

# MEDIA PLURALISM IN MOLDOVA

## Complementary approaches and recommendations



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## ABOUT GMR

### **The Global Media Registry (GMR)**

is a non-profit social enterprise, based in Germany, that supports transparency, accountability and pluralism in the digital information space. As a 21st century data utility at the nexus of media, technology and regulation, GMR is a service provider and solution hub for newsrooms, regulators and policy makers, and for all stakeholders that engage with the media industry. One of GMR's flagship projects is the global 'Media Ownership Monitor' (MOM) that is also being implemented in Moldova at the time of publishing this report.

## A EXECUTIVE SUMMARY

The purpose of this report is to provide the National Regulatory Authority (NRA) for the audiovisual sector of the Republic of Moldova, the Audiovisual Council (CA), with actionable recommendations to optimize and upgrade its operations in order to fulfil its mandate. It is based on existing national and European law as well as previously compiled documents and several exchanges with key stakeholders. Accordingly, and also with a view of the concurrent process of the country's accession to the European Union, five interconnected and complementary priorities have been identified to address as follows.

1. In relation to **transparency of media ownership**, the main conclusion of the report focuses on the need to ensure that the media NRA is perennially equipped with all the resources necessary in terms of staff, expertise, investigative powers and financial means. It is also recommended that the media NRA establish an optimal list of transparency requirements on the basis of the comparative table in Annex.
2. In the area of **protection of editorial independence**, it is recommended to create a legal duty for media services providers to self-report on the measures they adopt to protect editorial independence, and to include such measures in their annual report to the media NRA. The media NRA is recommended to develop a list of measures that can serve to protect and develop editorial independence on the basis of a detailed review of Recommendation (EU) 2022/1634.
3. In order to reinforce the effectiveness of the control of **the impact of anti-competitive behaviour and concentrations on media pluralism and editorial independence**, it is suggested that the remit of the media NRA is revised in order to include investigative powers, the power to issue binding requests for cooperation to other public authorities, and the power to impose remedies in order to ensure that the regulatory authority can make, within a reasonable time limit, a decision on any threat on media pluralism and editorial independence resulting from media concentration or anti-competitive behaviour, either on the basis of a complaint from a stakeholder (industry or civil society organisation) or on the basis of a monitoring of the national media market. This revision of the powers of the regulator to turn it into an effective guardian of pluralism could be phased: in a first stage, the jurisdiction of the NRA would cover the broadcast market; in the second phase, it would extend to the whole media market offline and online.
4. Due to the evolution of regulatory approaches in the context of **the convergence of media landscapes**, it is recommended that the media NRA contribute to the development and reinforcement of a culture of self-regulation and co-regulation in the country, by developing a strong relationship with the Press Council, and supporting the development and effectiveness of this self-regulatory mechanism, notably by relying on the decisions and reports of the Press Council in its assessment of media pluralism and editorial independence.
5. The media NRA is recommended to establish a multi-year programme of **continuous engagement with all stakeholders** including conferences, seminars, working groups and publications on key topics for democratic media regulation (a list of suggested topics is included in Annex 2).

## B INTRODUCTION

In line with its mission, this report focuses on transparency of media ownership, media concentration and media pluralism, while avoiding to replicate recent analysis that have discussed amendments to the regulatory framework in Moldova. We make the case for a range of measures that are complementary to each other and should be mobilised at some point in time ranging from the near future to the next few years.

The EU Commission noted that ‘the framework for fundamental rights and freedom of expression generally follows European and international standards. Moldova has made important progress in freedom of the media, despite its media concentration and opaque financing.’<sup>1</sup> In RSF Press Freedom Index, Moldova has risen from the 91st rank in 2020 to the 28th position in 2023, which signals a clear improvement for media freedom.<sup>2</sup> This said, the Media Pluralism Monitor (MPM) report concluded to a high level of threat on media plurality.<sup>3</sup> An initial assessment of the economic sustainability of audiovisual media in Moldova, conducted by the Global Media Registry (GMR) preceding this report, found the sector as characterised by unfair competitive practices, opaque or suspicious funding and concentration. A number of media actors appear to show little concern for media regulation or the ethics of verifiable and reliable information and seem to serve mostly political and business interests.

The current situation should be understood as one of transition: the media sector finds itself somewhere along the way that leads from a relatively lawless mayhem to a modern, pluralistic media landscape that is able to serve a functioning democratic society. This long-term transition represents a challenge for all relevant stakeholders, but primarily the country’s national regulatory authority (NRA), the Audiovisual Council (CA), that will only be able to fulfil its missions in the service of media pluralism and democracy if it is sufficiently and sustainably funded and staffed with qualified personnel. It is paramount that Moldovan authorities as well as the international community understand that the high expectations that are set on the media regulatory authority can only be met if the CA is given appropriate and perennial resources.

The implementation of recently adopted EU legislation, the DSA and the EMFA, has only just started, which means that a number of practical solutions or adjustments will be tested in the few years to come. Within the confines of the EU acquis, Moldova should not necessarily ‘copy and paste’ legal solutions developed in the particular historical, political and institutional contexts of various EU Member States, but rather seek to define the approaches that best fit the institutional architecture of the country while supporting the transition towards EU accession. Even at the early stages of both the EMFA’s enforcement and the Moldova’s process towards EU membership, the EU Commission emphasised the need to ensure compliance of national media law with the European Media Freedom Act.<sup>4</sup>

1 Commission Opinion on the Republic of Moldova’s application for membership of the European Union, COM(2022) 406 final, 17 June 2022, p. 9

2 See <https://rsf.org/en/index?year=2024> (Moldova ranks at the 31st position in 2024, a slight set back from the previous year but it remains a much higher score than previously).

3 CMPF, Monitoring media pluralism in the digital era - application of the media pluralism monitor in the European member states and candidate countries in 2023, Country report: The Republic of Moldova, by Victor Gotisan and Cristina Durnea. The Romanian version of the MPM report can be found at [https://cadmus.eui.eu/bitstream/handle/1814/77023/Moldova\\_MO\\_mpm\\_2024\\_cmpf.pdf?](https://cadmus.eui.eu/bitstream/handle/1814/77023/Moldova_MO_mpm_2024_cmpf.pdf?)

4 “Republic of Moldova 2023 Report”, Commission staff working document, 8 November 2023, p. 6, 34, [https://neighbourhood-enlargement.ec.europa.eu/document/download/d8ef3ca9-2191-46e7-b9b8-946363f6db91\\_en?filename=SWD\\_2023\\_698%20Moldova%20report.pdf](https://neighbourhood-enlargement.ec.europa.eu/document/download/d8ef3ca9-2191-46e7-b9b8-946363f6db91_en?filename=SWD_2023_698%20Moldova%20report.pdf).

## **Based on the above, this report identifies five interconnected and complementary areas to focus on:**

### **I. Transparency of media ownership**

The continued efforts of the CA to tackle issues of transparency of ownership and concentration in the audiovisual sector should take the form of developing a robust in-house capacity to verify the accuracy of data submitted by media actors (such as in annual reports) and to implement a monitoring of pluralism on the media market.

### **II. The protection of editorial independence**

The notion of media pluralism is broader than the analysis of ownership and transparency thereof: the regulatory authority has a role to play in the promotion and defence of editorial independence. This includes various ways to nudge media actors towards high standards of journalistic practices, which also plays a major part in the reaction to disinformation.

### **III. The media NRA as the competition authority**

Dealing with both issues of concentration of ownership and anti-competitive behaviour in the audiovisual sector requires the CA to maintain effective cooperation relationships with other public authorities in Moldova, such as the Competition Council. The legislative framework may need a couple of tweaks in order to reinforce formal procedures of collaboration. Another option may be a revision of the remit of the CA to entrust the media regulator with the task of preserving media pluralism from threats that result from media concentrations and anti-competitive behaviours in the audiovisual media sector or, more broadly, the entire media sector.

### **IV. The convergence of media landscapes**

The media sector is increasingly digital and Internet-based, which has direct consequences on the analysis of concentration of ownership and pluralism. Inescapably, the missions of the regulatory authority will extend to certain areas of online communication. This is the evolution that, to varying degrees, media regulatory authorities in the EU have been adapting to. The defence and promotion of high standards of journalistic practices, as well as the extension of the media NRA's responsibilities into the online sphere, are characterised by regulatory approaches that combine self-regulation (such as the Press Council) with the classic understanding of public regulation. Beyond its traditional role of implementing the law and imposing sanctions where necessary, the CA will have to become an agile partner in mechanisms of co-regulation in order to facilitate the transition of the media landscapes towards democratic maturity.

### **V. Continuous engagement with all stakeholders**

The CA adopted excellent practices of transparency of its action. Beyond the application of the law, publicity of decisions or formal consultations when required by law, the influence that the regulatory authority exerts through softer means — such as less formal contacts and open conversations with the sector, for instance through the organisation of conferences and other events — is key in enabling compliance with the law to percolate deeper into the practices of media actors. The regulatory authority also needs to be a constant pedagogue of media policy and regulation in a manner that envisages the public as an active partner and supporter of media pluralism.

## I. TRANSPARENCY OF MEDIA OWNERSHIP, INCLUDING BENEFICIAL OWNERSHIP

Media play a decisive role in enabling citizens to access information which is relevant for an active participation in democratic processes. Media market concentrations may hinder freedom of access to a broad diversity of information and ideas, which justifies the enactment of national rules targeting the entities that control significant interests in the national media market and thus hold a substantial influence on the formation of public opinion. Such rules need to be properly framed and be transparent, objective, proportionate and non-discriminatory.

It is crucial for the public to know with certainty who owns and who is behind the media services (that is, who is the ultimate beneficial owner), in order to be able to assess potential conflicts of interest, the political exposure of media owners, the existence of hidden political agenda, as well as the reliability of information. In that sense, transparency of media ownership is a prerequisite for the formation of well-informed opinions and the effective participation in a democracy. Transparency of ownership also serves as an effective tool to reduce the risk of interference with editorial independence (see below); it contributes to an open and fair market environment and enhances media accountability vis-à-vis the public, ultimately contributing to the quality of media services.<sup>5</sup>

The current policy of the European Union provides for a national assessment of media market concentrations that goes beyond the confines of competition law and includes the assessment of the potential impact of concentration on media pluralism and editorial independence.

An important criterion for the national regulation of media markets resides in the analysis of the impact of concentrations, namely the risk of a reduction of competing views within that market. Indeed, ‘media pluralism should be understood as the possibility to have access to a variety of media services and media content which reflect diverse opinions, voices and analyses.’<sup>6</sup>

### Example of cooperation between an NRA and a CSO on media ownership transparency

In Ireland, the audiovisual regulator Coimisiún na Meán agreed to fund updates and extensions of the MOM Ireland<sup>7</sup> project as a public-facing MIL initiative, but also to fulfil obligations under EU law.

### National law

The Code of the Republic of Moldova on the Audiovisual Media Services in Republic of Moldova (AVMSC) imposes restrictions on audiovisual media ownership. In particular, a person may not provide more than two TV services, and certain categories are banned from owning broadcasting companies, such as political parties, unions, public and elected officials (Art. 28). In 2023, the threshold for a ‘dominant position in the formation of public opinion’ was lowered from 35 to 25 per cent of the audience (Art. 29, 4). The CA has adopted a detailed methodology for the evaluation of dominant positions in shaping public opinion.<sup>8</sup>

5 Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act), text with EEA relevance. PE/4/2024/REV/1. OJ L, 2024/1083, 17.4.2024, Recital 32. ELI: <http://data.europa.eu/eli/reg/2024/1083/oj>. The text is available both in English and Romanian.

