



Declaration of the Committee of Ministers on the guarantee of the independence of public service broadcasting in the member states

(Adopted by the Committee of Ministers on 27 September 2006 at the 974th meeting of the Ministers' Deputies)

The Committee of Ministers of the Council of Europe,

Recalling the commitment of member states to the fundamental right to freedom of expression and information, as guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights);

Recalling, in particular, the importance of freedom of expression and information as a cornerstone of democratic and pluralist society, as underlined in the relevant case law of the European Court of Human Rights and, in this context, stressing the importance of the existence of a wide variety of independent and autonomous media, permitting the reflection of diversity of ideas and opinions, as stated in the Committee of Ministers' Declaration on freedom of expression and information of 29 April 1982;

Highlighting the specific remit of public service broadcasting and reaffirming its vital role as an essential element of pluralist communication and of social cohesion which, through the provision of comprehensive programme services accessible to everyone, comprising information, education, culture and entertainment, seeks to promote the values of modern democratic societies and, in particular, respect for human rights, cultural diversity and political pluralism;

Reiterating the objective to ensure the absence of any arbitrary controls or constraints on participants in the information process, on media content or on the transmission and dissemination of information, as stated in the Declaration on the freedom of expression and information;

Bearing in mind the undertaking made at the 4th European Ministerial Conference on Mass Media Policy (Prague, December 1994) to guarantee the independence of public service broadcasters against any political and economic interference and, more particularly, recalling Recommendation No. R (96) 10 on the guarantee of the independence of public service broadcasting;

Considering that the editorial independence and institutional autonomy of public service broadcasting, including through an appropriate, secure and transparent funding framework, should be guaranteed by means of a coherent policy and an adequate legal framework, and ensured by the effective implementation of the said policy and framework;

Welcoming the situation which prevails in those member states where the independence of public service broadcasting is solidly entrenched through the regulatory framework and scrupulously respected in practice, as well as the progress being made in other member states towards securing such independence;

Noting the concern expressed by the Parliamentary Assembly of the Council of Europe in its Recommendation 1641 (2004) on public service broadcasting that the fundamental principle of the independence of public service broadcasting contained in Recommendation No. R (96) 10 is still not firmly established in a number of member states;

Bearing in mind the texts adopted at the 7th European Ministerial Conference on Mass Media Policy (Kyiv, March 2005), in particular the Ministers' call for the monitoring of the implementation by member states of Recommendation No. R (96) 10, and taking note, in this connection, of the overview contained in the appendix hereto concerning the situation in member states;

Regretting developments in a few member states that tend to weaken the guarantee of independence of public service broadcasting or lessen the independence that had already been attained, and expressing concern about the slow or insignificant progress being made in certain other member states towards securing independent public service broadcasting, be it as a result of an inadequate regulatory framework or the failure to apply in practice existing laws and regulations,

I. Reiterates its firm attachment to the objectives of editorial independence and institutional autonomy of public service broadcasting organisations in member states;

II. Calls on member states to:

- implement, if they have not yet done so, Recommendation No. R (96) 10 on the guarantee of the independence of public service broadcasting, with particular reference to the guidelines appended thereto, and having regard to the opportunities and challenges brought about by the information society, as well as by political, economic and technological changes in Europe;
- provide the legal, political, financial, technical and other means necessary to ensure genuine editorial independence and institutional autonomy of public service broadcasting organisations, so as to remove any risk of political or economic interference;
- disseminate widely the present declaration and, in particular, bring it to the attention of the relevant authorities and of public service broadcasting organisations, as well as to other interested professional and industrial circles;

III. Invites public service broadcasters to be conscious of their particular remit in a democratic society as an essential element of pluralist communication and of social cohesion, which should offer a wide range of programmes and services to all sectors of the public, to be attentive to the conditions required in order to fulfil that remit in a fully independent manner and, to this end, to elaborate and adopt or, if appropriate, review, and to respect codes of professional ethics or internal guidelines.

