



TRANSPARENCY

OF MEDIA OWNERSHIP

IN THE REPUBLIC OF MOLDOVA



This study assesses the existing legal framework of the Republic of Moldova regarding media ownership and the good practices of the European Union and analyzes the opportunities for adapting and applying them in Moldova. It served as the basis for drafting amendments to the Broadcasting Code aimed at improving the transparency of media ownership.

Authors: Doina Costin, Mamuka Andguladze

Contributor: Victor Gotișan



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Instead of a Preface:

An “Anamnesis” of the Transparency of Moldovan Media Ownership

Transparency and access to information. Access to information is a fundamental human right. In open societies, as Karl Popper used to call them, access to information is one of the most important rights that citizens can enjoy.¹ Knowledge, or in other words, access to information, makes a society stronger in terms of democratic standards and principles. Democracy is nonexistent wherever free, easy and full access to information of public interest is unavailable to citizens. Public interest is a test that needs to be applied by providers of information whenever they assess its accessibility although it is not always an easy task. There are often competing interests to be balanced such as protecting privacy, trade secrets or even state secrets. Nevertheless, any reservations about whether information is of public interest should be resolved in favor of disclosure. In fact, the human rights system in Europe has largely tilted the balance in favor of increasing the transparency of official institutions and, implicitly, of the accessibility to public information; the degree of transparency is directly proportional to the degree of accessibility.

Media transparency as a subject related to access to information of public interest requires openness and responsibility. The more information about mass media that is available to the public, the greater their responsibility to consumers is. The role of mass media in society, its power to influence the public agenda and public affairs, requires maximum transparency, especially regarding owners and sources of funding. When the public does not know who the beneficial owners² and funders of mass media are, there is greater scope for the manipulation and propaganda that are inimical to a democratic society and, implicitly, to the very concept of a free press.

The direct beneficiaries of transparency in mass media are not only consumers but also the state in the form of the media regulating authorities that need to adopt informed decisions. An analysis by the Open Society Foundation of the evolution of transpar-

1 Karl Popper, *Open Society and Its Enemies* // Karl Popper, *Societatea deschisă și dușmanii ei*, Editura Humanitas, București, 1993.

2 a term used in international commercial legislation that refers to a person—not the one listed in the legal title to the property—who influences, controls and finally benefits from the revenue derived from exercising the right of ownership

ency in media ownership in Moldova mentions that it has not improved in the past six years.³

It is very eloquent that the Declaration of Human Rights adopted on 10 December 1948 mentions the two rights: the right to own property and the right of access to information, as some of the most important rights of a person.⁴

Transparency and pluralism of mass media. Transparency of media ownership is also one of the main conditions for pluralism which in turn contributes to the proper functioning of the democratic system by providing the public with a variety of content reflecting the different political and cultural views in society.⁵ The legal basis of media pluralism is derived from the fundamental right to free expression and is guaranteed by many international agreements.⁶

Media pluralism ensures public access to broad sources of information, opinions or views as public opinion should be shaped without being influenced by one dominant outlook,⁷ and it is directly related to plurality of ownership. The media reports on issues of public interest such as politics, the economy or elections, and representatives of political or business groups try to influence media coverage in their own interests. People with powerful financial resources who own several media outlets may thereby form a threat to media pluralism by monopolizing the whole sector.⁸

There are different types of regulations in democratic states to ensure the protection of media from political or economic interference.⁹ The Republic of Moldova is not the only country that has not yet regulated the transparency of media ownership: the legislation of some European countries does not require it either. As a result, TV companies are not obliged to disclose the names of their owners. Loopholes in the legislation allow the owners to manage media companies through entities registered offshore leading to a lack of transparency that casts doubt on the objectivity of the information provided

³ Open Society Foundations, *Mapping Digital Media: Moldova Country Report*, London, 2012, p. 87, available online at <http://www.soros.org/sites/default/files/OSF-Media-Report-Moldova-03-01-2012-WEB.pdf> .

⁴ http://www.onuinfo.ro/documente_fundamentale/declaratia_drepturilor_omului/

⁵ Cp. Recommendation No. R (99) 1 on measures to promote media pluralism and its Explanatory Memorandum, available online at [http://www.coe.int/t/dghl/standardsetting/media/doc/CM/Rec\(1994\)013&ExpMem_en.asp#TopOfPage](http://www.coe.int/t/dghl/standardsetting/media/doc/CM/Rec(1994)013&ExpMem_en.asp#TopOfPage) .

⁶ For example: Article 19 of the Universal Declaration of Human Rights; Article 10 of the European Convention on Human Rights and Fundamental Freedoms; Article 19 of the International Covenant on Civil and Political Rights.

⁷ Commission staff working paper: *Media pluralism in the member states of the European Union*"; Recommendation CM/Rec (2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007SC0032:EN:NOT> .

⁸ Cp. ECtHR *VGT Vereinigung gegen Tierfabriken v. Switzerland*; Arnout Nieuwenhuis, *The concept of pluralism in the case law of the ecthr*.

⁹ *Ibidem*.

and raises questions about the affiliation of media owners with political or business groups.¹⁰

After the Alliance for European Integration came to power in Moldova in the summer of 2009, the three parties forming the governing coalition promised to harmonize media legislation with European standards, to adopt a new broadcasting code and to reform Moldova's public broadcaster. To ensure the sustainability of media outlets, the officials plan to support and encourage businesses to invest in the local media market.¹¹ However, the state of media pluralism in Moldova has not changed and transparency of ownership remains problematic. The lack of public information about the owners of media outlets and in some cases the complete lack of financial and organizational transparency about trusts that own media companies limit the access of civil society to information about the financial sources or funding of trusts. Moreover, the government agencies that hold such information do not ensure it is published.¹²

This study analyzes the issue of media ownership and owners of media outlets on various levels: the legal framework of the Republic of Moldova, details about how media ownership is covered in the national media and international best practices and legislation.

10 Article 19, *Transparency of media ownership by off-shore companies in Ukraine: problems and solutions*, London 2011, available online at <http://www.article19.org/resources.php/resource/2735/en/transparency-of-media-ownership-by-off-shore-companies-in-ukraine:-problems-and-solutions> .

11 IREX, *Media Sustainability Index 2012*, http://www.irex.org/sites/default/files/u105/EE_MSI_2012_Moldova.pdf

12 *Ibidem*.