6 European Media Freedom Act, Recital 64.

7 <https://ireland.mom-gmr.org/en/>

8 Decizia nr. 90 din 29 martie 2024 Cu privire la aprobarea Metodologiei pentru evaluarea riscurilor de apariție a situațiilor dominante în formarea opiniei publice; <https://consiliuaudiovizual.md/wp-content/uploads/2024/04/D.90-din-29.03.2025-Cu-privire-la-aprobarea-Metodologiei-pentru-evaluarea-riscurilor-de-apariție-a-situațiilor-dominante-în-formarea-opinii-publice.pdf>

A number of transparency obligations are imposed on AV media services, with the owners of outlets listed in a register kept by the Audiovisual Council (CA).<sup>9</sup> Nonetheless, 'several outlets have owners with either foreign ties to Russia or murky ties to Moldova's own political elite that create opportunities for hidden influence.'<sup>10</sup> To guarantee media pluralism in Moldova, the European Commission suggested that the concentration of media ownership and the opacity of media financing needed to be properly tackled.<sup>11</sup>

Article 21 AVMSC mandates that media companies be transparent (see Table 1) and notify the CA of changes in key elements of their licence application (Art. 25). The AVMSC also requires media services providers to fill an annual report on the basis of a template established by the CA.

### Council of Europe

In its key document, the 'Guidelines on media pluralism and transparency of media ownership'<sup>12</sup>, the Council of Europe encourages member states to develop suitable methodologies for the assessment of media concentration, in respect of both the influence of individual media and the aggregated influence of a media outlet/group across sectoral boundaries. In addition to measuring the availability of media sources, this assessment should reflect the real influence of individual media by adopting an audience-based approach and using appropriate sets of criteria to measure the use of individual media and their impact on the forming of opinions. This audience-based approach should take into consideration the offline and online footprint of the media. The measurement exercise should be carried out by an independent authority or another designated body.

The Guidelines suggest that the states set out disclosure or transparency obligations for media in a clear and precise way to include certain key elements (see Table 1).

Additionally, the Guidelines recommend that high levels of transparency should be ensured with regard to *the sources of financing of media outlets* in order to provide a comprehensive picture of the different sources of potential interference with the editorial and operational independence of the media and allow for effective monitoring and controlling of such risks. It also suggests a disclosure by media outlets of contractual relations with other media or advertising companies and political parties that may have an influence on editorial independence.<sup>13</sup>

These data should be kept up to date and made available to the public free of charge and without delay. Ideally, they should be readily accessible and searchable, for example in the form of online databases in an open format and with no restrictions on reuse.

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9 Codul serviciilor media audiovizuale al Republicii Moldova în Republica Moldova (Code of the Republic of Moldova on the Audiovisual Media Services in Republic of Moldova), No.174 of 8 November 2018, Art. 21, Art. 28, [https://www.legis.md/cautare/getResults?doc\\_id=33713&lang=ro](https://www.legis.md/cautare/getResults?doc_id=33713&lang=ro)

10 Emily Dumont, Jonathan Solis, and Lincoln Zaleski, Moldova: Profile of Media Ownership and Potential Foreign Influence Channels, William & Mary's Global Research Institute, p. 5, <https://docs.aiddata.org/reports/media-resilience/mda/Moldova-Profile-of-Media-Ownership-and-Potential-Foreign-Influence-Channels.pdf>

11 Communication from the Commission to the European Parliament, the European Council and the Council, "Commission Opinion on the Republic of Moldova's application for membership of the European Union", Brussels, 17.6.2022 COM(2022) 406 final. P. 9-10, <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-06/Republic%20of%20Moldova%20Opinion%20and%20Annex.pdf>

12 Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership, Appendix 'Guidelines on media pluralism and transparency of media ownership', see in English: <https://search.coe.int/cm?i=0900001680790e13>. See also: Legal framework to ensure independence of the media and safeguard media pluralism: [https://www.coe.int/en/web/freedom-expression/legal-framework-to-ensure-independence-of-the-media-and-safeguard-media-pluralism#\[%22253293845%22:1\]}](https://www.coe.int/en/web/freedom-expression/legal-framework-to-ensure-independence-of-the-media-and-safeguard-media-pluralism#[%22253293845%22:1]})

13 Recommendation CM/Rec(2018)1, para 4.7.

## European Union

The requirement to respect media freedom and media pluralism is prescribed by Article 11 of the Charter of Fundamental Rights of the European Union. The European Media Freedom Act (EMFA)<sup>14</sup>, which entered into force in the EU on 7 May 2024 and will be practically applied from 2025, laid down common rules for the proper functioning of the internal market while safeguarding the independence and pluralism of media services.

Recital 62 of the EMFA explains that common rules are necessary because media market concentrations are currently regulated differently across the European Union: some States rely on competition assessments only whereas others have enacted frameworks dedicated to the specific analysis of the impact of concentrations on pluralism. And in the latter category, there is a considerable degree of variation among States:

- in some cases, all media transactions are scrutinised irrespective of whether they reach certain thresholds, while in other cases an assessment is conducted only when specific thresholds are exceeded or certain qualitative criteria are met (for instance, for the purposes of such an assessment, some States apply revenue multipliers in order to ensure that competitive threats do not pass undetected even when the outlets involved have low revenues).
- there are also differences in the procedures applicable to the scrutiny of market transactions for media pluralism purposes. The analysis is often carried out independently by the national media regulator or by the competent authority with a contribution of the media regulator. Certain national rules enable ministries or governmental bodies to intervene in the scrutiny of media markets on **non-economic grounds**, ranging from the protection of media pluralism to the safeguarding of national security or other general interests.

With the entry into force of the EMFA, assessment of media market concentrations shall be distinct from national competition law assessments, including those provided for under merger control rules in the EU (which already stipulate that Member States may take appropriate measures to protect legitimate interests including, plurality of the media).<sup>15</sup> Member States shall lay down, in national law, substantive and procedural rules which allow for an assessment of media market concentrations that could have a significant impact on media pluralism and editorial independence.

Article 22 (para 1) prescribes that those rules shall:

- be transparent, objective, proportionate and non-discriminatory;
- require the parties involved in such a media market concentration to notify the concentration in advance to the relevant national authorities or bodies or provide such authorities or bodies with appropriate powers to obtain information from those parties which is necessary to assess the concentration;
- designate the national regulatory authorities or bodies as the ones responsible for the assessment or ensure that they are substantively involved in the assessment;
- set out in advance objective, non-discriminatory and proportionate criteria for notifying such media market concentrations and for assessing the impact on media pluralism and editorial independence;
- specify in advance the timeframes for completing such assessments.

The EMFA provides for the Member States to set out disclosure or transparency obligations for media (see Table 1).

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<sup>14</sup> Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act) text with EEA relevance. PE/4/2024/REV/1. OJ L, 2024/1083, 17.4.2024, ELI: <http://data.europa.eu/eli/reg/2024/1083/oj>. The text is available both in English and Romanian.

<sup>15</sup> Article 21(4) of the Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), ELI: <http://data.europa.eu/eli/reg/2004/139/oj>.

As to the methodology for the assessment of market concentrations, the EMFA prescribes to take into account such elements as:

- the expected impact of the media market concentration on media pluralism, including its effects on the diversity of media services and the media offering on the market, taking into account the online environment and the parties' interests in, links to or activities in other media or non-media businesses;
- whether, in the absence of the media market concentration, the parties involved in the media market concentration would remain economically sustainable, and whether there are any possible alternatives to ensure their economic sustainability.<sup>16</sup>

While the EMFA does not explicitly refer to other anti-competitive behaviours than concentration, it should be kept in mind that the general objective of the regulation is the protection of a well-functioning internal market for media services, which includes 'the protection of media freedom and media pluralism as two of the main pillars of democracy and of the rule of law'.<sup>17</sup> It can therefore be assumed that any anti-competitive practice that affects either the economic sustainability of a media market or the editorial independence of media services could be assimilated to concentrations under the EMFA and call for similar appropriate reactions.

It is important to note that, according to Recital 32 of the EMFA, '[t]he disclosure of targeted media ownership information would produce benefits clearly outweighing any possible impact of the disclosure obligation on fundamental rights, including the right to private and family life and the right to protection of personal data'.<sup>18</sup>

### Recommendations

1. On the basis of the transparency requirements detailed in the EMFA and the Recommendation of the Council of Europe, the CA is recommended to establish an optimal list of transparency requirements for media services providers in Moldova, in a manner that complies with EU law and does not overly interfere with the conduct of business.
2. In order to incentivise a smooth delivery of annual reports, the CA is recommended to consider sending forms to service media providers that, where reasonable, are pre-filled with the information already in its possession, so that the media companies only have to verify data, update where necessary and fill in the blanks.
3. On the basis of best practices in European countries<sup>19</sup> and the law of the European Union, the CA is recommended to engage in discussions with stakeholders, notably the national competition authority, personal data agency, media companies and business associations, academia and civil society organisations, on how to improve the collection and dissemination of the information on media ownership in Moldova.
4. In order to fulfil tasks as diverse as the assessment of the impact of media concentrations on pluralism and editorial independence or the participation as an observer in the activities of ERGA and the future European Board for Media Services, the CA is recommended to be perennially equipped with all the resources necessary in terms of staff, expertise and financial means.

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<sup>16</sup> European Media Freedom Act, Art. 22.

<sup>17</sup> See European Media Freedom Act, Recital 2.

<sup>18</sup> European Media Freedom Act, Recital 32.

<sup>19</sup> For example, those described in: 'Study on Legal Ownership Regime, Competition in Audiovisual and Advertising Markets, TV Audience Measurement System and Transparency of Ownership and Financing of Audiovisual Sector in Moldova' by Jean-François Furnémont, Ion Bunduchi, Alexandru Dorogan and Vasile State, Section 4, Chisinau, January 2023.

In that perspective, it is recommended to define the budget of the CA on the basis of the analysis of the extended duties of the national regulatory authorities provided for in the EMFA.

In addition, the CA is recommended to be equipped with appropriate powers in order to be able to obtain information and data from any public authority and natural or legal person who might reasonably be in possession of the information and data needed to ensure transparency of media ownership.

5. The CA is recommended to continue its proactive support of independent initiatives by CSOs in this field, such as the 'Media Ownership Monitor' (MOM)<sup>20</sup>, that can cross-pollinate with the aforementioned recommendations, to:

- a) add public facing and easily accessible, media and information literacy (MIL) oriented ways of providing transparency of media ownership;
- b) extend the narrow scope of audiovisual media towards a more holistic assessment of the marketplace overall, i.e. including print and non-traditional actors;
- c) benefit from and contribute to an exchange of methodological approaches and best practices in the field globally.

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<sup>20</sup> Media Ownership Monitor (MOM): <https://mediaownershipmonitor.org/> (Disclosure: the MOM is operated by Global Media Registry (GMR), a Germany-based NGO tasked with compiling this report).