Introduction

1. By decision of 24 November 2004, the Committee of Ministers of the Council of Europe instructed the Steering Committee on the Mass Media (CDMM), which subsequently became the Steering Committee on the Media and New Communications Services (CDMC), inter alia to look into "the independence of the public broadcasting service".

The Ministers participating in the 7th European Ministerial Conference on Mass Media Policy (Kyiv, March 2005) also requested that the Council of Europe "monitor the implementation by member states of Recommendation No. R (96) 10 of the Committee of Ministers on the guarantee of the independence of public service broadcasting, with a view, if necessary, to providing further guidance to member states on how to secure this independence".

2. This appendix contains an overview on the independence of public service broadcasting organisations in member states. The appendix and the Committee of Ministers' declaration that precedes it have been prepared under the authority of the CDMC by its subordinate Group of Specialists on public service broadcasting in the information society (MC-S-PSB) in response to the above-mentioned instructions and request.

3. This appendix is based on Council of Europe documents as well as on information available from a variety of other sources, including international and non-governmental organisations.¹ Its purpose is to give an overview of the complex and diverse situation in Council of Europe member states and to identify areas where national audiovisual or media policies, as well as legal, institutional or financial frameworks for public service broadcasting resulting from these policies, may need to be re-examined to become better aligned with Council of Europe standards.

Legal framework

4. According to Recommendation No. R (96) 10, the legal framework governing public service broadcasting organisations should clearly stipulate their independence. The general provisions in Part I of the appendix to that recommendation highlight a number of issues requiring appropriate regulations in order to guarantee that independence.² Specific reference is made to the need to regulate the responsibility and supervision of public service broadcasting organisations and of their statutory organs,³ and to the requirement that there be no form of undue interference in the form of censorship and a-priori control of their activities.

5. Almost all Council of Europe member states have established legal frameworks governing public service broadcasting, in a few cases with a clear constitutional basis. The latter reflects the understanding that the legal basis of public service broadcasting should be subject to broad consensus.

Many of those legal frameworks can be regarded as meeting Council of Europe standards, in particular to the extent that they declare the editorial independence and institutional autonomy of public service broadcasting organisations and set out rules for the establishment, membership and operation of their governing and supervisory bodies. Some of those regulatory frameworks and the manner in which they are applied in practice are fully consistent with Council of Europe standards on the subject and, on occasion, can even be characterised as exemplary.

6. By contrast, in a number of Council of Europe member states, legal frameworks for public service broadcasting organisations are unclear or incomplete. In some cases, the applicable regulations are not capable of guaranteeing editorial independence and institutional autonomy of public service broadcasters, whether as a result of the tenor of substantive provisions or of the weakness or absence of mechanisms designed to ensure their application.

Reportedly, in some cases, while relevant provisions may be adequate, they are disregarded in practice, leaving public service broadcasting organisation under the effective control of the government or political bodies or formations, serving the interests of those bodies rather than society at large.

On occasion, the provisions relating to governing or supervisory bodies (as, for example, regarding the selection, appointment and termination of appointment of members) entail a risk of interference. In this connection, complaints have been voiced to the effect that proposed or actual changes to the regulatory framework in a few member states curtail the independence of public service broadcasters' governing and/or supervisory bodies.

Public service remit

7. Resolution No. 1 on the future of public service broadcasting, adopted at the 4th European Ministerial Conference on Mass Media Policy (Prague, December 1994), summarises the main missions of public service broadcasters.⁴ In this context, it should be recalled that Recommendation [Rec\(2003\)9](#) on measures to promote the democratic and social contribution of digital broadcasting states that "public service broadcasting should preserve its special social remit, including a basic general service that offers news, educational, cultural and entertainment programmes aimed at different categories of the public".

Further, the above-mentioned Resolution No. 1 includes an undertaking "to define clearly, in accordance with appropriate arrangements in domestic law and practice and in respect for their international obligations, the role, missions and responsibilities of public service broadcasters and to ensure their editorial independence against political and economic interference".⁵

In the media context, a genuine public service presupposes the independence of the organisations entrusted with the delivery of that service. It also involves the ability, in terms of legal provisions and material possibilities, to adapt to changing circumstances. This close link between public service remit and independence is the guiding principle behind Recommendation No. R (96) 10.