PART I:

The Transparency of Mass Media Ownership in the Republic of Moldova

A. Legal Aspects

After the government changed in 2009, civil society, especially the non-government sector, made it very clear that the more pressing problems in the media sector that demanded expeditious solutions were reforming the public broadcaster, denationalizing the media, passing laws on defamation and ending monopolies in the media market by disclosing the owners and funders and by establishing a proper legislative framework in this regard. Authorities undertook to solve these problems in collaboration with civil society in the government's plan for 2011–2014.¹³ Civil society soon launched a project to produce a new broadcasting code that would, "... aim to ensure a functional legal framework for the development of broadcasting in the country based on truly democratic principles."¹⁴ The draft broadcasting code contains a greater number of requirements regarding transparency in media ownership. Although it was submitted to a special parliamentary commission in May 2011, the draft has not yet been examined in Parliament. Two thoughts come to mind: Either the complexity, volume and subject matter of the draft are beyond the competence of the MPs, or there is no political will to enact such reforms

The reasons underlying the reticence of politicians to adopt pro-active regulations on transparency were the subject of a number of media investigations, especially in the context of the emergence of two new TV stations in the media market: Publika TV and Jurnal TV. The management of the former has undergone a series of changes during its three years of operations. In the beginning, it was an investment by the Romanian media magnate Sorin Ovidiu Vantu, but it was sold a year after its launch to a Romanian businessman and was later bought by Dumitry Tira, the general director of the TV station. It is not the business transactions themselves that raise questions, but the fact that these transactions were made by means of companies

13 *Activity Plan of the Government of the Republic of Moldova for 2010*, published in Monitorul Oficial no. 39-40 as of 23.03.2010 available online at www.mf.gov.md/common/programstrategy/PAG_2010.doc. The Activity program of the Moldovan Government, *European Integration: FREEDOM, DEMOCRACY, WELFARE 2011-2014*, available at http://www.moldpres.md/pdf/3350445_md_program_activi.pdf; // *Programul de activitate al Guvernului Republicii Moldova Integrarea Europeană: LIBERTATE, DEMOCRAȚIE, BUNĂSTARE 2011-2014*.

14 Independent Journalism Center, *Report on the Situation of the Press in Moldova in 2011*, available online at http://ijc.md/Publicatii/mlu/RAPORT_FOP_2011_rom_final.pdf // Centrul pentru Jurnalism Independent din Moldova (CJI), *Raport asupra situației presei în Republica Moldova în anul 2011*.

and economic entities registered abroad whose shareholders, managers and activities are at the very least not transparent (e.g. the editor of Publika TV, Stiri Media Grup LLC, registered in Chisinau on 13 October 2009, whose administrator is Zosciuc Anatolie Vladimir, a tractor driver and machine operator by profession).¹⁵

The problem of offshore companies that are used to establish or buy mass media outlets is not addressed in Moldovan legislation in any manner. It is not even the subject of a decision of the Broadcast Coordinating Council (BCC), although it is definitely clear that the true owners of broadcasters hide behind offshore companies.

International legislation on offshore zones often ensures the confidentiality of owners.¹⁶ According to a public policy study developed by Article 19, “Transparency of media ownership by offshore companies in Ukraine: Problems and Solutions,” the legislation on offshore companies does not oblige the disclosure of the beneficial owners of these companies to any public institution. Only at the moment of establishment are these data submitted to the central bank while the bank’s employees are liable to protect their confidentiality. Furthermore, the state is not liable to disclose information about natural or legal persons at the request of other countries except in cases of money laundering or financing terrorism.”¹⁷

Both national legislation and legislation on offshore zones that protects the confidentiality of owners of the companies registered there can present obstacles that hinder access to information about media owners, but Greece, for example, has restricted the acquisition of mass media outlets by offshore companies¹⁸ Georgia went even further and in 2011 prohibited issuing broadcasting licenses to companies registered offshore.¹⁹ In Moldova, some of the most viewed TV stations—Prime TV and Publika TV—have foreign investment companies registered offshore as owners²⁰

Transparency of Print Media Ownership

The work of print media is regulated by the Law on the Press no. 243 of 26 October 1994. In addition to print media, the law also regulates news agencies. It is an obsolete law that has almost fallen into disuse given that the majority of periodicals

15 How to map the media ownership in Moldova, project implemented by the Independent Journalism Center of Romania in partnership with the Independent Press Association of the Republic of Moldova.

16 Article 19, *Transparency of media ownership by offshore companies in Ukraine: Problems and Solutions*, available online at <http://www.article19.org/data/files/medialibrary/2735/11-09-08-Ukraine.pdf>.

17 *Ibidem*.

18 *Ibidem*.

19 The Law on Broadcasting of Georgia, Article 37.

20 *How to map the media ownership in Moldova*, project implemented by the Independent Journalism Center of Romania in partnership with the Independent Press Association of the Republic of Moldova.

in the country are registered at the State Registration Chamber (SRC). Only a single provision in the law remains slightly applicable for requests to register periodicals at the Ministry of Justice, namely the part that regulates the work of periodicals and of news agencies. For this very reason civil society insists on repealing the law and on transferring this provision into another legal act. The law has been amended dozens of times with the latest one adopted in 2006 by the Communist government. Article 12, “Financing,” has been amended by seven of ten subsequent laws.

It is imperative to provide from the very start some explanations of the terms used inadequately in Moldovan legislation. The Law on the Press uses the term “founder” to name a natural or legal person that establishes a periodical or a news agency. The terms “owner,” “participant” and “shareholder” are not used in the law, although in the situation of alienation of a share of the statutory capital of a publication or news agency, the buyer becomes “owner/participant in the statutory capital,” and not “founder,” and the rights and obligations prescribed by the Law on the Press for founders are transferred to owners/participants in the statutory capital.

Both the Civil Code and the specialized legislation, especially the Law on the Press and the Law on Enterprises and Entrepreneurship, regulate the establishment of legal persons by using the term “founder” for natural and legal persons establishing them. For instance, the Law on Enterprises and Entrepreneurship uses the term “founder” to designate natural or legal persons that associate their property in order to jointly carry out an entrepreneurial activity (Article 17). It is logical that the initial shareholders that establish a legal person are founders, while after alienation of shares the new shareholders are owners and cannot be named founders in the sense used in the law. Hence confusion arises as to the term “founder” that is improperly used in adjacent legislation to designate owners (e.g. in the Broadcasting Code).

The Broadcasting Code uses the terms “founder,” “owner” and “shareholder” inconsistently in situations which in principle aim to ensure ownership transparency and to prevent concentration of ownership; however, used improperly, these terms are far from facilitating the attainment of this goal [e.g., Article 28 (5) requires the solicitor of an authorization for retransmission to disclose the “founder (shareholder),” terms that could help solicitors elude the law by disclosing only the founder; yet, it would be correct to use the term “owner,” which would cover both the “founder” and the “subsequent shareholders”].

European legislation uses the term “owner” to mean persons who possess property or control something, a term that covers both founders and persons who obtain ownership later.

The Russian version of the Law on the Press uses the term “учредитель” (founder), which in the Russian legislation is not synonymous with the terms “участник” (participant), “акционер” (shareholder), or “член” (member) (e.g., Law no. 223-35 of 11 May 2006 on state unitary enterprises in St. Petersburg, state agencies, and other commercial and non-commercial organizations in which the city of St. Petersburg is founder, participant, shareholder, or member).

The law operates based on a few basic notions: (co)founder, publisher, editorial team, editor (editor-in-chief), and head of agency. According to the law, the (co)founders of a periodical can be citizens of the Republic of Moldova, while foreign citizens can participate in founding them, holding not more than 49% of the statutory capital.

According to this legal provision, foreigners cannot hold more than 49% of the statutory capital as founders. Therefore, by applying the law ad literam, the foreigners that might subsequently become participants in the statutory capital can obtain ownership of a share greater than 49% of the statutory capital, since this restriction only refers to founders.