## II. PLURALISM, EDITORIAL INDEPENDENCE AND MEDIA CONCENTRATIONS

Shareholders and other private parties with a controlling interest in media service providers might behave in ways that negatively affect the public opinion-forming process.<sup>21</sup> Only when viewers are aware of who owns and who stands behind the media, can they identify potential interference with information. In this regard, ‘transparency is also an effective tool to disincentivise and thus to limit the risk of interference with editorial independence.’<sup>22</sup>

### National law

Editorial independence is central to Moldovan media regulation. Its violation equals or borders on censorship: the definition of censorship, which is prohibited by law, includes an ‘unjustified distortion of the journalistic material or unjustified prohibition to spread certain information by the mass media management’.<sup>23</sup> The Law on Freedom of Expression provides a broad protection to the journalists and others exercising their right to this freedom. In particular, it upholds that ‘the editorial independence of the mass media is recognized and guaranteed by law’ and prohibits interferences ‘in the editorial activity of the mass media, except in the cases provided by law.’<sup>24</sup>

Article 8 of the AVMSC<sup>25</sup>, while mostly protecting editorial independence from interference by the public authorities, extends the protection to interferences ‘of any kind in the content, form or in the methods of creation and presentation of audiovisual programs and other elements of audiovisual media services’ *by any other person*. Article 65 (para 1a) of the AVMSC additionally prohibits the sponsor of audiovisual programmes from influencing the editorial independence, in particular the content and schedule of the programmes. A similar prohibition exists in relation to product placement (Art. 69, para 2a).

Article 21 of the AVMSC prescribes that all media service providers shall ‘ensure simple, direct and permanent access of audiovisual media service users’ to information on ‘the editorial policy and the person/persons (body/bodies) who determine the editorial policy and are responsible for it’.

Further, Article 34 of the AVMSC describes editorial independence and creative freedom of *public providers* of media services as their right to make decisions regarding:

- ‘a) determining the editorial policy, approving and modifying the content of audiovisual media services and the broadcast schedule;
- b) organisation of editorial and creative activity;
- c) designing, producing and broadcasting audiovisual programs;
- d) other activities established by this Code and/or by the supervisory body of the activity of the public media service provider.’

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21 European Media Freedom Act, Recital 18.

22 European Media Freedom Act, Recital 32.

23 Law of the Republic of Moldova “On Freedom of Expression” of 23 April 2010, No. 64, Art. 2.  
[https://www.legis.md/cautare/getResults?doc\\_id=126675&lang=ro](https://www.legis.md/cautare/getResults?doc_id=126675&lang=ro).

24 Law of the Republic of Moldova “On Freedom of Expression”, Art. 5.

25 Codul serviciilor media audiovizuale al Republicii Moldova în Republica Moldova (Code of the Republic of Moldova on the Audiovisual Media Services in Republic of Moldova), No. 174 of 8 November 2018, Art. 2 para 1 point b,  
[https://www.legis.md/cautare/getResults?doc\\_id=138546&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=138546&lang=ro#).

On 15 March 2024, the CA adopted methodologies for the evaluation of internal and external pluralism in the audiovisual media market; the methodology on internal pluralism includes some indicators that relate to editorial independence.<sup>26</sup>

### Council of Europe

Recommendation CM/Rec 2018 states that ‘national legislative and policy frameworks should safeguard the editorial independence and operational autonomy of all media to ensure that they can carry out their key tasks in a democratic society. These frameworks should be designed and implemented in a manner which prevents States, or any powerful political, economic, religious or other groups from acquiring dominance over and exerting pressure on the media.’<sup>27</sup>

Media pluralism requires high levels of transparency about *editorial and commercial content*: ‘media and other actors should adhere to the highest standards of transparency regarding the source of their content and always indicate clearly when content is provided by political sources or involves advertising or other forms of commercial communications, such as sponsoring and product placement. This also applies to hybrid forms of content, including branded content, native advertising, advertorials and infotainment. In cases where these obligations are not fulfilled, provision should be made for proportionate measures to be applied by the competent regulatory authorities.’<sup>28</sup>

Media self-regulation and standards of journalistic ethics are effective tools that support the independence of journalists and help them to resist undue pressure, including of a political and commercial nature, thus enhancing public trust in the media<sup>29</sup>.

In the context of the de-oligarchization Action Plan in Moldova, the Venice Commission of the Council of Europe noted that the need to strengthen media pluralism and transparency of media ownership is a central issue that should be tackled in line with the above Recommendation.<sup>30</sup>

### European Union

A major objective of the EMFA is to implement European rules related to media pluralism and editorial independence, thereby guaranteeing high standards in these areas. Addressed to the EU Member States, the EMFA also serves as a clear summary of best practices for the NRAs of the candidate countries.

When it comes to the promotion of editorial independence in the European Union, the best practices are summarised in a 2022 European Commission Recommendation<sup>31</sup> and include corporate governance measures, standards such as editorial charters or codes, and mechanisms such as committees of ethics. The European Commission, assisted by the future European Board for Media Services, is expected to issue guidelines on the

26 Decision of the CA, No 76, 15 March 2024, Metodologia de monitorizare și evaluare a pluralismului audiovizual intern, Metodologia de monitorizare și evaluare a pluralismului audiovizual extern, <https://consiliuaudiovizual.md/news/ca-a-aprobat-metodologiile-de-monitorizare-si-evaluare-a-pluralismului-audiovizual-intern-si-extern/>.

27 Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership, Appendix “Guidelines on media pluralism and transparency of media ownership”, para 1.3, see in English: <https://search.coe.int/cm?i=0900001680790e13>.

28 Op.cit., Appendix “Guidelines on media pluralism and transparency of media ownership”, para 2.7.

29 Recommendation CM/Rec(2018)1, para 3.

30 Republic of Moldova - Final Opinion on limiting excessive economic and political influence in public life (de-oligarchisation), adopted by the Venice Commission at its 135th Plenary Session (Venice, 9-10 June 2023), CDL-AD(2023)019-e, Para 31, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2023\)019-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)019-e).

31 Commission Recommendation (EU) 2022/1634 of 16 September 2022 on internal safeguards for editorial independence and ownership transparency in the media sector (OJ L 245, 22.9.2022, p. 56), para 12, see in English and in Romanian: <http://data.europa.eu/eli/reco/2022/1634/oj>.

safeguards for pluralism and editorial independence. It is likely that the future guidelines will develop the existing Commission Recommendation.

The actual practice varies in this regard. In some news outlets, journalists have a say on the selection of the editor-in-chief or even on media ownership changes. In certain media companies, journalists have the status of shareholders and can participate in strategic decision-making and in the allocation of the economic gains. In a few countries, some of these corporate measures are mandatory for specific types of media service providers.<sup>32</sup>

It is clear that media market concentrations, media pluralism and editorial independence are closely interrelated. On the one hand, concentrations ‘could have a significant impact on media pluralism and editorial independence’<sup>33</sup>, while on the other hand, ‘risks to media pluralism and the editorial independence of media service providers... could impact the functioning of the internal market.’<sup>34</sup>

European law prescribes that the assessment of media market concentrations by the national media regulator should include such elements as ‘the safeguards for editorial independence, including the measures taken by media service providers with a view to guaranteeing the independence of editorial decisions’, and, ‘where applicable, the commitments that any of the parties involved in the media market concentration might offer to safeguard media pluralism and editorial independence.’<sup>35</sup>

The EMFA makes it clear that media service providers that provide news and current affairs content have a duty to ‘take measures that they deem appropriate with a view to guaranteeing the independence of editorial decisions.’<sup>36</sup> In addition, the monitoring of the internal market of media services by the public authority should include ‘an overview of measures taken by media service providers with a view to guaranteeing the independence of editorial decisions.’<sup>37</sup>

The category of media service providers that provide news and current affairs content also includes those, irrespective of their format, that provide documentaries or magazines covering such issues. Therefore, the recommendations relating to measures on editorial independence are to be addressed to all such providers.<sup>38</sup> The particular attention to news and current affairs content is explained by their societal role as a public good.<sup>39</sup> The public has the right ‘to enjoy pluralistic media content produced in accordance with editorial freedom in the internal market. That is key to fostering public discourse and civic participation, as a broad range of reliable sources of information and quality journalism empower citizens to make informed choices, including about the state of their democracies.’<sup>40</sup>

While it is legitimate for private media owners to decide the long-term editorial direction, it is important to ensure that editors can cover independently news and current affairs in their daily work. Indeed, editors should base individual editorial decisions on the journalistic research and their assessment of the relevance of the information for the readers; they should also be able to freely express critical views without fear of retribution.<sup>41</sup>

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32 For instance, in France, Law No 2016-1524 (so-called ‘Loi Bloche’), and in Portugal, Law No 1/99 of 13 January.

33 European Media Freedom Act, Recital 64.

34 European Media Freedom Act, Art 26, para 3, point c).

35 Op.cit., Art. 22 para 2, points b) and e).

36 Op.cit., Art. 6, para 3, point a).

37 Op.cit., Art. 26, para 3, point d).

38 Commission Recommendation (EU) 2022/1634), para 11.

39 European Media Freedom Act, Recital 17.

40 Op.cit., Recital 8.

41 Commission Recommendation (EU) 2022/1634), para 13.

Therefore, the measures to enable editorial independence shall aim, in particular, to:

- “(a) guarantee that editorial decisions can be taken freely within the established editorial line of the media service provider concerned; and
- (b) ensure that any actual or potential conflicts of interest that might affect the provision of news and current affairs content are disclosed”.<sup>42</sup>

These obligations are interrelated with the transparency obligations of AV media service providers, such as the duty to make relevant up-to-date information ‘easily and directly accessible to the recipients of their services.’<sup>43</sup>

Editorial independence of foreign programmes. Numerous resolutions of international professional organisations, such as IFJ, EFJ, and AIPCE have noted that AV media service providers based in Russia and Belarus do not enjoy media independence and are in fact controlled by autocratic states. Therefore, a retransmission of their programmes and/or of other content in Moldova are tantamount to a clear sign of disregard for the legal duty to respect editorial independence by the media service providers that make such content available to the public in Moldova.

The EMFA envisions the future European Board for Media Services to provide support to the NRAs in their role of protecting the internal market for media services from rogue media service providers. In particular, it is to draw up a *list of criteria concerning media service providers established or originating from outside of the EU*. Such a list would help the NRAs in situations where a media service provider seeks jurisdiction in a Member State or where a media service provider already under the jurisdiction of a Member State appears to pose a serious and grave risk to public security. The EMFA states that the elements to be covered in such a list would concern, inter alia, ownership, management, financing structures, editorial independence from third countries or adherence to co-regulatory or self-regulatory mechanisms governing editorial standards in one or more Member States.<sup>44</sup>

It is worth noting that at the time of the adoption of the Council of Europe Recommendation on media pluralism and transparency of media ownership in 2018, the Permanent Representative of the Russian Federation to the Council of Europe clearly indicated that his government reserved the right to limit the scope of application of the Recommendation for Russian media.