8. In practically all Council of Europe member states, the relevant legal frameworks address the question of public service remit.

While there is great diversity in the approach followed (for example, as to the degree of detail provided, reflecting each country's broadcasting strategy and policies, as well as the cultural, economic or political context, mostly by defining it in a clear and comprehensive manner), the determination of the remit of public service broadcasting organisations can on the whole be regarded as satisfactory. In some cases, the public service broadcasting organisations' purpose is particularly well defined, both in terms of immediate aims and the manner in which those aims should be achieved, as well as envisaged future developments (for example, in view of the new information and communication technologies (ITCs)).

9. By contrast, in some member states, the remit of public service media is unclear or difficult to apply. This has not paved the way to offering quality services of public interest (for example, balanced/impartial news programmes; education and learning; investigative journalism; ensuring pluralism and diversity in the media; minority and local/community programmes; offering quality entertainment; and promoting creativity) which have traditionally

distinguished public service broadcasting organisations from commercial ones.

There has been criticism that, in certain countries, the distinction between public service and commercial broadcasting has become increasingly blurred, leading to what is called "programme convergence", to the detriment of the quality of the programmes offered by the former. While it is important for public service broadcasters to offer entertainment programmes and to seek to reach wide audiences, the distinctiveness of public service content as a whole, vis-à-vis commercial output, must also be ensured. Moreover, on occasion, the public service broadcasters are not provided with the legal means or the material resources necessary for the adequate implementation of the public service entrusted to them. This situation can result in poor quality programmes or lead to over-reliance on mass-appeal and revenue-generating programmes, which is not in keeping with the public service remit.

10. It would appear that, in those countries where the situations described in the foregoing paragraph prevail, either there is little knowledge both among professionals and within society at large of the particular mission of public service broadcasters and understanding of the characteristics of public media, or proper performance of the public service mission is prevented by extraneous circumstances. In some of those countries, there would also seem to be a lack of experience as regards public service broadcasting, leading to widespread indifference regarding its role in a democratic society or a lack of confidence that genuine public service in the audiovisual area will be established and safeguarded.

Remedying these shortcomings, restoring or enhancing the legitimacy of public service broadcasting and, more particularly, raising awareness of and promoting the importance of such a service based on Council of Europe standards is essential. The role of public authorities in this respect should not be underestimated.

11. As already indicated, in some member states, public service broadcasting organisations' legal framework specifically permits them to adapt in light of developments (for example, new communication technologies). In several member states, while this is not specifically foreseen in the legal framework, nothing prevents them from offering the public service entrusted to them using new formats or platforms. Progress in this area is to be welcomed. In other cases, however, existing provisions do not allow or are interpreted as an obstacle for such development.⁶

Editorial independence

12. Article 10, paragraph 1, of the European Convention on Human Rights stipulates that "everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority [...]". In its case law, the European Court of Human Rights has repeatedly underlined the importance of this right with regard to freedom of the media and editorial independence.

13. The Council of Europe has developed further standards reinforcing freedom of the media and editorial independence.

In its Declaration on freedom of expression and information, adopted on 29 April 1982, the Committee of Ministers underlined the objective to ensure the absence of any arbitrary controls or constraints on participants in the information process, on media content or on the transmission and dissemination of information. Further, at the 4th European Ministerial Conference on Mass Media Policy, Council of Europe member states undertook to guarantee the independence of public service broadcasters against political and economic interference. These commitments and objectives have been reiterated in a number of other Council of Europe documents, and are also at the origin of Recommendation No. R (96) 10.

More particularly, in Part I, Recommendation No. R (96) 10 stipulates that the legal framework governing public service broadcasting organisations should provide for their editorial independence, offers guidance designed to facilitate the guarantee of editorial independence⁷ and proscribes interference in the form of censorship or control of their activities.⁸

14. As already indicated, the legal frameworks in many Council of Europe member states make provision for the editorial independence of public service broadcasting organisations.