The editor-in-chief and the head of agency must be Moldovan citizens; however, any natural or legal person can be publisher, since the law does not specify citizenship. Actual management of a periodical and a news agency is carried out by the founder, who, according to Article 8 undertakes the management or appoints a person for this purpose; approves the status and the program of the publication and establishes its profile, general orientation, periodicity, price, etc. Articles 12 and 13 contain provisions referring to media (ownership) transparency. Twice a year the law requires periodicals and news agencies to publish information about the source and value of donations (including non-monetary ones) received in the country and abroad and the mandatory reference data in every issue (title of the publication, the founder, the name of the editor, the number and date of print, price per copy, address of the editorial office and of the printing house, postal code, circulation and number and date of registration). Moreover, the law prohibits editing publications that fail to publish all the reference data which is an ineffective provision *ab initio* since there are no sanctions for the failure to do so.

If under the Law the public has access only to general and minimal information about founders and the management of publications, the Ministry of Justice which issues registration certificates, requires more detailed information when applying for them.²¹ Public access to general information about print media is definitely more limited than that of the authorities. Thus, the two articles also aim to allow readers to form an opinion about the value of the information disseminated by periodicals and news agencies.

21 (i) application for the registration of the statute of the periodical or news agency, signed by the founder (founders), indicating the place of residence, or by their representatives (for founders legal persons), and stamped; (ii) decision or minutes of establishment of the periodical or news agency, approval of the statute, signed by the founder (founders), naming the editor-in-chief of the publication, editorial board, and censor; (iii) statute signed by founder (founders), indicating identification data; (iv) list of founders, specifying for natural persons: surname, name, year of birth, number and series of the ID card, place of residence, and signature; for legal persons: name, office, number and date of registration, signature of the representative (president); for founder-legal person: extract from the minutes of the session of the authorized administrative body of the legal person, stipulating the decision on the establishment of the periodical or news agency; (v) the minutes of the members of the editorial team regarding establishment of the periodical or news agency, adoption of the statute of the periodical or news agency. <http://servicii.gov.md/ServiceDetails.aspx?id=cfc476cb-ba4e-4c68-9be3-644cf41a9a5a>

Articles 12 and 13 only slightly cover the Council of Europe’s recommendations regarding transparency of ownership of print media as provided in Recommendation (94)13 and Recommendation (2007)2. The law does not require disclosure of information about the, “...interests held in other mass media by an editorial structure or by the persons or bodies that participate in it,” nor of information about the, “...persons or bodies other than those directly involved in the editorial structure that are prone to exercise a significant influence over the editorial orientation of the media outlet or outlets administered by them.”

Also, the law disregards extremely important information about the “editorial policy or political orientation of media outlets” as well as data about the “financial standing of the editorial structure and about the dissemination of the media outlet or outlets it uses.” These omissions in the law are critical and decisive from the perspective of ensuring and promoting transparency of media ownership. Furthermore, there are no provisions for enforcing the obligation to publish required information. According to Recommendation (94)13, citizens should have the ability and the right to request such data from the editorial board of a periodical, but this recommendation has not been adopted in Moldovan legislation. Technically, according to the legislation on access to information, citizens could have access to data about founders held by the Ministry of Justice, but this information is inadequate since it only relates to founders and not to beneficial owners.

In most cases, the founder or owner of a media outlet is a commercial enterprise, which in its turn can be founded or owned by other commercial enterprises. In such cases, especially in Moldova, the connection between commercial enterprises and individuals who hold shares in the former and whose involvement is in fact of interest and importance is camouflaged by interposing an entire chain of commercial enterprises. Thus, the simple obligation of disclosing the owner(s) can end, as it was with Article 641 (2) of the Election Code, with disclosure of the name of the commercial enterprise owning the media outlet and the protection of individuals—beneficial owners who in fact control and influence the editorial policy of the outlet.

Transparency of Electronic Media Ownership

The activity of electronic media outlets is regulated by Broadcasting Code no. 260 of 27 July 2006. According to Article 1, one of the purposes of the code is to protect the rights of program consumers to receive correct and objective information to allow them to freely form opinions, but the transparency of ownership of broadcasters and service providers (cable operators) is covered only superficially or implicitly in several articles that contain general provisions regarding concentration of ownership. Thus, Article 7 paragraph (5) contains the principle that, “To protect pluralism

and political, social and cultural diversity, the concentration of ownership shall be limited to dimensions that would ensure economic efficiency but would not generate a dominant position in forming public opinion.”

The Broadcasting Code provides in Article 27 the sanction of withdrawing the broadcasting license for violating the norms of ownership of broadcasting outlets; however, the code contains no provisions on controlling the observance of this obligation, nor any clear delimitation of functions of the National Agency for the Protection of Competition and the Broadcast Coordinating Council regarding the control and identification of violations in competition in broadcasting.

Article 23 contains further provisions on ownership transparency. Paragraph (3) letter b) provides that, “...broadcasting licenses shall be issued according to the principle of ensuring pluralism in broadcasting, excluding the possibility of creating conditions for monopoly and concentration of property in broadcasting and in the media in general.” The implementation of this provision, which can be achieved only by the National Agency for the Protection of Competition (NAPC), implies knowledge of the structure of ownership and implicitly requires ownership transparency in all types of information provided by Recommendation (94)¹³ and Recommendation (2007)². On the other hand, the principle stated in Article 23 is relevant not only when the broadcasting license is issued but also during the entire period of validity of the license. The code, however, provides nothing in this regard. It appears that the framework regulating concentration of ownership applicable to broadcasters and service providers during the validity of the broadcasting license and of the authorization for retransmission is provided by the Law on the Protection of Competition.

Further, paragraph (6) of Article 23 requires applicants for broadcasting licenses to disclose, *inter alia*, the identity of the *owners* and the sources of funding. This obligation is very vague and does not contribute to transparency, although paragraph (7) stipulates that, “During the period provided for submission of offers, the BCC shall make public the proposal for offering programs and the information about participants in the contest,” since in all cases only the data on firms are disclosed. Moreover, these articles of the law remain ineffective in the absence of detailed provisions regarding the transparency of ownership of applicants for broadcasting licenses. For instance, how could the BCC follow paragraph (9) of this article which provides that it shall designate the winner of the contest according to the principles provided in paragraph (3) when the BCC has only the general identification data on the applicant (which provide no indication as to the beneficial owners shareholders, participants, members) that could control other media outlets as well?

Article 25 indicates the information that a broadcasting license must contain, but it does not provide for the publication and accessibility of this document to the general public. At the same time, Article 28, “Authorization for Retransmission,” requires applicants to state to the BCC the surname, name, citizenship (for legal persons the name of the com-

pany), address of the applicant, and information about participation in other mass media outlets as founder (shareholder). Although the obligation to disclose founding other media outlets is rather important for ensuring ownership transparency and pluralism, this obligation is limited to founding and not to owning. As a matter of fact, including the word “shareholder” in brackets minimizes the impact of this article on transparency by limiting its scope only to the actual founding of the company.

Another provision relevant to this analysis is Article 41 which contains the obligations of the BCC and which, *inter alia*, stipulates that the BCC shall ensure transparency of broadcast media ownership. However, this obligation is merely stated since the code does not provide for a mechanism by which the BCC can fulfill this obligation.