Editorial independence should not be a fetish. It happens that rogue, corrupt and dishonest or politically ambitious media service providers are established with the aim of producing and/or disseminating false news and harmful propaganda. Then the editorial office is established of predetermined media actors, which may even enjoy independence from the owner as long as it enables the established editorial line of

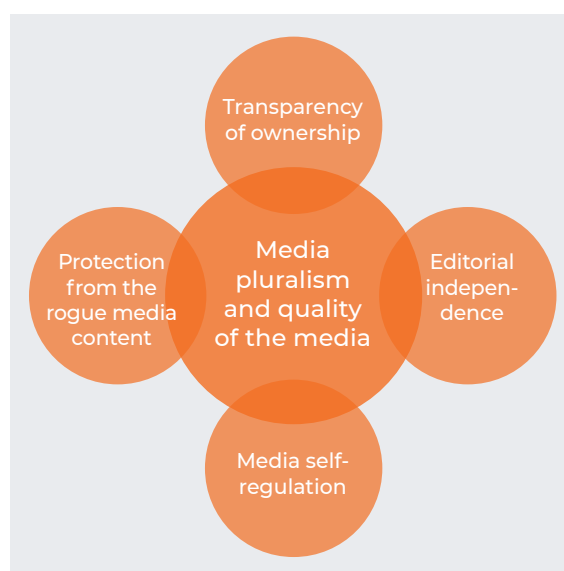


Figure 1. Interrelations between the elements of media pluralism.

<sup>42</sup> European Media Freedom Act, Art. 6, para 3.

<sup>43</sup> Op.cit., Art. 6, para 1.

<sup>44</sup> Op.cit., Recital 49.

the media service provider concerned. Does it fit the pattern of editorial independence in the sense of European law? Probably not, as, for example, the 2018 Council of Europe Recommendation provides that ‘the exercise of editorial decision making should be incompatible with the exercise of political authority.’ This incompatibility should be clearly recognised in Europe as a matter of principle.<sup>45</sup>

In view of the status of Moldova as a candidate country to the EU<sup>46</sup>, it is necessary to further harmonise certain aspects of national rules related to media services. In view of the status of Moldova as a Member State of the Council of Europe, it is important to take into account that ‘adequate safeguards, including legislative safeguards, as appropriate, should also be put in place to prevent interference with editorial independence of the media, in particular in relation to coverage of conflicts, crises, corruption and other sensitive situations where objective and quality journalism and reporting are key tools in countering propaganda and disinformation.’

### Recommendations

1. In assessing the potential impact of media market concentrations and anti-competitive practices on media pluralism and editorial independence<sup>47</sup>, the CA is recommended to:
  - analyse the specific cases and potential risks of undue interference with editorial independence by the prospective owner, management or governance structure of the media service provider suspected of striving to dominate on the market;
  - consider the effect of the planned or existing concentration, or of anti-competitive practices, on the economic sustainability of the entity or entities involved in the concentration, whether the provider is actually able to provide and further develop financially viable, adequately resourced and technologically adapted *quality* media services<sup>48</sup> in the market, or – on the contrary – it will completely depend on its owner’s will and donations or further investments without economic possibility of their returns.
2. On the other hand, the CA is recommended to be enabled to review the measures to be taken or already implemented by the AV media service provider with a view to guaranteeing the independence of editorial decisions.

Those measures could include the existing or envisaged internal safeguards that aim to preserve ethical and professional standards, such as:

- the existence of a code of ethics within the media service provider and the existence of effective processes of implementations of said code;
- compliance with the decisions of the Moldovan Press Council<sup>49</sup>, when applicable;
- principled recognition by the media service provider of the national Deontological Code through becoming a party to it;<sup>50</sup>
- existence and easy accessibility of the newsroom’s ombudsperson;
- separation of the editorial and commercial offices;
- introduction of media literacy and fact-checking practices;
- compliance with the right of reply or rectification;
- existence and implementation processes of rules on potential conflicts of interests;

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<sup>45</sup> Recommendation CM/Rec(2018)1, Appendix: Guidelines on media pluralism and transparency of media ownership, Para 3.6.

<sup>46</sup> Since June 2022.

<sup>47</sup> The role and powers of the CA are discussed in the next section.

<sup>48</sup> In the EMFA, quality media services are defined as those that are ‘produced by journalists in an independent manner and in line with ethical and journalistic standards and which, therefore, provide trustworthy information.’ (Recital 14)

<sup>49</sup> See <https://consiliuldepresa.md/en>.

<sup>50</sup> See <https://consiliuldepresa.md/en/page/moldovan-journalist-code-of-ethics>.

- as well as other possible safeguards for the independence of editorial decisions, such as provided for in the Commission Recommendation (EU) 2022/1634.

Through public discussions with the industry and all stakeholders<sup>51</sup>, the CA is recommended to develop a list of criteria of measures that can serve to protect and develop editorial independence, on the basis of a detailed review of Recommendation (EU) 2022/1634. The Recommendation lists specific safeguards to ensure the independence and integrity of editors, which cover editorial integrity, editorial independence, relevant internal bodies or structures; safeguards to promote the participation of journalists in decision-making of media companies; and safeguards to improve the sustainability of media service providers and long-term investment in content production.<sup>52</sup>

3. Where relevant to its assessment of threats on pluralism and editorial independence, the CA is recommended to take into account the findings of the European Commission's annual Rule of Law reports related to media pluralism and media freedom,<sup>53</sup> as well as the Media Pluralism Monitor, a research project of the Centre for Media Pluralism and Media Freedom that assesses the health of media ecosystems in Europe, highlighting threats to media pluralism and media freedom in the European Union's Member States and candidate countries.<sup>54</sup>
4. The assessment of editorial independence is recommended to rely first on self-reporting, transparency and self-regulation mechanisms in order to defuse accusations of state interference with media freedom. Self-reporting by media service providers, such as through publicly available information and annual reports, could then be assessed by the CA in a neutral and objective manner that relies on contributions from national media associations, civil society organisations, self-regulatory mechanisms such as the Press Council, and on reports on media pluralism from international media freedom organisations.

In that regard, we observe that the methodology approved by the CA on evaluation of internal media pluralism (which in itself can only be implemented with the adequate resources) could also serve for self-evaluation by media service providers.

In order to foster legal certainty and ensure that the national rules and procedures that allow for the assessment of concentrations that could have a significant impact on editorial independence genuinely aim to protect media pluralism and editorial independence, it is essential that objective, non-discriminatory and proportionate criteria for notifying and assessing the voluntary measures on protection of media pluralism and editorial independence from impact of owners within a given media service provider be set out in advance. In practical terms, relevant changes will be in line with the spirit and letter of the AVMSC as its preamble stipulates the adherence of the AVMSC to the Directive 2010/13/EU<sup>55</sup>, while the EMFA is both establishing a common framework for media services in the internal market and amending and developing Directive 2010/13/EU.

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<sup>51</sup> See section 5 and the list in Annex.

<sup>52</sup> Commission Recommendation (EU) 2022/1634), Section II.

<sup>53</sup> See in English and in Romanian: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 Rule of Law Report. The rule of law situation in the European Union, COM/2023/800 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023DC0800>.

<sup>54</sup> <https://cmpf.eu/media-pluralism-monitor/>.

<sup>55</sup> Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive).

The following amendments are recommended to be considered:

- Article 21 of the AVMSC (“Transparency of media service provider’s ownership”) is recommended to be supplemented with Article 21-1 (“Self-reporting on media service provider’s editorial independence”), which will enlist the elements that indicate the existence and availability of such mechanisms within the media service provider. Among those elements, and to be moved to a new Art. 21-1, could be the current point f) of para 1 of Article 21 (f) on the editorial policy and the person/persons (body/bodies) who determine the editorial policy and are responsible for it.
- Article 28 of the AVMSC is recommended to be amended to include a provision (within or after para 13) that will oblige private media service providers to report on the specific measures taken to develop and protect editorial independence, both through their own website and in the annual report they have to submit to the CA.

As a first step, the proposed measures to develop and protect editorial independence are recommended to become obligatory for the private media service providers *that provide news and current affairs content*. Whether the requirements should also apply to other private media service providers remains to be assessed later.

5. As to the malign foreign interference in the media market, the CA is recommended to compile a separate list of criteria concerning jurisdictional issues of media service providers established or originating from *outside* the Republic of Moldova, the EU and, perhaps, the US and Canada (in line with Art. 14 para 4 point a) of the AVMSC). If such a media service provider seeks jurisdiction in Moldova or is already under its jurisdiction, its treatment by the CA shall depend on whether the provider and its programmes appear to pose a serious and grave risk to public security and/or national audiovisual space and information security. The elements to be covered in such a list might concern issues of ownership, management, financing structures, editorial independence from third countries, especially governments of the third countries, or adherence to co-regulatory or self-regulatory mechanisms governing editorial standards in the country of origin. Inasmuch as possible, being under sanctions of the EU or Moldova, should become an important element of CA’s assessment of the media service providers established or originating outside of Moldova. The CA might choose to wait for the European Board for Media Services to adopt its own list of relevant criteria and then use it as a blueprint, but we advise CA to start the drafting in advance.

### III. PORTRAIT OF THE MEDIA NRA AS A COMPETITION AUTHORITY

The state of competition and the economic health of a media market is not measured simply through the analysis of the prices paid by consumers: media markets are double-sided, which means that media service providers have to navigate between the intertwined competition for audiences and competition for advertising. In addition, it should be kept in mind that media businesses operate a commercial service that is of a vital importance for the liveliness of civil society and the functioning of democratic institutions. The media industry is a commercial sector that fulfils a societal function: as such, competition rules need to be balanced with the cultural and democratic roles that it plays in society. With its focus on the complexities of market analysis, a competition authority can take into consideration neither the requirements of pluralism as such, nor the specific role of media in the service of national cohesion, cultural diversity and the functioning of democracy. These key issues are the realm of the media NRA's expertise. As it entertains this specific, deep proximity with the sector, the regulatory authority might also be in the best position to conduct the assessment and the application of competition policy in the audiovisual media market.

In the contemporary context, anti-competitive behaviours or levels of concentration in a national media market should be analysed in relation to the full extent of the production chain, including all online producers and distributors of media content. The impact of the convergence of the media landscape on competition and pluralism must be taken into account, especially in consideration of the fact that the traditional remit of the media NRA is limited to the audiovisual sector. The *summa divisio* between the audiovisual media and the print sector has been progressively eroded by technological convergence, to the point where a contemporary analysis of media markets should consider all media businesses rather than remaining within the confines of obsolete media categories. In EU countries, the role of the media NRA in relation to competition and the financial sustainability of the media market takes various forms of institutionalised cooperation.

As mentioned before, EU law explicitly acknowledges the specificities of the media sector by comparison with general competition rules. Indeed, with the entry into force of the EMFA<sup>56</sup>, EU Member States will have to set in law 'substantive and procedural rules which allow for an assessment of media market concentrations that could have a significant impact on media pluralism and editorial independence.'<sup>57</sup> Such assessments, it must be noted, 'shall be distinct from Union and national competition law assessments, including those provided for under merger control rules.'<sup>58</sup>

National rules should 'require the parties involved in such a media market concentration to notify the concentration in advance to the relevant national authorities or bodies or provide such authorities or bodies with appropriate powers to obtain information from those parties which is necessary to assess the concentration.'<sup>59</sup>

In the specific context of Moldova, anti-competitive behaviours on the media market appear to be a major threat on media pluralism and editorial independence. Achieving the objectives of the EMFA, namely a healthy internal market for media services providers, requires to include, alongside media concentration operations, other business practices that negatively impact the economic sustainability of quality media.