In practice, in a majority of member states, public service broadcasters enjoy editorial independence and institutional autonomy. It is generally acknowledged that, in those member states, interference with editorial independence would be met with a strong reaction from the public service broadcasting organisations concerned, as well as by other media, civil society and the public in general. In several member states, legal mechanisms have been set up to deal with such situations should they occur.

15. However, in other cases, some public service broadcasting organisations reportedly face interference and pressure. Such allegations concern close ties between public service broadcasters and government, politicians or public or private entities, or the undue influence of such bodies or persons on public service broadcasting organisations, which compromise editorial independence. The situation during electoral periods and campaigns is often highlighted; it is alleged that, during such periods, leverage over public broadcasters is used to ensure favourable coverage.⁹

16. In some Council of Europe member states, the process of transformation of state broadcasting organisations into genuine public service broadcasters has been slow or still is under way and has, on occasion, been more formal than real. In some countries, the influence of governments and politicians on broadcasting regulators or the broadcasting sector in general has been identified as the key impediment to building and ensuring a diverse, impartial and pluralistic broadcasting landscape. The undue influence of private actors has also on occasion been reported.

17. It might be added that, in some member states, there is a lack of tradition concerning self-regulation or co-regulation, the adoption of and compliance with editorial standards, and a general culture of objectivity and professionalism. Ethical codes and internal guidelines, which can greatly contribute to the independent functioning of public service broadcasters, have not yet been adopted in all member states experiencing the problems outlined above.

Funding

18. The question of resources available to public service broadcasting organisations is at the crux of the issue of their independence and their ability to fulfil their remit. This explains the undertakings made at the 4th European Ministerial Conference on Mass Media Policy "to guarantee public service broadcasters secure and appropriate means necessary for the fulfilment of their missions" and "to maintain and, where necessary, establish an appropriate and secure funding framework which guarantees public service broadcasting organisations the means necessary to accomplish their missions", as well as the attention paid to the matter in Recommendation No. R (96) 10.¹⁰

19. In some Council of Europe member states, public service broadcasting organisations receive appropriate funding, be it in the form of direct contributions from the state, licence fees, income-generating activities or a combination of these sources.

Whichever approach is adopted, it can be implemented with due respect for the market. It is generally agreed that care should be taken so that funding of public service broadcasters does not affect competition on the audiovisual market to an extent which would be contrary to the common interest.^{11, 12} That said, excessive reliance on income-generating

activities, which is often caused by a lack of public funding, can have a negative impact on programming and, in consequence, on the fulfilment of the public service remit entrusted to the organisations concerned.

It is often advanced that there is some degree of correlation between the resources available to public service broadcasting organisations and the quality of the services rendered by them. However, the satisfactory delivery of public service and sound management can also be regarded as contributing to attracting adequate resources.

20. Reportedly, in other Council of Europe member states, there is no appropriate, secure and transparent funding framework guaranteeing public service broadcasting organisations the means necessary to accomplish their remit. On occasion, funding commitments and mechanisms often represent mere statements of intention, without efforts being made to implement them in practice.

Concerns are also frequently expressed as regards the threat to the continuity of the activities of public service broadcasting organisations due to uncertainty of both short- and longer-term funding (for example, as a result of lack of consultation on state contributions, difficulties arising from the fee collection system, failure to adjust contributions of licence fees in view of inflation) or exposure to pressure from authorities with financial decision-making power and the resulting threat to editorial independence and institutional autonomy. In order to avoid such risks, especially in cases where public funding comes from the state budget, appropriate safeguards should be put in place.

Employee protection

21. The relevance of staff policy matters has also been recognised in Recommendation No. R (96) 10, which contains some references to recruitment and non-discrimination, associative activities and the right to engage in industrial action, and the requirement that staff be free from influence from outside the public service broadcasting organisation concerned.¹³

22. It would appear that these criteria are met in many Council of Europe member states, and that employee protection standards are generally respected.