Most provisions regarding the transparency of broadcasters are covered in Article 66 (“Private Broadcasters”) that together with three additional paragraphs regulating ownership in broadcasting requires broadcasters in paragraph (6) to inform the public of the name and address of the administrator; the name of the producer of programs, the signals of the radio station and the symbol of the TV station but not the owner of the outlet.

According to Article 66, any natural or legal person, regardless of nationality, can found a private media outlet. Thus, the law does not stop offshore companies from founding private broadcasting outlets, but paragraph (4) of the same article restricts ownership rights stipulating that, “A natural or legal person, from the country or from abroad, can be an investor or majority shareholder, *directly* or *indirectly*, in not more than two broadcasters of different types.” It is, however, difficult to verify a Moldovan citizen’s status as an *indirect* investor or majority shareholder using the instruments offered in the legislation. Furthermore, one cannot verify the status of an investor or majority shareholder or of a foreign natural or legal person as *direct* or *indirect*, particularly offshore companies whose identity is strictly protected by the legislation on offshore zones.

Related Legislation

The Law on Entrepreneurship and Enterprises

Article 7 of this law requires enterprises to abide by the rules of conduct in the market under conditions of free competition, to respect the legitimate rights and interests of consumers and to ensure proper quality of the goods produced (of work and services provided).

Electoral Code

In the context of the early parliamentary elections in the autumn of 2010, Parliament adopted several amendments to the Electoral Code, including to Article 64, and added the new Article 64¹. Both articles cover the work of mass media during elections and were mostly suggested by the Civic Coalition for Free and Fair Elec-

tions. Paragraph (2) of Article 64¹ aimed to meet European demands for conducting elections which require maximum transparency of the broadcasters involved in covering them. Thus, according to the abovementioned stipulation, in the first seven days after the approval of the Regulations on the Coverage of the Elections Campaign in Mass Media, every broadcaster must submit to the BCC a statement regarding its editorial policy for the election campaign and must indicate the name of the owner/owners of the outlet. To ensure greater transparency, the article requires the BCC to publish these statements on its web page so as to make them accessible to the general public. This provision did not, however, have the desired effect and did not increase transparency of media ownership at least for the duration of the campaign since broadcasters confined themselves to formally stating their editorial policies and the names of the founding companies. Still, we believe that the failure to properly apply this provision is mainly due to the BCC as it did not ensure the *ad litteram* application of the provision which requires stating the name of the owner/owners, i.e. of the shareholders/participants/members, and not the name of the founder or the company owner.

Law on Access to Information

Media outlets are not among the subjects of this law. Also, the object of the law refers only to official information held by its providers, so media consumers can have access to the information held by public authorities, particularly by the Ministry of Justice, the BCC, the SRC (for a fee) and the NAPC.

Law on Protection of Competition

This law authorizes the NAPC in Articles 13 and 14 to have free access to buildings and the grounds of businesses and to request businesses to submit required documents and written and oral explanations and other information about their functions. Under Article 15, the NAPC shall not disclose commercial information obtained in the context of its work, so information obtained by the NAPC from businesses, particularly mass media, can be accessed by the public as long as it is not a trade secret.

Law on Trade Secrets

The law classifies as trade secrets any information pertaining to production, technology, administration, financial activity and other economic activity, the disclosure (transfer, leakage) of which can affect their interests (Article 1). Paragraph (4) of Article 5 covers the information that can be included in the category of trade secrets, namely: a) constitutional documents, as well as the documents allowing entrepreneurial activity and certain types of economic activity that are subject to licensing; b) information in an established form of statistical reporting and of reports on economic and financial activity and other data necessary for verifying the correctness of calculating and paying taxes and other mandatory payments; c) documents confirming the payment of taxes and other payments to the national public budget; d) documents confirming solvency; e) information about the number and structure of personnel, salary of employees, working conditions and availability of jobs; f) information about violating antimonopoly legislation.

B. Investigative Aspects

The topic of transparency of ownership has been and still is barely analyzed by Moldovan media. The majority of articles published on the subject are mainly based on assumptions or information that cannot be verified. The main problems that lead to a lack of transparency and of access to information about the owners of media outlets in Moldova arise from the existing legal framework.

In an interview for *Ziarul de Garda*, Dunja Mijatovic, the OSCE Representative on Freedom of the Media, said that it is essential for the citizens of a country to know who the owners of media outlets are and, implicitly, their political affiliation because "... it is the only way that the public can correctly interpret the messages of these media outlets."²² In this sense, transparency directly guarantees media plurality, one of the basic elements in a democratic society.

Public Institutions and Access to Information

According to the legislation, the SRC "is the authority that by means of its regional offices registers legal persons and individual entrepreneurs established in the Republic of Moldova, except those that according to the legislation are registered by other public authorities."²³ Thus, the SRC is the institution that can provide details about the owners of an institution or enterprise, including broadcasting outlets (radio and TV), while the information on the print press and periodicals can be accessed at the Ministry of Justice, the public authority that registers those enterprises.

For this study, we filed a request with the SRC for the following information about broadcasters: a) the company name and the names of owners, founders and managers; b) all previous modifications of the statutory acts of the company; c) the date of registration; d) the legal address and e) type of activity. The reply we received, however, listed the registration number of the media outlet, its founders, address, and types of activity, not the owners. Also, reference was made to the share capital, the director and the shares of each legal or natural person.

According to the current legislation, both a natural and a legal person can found a company. In most cases, a company/enterprise (legal person) is behind a broadcasting media outlet. In the case of periodicals, founders often include natural persons. That is, for example, the case for the newspapers *Panorama*, *Jurnal de Chisinau*, and *Timpul de Dimineata*.

²² Ziarul de Garda, *More freedom to criticise officials*, Interview with Dunja Mijatovic, OSCE Representative on Freedom of the Media, no. 383 (26 July 2012), available online at <http://www.zdg.md/politic/mai-multa-libertate-de-a-critica-demnitarii> // Ziarul de Gardă, *Mai multă libertate de a critica demnitarii*, Interviu cu Dunja Mijatovic, reprezentanta OSCE pentru libertatea de expresie, Nr. 383 (26 iulie 2012).

²³ Camera Înregistrării de Stat, *Istoricul și Principalele Atribuții*, www.cis.gov.md/content/2 .

Information can be obtained from the SRC for a fee that mainly depends on what is requested. To access full information on an enterprise, the fee is MDL 50.²⁴ For the SRC to access/search for information about the period of registration and a partner country where a certain enterprise has been registered costs MDL 1,000. To research and find details about the address of a company's head office, the fee is MDL 1,000, and to obtain information on the founder or administrator costs MDL 500.