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<sup>56</sup> European Media Freedom Act, Art. 29.

<sup>57</sup> European Media Freedom Act, Art. 22 (1).

<sup>58</sup> European Media Freedom Act, Art. 22 (1) in fine.

<sup>59</sup> European Media Freedom Act, Art. 22 (1) b.

The increased digitisation of the media market and the growing importance of the online sector (online media as well as platforms) alongside the traditional formats of print and audiovisual would inevitably be key elements in the analysis of media pluralism in the country.<sup>60</sup> Appropriately, Art. 18 EMFA provides for the identifiability, the distribution and the protection of media services providers' content on very large online platforms, which are now an important ground for the sustainability of media businesses.

It appears clear that the definition of effective and cohesive regulatory responses to the digital evolution of media landscape has led public authorities (including media NRA, competition authority, data protection authority, and others) towards reinforced coordination through national networks. One observes a shift 'from a dogmatic viewpoint focused on structure to a pragmatic approach favouring constructive dialogue and cooperation between the various sectoral authorities (or departments) to ensure compliance with regulatory goals independently of the type of chosen structure.'<sup>61</sup> In such network of cooperation, the media NRA has a leading role to play when it comes to the protection of media pluralism and editorial independence.

How can the need to consider the entirety of the media market for the purposes of the assessment of media pluralism be reconciled with the fact that, traditionally, the jurisdiction of a media regulator only covers the audiovisual sector? In theory, the options are either making the NRA the guardian of media pluralism for all media actors (thus broadening its jurisdiction much beyond its traditional confines) or setting up clear and precise legal procedures for cooperation between the media regulator (in charge of the audiovisual sector), the competition authority (in charge of other media-related competition issues), and other relevant public authorities.

Against that background, what could the optimal approach to the role of the CA in relation to the assessment of pluralism and the application of competition policy to the media sector? Based on EU experiences, different options could be considered.

### **1. In any case, reinforce in-house capacity**

The AVMSC entrusts the CA with specific duties in the area of media pluralism. Transparency of ownership has been discussed in the first section; in addition, according to Art. 29 AVMSC, the CA must assess dominant positions on shaping public opinion.

The CA adopted, in 2024, methodologies to assess pluralism (internal and external pluralism) and the dominant position on shaping public opinion.<sup>62</sup> Inspired by the MPM, a leading reference endorsed by the EU Commission, the methodology appears to be both solid and complex: as with the MPM itself, the implementation is a demanding and lengthy process that requires substantial resources and expertise.

The NRA should have the effective in-house capacity to monitor the state of pluralism and editorial independence, to assess the current levels of anti-competitive practices, concentration and generally the financial sustainability of the market. One possibility to be considered, a fully staffed department of economics would enable

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60 See Ofcom (2021). The future of media plurality in the UK: Ofcom's report to the Secretary of State on the Media Ownership Rules and our next steps on media plurality. In this report, the UK regulator notes that there are elements of the contemporary media landscape in the UK that are not considered by the existing regulatory framework although they may impact media plurality: the role of algorithms and the resulting prominence of certain news sources or information, the lack of transparency in algorithmic distribution of news, and the fact that consumers may not necessarily possess the skills to critically receive online news.

61 European Audiovisual Observatory and EPRA, IRIS Plus 2021-2, Media regulatory authorities and the challenges of cooperation, p. 4

62 Decizia nr. 90 din 29 martie 2024 Cu privire la aprobarea Metodologiei pentru evaluarea riscurilor de apariție a situațiilor dominante în formarea opiniei publice ; <https://consiliuaudiovizual.md/wp-content/uploads/2024/04/D.90-din-29.03.2025-Cu-privire-la-aprobarea-Metodologiei-pentru-evaluarea-riscurilor-de-aparitie-a-situatiilor-dominante-in-formarea-opinii-publice.pdf>

the CA to conduct authoritative assessments in the area of media pluralism, included through investigation and fact-finding. The same department would also reinforce the capacity of the CA to analyse information and data submitted by media companies in their annual reports and applications for licences.<sup>63</sup>

This appears to be an essential condition for the continuation of the endeavour of the CA to defend and promote media pluralism in Moldova. No matter what choices are made in terms of the formal cooperation channels between the CA and other public authorities, the media regulatory body should absolutely possess a fully staffed capacity, including with the relevant investigative powers and the right to request and obtain information and expertise from the competition authority and other public institutions.

The CA is already engaged in European cooperation through participation in EPRA and the Black Sea Broadcasting Regulatory Authorities Forum, and with the observer status at ERGA, as well as in a peer-support project with the UK Ofcom.<sup>64</sup> While these forms of cooperation certainly provide opportunities for the CA to reinforce its expertise, they usually offer forms of cooperation that are resource-intensive (that is, the costs of a visit to the regulatory body in another country, including the unavailability of board and staff for daily workload of the CA during the duration of the trip) and concentrated in time (exchanges take place over the course of a few intense days but do not extend beyond that).

An additional layer in the European cooperation could consist in enabling staff to work with mentors from other media NRAs on a regular basis over a longer period of time. Through a mentoring scheme, the personnel of the CA would have the possibility to build a rapport with their counterparts in other NRAs and to benefit from long-term, informal and easily accessible support on any practical regulatory matter. For instance, a member of staff from the CA could, when confronted with a practical question related to the implementation of a regulatory question (such as, for instance, the definition of an effective strategy to improve data collection in annual reports, including very concrete elements such as a template for data collection), call or email their mentors in other NRAs to discuss the difficulty, hear feedback and collect suggestions and ideas based on the mentors' experiences.

It must also be noted that any analysis of media concentration and pluralism requires a reliable mechanism for the measurement of audiences.

## 2. Option A: Legal procedures of cooperation

As mentioned above, the cooperation of media NRAs with competition authorities is a topic that is currently popular: 'during the 52nd EPRA meeting, a "teach-in" session discussed how audiovisual and competition regulatory fields could potentially work together more closely in the digital era and inspire each other. (...) the need for building strong partnerships with other regulators, such as the electronic communications, competition and data protection authorities, to secure a coherent approach to overlapping areas was emphasised by several EPRA members at the plenary session of the 52nd EPRA meeting "Great expectations: the changing paradigm of media regulators" as part of a necessary mindset shift on the part of media regulators.'<sup>65</sup>

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63 For comparative purposes, note for instance that the organigram of the Belgian French-speaking CSA includes one cross-sectoral position for economics (<https://www.csa.be/membres/>); the French ARCOM has a department of economics, prospective and studies, and states that the staff consists mostly of 'engineers, lawyers and economists.' (<https://www.arcom.fr/nous-connaitre/notre-institution/organigramme>).

64 A project funded by the Council of Europe.

65 EPRA and Beth McNulty (Ofcom), Background paper for the 54th EPRA meeting, Cross-sectoral cooperation between regulators, 14 October 2021.

Art. 85 of AVMSC provides that the CA should cooperate with other public authorities. A necessary element of modern governance, this principle might be reinforced through the enactment of more precise binding procedures. In particular, the submission of reports and opinions by a public body to another public body might be framed in the law in such a manner that the receiving authority has a legal duty to acknowledge the report it received and to respond to it publicly within a given time limit.

For instance, the CA could be tasked with submitting to the parliament a report on media pluralism every 2 years, possibly including recommendations, and the parliament would then have to hold a public debate on the CA's findings and suggestions. While being in no way bound by the report of the NRA, the legislative assembly would have to publicly explain why it agrees or disagrees with the analysis, and why it does not deem necessary to adopt any recommended course of action in relation to the state of the media market.

As concerns more particularly the area of competition policy, the AVMSC and the law on competition (Art. 34) establish a principle of cooperation between the CA and the CC.<sup>66</sup> In such situations, a major difficulty may stem from the proper jurisdiction and expertise of public authorities that each serve a specific mission in the institutional architecture of the country, are each defined by a specific legislation with its own specific legal concepts, and are each characterised by a specific topical expertise and culture. There are legal concepts that differ between the two laws and that would need to be reconciled in order to enable an effective collaboration between the CA and CC.<sup>67</sup>

Forms of cooperation have existed between the two authorities (such as a 2022 agreement). For the sake of effectiveness, the cooperation could be crystallised into specific procedures, creating clear and legally binding duties and time limits for an authority to act in response to an opinion or request submitted by another public authority.

With such amendments, the CC would need to request an opinion from the CA whenever it would have to decide a case that involves audiovisual media actors.<sup>68</sup> The law could provide for a fixed time limit (at present, it is the CC that sets the time limit), thus ensuring that the media NRA has sufficient time to provide a detailed response within a reasonable deadline. In addition, the law could list the data (about media companies that are parties to a case, or general data about the sector) that the CC would be under obligation to share with the CA when it requests an opinion.

On the other hand, whenever it observes a situation that either qualifies as relevant under competition law (that is, an abuse of dominant position or uncompetitive business practices) or threatens media pluralism under the AVMSC (that is, a concentration that reaches the legal threshold for a dominant position on the shaping of opinion), the CA might be given the power to request CC to initiate legal proceedings against the alleged rule-breakers. The CC would be under obligation to do so.

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<sup>66</sup> Art. 85 of AVMSC; Art. 34 of law on competition.

<sup>67</sup> As discussed in 'Study on Legal Ownership Regime, Competition in Audiovisual and Advertising Markets, TV Audience Measurement System and Transparency of Ownership and Financing of Audiovisual Sector in Moldova' by Jean-François Furnémont, Ion Bunduchi, Alexandru Dorogan and Vasile State, Section 4, Chisinau, January 2023.

<sup>68</sup> Or more broadly, any media actor, if the CA is trusted with a broader duty to assess media pluralism in the converged media landscapes (see the following section on the digital media landscape).

It is useful to note that with both of these suggestions, there may be due process considerations to integrate into the definition of procedures.

### Example of cooperation between the media NRA and the Competition Authority in France.

In France, the media regulatory body, CSA, has merged with the public authority for the protection of intellectual property (Hadopi) to form, as of Jan. 2022, an integrated regulatory agency, ARCOM (Regulatory Authority for Audiovisual and Digital Communication).<sup>69</sup>

The cooperation between ARCOM and the Competition Authority<sup>70</sup> in relation to the media sector has been formalised in law.<sup>71</sup> When it looks into a case of anti-competitive practices or an operation of concentration that concerns, directly or indirectly, a media company, the Competition Authority must request an opinion from ARCOM, which, in turn, must respond within a month.

On its side, ARCOM has the power to request an opinion from the Competition Authority on questions of competition or concentration, or to refer a case of alleged anti-competitive practices to the Competition Authority.

### 3. Option B: the media NRA as a competition authority?

A more radical approach to the application of competition law to the media market might consist in entirely allocating the role of guardian to the media regulatory authority. Competition bodies may not necessarily be equipped with the necessary expertise to understand the particular characteristics of a media market and its role in a democratic society. By its nature, the media authority possesses the in-depth understanding of both the media market in its whole complexity and the societal importance of media pluralism. As such, the media authority might simply be in the best position to serve as the judge of competition rules in the media market while balancing it with the requirements of pluralism, cultural diversity and democracy.