23. However, reportedly, in a number of Council of Europe member states, such standards are not yet well-established, particularly where the media are concerned. This situation renders media professionals more exposed to political and economic influence and pressure and less committed to professional standards.

Complaints are sometimes made of discrimination or dismissal of journalists resulting from pressure brought to bear on management by outside persons or bodies, and allegations have been made to the effect that, in certain countries, under cover of the process of transformation of state broadcasting organisations into public service broadcasters, journalists who are thought to be too controversial or inquisitive have been dismissed.

Concern has also been expressed in respect of proposals to give responsibility for the management of staff issues in public service broadcasters or regulatory bodies to the government.

Openness, transparency and accountability

24. Due to its very nature, public service broadcasting should be accountable to society at large, both because it exists to serve the public in general and because, in most cases, it is financed at least partly from public resources (for example, state contributions) or from broadcasting fees, paid by the intended beneficiaries of the service. According to Resolution No. 1 adopted at the 4th European Ministerial Conference on Mass Media Policy, "public service broadcasters must be directly accountable to the public. To that end, public service broadcasters should regularly publish information on their activities and develop procedures for allowing viewers and listeners to comment on the way in which they carry out their missions".

It goes without saying that accountability is also desirable as regards the sound management of the resources available to public service broadcasting organisations.

25. In most Council of Europe member states, public service broadcasting organisations are relatively open and transparent.

Noteworthy examples of good practice as regards accountability concern some public service broadcasting organisations that engage very actively in seeking audience feedback with a view to assessing their own performance and review, when necessary, the services provided by them.

Many public service broadcasters publish relevant information on a regular basis, some being subject to statutory obligations to publishing yearly reports or submit such reports to parliament. This allows for desirable public scrutiny.

26. However, in some cases, there is insufficient openness, transparency and accountability vis-à-vis society at large as to how public service broadcasting organisations implement their mission and use the (public) resources available to them. It has also been advanced that there are cases where, despite provisions concerning submission of an annual report to the national parliament, such a report is rarely the subject of scrutiny and real debate.

¹ Particular reference should be made to the following: responses by member states to a questionnaire on the degree of implementation of Recommendation No. R (96) 10 of the Committee of Ministers; the report of 12 January 2004 on public service broadcasting, prepared by the Committee on Culture, Science and Education of the Parliamentary Assembly of the Council of Europe (Doc. 10029), and Parliamentary Assembly Recommendation 1641 (2004) on public service broadcasting; the report of 14 January 2003 on freedom of expression in the media in Europe, also prepared by the Committee on Culture, Science and Education of the Parliamentary Assembly (Doc. 9640 revised), and Parliamentary Assembly Recommendation 1589 (2003) on freedom of expression in the media in Europe; Parliamentary Assembly country specific reports and recommendations; the United Nations Educational, Scientific and Cultural Organisation (UNESCO) document on "Public Service Broadcasting: A best practices sourcebook"; and the report of the European Union Monitoring and Advocacy Program of Open Society Institute entitled "Television across Europe: regulation, policy and independence".

² Namely the definition of programme schedules; the conception and production of programmes; the editing and presentation of news and current affairs programmes; the organisation of the activities of the service; recruitment, employment and staff management within the service; the purchase, hire, sale and use of goods and services; the management of financial resources; the preparation and execution of the budget; the negotiation, preparation and signature of legal acts relating to the operation of the service; the representation of the service in legal proceedings as well as with respect to third parties.

³ More detailed guidance concerning governing and supervisory bodies of public service broadcasting organisations (their competencies, status and responsibilities) is offered in Parts II and III of the appendix to Recommendation No. R (96) 10.

⁴ As regards developments concerning the public service remit, see footnote 7.