The price list established by the SRC for requests of information

Item No.	Type of information	Price for information (in MDL per 1 item of information)
1.	Basic information (name, IDNO/fiscal code, previous registration no., date of registration, legal form of organization, manager, head office)	10.00
2.	Basic information + founders (associates) + declared types of activity (subscribed share capital and shares)	20.00
3.	Basic information + bodies of management, supervision, and control	20.00
4.	Basic information + mentions about the procedure of liquidation, reorganization, insolvency, suspension of activity	20.00
5.	Basic information + data from the annual financial statement	20.00
6.	Full information (items 1-5 + data about interdictions)	50.00

Item No.	Search criteria	Price of connection/MDL
1.	For the name and identification numbers of the company (short name, IDNO/fiscal code, previous registration no., previous fiscal code)	100.00
2.	For the administrator – natural person (name, IDNP) and legal person (name, IDNO or registration number)	500.00
3.	For the founder – natural person (name, IDNP) and legal person (name, IDNO or registration number)	500.00
4.	For the head office (address)	1000.00
5.	For the registration period and territorial office	1000.00
6.	For the registration period and partner country	1000.00

²⁴ According to the data provided by the SRC, full information includes: name, fiscal code, legal form of organization, administrator, head office, date and number of registration, share capital and shares of participation, bodies of management, procedure of liquidation, reorganization and suspension of activity and data from the annual financial statement.

Interest of National Media in the Owners of Media Outlets

Information about media owners and ownership of Moldovan mass media outlets in fact cannot be accessed or obtained. Journalists must deal only with information that cannot be verified, and in most cases when covering subjects about media owners and ownership they must rely on assumptions or connections between editorial policies, declarations and excerpts from the monitoring reports of media organizations. Because of this, Moldovan mass media have not been and are not interested in the subject of owners and ownership.

The newspapers *Adevarul* and *Jurnal de Chisinau* have written articles on media ownership. The main media company they analyzed²⁵ was the FIC Prime LLC, whose owner, according to these publications, is Vlad Plahotniuc, the Vice-President of Parliament and member of the Democratic Party of Moldova. According to these publications, his “media empire” includes Prime TV, Prime FM, Canal 3, 2 Plus, Maestro FM and Megapolis FM. Also, in June 2012 the Association for the Development of Culture and Protection of Copyright and Related Rights (Apollo) notified the BCC, the NAPC and the General Prosecutor’s office that Vladimir Plahotniuc is, “...the owner of five broadcasters with national coverage.”²⁶ These broadcasters are the radio stations Prime FM and Maestro FM and the TV stations Canal 3,²⁷ 2 Plus and Prime TV. Apollo representatives claim that the founder of the companies holding the broadcasting licenses of these outlets is one company—OTIV Prime Media B.V., a company registered in Amsterdam, Holland (address: Bloemgracht 45, Amsterdam, Noord-Holland 1016 KD).²⁸ To prove that OTIV Prime Media B.V. is owned by Vlad Plahotniuc, *Adevarul* linked the initials “OTIV” with the names of the Plahotniuc family: Oxana (wife), Timofei (son), Inochentie (son), and Vlad.²⁹ It should be mentioned

- 25** If the investigations of *Adevarul* regarding the FIC Prime LLC are purely journalistic, meaning that the editorial team researches this case guided mainly by correct journalistic ethics, then the investigations of *Jurnal de Chisinau* about the same company are perceived as a kind of political revenge. In the elections according to monitoring reports, *Jurnal de Chisinau*, supported the candidate of the Party for the People and the Country and disfavored the PDM, especially Vlad Plahotniuc.
- 26** “*Adevarul*”, *New house for the televisions of Plahotniuc*, 29 August 2012, available online at http://www.adevarul.ro/moldova/economie/Prime-Plahotniuc-TV-studio_TV_0_764323589.html // *Adevărul, Casă nouă pentru televiziunile lui Plahotniuc*, 29 august 2012; Association for the Development of Culture and Protection of Copyright and Related Rights—Apollo—*Vlad Plahotniuc is the final beneficiary of 5 broadcasters contrary to legal provisions*, http://aoapollo.md/?page_id=233 // *Asociația pentru Dezvoltarea Culturii și Protecției Drepturilor de Autor și Conexe—Apollo—Vlad Plahotniuc este beneficiarul final a 5 radiodifuzori contrar prevederilor legale*.
- 27** According to the information provided by the SRC when requested by the Independent Journalism Center, the address of the Canal 3 television is the same as that of Prime TV and Prime FM. Also, it is interesting that the broadcasting license holder of this television station is the FIC Prime LLC, the same company that holds the broadcasting licenses of Prime TV and Prime FM. The director of Canal 3 is Lilian Bustiuc, and the owner of the founding company FIC Media Production LLC is Sergiu Latis, who, since December 2011, is also the producer of the “Who Wants to Be a Millionaire?” show on Prime TV. It should also be mentioned that the founding company of FIC Media Production LLC is OTIV Prime Media B.V. According to the *How to Map Media Ownership in Moldova* project, implemented by the Independent Journalism Center of Romania in partnership with the Independent Press Association of Moldova, OTIV Prime Media B.V. is also the founding company of Prime TV and Prime FM.
- 28** *How to Map Media Ownership in Moldova* project implemented by the Independent Journalism Center of Romania in partnership with the Independent Press Association of Moldova,
- 29** *Ibidem*.

that Canal 3, Prime FM, and Prime TV have the same head office: 57/1 Mitropolit Gavriil Banulescu-Bodoni St., Chisinau.

A new way to indirectly identify media owners is also to use data and information from the monitoring reports of media outlets though they do not provide facts that can be verified by documents. The main factor that is taken into consideration in monitoring reports is the editorial policy and predisposition of media outlets to cover news and information in a positive or negative light. Using that information, journalists make connections that may indicate who owns the outlets.

For example, the “Report on the Media Monitoring of the Election Campaign for the Early Parliament Elections of November 28, 2010” produced by the Independent Journalism Center of Moldova mentioned the following: “The private TV station NIT heavily favored the candidate of the Communists...; *Moldova Suverana* was in favor of the Communist candidate; Judging by the frequency of quotes and the context in which candidates appear in news and programs, Prime TV favored the Democratic Party of Moldova. The same trend was evident at 2 Plus and Prime FM; Jurnal TV favored the Party for the People and the Country; The newspaper *Panorama* disfavored the Communists and presented the other candidates both positively and negatively, favoring the candidate of the Humanist Party of Moldova.”³⁰ According to information from the Moldovan media (and in some cases information provided by the SRC), NIT and implicitly the newspaper *Moldova Suverana*³¹ are owned by the Communist Party of Moldova; Prime TV, Prime FM and 2 Plus are owned by Vlad Plahotniuc, the vice-president of the Democratic Party of Moldova; Jurnal TV is owned by Viorel Topa, a candidate of the Party for the People and the Country and the newspaper *Panorama* is owned by Dumitru Ciubasenco (according to data obtained from the SRC he is founder and owner of 50% of shares of the newspaper) who from September to November 2010 was speaker of the PUM.³²

30 Independent Journalism Center of Moldova, “Report on the Media Monitoring of the Election Campaign for the Early Parliament Elections of November 28, 2010” Final report, 28 September – 28 November 2010, page 4-5.// Centrul pentru Jurnalism Independent din Moldova, “Raportul de Monitorizare a mass-media în campania electorală pentru alegerile parlamentare anticipate din 28 noiembrie 2010,” Raport final, 28 septembrie - 28 noiembrie 2010, p. 4-5, www.ijc.md/Publicatii/monitorizare/Raport_final_maleg_ro.pdf .