As mentioned previously, the EMFA provides for the adoption of national rules and procedures, distinct from the application of competition rules, to assess threats on media pluralism resulting from concentrations. As part of the implementation of the EMFA into the legal architecture of Moldova, the CA could be equipped with additional powers to protect and preserve media pluralism without necessarily revising the law on competition. Provided that these additional powers are effective in enabling the CA to deal with concentrations and other anti-competitive behaviours that negatively impact media pluralism and editorial independence<sup>72</sup>, the reinforced role for the media NRA could very well co-exist with the general jurisdiction of the competition authority.

While a complete elaboration of this option into a legislative proposal would fall outside the limits of this report, it is possible to list the following questions that would need to be considered in order to implement this upgrade to the powers of the media NRA:

69 Loi n° 2021-1382 du 25 octobre 2021 relative à la régulation et à la protection de l'accès aux œuvres culturelles à l'ère numérique, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000044245615/>

70 See <https://www.autoritedelaconcurrence.fr/fr>

71 Article 41-4 de la loi du 30 septembre 1986 relative à la liberté de communication.

72 As mentioned above, in the context of Moldova, threats on media pluralism, editorial independence and generally the economic sustainability of quality media, are often the consequences of anti-competitive behaviour rather than concentrations.

- The AVMSC would need to be revised to equip the CA with the adequate investigative and decision-making powers, so that the media NRA, as a natural continuation of its monitoring of pluralism, would have the legal capacity to adopt and enforce appropriate remedies.
- The law would provide that CA could initiate proceedings in cases referred by industry actors or civil society, or on its own initiative following regular analysis of the media landscape or the reception of data relating to ownership or audience shares.
- This evolution of the powers of the media NRA would require an analysis of due process requirements for all new legal procedures.
- Should the new powers of the CA to impose sanctions and remedies to protect pluralism be limited to the broadcast media market or should it be expanded beyond its traditional remit to include the whole media market, including the online sphere? A cohesive analysis of a contemporary media market should inevitably consider the online media sphere alongside the traditional categories of print and broadcast. A phased approach should be considered here. During a first period, the jurisdiction of the CA in its new, reinforced role of active guardian of pluralism, would only include broadcast media. This would allow the NRA to hire additional staff and develop experience in the first 3 or 5 years of implementation of its new powers. In the second stage, the media NRA's jurisdiction to protect pluralism would then be expanded to the whole media market.

As a preparation for the implementation of this option, the CA could organise a public form of engagement with all stakeholders to further study examples from other EU countries (such as the German KEK, which is particularly relevant here) and discuss the most relevant manner to develop the necessary legislative amendments.

#### Example of one federal institution to regulate media concentration in Germany.

The federal institutional structure of Germany includes a public body that is in charge of concentration issues in the audiovisual sector: The Commission on Concentration in the Media (Kommission zur Ermittlung der Konzentration im Medienbereich, KEK) has the mandate to safeguard the diversity of opinion in nationwide private television.<sup>73</sup>

The KEK uses the criteria of audience shares to decide of the existence of a dominant power on public opinion and the resulting need to impose remedies to a situation of concentration.

The KEK intervenes either in relation to the allocation or renewal of a license, a modification in the ownership structure of existing licensees, or if a company somehow acquires a situation of dominant power of public opinion.

Among the remedies that the KEK can decide to increase diversity in presence of a dominant influence on public opinion, are the allocation of broadcasting time to independent third parties and the implementation of regional broadcasting windows.

<sup>73</sup> <https://www.kek-online.de/en/about-us/>

## Recommendations:

1. The CA is recommended to seek to enter into cooperation agreements with other EU media NRAs in order to establish a mentoring scheme that ensures long-term, easily accessible expert and peer support to the staff.
2. The CA is recommended to establish a detailed list of the resources in terms of staff and expertise that are needed to ensure the fulfilment of its missions in relation to the assessment of media pluralism and editorial independence. In particular, the need for a fully staffed department of economic analysis should be considered.

The government and the Parliament are recommended to ensure that the budget of the CA perennially includes all resources needed by the NRA for the fulfilment of its missions in relation to the assessment of media pluralism and editorial independence.

3. To facilitate the appropriate legislative amendments, the CA is recommended to establish a detailed list of the investigative powers and legal powers to issue binding requests for cooperation from other public authorities that would be required to enable the media NRA to fulfil its missions in relation to the assessment of media pluralism and editorial independence.
4. In order to reinforce the effectiveness of the control of the impact of anti-competitive behaviour and concentrations on media pluralism and editorial independence, one of the following options is recommended to be implemented, including through appropriate legislative amendments:
  - legal cooperation procedures between public authorities, especially the CC and the CA, are recommended to be clarified and reinforced to ensure that:
    - mutual consultation, where relevant, occurs within reasonable time limits, and
    - that an effective decision is made in relation to any threat on media pluralism resulting from media concentration or anti-competitive behaviour, within a reasonable time limit, by the CC, on the basis of either a complaint from a stakeholder (industry or civil society organisation) or at the request of the CA;

OR

- the remit of the CA is revised in order to include investigative powers, the power to issue binding requests for cooperation to other public authorities, and the power to impose remedies, in order to ensure that the CA can make, within a reasonable time limit, a decision on any threat on media pluralism and editorial independence resulting from media concentration or anti-competitive behaviour, either on the basis of a complaint from a stakeholder (industry or civil society organisation) or on the basis of the CA's monitoring of the national media market. This revision of the powers of the CA to turn it into an effective guardian of pluralism could be phased: in a first stage, the jurisdiction of the NRA would cover the broadcast market; in the second phase, it would extend to the whole media market offline and online.
5. The CA is recommended to integrate a holistic vision of the media market in its assessment of media pluralism and editorial independence, including all online media producers and distributors.

The CA is recommended to make this question a matter of public engagement with all stakeholders, including the industry, media and journalists' associations, academia, and civil society organisations.

6. On the basis of the best practices from EU NRAs, the CA is recommended to initiate and take part in all relevant stable and perennial cooperation mechanisms with other public authorities involved in the regulation of online content, especially in relation to the monitoring and assessment of the impact of anti-competitive practices and media concentrations on pluralism and editorial independence.
7. On the basis of a review of experiences in EU countries, it is recommended to adopt a clear, neutral and precise legal framework for the monitoring and prevention in a converged media landscape (including all online producers and distributors of media content) of the negative impact of anti-competitive behaviour or media concentrations on media pluralism and editorial independence. Within a legally structured cooperation network of public authorities, the media NRA should play the lead role in this future legal framework.

## IV. THE ROLE OF THE MEDIA NRA IN THE CONVERGED MEDIA LANDSCAPE

In light of the evolution both of media landscapes and of European law, it is inevitable that the media NRA will see its role in the online sphere grow.<sup>74</sup> The presence of the regulatory body in these new territories is also a condition for the credibility of regulatory interventions in the eyes of the stakeholders, including the general public.<sup>75</sup> We now live in a world where a very large online platform, before it removes media content (that is, content from a media service provider) from its services, has to analyse the impact of its decision on media freedom and media pluralism.<sup>76</sup> In other words, media pluralism is being assessed (also) by social media companies.

As mentioned in the previous section, this inevitably calls for reinforced cooperation between public authorities.

### Example of a cooperation network between public authorities

‘In the Netherlands, on 13 October 2021, the ACM, the media regulatory authority CvdM, the Data Protection Authority and the authority for financial markets announced they would intensify cooperation through the launch of the Digital Regulation Cooperation Platform (*Samenwerkingsplatform Digitale Toezichthouders – SDT*). SDT aims to exchange knowledge and experiences in areas such as AI, algorithms, data processing, online design, personalisation, manipulation, and misleading practices. Platform members are committed to joint investments in knowledge, expertise, and skills, and will explore how to strengthen each other’s work in enforcement procedures, e.g. by dealing with digital market problems collectively.’<sup>77</sup>

Adapting to the digital evolution of the media landscapes does not imply a mere extension of the regulatory missions of the CA: in response to the growth of video-sharing platforms and social media as well as concerns caused by the massive flows of disinformation, the regulatory framework is increasingly adopting new forms with the emergence of self-regulatory mechanisms and co-regulation schemes.<sup>78</sup> The role of the NRA mutates from a one-person sport to a team game, from the solitary shepherd herding their flock to a voice within a choir of regulatory actors. Like each individual player on a football field, the CA has a specific role to fulfil in the new regulatory environment, that of bringing to the table its expertise in media pluralism, the promotion of cultural diversity, and media freedom.

As per its Recital 54, the EMFA ‘recognises the importance of co-regulatory and self-regulatory mechanisms in the context of the provision of media services on very large online platforms. Such mechanisms represent a type of voluntary initiative, for instance in the form of codes of conduct, which enables media service providers or their representatives to adopt common guidelines, including on ethical standards, the correction of errors or complaint handling, amongst themselves and for themselves. Robust, inclusive and widely accepted media

<sup>74</sup> A recent report put forward recommendations for the integration of the AVMSD and DSA into the laws of Moldova. See: Legal analysis: assessment of moldovan audiovisual legislation in relation to the audiovisual media services directive, european media freedom act, digital services act, and other relevant international standards — prepared for Freedom House, by Deirdre Kevin, CommSol, April 2024.

<sup>75</sup> The MPM 2023 (p. 8) describes the growing importance of Internet that has now become a major source of news.

<sup>76</sup> European Media Freedom Act, Preamble, Recital 50.

<sup>77</sup> EAV 2021, op. cit., p. 60

<sup>78</sup> EAV 2021, op. cit.

self-regulation represents an effective guarantee of the quality and professionalism of media services and is key to safeguarding editorial integrity.’

As can be illustrated by the development of the EU Code on disinformation<sup>79</sup>, the regulation of content online does not simply take the form of a regulation prescribed and enforced by a public authority. Rules are discussed and elaborated over time by a number of stakeholders, who should ideally be representative of the whole diversity of society. New actors appear and suddenly seem to occupy key positions in the new practical forms of control that shape up: fact-checkers, for instance, that may possibly serve as trusted flaggers to the very large online platforms, seem to constitute a fairly new category of media actors in responses to disinformation. The role of the regulatory body is two-fold: it takes part in the development of codes of conduct, and its mission as a controller and enforcer tends to focus more on a systemic approach rather than on individual cases.

In this perspective, the development of a culture of self-regulation and co-regulation in Moldova could be a key condition for an effective approach to the regulation of online content within the confines of the EU acquis. One obvious opportunity for this is the sustainability of the Press Council, a self-regulatory mechanism for the promotion of the ethics of journalism.<sup>80</sup>

Another new type of media actor is the one known as ‘the influencers’, individuals or small team that have built a large audience online. Often discredited as lawless producers of disinformation (which some truly are), these new content producers might simply be an unexplored continent in the eyes of regulation. It is interesting to note that some EU regulatory bodies have taken the initiative of getting to know them, as a soft approach towards nudging them towards good practices, for instance in relation to transparency of ownership.

### Example of a media NRA approaching online content producers

In 2023, the French-speaking Belgian CSA organised an event simply titled ‘Meet You’ in order to gather the online content producers of the region, digital entrepreneurs that can claim audiences broader than certain traditional media companies.<sup>81</sup>

### Recommendations:

1. Moldova is recommended to thoroughly adapt its legislative framework to fully reflect the AVMSD, the DSA and the EMFA.