⁵ Reference could also be made to Recommendation 1589 (2003) on freedom of expression in the media in Europe, where the Parliamentary Assembly asked the Committee of Ministers to urge member states, where appropriate “[...] to revise in particular their broadcasting legislation and implement it with a view to the provision of a genuine public service”. Further, in its Recommendation 1641 (2004) on public service broadcasting, the Parliamentary Assembly stated that “public service broadcasting, a vital element of democracy in Europe, is under threat. It is challenged by political and economic interests, by increasing competition from commercial media, by media concentrations and by financial difficulties. It is also faced with the challenge of adapting to globalisation and the new technologies”. The Parliamentary Assembly also indicated that “it is a matter of concern that many European countries have so far failed to meet the commitment that their governments undertook, at the 4th European Ministerial Conference on Mass Media Policy held in Prague in 1994, to maintain and develop a strong public broadcasting system. It is also worrying that the fundamental principle of the independence of public service broadcasting contained in Recommendation No. R (96) 10 of the Committee of Ministers is still not firmly established in a number of member states. Moreover, governments across the continent are in the process of reorienting their media policies in the light of the development of digital technology and are in danger of leaving public service broadcasting without enough support”.

⁶ As regards access by public service broadcasting organisations to new communications technologies, see *inter alia*, Part VII of the appendix to Recommendation No. R (96) 10, which indicates that “public service broadcasting organisations should be able to exploit new communications technologies and, where authorised, to develop new services based on such technologies in order to fulfil in an independent manner their missions as defined by law.” More recently, in the texts adopted at the 7th European Ministerial Conference on Mass Media Policy, reference is made to “the particularly important role of public service broadcasting in the digital environment, as an element of social cohesion, a reflection of cultural diversity and an essential factor for pluralistic communication accessible to all” and to “the importance of ensuring free and universal access to the services of public service broadcasters across various platforms and the need to develop further the public service broadcasting remit in the light of digitisation and convergence”. In line with the action plan adopted at the 7th European Ministerial Conference on Mass Media Policy, work is being carried out under the authority of the CDMC by its subordinate group of specialists, the MC-S-PSB, to “examine how the public service remit should, as appropriate, be developed and adapted by member states to suit the new digital environment, and study the legal, financial, technical and other conditions needed to enable public service broadcasters to discharge it in the best possible manner, so as to formulate any legal or other proposals which it may consider advisable for this purpose”.

⁷ Particular reference is made to programme schedules, the conception and production of programmes, and the editing and presentation of news and current affairs programmes.

⁸ See also Part VI of the appendix to Recommendation No. R (96) 10, dealing with specific aspects of the programming policy of public service broadcasting organisations.

⁹ See also, in this context, Recommendation No. R (99) 15 on measures concerning media coverage of election campaigns.

¹⁰ Part V of the appendix to Recommendation No. R (96) 10 makes reference, *inter alia*, to the requirement that the question of funding should not be used to exert, directly or indirectly, any influence over the editorial independence and institutional autonomy of public service broadcasting organisations; that public service broadcasting organisations should be consulted on the subject of funding; payments should be made in a way which guarantees the continuity of the activities of the public service broadcasting organisation and which allows it to engage in long-term planning; and to the fact that financial supervision of public service broadcasting organisations should not prejudice their independence in programming matters.

¹¹ The Amsterdam Protocol on the system of public broadcasting in European Union member states, annexed to the Treaty establishing the European Community, states that the system of public broadcasting in those states is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism. Furthermore, it stipulates that “the provisions of the Treaty establishing the European Community shall be without prejudice to the competence of member states to provide for the funding of public service broadcasting in so far as such funding is granted to broadcasting organisations for the fulfilment of the public service remit as conferred, defined and organised by each member state, and in so far as such funding does not affect trading conditions and competition in the Community to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account”.

¹² In this context, reference can also be made to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which reaffirms the sovereign right of states to formulate and implement their cultural policies and to adopt measures to protect and promote the diversity of cultural expressions, notably through regulatory measures, financial assistance, the establishment of and support to public institutions and enhancing diversity of the media including through public service broadcasting.

¹³ As regards the latter point, Part IV of the appendix to Recommendation No. R (96) 10 sets out the need for clear provisions to the effect that staff of public service broadcasting organisations may not take any instructions whatsoever from persons or bodies outside the organisation employing them without the agreement of the board of management of the organisation, subject to the competencies of the supervisory bodies.

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