31 How to Map Media Ownership in Moldova project implemented by the Independent Journalism Center of Romania in partnership with the Association of Independent Press of Moldova. “Since 23 October 2007, *Moldova Suverana* becomes the property of Noi Idei Televizate LLC, which is known to be owned by communists (90%) and Ion Berlinski (10%). The Joint Venture Noi Idei Televizate LLC was registered on 12 March 1997, by founders: 1) JSC “Advac Associates” LLC (95.76%), which, according to the newspaper *Jurnal de Chisinau*, is an off-shore company of the British Virgin Islands; 2) Serghei Drobot (4.22%), editor-in-chief of the newspaper *Kishinevskie Novosti*, former media director of the holding, a part of which was also the TV station NIT, decorated in 2009 by the former Communist president Vladimir Voronin with the Order of Labor Glory; and 3) Novost LLC (0.01%). In June 2012, when the BCC withdrew the license of NIT, Noi Idei Televizate LLC assigned its 90% share to the “staff” of *Moldova Suverana*, as it was also announced by the Communist MP Sergiu Sarbu on his Facebook account.

32 ADEPT, *List of candidates for the position of Member of Parliament of the Republic of Moldova for the parliamentary elections of 28 November 2010 on behalf of the Humanist Party of Moldova* <http://www.e-democracy.md/elections/parliamentary/2010/opponents/pum/list/> .

PART II:

International Legislation and Practice regarding Transparency in Media Ownership

As it has been mentioned earlier, there are three main causes for the lack of transparency in media ownership in Moldova: 1) media companies are not obliged to ensure that the public knows the identity of individual owners; 2) the government agencies that hold the information about owners and their funding do not disclose it on their own initiative since the legislation does not require them to and 3) several companies are owned by entities registered off shore, and the offshore legal framework protects the identity of owners.

There are no common European standards for regulations regarding transparency in media ownership. Unlimited concentration of ownership can jeopardize media pluralism; supporting only free market competition cannot ensure it.

After the collapse of the Soviet Union, a number of new media outlets emerged in Central and Eastern European countries as traditional western media companies explored new markets. Due to financial constraints and to insecure revenues from advertising, several Western companies dominate the market. Almost 80% of the media outlets in the Czech Republic are owned by German and Swiss companies; more than a half of all Hungarian newspapers are in the hands of German and Swiss entities. The WAZ group enjoys the dominant position in Bulgaria, Croatia and other East European countries.³³

The appearance of new players in the market was broadly welcomed by the new states as they brought new technologies and increased media content; however, the lack of transparency in ownership and the concentration of cross-border ownership raised concerns over media pluralism. In addition, the traditional European markets

33 The impact of media concentration in professional journalism, OSCE Representative on Freedom of the Media, <http://www.osce.org/fom/13870> ; Article 19, *Transparency of media ownership by off-shore companies in Ukraine: problems and solutions*, <http://www.article19.org/resources.php/resource/2735/en/transparency-of-media-ownership-by-off-shore-companies-in-ukraine:-problems-and-solutions> ; Commission staff working paper, *Media pluralism in the member states of the European Union*, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007SC0032:EN:NOT> .

are also under increased influence of non-European companies, especially American ones.³⁴

Regulations on Media Ownership in Europe

Council of Europe

The Council of Europe actively promotes the principle of transparency in media ownership in its member states acknowledging the importance of the media in safeguarding pluralism among all democratic groups.³⁵ The Council makes both specific and general recommendations on media ownership and proposes guidelines for achieving the desired goals. In addition, the binding European Convention on Transfrontier Television defines the requirements for channels to disclose information about their owners.

Council of Europe Recommendation No. R (94) 13³⁶ of the Committee of Ministers is a specific one for improving transparency of ownership within and among the member states. This non-binding recommendation includes the following six basic guidelines; member states may choose those measures they feel are necessary and appropriate and take into account the protection of the rights and legitimate interests of those who are subject to transparency requirements. Due to regulatory differences, the guidelines deal separately with the print and broadcasting sectors.³⁷

Guideline No. 1: Access by the public to information on the media. By taking into account the legitimate interests of media companies,³⁸ member states should provide citizens with access to basic information on media outlets in order to form an opinion on the value of the information imparted.

Guideline No. 2: Exchange of information on media transparency between national authorities. National authorities in possession of information on ownership

³⁴ OSCE Representative on Freedom of the Media, *The impact of media concentration in professional journalism*, <http://www.osce.org/fom/13870> ; Article 19, *Transparency of media ownership by off-shore companies in Ukraine: problems and solutions*, <http://www.article19.org/resources.php/resource/2735/en/transparency-of-media-ownership-by-off-shore-companies-in-ukraine:-problems-and-solutions> ; Commission staff working paper, *Media pluralism in the member states of the European Union*, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007SC0032:EN:NOT> .

³⁵ See Preamble of the European Convention on the Transfrontier Television, <http://conventions.coe.int/treaty/en/treaties/html/132.htm#ANX> .

³⁶ [http://www.coe.int/t/dghl/standardsetting/media/doc/CM/Rec\(1994\)013&ExpMem_en.asp#TopOfPage](http://www.coe.int/t/dghl/standardsetting/media/doc/CM/Rec(1994)013&ExpMem_en.asp#TopOfPage) .

³⁷ Recommendation No. R (99) 1 on measures to promote media pluralism and its Explanatory Memorandum [http://www.coe.int/t/dghl/standardsetting/media/doc/CM/Rec\(1994\)013&ExpMem_en.asp#TopOfPage](http://www.coe.int/t/dghl/standardsetting/media/doc/CM/Rec(1994)013&ExpMem_en.asp#TopOfPage) .

³⁸ The principle of freedom of trade and industry, the requirements of data protection, commercial secrecy, the confidentiality of the sources of information of the media and editorial secrecy.

should be allowed to share this information with similar bodies in other member states by means of appropriate mechanisms. This arises from the new reality created when international companies entered traditional media markets. A mechanism for international information sharing should therefore be part of national law.

Guideline No. 3: Disclosure of information when granting broadcasting licenses to broadcasting services. Three types of information should be disclosed by broadcasters: 1) information related to the persons or bodies taking part in the business and operating the service; 2) information about the nature and interest of the persons and bodies who operate the service; 3) information about those persons who exercise a significant influence on programming policy.

Guideline No. 4: Disclosure of information following the grant of broadcasting licenses to broadcasting services. When changes take place in media outlets, the public should be advised of them.

Guideline No. 5: Exercise of the functions of the service or authorities responsible for ensuring transparency in the running of broadcasting services. Member states should provide effective legal bases and guarantees for the official bodies in charge of providing the public with information on transparency of media ownership.

Guideline No. 6: Specific measures that may guarantee media transparency in the press. Transparency in the press is achieved when information about the financial situation of the outlet and its distribution and information about the persons who directly take part in the business or who influence editorial policy is disclosed. Furthermore, information about the interests of the responsible persons in other media outlets should be publicly available as well.

Transparency in the press can also be ensured by introducing an appropriate self-regulatory mechanism.