In order to contribute to this effort, the CA is recommended to make it the topic of a public form of engagement (such as publications, talks and seminars) with stakeholders.

2. In the objective of contributing to the development and reinforcement of a culture of self-regulation and co-regulation in the country, the CA is recommended to seek to develop a strong relationship with the Press Council, support the development and effectiveness of this self-regulatory mechanism, notably by relying on the decisions and reports of the Press Council in its assessment of media pluralism and editorial independence.

<sup>79</sup> See the critical analysis by free speech group ARTICLE 19: <https://www.article19.org/resources/eu-disinformation-guidance-must-protect-freedom-of-expression/>

<sup>80</sup> On self-regulation in the media, see for instance The OSCE cookbook on media self-regulation at <https://www.osce.org/files/f/documents/1/d/31497.pdf>

<sup>81</sup> <https://www.csa.be/123180/meetyou-une-rencontre-avec-les-createurs-de-contenu-sur-le-theme-de-la-liberte-dexpression/>

3. The CA is recommended to initiate or take part in initiatives that seek to survey, identify and understand the online media landscape and the online content producers, and initiate or take part in cooperative strategies that support the promotion of media pluralism, media freedom and freedom of expression, in the converged media landscape.
4. The CA is recommended to establish a detailed list of the resources in terms of staff and expertise that are needed to ensure the fulfilment of its missions in relation to the converged media landscape.

## V. THE MEDIA NRA'S ENGAGEMENT WITH ALL STAKEHOLDERS

The CA has developed effective practices of publicising its action, as demonstrated by the website of the institution, where the legal framework, agenda and decisions, can easily be consulted. The contemporary role of a regulatory agency, however, goes beyond the 'broadcasting' of its work.

The CA, in the context as described for instance in the GMR research, inevitably has a very adversarial relationship to a sector that is characterized by its opacity, high concentration, and suspicious funding. Enforcement and sanctions, of course, deploy certain effects of education and prevention. But a tense situation may easily degrade into a fully blocked opposition where no actual progress can be made; and it easily leads to long court proceedings. The regulatory authority may find it effective to also position itself on a different terrain — that of a more cooperative interaction with the sector and stakeholders.

In the perspective of facilitating a transition towards a mature, sustainable media landscape that serves a functioning democratic society, the CA would then have to, in addition to its role as a neutral enforcer of the law, engage in 'soft power'<sup>82</sup> approaches with all stakeholders, from industry actors to the public at large. This serves the objective of building good will in the sector and a broad consensus around media policy and regulation within society.

### Examples of EU media NRA's engagement with stakeholders

The French-speaking Belgian CSA runs a webzine, Regulation.be<sup>83</sup>. Aimed at the general public, this online magazine presents topical issues such as, for instance, media and elections, and features interviews with personalities from the sector, such as managers or staff of media companies, representatives of other public institutions or self-regulatory bodies and academics.

Examples of recent articles include:

- The General Counsel for a private TV explains how the company approaches the coverage of elections (<https://regulation.be/2024/02/12/au-departement-corporate-affairs-nous-sommes-un-peu-les-gardiens-du-temple/>);
- The CEO of a regional TV explains how the channel will cover elections (<https://regulation.be/2024/02/12/le-role-dun-media-de-proximite-est-de-rendre-accessible-tous-les-enjeux-des-elections/>);
- The head of the public institution for equality and anti-discrimination speaks about the prohibition of hate speech in a democratic society (<https://regulation.be/2023/03/10/au-nom-de-la-sante-publique-de-notre-democratie-on-peut-interdire-certains-discours/>);

<sup>82</sup> 'Soft power is the ability to co-opt rather than coerce (in contrast with hard power). It involves shaping the preferences of others through appeal and attraction. Soft power is non-coercive, using culture, political values, and foreign policies to enact change.' [https://en.wikipedia.org/wiki/Soft\\_power](https://en.wikipedia.org/wiki/Soft_power)

<sup>83</sup> <https://regulation.be/>

- The General secretary of the self-regulatory press council presents her institution's work (<https://regulation.be/2023/03/10/en-filigrane-du-contrat-de-confiance-entre-journalistes-medias-et-citoyens-le-conseil-de-deontologie-journalistique-cdj/>);
- After the CSA organised an event to gather all online content producers of the region under the regulator's jurisdiction (French-speaking Belgium), participants share their feedback and thoughts after the event (<https://regulation.be/2024/01/25/meetyou-la-rencontre-des-createurs-de-contenu-vue-par-ses-participants/>).

The CSA also presents an offer to the academic sector, which until 2021 used to include an annual award for masters' thesis related to the institution's remit, now puts forward a list of suggested topics for masters thesis<sup>84</sup>. They also put forward an offer of training and seminars<sup>85</sup>.

The Catalan CAC publishes an academic journal, the *Quaderns del CAC*: "The journal aims to be a platform for approaching the field of audiovisual communication and culture from different disciplinary perspectives, with a particular focus on European and international research. It is published once a year, entirely in Catalan, Spanish and English."<sup>86</sup>

Beyond accountability through transparency, beyond the one-way dissemination of information to the public, the NRA needs to be a constantly active pedagogue of media policy and media regulation. In particular, media literacy efforts need to be shaped in a manner that considers the public at large as an active partner of media regulation.<sup>87</sup> In the contemporary context, 'the relationship of many media regulatory authorities with citizens has been gradually evolving from a top-down approach based on the requirement to inform the viewers, protect the vulnerable audience and be transparent and accountable towards viewers, to an expectation also of active engagement with, or the empowerment of, citizens, to turn them into partners of regulation.'<sup>88</sup>

### An example of an attractive media literacy initiative.

Digital games have proven to be an effective tool in building cognitive resistance to disinformation across diverse environments and cultural contexts. 'Bad News' is a short text-based game where players have to choose the best strategies to spread disinformation and rumours.<sup>89</sup> This game applies the principle of 'active inoculation' by letting the player take on the role of the villain. Research conducted at the University of Cambridge found that after playing an active inoculation game, players are significantly better at spotting misleading and false information than control groups.<sup>90</sup>

84 <https://www.csa.be/etudes-et-recherches/academique/>

85 <https://www.csa.be/modules-de-formation-du-csa/>

86 <https://www.cac.cat/acords-recerca/revista-quaderns-del-cac>

87 European Audiovisual Observatory, IRIS, Media literacy and the empowerment of users, 2024.

88 EAV 2021, p. 61

89 <https://www.tiltstudio.co/solutions/cases/bad-news-game/>

90 The new science of prebunking: how to inoculate against the spread of misinformation, van der Linden and Roozenbeek, Oct. 2019, <https://blogs.biomedcentral.com/on-society/2019/10/07/the-new-science-of-prebunking-how-to-inoculate-against-the-spread-of-misinformation/>

### Recommendations:

1. As a starting point, the CA is recommended to establish a detailed list of all its stakeholders, including but not necessarily limited to online and offline media service providers and distributors, media business associations, journalists associations or unions, academia, other public authorities, and civil society organisations representative of the whole diversity of the population.
2. With a view to reinforcing its rapport with all stakeholders, the CA is recommended to consider the publication of a newsletter or a webzine that includes interviews or other forms of contributions from all categories of stakeholders.
3. On the basis for instance of the list in Annex 2, the CA is recommended to establish a multi-year programme of engagement with stakeholders, including conferences, seminars, working groups and publications on key topics for democratic media regulation.
4. In its own MIL work as well as in its participation in national cooperation networks on MIL, the CA is recommended to ensure that:
  - MIL programmes and initiatives target all segments of the population,
  - MIL programmes and initiatives view the public as an active partner and ally,
  - MIL programmes and initiatives are attractive and easy to engage with (such as online games),
  - MIL programmes and initiatives include a presentation and explanation of key elements of freedom of expression and media regulation.

## C CONCLUSION

Commissioned by the German development agency GIZ, and co-funded by the EU Delegation to Moldova and the German Federal Foreign Office, this report on transparency of media ownership, media concentration and media pluralism in Moldova, makes the case for a range of measures that are complementary to each other and should be mobilised at some point in time ranging from the near future to the next few years.

1. On the basis of the transparency requirements detailed in the EMFA and the Recommendation of the Council of Europe (see Annex 1), the CA is recommended to establish an optimal list of transparency requirements for media services providers in Moldova, in a manner that complies with EU law and does not overly interfere with the conduct of business.
2. In order to incentivise a smooth delivery of annual reports, the CA is recommended to consider sending forms to service media providers that, where reasonable, are pre-filled with the information already in its possession, so that the media companies only have to verify data, update where necessary and fill in the blanks.
3. In order to fulfil tasks as diverse as the assessment of the impact of media concentrations on pluralism and editorial independence or the participation as an observer in the activities of ERGA and the future European Board for Media Services, the CA is recommended to be perennially equipped with all the resources necessary in terms of staff, expertise and financial means. In that perspective,
  - it is recommended to define the budget of the CA on the basis of the analysis of the extended duties of the national regulatory authorities provided for in the EMFA, and to ensure that the budget perennially includes all resources needed by the NRA for the fulfilment of its missions in relation to the assessment of media pluralism and editorial independence;
  - the CA is recommended to be equipped with appropriate powers in order to be able to obtain information and data from any public authority and natural or legal person who might reasonably be in possession of the information and data needed to ensure transparency of media ownership. To facilitate the appropriate legislative amendments, the CA is recommended to establish a detailed list of the investigative powers and legal powers to issue binding requests for cooperation from other public authorities that would be required to enable the media NRA to fulfil its missions in relation to the assessment of media pluralism and editorial independence;
  - the CA is recommended to establish a detailed list of the resources in terms of staff and expertise that are needed to ensure the fulfilment of its missions in relation to the assessment of media pluralism and editorial independence. In particular, the need for a fully staffed department of economic analysis should be considered.
4. The CA is recommended to continue its proactive support of independent initiatives by CSOs in this field, such as the 'Media Ownership Monitor' (MOM), that can cross-pollinate with the aforementioned recommendations, to:
  - add public facing and easily accessible, media and information literacy (MIL) oriented ways of providing transparency of media ownership;
  - extend the narrow scope of audiovisual media towards a more holistic assessment of the marketplace overall, i.e. including print and non-traditional actors;