Recommendation No. R (99) 1 of the Committee of Ministers on measures to promote media pluralism³⁹ includes provisions concerning the ownership of broadcasters and the press. The recommendation calls on member states to introduce legislation to prevent media concentration that can endanger media pluralism nationally, regionally and even locally. The legislation should limit the possibility of media companies to have an influence in one or more sectors. To this end, member states may introduce thresholds. The states should also pay attention to the mergers of entities that may threaten media pluralism.

³⁹ Recommendation no. R (99) 1 of the Committee of Ministers to member states on measures to promote media pluralism, available online at <https://wcd.coe.int/ViewDoc.jsp?id=399303&Site=CM>.

Recommendation CM/Rec (2007) 2 on media pluralism and diversity of media content⁴⁰ reaffirms once again the importance of pluralism which is crucial for democracy. The guarantee of media pluralism is provided under Article 10 of the European Convention on Human Rights; in order to ensure it, taking into account the size, geography and specifics of the audiovisual market, member states should adopt rules to avoid the concentration of influence of persons or groups in one or more media outlets. To this end, member states may introduce thresholds based on audience share, circulation, revenue, capital, etc. Any review in the regulation should be based on ongoing technological, economic and social developments. This recommendation reaffirms the significance of transparency in protecting diversity of ideas, opinions and culture. The non-binding document includes a list of types of information on media outlets that is very similar to Council of Europe recommendation No. R (94) 13 except for the right to reply:

- *Information concerning the persons or bodies participating in the structure of the media and the nature and the extent of the respective participation of these persons or bodies in the structure concerned and, where possible, the ultimate beneficiaries of this participation;*
- *Information on the nature and the extent of the interests held by the above persons and bodies in other media or in media enterprises, even in other economic sectors;*
- *Information on other persons or bodies likely to exercise a significant influence on programming policy or editorial policy;*
- *Information regarding support measures granted to the media;*
- *Information on the procedure applied in respect of the right of reply and complaint.*

The main goal of the European Convention on Transfrontier Television⁴¹ is to facilitate the cross-border transmission and retransmission of TV program services among the member states of the Council of Europe.⁴² The convention includes provisions providing for the protection of media pluralism. According to article 10 *bis*, states should avoid broadcasting television programs that endanger media pluralism.

Article 6 (2) of the Convention specifies the types of information that should be disclosed by transfrontier television stations upon request by a competent authority:

40 Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content, available online at <https://wcd.coe.int/ViewDoc.jsp?id=1089699&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75> .

41 The European Convention on Transfrontier Television, available online at: <http://conventions.coe.int/treaty/en/treaties/html/132.htm> .

42 Moldova has been a party to the European Convention on Transfrontier Television since 01 July 2003, <http://www.conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=132&CM=8&DF=22/09/2012&CL=ENG> .

“Information about the broadcaster shall be made available upon request by a competent authority of the transmitting Party. Such information shall include, at a minimum, the name or denomination, seat and status of the broadcaster, the name of the legal representative, the composition of the capital, the nature, purpose and mode of financing of the programme service the broadcaster is providing or intends providing.”

In the Explanatory Memorandum on the Convention, Article 6 (2) aims to satisfy the right of the general public to have information about the names, composition, legal status and mode of financing of broadcasters,⁴³ however, this provision does not oblige broadcasters to automatically disclose information about media outlets unless a competent agency requests it.

In order to bring the European Convention on Transfrontier Television in line with the Audiovisual Media Services Directive (AVMD) of the European Union (EU), a revision of the text of the convention has been prepared. To ensure “media pluralism and diversity of content” the states “... will promote full transparency of ownership of media service providers.”⁴⁴ The new provision could have “far-reaching” effects, as it imposes positive obligations on the states to “promote” a high level of media ownership transparency, but on the other hand, the draft provision could be more permissive as it currently does not require member states to achieve the goal but only speaks about “promoting” transparency.⁴⁵

43 Explanatory Memorandum of the European Convention on Transfrontier Television; Yolande Stolte and Rachael Craufurd Smith, *The European Union and media ownership transparency*.

44 Article 12 (2) of the Revision of the European Convention on Transfrontier Television, Draft Council of Europe Convention on Transfrontier Audiovisual Media Services, T-TT(2009)013FIN.

45 See Yolande Stolte and Rachael Craufurd Smith, *The European Union and media ownership transparency*.

European Union

Media pluralism is key to the fundamental right to free expression which constitutes one of the core foundations of the European Union. The EU's commitment to ensure media pluralism is derived from the Charter of Fundamental Rights⁴⁶ and the European Convention of Human Rights.⁴⁷ Despite the fact that its competence to regulate media concentration is restricted, the supranational organization may play a very effective role in protecting and promoting media pluralism.⁴⁸

The provisions relevant for the current research are the AVMSD and the Resolution of the European Parliament of 2008 that prescribe minimum requirements for transparency in the ownership of media outlets. The AVMSD⁴⁹ applies to all kinds of audiovisual media services⁵⁰ such as traditional television stations (linear service) and video-on-demand (non-linear service). The distinction between services depends on who decides what kind of programs should be transmitted and whether a program schedule exists.⁵¹ The directive sets the types of information that should be “easily, directly and permanently” available for the public:

- (a) the name of the media service provider;*
- (b) the geographical address at which the media service provider is established;*
- (c) the details of the media service provider, including its electronic mail address or website, that allow it to be contacted rapidly in a direct and effective manner.*

European Parliament Resolution of 25 September 2008 on concentration and pluralism in the media in the EU⁵² considers the lack of transparency in media ownership as one of the main concerns threatening media pluralism. Concentrations of ownership may increase dependency on owners of large media outlets with the risk that the media ignores its vital function as watchdog if private outlets are mainly interested in financial profit. So while there is an urgent need for a legal framework for

⁴⁶ Article 11. Freedom of expression and information: “1. 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 and regardless of frontiers. 2. The freedom and pluralism of the media shall be respected”.

⁴⁷ Article 10 of the European Convention on Human Rights.

⁴⁸ European Parliament Resolution as of 25 September 2008 on concentration and pluralism in the media in the European Union.

⁴⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32010L0013:EN:NOT> .

⁵⁰ Article 1 paragraph 1 sub-paragraph a (i) of AVMSD: “a service ... which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes, in order to inform, entertain or educate, to the general public by electronic communications networks.”

⁵¹ See *TV, online, on-demand. Modern Rules for Audiovisual Europe*, available online at http://ec.europa.eu/avpolicy/docs/reg/avmsd/fact_sheet_en.pdf ; Audiovisual Media Services Directive (AVMSD), *What's new?*, available online at http://ec.europa.eu/avpolicy/reg/avms/index_en.htm#top .