- benefit from and contribute to an exchange of methodological approaches and best practices in the field globally.
5. In assessing the potential impact of media market concentrations and anti-competitive practices on media pluralism and editorial independence, the CA is recommended to:
    - analyse the specific cases and potential risks of undue interference with editorial independence by the prospective owner, management or governance structure of the media service provider suspected of striving to dominate on the market;
    - consider the effect of the planned or existing concentration, or of anti-competitive practices, on the economic sustainability of the entity or entities involved in the concentration, whether the provider is actually able to provide and further develop financially viable, adequately resourced and technologically adapted quality media services in the market, or – on the contrary – it will completely depend on its owner's will and donations or further investments without economic possibility of their returns;
    - integrate a holistic vision of the media market in its assessment of media pluralism and editorial independence, including all online media producers and distributors;
    - where relevant to its assessment of threats on pluralism and editorial independence, the CA is recommended to take into account the findings of the European Commission's annual Rule of Law reports related to media pluralism and media freedom, as well as the Media Pluralism Monitor.
  6. The CA is recommended to be enabled to review the measures to be taken or already implemented by the AV media service provider with a view to guaranteeing the independence of editorial decisions. Those measures could include the existing or envisaged internal safeguards that aim to preserve ethical and professional standards, such as:
    - the existence of a code of ethics within the media service provider and the existence of effective processes of implementations of said code;
    - compliance with the decisions of the Moldovan Press Council, when applicable;
    - principled recognition by the media service provider of the national Deontological Code through becoming a party to it;
    - existence and easy accessibility of the newsroom's ombudsperson;
    - separation of the editorial and commercial offices;
    - introduction of media literacy and fact-checking practices;
    - compliance with the right of reply or rectification;
    - existence and implementation processes of rules on potential conflicts of interests;
    - as well as other possible safeguards for the independence of editorial decisions, such as provided for in the Commission Recommendation (EU) 2022/1634.
  7. Through public discussions with the industry and all stakeholders, the CA is recommended to develop a list of criteria of measures that can serve to protect and develop editorial independence, on the basis of a detailed review of Recommendation (EU) 2022/1634. The Recommendation lists specific safeguards to ensure the independence and integrity of editors, which cover editorial integrity, editorial independence, relevant internal bodies or structures; safeguards to promote the participation of journalists in decision-making of media companies; and safeguards to improve the sustainability of media service providers and long-term investment in content production.
  8. The assessment of editorial independence is recommended to rely first on self-reporting, transparency and self-regulation mechanisms in order to defuse accusations of state interference with media freedom. Self-reporting by media service providers, such as through publicly available information and annual reports, could

then be assessed by the CA in a neutral and objective manner that relies on contributions from national media associations, civil society organisations, self-regulatory mechanisms such as the Press Council, and on reports on media pluralism from international media freedom organisations. In that regard, we observe that the methodology approved by the CA on evaluation of internal media pluralism (which in itself can only be implemented with the adequate resources) could also serve for self-evaluation by media service providers.

9. In order to foster legal certainty and ensure that the national rules and procedures that allow for the assessment of concentrations that could have a significant impact on editorial independence genuinely aim to protect media pluralism and editorial independence, it is essential that objective, non-discriminatory and proportionate criteria for notifying and assessing the voluntary measures on protection of media pluralism and editorial independence from impact of owners within a given media service provider be set out in advance. In practical terms, relevant changes will be in line with the spirit and letter of the AVMSC as its preamble stipulates the adherence of the AVMSC to the Directive 2010/13/EU, while the EMFA is both establishing a common framework for media services in the internal market and amending and developing Directive 2010/13/EU.

The following amendments are recommended to be considered:

- Article 21 of the AVMSC (“Transparency of media service provider’s ownership”) is recommended to be supplemented with Article 21-1 (“Self-reporting on media service provider’s editorial independence”), which will enlist the elements that indicate the existence and availability of such mechanisms within the media service provider. Among those elements, and to be moved to a new Art. 21-1, could be the current point f) of para 1 of Article 21 (f) on the editorial policy and the person/persons (body/bodies) who determine the editorial policy and are responsible for it.
- Article 28 of the AVMSC is recommended to be amended to include a provision (within or after para 13) that will oblige private media service providers to report on the specific measures taken to develop and protect editorial independence, both through their own website and in the annual report they have to submit to the CA.

As a first step, the proposed measures to develop and protect editorial independence are recommended to become obligatory for the private media service providers *that provide news and current affairs content*. Whether the requirements should also apply to other private media service providers remains to be assessed later.

10. As to the malign foreign interference in the media market, the CA is recommended to compile a separate list of criteria concerning jurisdictional issues of media service providers established or originating from *outside* the Republic of Moldova, the EU and, perhaps, the US and Canada (in line with Art. 14 para 4 point a) of the AVMSC). If such a media service provider seeks jurisdiction in Moldova or is already under its jurisdiction, its treatment by the CA shall depend on whether the provider and its programmes appear to pose a serious and grave risk to public security and/or national audiovisual space and information security. The elements to be covered in such a list might concern issues of ownership, management, financing structures, editorial independence from third countries, especially governments of the third countries, or adherence to co-regulatory or self-regulatory mechanisms governing editorial standards in the country of origin. Inasmuch as possible, being under sanctions of the EU or Moldova, should become an important element of CA’s assessment of the media service providers established or originating outside of Moldova. The CA might choose to wait for the European Board for Media Services to adopt its own list of relevant criteria and then use it as a blueprint, but we advise CA to start the drafting in advance.

11. The CA is recommended to seek to enter into cooperation agreements with other EU media NRAs in order to establish a mentoring scheme that ensures long-term, easily accessible expert and peer support to the staff.
12. In order to reinforce the effectiveness of the control of the impact of anti-competitive behaviour and concentrations on media pluralism and editorial independence, one of the following options is recommended to be implemented, including through appropriate legislative amendments:
  - legal cooperation procedures between public authorities, especially the Competition Council and the CA, are clarified and reinforced,
 OR
  - the remit of the CA is revised in order to include investigative powers, the power to issue binding requests for cooperation to other public authorities, and the power to impose remedies, in order to ensure that the CA can make, within a reasonable time limit, a decision on any threat on media pluralism and editorial independence resulting from media concentration or anti-competitive behaviour, either on the basis of a complaint from a stakeholder (industry or civil society organisation) or on the basis of the CA's monitoring of the national media market. This revision of the powers of the CA to turn it into an effective guardian of pluralism could be phased: in a first stage, the jurisdiction of the NRA would cover the broadcast market; in the second phase, it would extend to the whole media market offline and online.
13. On the basis of the best practices from EU NRAs, the CA is recommended to initiate and take part in all relevant stable and perennial cooperation mechanisms with other public authorities involved in the regulation of online content, especially in relation to the monitoring and assessment of the impact of anti-competitive practices and media concentrations on pluralism and editorial independence.
14. Moldova is recommended to thoroughly adapt its legislative framework to fully reflect the AVMSD, the DSA and the EMFA.
15. In the objective of contributing to the development and reinforcement of a culture of self-regulation and co-regulation in the country, the CA is recommended to seek to develop a strong relationship with the Press Council, support the development and effectiveness of this self-regulatory mechanism, notably by relying on the decisions and reports of the Press Council in its assessment of media pluralism and editorial independence.
16. The CA is recommended to initiate or take part in initiatives that seek to survey, identify and understand the online media landscape and the online content producers, and initiate or take part in cooperative strategies that support the promotion of media pluralism, media freedom and freedom of expression, in the converged media landscape.
17. The CA is recommended to establish a detailed list of all its stakeholders, including but not necessarily limited to online and offline media service providers and distributors, media business associations, journalists associations or unions, academia, other public authorities, and civil society organisations representative of the whole diversity of the population.
18. With a view to reinforcing its rapport with all stakeholders, the CA is recommended to consider the publication of a newsletter or a webzine that includes interviews or other forms of contributions from all categories of stakeholders.

19. On the basis for instance of the list in Annex 2, the CA is recommended to establish a multi-year programme of engagement with stakeholders, including conferences, seminars, working groups and publications on key topics for democratic media regulation.
20. In its own MIL work as well as in its participation in national cooperation networks on MIL, the CA is recommended to ensure that:
- MIL programmes and initiatives target all segments of the population,
  - MIL programmes and initiatives view the public as an active partner and ally,
  - MIL programmes and initiatives are attractive and easy to engage with (such as online games),
  - MIL programmes and initiatives include a presentation and explanation of key elements of freedom of expression and media regulation.

## ANNEXES

**ANNEX 1. Table 1. Transparency of certain aspects of ownership of media services**

Moldova (Art. 21 of the AVMSC)	Council of Europe (para 4.5 of Recommendation CM/Rec (2018) 1)	European Union (Art. 6 of the EMFA)
1) its name, legal status and head- quarters	legal name and contact details of a media outlet	1) their legal name or names and contact details
2) the name of the legal representa- tives	name(s) and contact details of the direct owner(s) with sharehold- ings enabling them to exercise influence on the operation and strategic decision making of the media outlet	2) the name or names of their di- rect or indirect owner or owners with shareholdings enabling them to exercise influence on the operation and strategic decision making, including direct or indi- rect ownership by a state or by a public authority or entity
3) beneficial owners who have, directly or indirectly, control over the media service provider	name(s) and contact details of natural persons with beneficial shareholdings	3) the name or names of their beneficial owner or owners as defined in Article 3, point (6), of Directive (EU) 2015/849
	<i>Beneficial shareholding applies to natural persons who ultimately own or control shares in a media outlet or on whose behalf those shares are held, enabling them to indirectly exercise control or influence on the operation and strategic decision making of the media outlet</i>	
4) the list of shareholders and asso- ciates up to the level of a natural person, with the exception of shareholders and associates who are joint-stock companies with bearer shares or listed on inter- national stock exchanges	information on the nature and ex- tent of the shareholdings or vot- ing rights of the above legal and/ or natural persons in other media, media-related or advertising com- panies which could lead to deci- sion-making influence over those companies, or positions they may hold in political parties	4) the total annual amount of public funds for state advertising allocated to them and the total annual amount of advertising revenues received from third- country public authorities or entities

Moldova (Art. 21 of the AVMSC)	Council of Europe (para 4.5 of Recommendation CM/Rec (2018) 1)	European Union (Art. 6 of the EMFA)
5) the persons in the management body and, as the case may be, the supervisory body, as well as the positions held by them	name(s) of the persons with actual editorial responsibility	
6) the editorial policy and the person/persons (body/bodies) who determine the editorial policy and are responsible for it	changes in ownership and control arrangements of a media outlet	
7) the contact details of the media service provider, including the legal address, the addresses for correspondence (as applicable), the address of the electronic mail and the official web page, where it can be contacted quickly, directly and effectively		

## ANNEX 2. A list of topics for various forms of engagement with stakeholders

The following topics would provide excellent opportunities for a programme of engagement with stakeholders, including other public authorities, the media sector, media self-regulatory bodies, journalists unions or associations, academia and civil society actors representative of the diversity of society. Such engagement can take the form of publications (either specialized or for the general public), conferences with or without the participation of international experts, series of seminars or working groups, or pedagogical explanations in MIL initiatives directed towards all segments of the population. These topics would most likely resonate with donors from the international community.

1. The collection, update and dissemination of detailed information on media ownership in Moldova.
2. The implementation of the European Media Freedom Act in Moldova.
3. The CA's methodologies for the assessment of pluralism (internal, external, dominant position to shape public opinion).
4. The anti-SLAPP Directive.
5. The adaptation of the regulatory framework to the online environment and the development of co-regulation mechanisms.
6. On the basis of existing examples of safeguards in Europe and recommendations of the European Commission, a series of working groups or seminars on how to improve the protection of editorial independence in Moldova through a set of voluntary measures. This endeavour should strive to respect a balance between the protection of editorial independence and the legitimate interests of media owners in the perspective both of business and their own freedom of expression.
7. How to improve the measurement of audiences in Moldova?
8. The optimal allocation of public funds to support media while ensuring the provision of a public interest good, such as reliable information, pluralism or cultural diversity.
9. A series of seminars might provide a public forum to define the optimal approaches to coordinating the action of public authorities in the service of media pluralism.
10. As recently completed in France, a public-facing, multi-stakeholder reflexion process to assess the state of information media and develop a series of legislative and practical responses to contemporary challenges for this particular category of media in the digital age.

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