⁵² European Parliament Resolution as of 25 September 2008 on concentration and pluralism in the media in the European Union, available online at <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2008-0459&language=EN> .

media pluralism, over-restrictive regulation on media ownership risks reducing the competitiveness of media companies with respect to non-European media entities. Thus, the regulation should provide a balance between rules for a fair, competitive market and the provisions ensuring a pluralistic media landscape.⁵³

The European Parliament considers media pluralism vital not only within member states but also calls on EU officials to include it as a fundamental condition for foreign relations.⁵⁴ Concentrations of media ownership create an ideal environment for monopolizing the advertising market and hinder new players from entering. As a result, it leads to homogeneity of content. Legislation on competition should contain regulations that guarantee free market access and avoid conflicts of interest among participants.⁵⁵

Taking into account the growing importance of online media, the resolution considers that regulations on media ownership should apply to electronic channels and mechanisms that provide access to and dissemination of content on the Internet. Finally, the resolution underlines the necessity to introduce a system to monitor and implement media pluralism.⁵⁶

The minimum transparency requirements established in EU acts or even by the European Convention on Transfrontier Television are not sufficient to guarantee full transparency of ownership for the general public. These principles are more for providing consumers with information about television stations in order to file complaints against responsible persons. In addition, the attempt of the EU to adopt a new and more effective directive on “Concentration and Pluralism” aimed at harmonizing the legislation of member states on media concentration and introducing higher standards for media pluralism failed in 2009. The European Parliament did not support the new draft directive.⁵⁷

National Approaches

Legislation regulating transparency in media ownership differs from one country to another. Moreover, research conducted by international organizations indicates that the lack of such legislation is geographically specific. The media markets of some Eastern European countries are dominated by companies registered offshore as national legislation does not oblige media companies to disclose the identity of

53 *Ibidem*, paragraphs N, V, W, Z, AA.

54 *Ibidem*, paragraph 1.

55 *Ibidem*, paragraphs 4, 5.

56 *Ibidem*, paragraphs 16, 21.

57 Cp. Yolande Stolte and Rachael Craufurd Smith: The European Union and media ownership transparency.

owners.⁵⁸ Media concentration in several Western European countries, on the other hand, raises concern that the existing system endangers pluralism.

In 2011, the **Georgian** parliament made several amendments to the law on broadcasting aimed to improve transparency in the media sector. The new law prohibited offshore companies from owning broadcasting entities and required them to disclose the identity of their owners. The new law obliges media outlets to submit this information to the regulatory agency which should in turn ensure public availability of the documents. Broadcasters must also periodically provide the government agency with a break-down of their sources of income. Before the adoption of the transparency law, the main TV channels were owned by offshore companies, and information about the real owners was unknown. Since 1 January 2012, all Georgian media outlets have fulfilled their obligations and made the identities of the owners public.⁵⁹ If ownership changes, the company must inform the regulatory agency within 10 working days.

The legal requirement for transparency in media ownership derives from the Constitution of **Greece**, which in addition to guaranteeing free expression and media freedom states that, “The law may specify that the means of financing newspapers and periodicals should be disclosed.”⁶⁰ Law no. 33102005 on measures to ensure media ownership goes further and in fact is rather radical. It has been criticized by European experts and the European Commission as a very strict statute that raises concern over freedom of expression. Offshore companies are not allowed to own even 1% of shares in a media outlet or in an entity bidding for public contracts.⁶¹ A special agency is in charge of monitoring the implementation of the law, and administrators are liable for violations.⁶² In addition, the so-called “Law of the Basic Shareholder” includes provisions, similar to those in Georgian legislation restricting concentration of ownership. Generally, a company may own one television station and/or one radio station; however, the law allows parallel ownership under certain conditions if the prospective owner is not among the 10 basic shareholders of the company or if its market share in both companies does not exceed more than 35 percent for the same type of media or 32 percent for different media.⁶³

58 Cp. Article 19, Policy Brief: “Transparency of Media Ownership by Off-shore Companies in Ukraine: Problems and Solutions”.

59 Article 37, 37¹ Georgian Law on Broadcasting; Blog of the Transparency International Georgia, <http://transparency.ge/en/post/general-announcement/georgian-tv-and-radio-owners-revealed>.

60 Article 14 paragraph 9 Constitution of Greece.

61 See “Independent Study on Indicators for Media Pluralism in the Member States - Towards a Risk-Based Approach,” available at http://ec.europa.eu/information_society/media_taskforce/doc/pluralism/pfr_report.pdf.

62 See Article 19, Policy Brief: “Transparency of Media Ownership by Off-shore Companies in Ukraine: Problems and Solutions”.

63 See the homepage of the European Journalism Center, Media Landscape: Greece, 2010.

The **Lithuanian Law** on the Provision of Information to the Public obliges broadcasting license holders to inform the media regulatory commission if the ownership status of the outlet has changed by at least 10%.⁶⁴ Furthermore, if control of management has been transferred or will be transferred to another person, the deal can be carried out only with the written consent of the commission.⁶⁵ The licenses of broadcasters may be revoked if the interested parties fail to receive the written consent of the commission or if the information submitted to the agency is incorrect.⁶⁶ Media outlets must provide information to the commission about persons who are in possession or control of at least 10% of company shares,⁶⁷ and the commission is obliged to publish this information within 15 days from the date of receipt thereof.

The lack of an appropriate legal framework for the prevention of media concentration and the inefficiency of the regulatory agencies are named as the main reasons for the phone-hacking scandal in the **United Kingdom (UK)**. For many years, the leading newspaper *News of the World* illegally hacked the voice mail of prominent persons such as politicians, famous actors, the families of dead British soldiers and victims of crimes. Despite the fact that information about the owners of media outlets is known in the UK, ineffective regulation not only did not prevent the hacking but also allowed the dominant position of News Corps, the paper's publisher, in the UK media market. As a reaction to the scandal, the Secretary of State for Culture, Media and Sport asked the media regulatory body Ofcom to establish measures on media ownership.⁶⁸

⁶⁴ Article 22 paragraph 3 Lithuanian Law on the Provision of Information to the Public.

⁶⁵ Article 22 paragraph 4 Lithuanian Law on the Provision of Information to the Public.

⁶⁶ Article paragraph 14 (8) Lithuanian Law on the Provision of Information to the Public.

⁶⁷ Article 24 paragraph 2 Lithuanian Law on the Provision of Information to the Public: "Notifications of the revised data must contain the names and surnames (names) of such participants, their personal numbers (registration numbers), the stake held in the assets or the number of shares as well as the percentage of votes, administrative bodies and members thereof as well as information about property relations and/or joint activity linking them with other producers and/or disseminators of public information and/or their participants. Where the participants of the legal persons are legal persons registered in the Republic of Lithuania or in a foreign state, the participants of such entities must also be indicated."

⁶⁸ The British Broadcasting Corporation (BBC), *Plans to measure share of media ownership*, available online at <http://www.bbc.co.uk/news/entertainment-arts-14880321>.

Conclusions and Recommendations

Since neither the recommendations of the Council of Europe nor the EU legislation are mandatory for Moldova, it is for the state to decide to adopt regulations that comply with European standards. Media diversity and transparency cannot be realized in Moldova as long as there is no clear, well-defined legal framework. At present, Moldovan legislation covers transparency in media ownership superficially and inefficiently, and for this reason the public is not informed about who is behind media outlets. This issue needs to be regularized, and mechanisms need to be created to implement legal provisions. Therefore, the conclusions of this study and the corresponding recommendations are the following.

The Moldovan legislation on mass media makes improper and insufficient use of the term *funder* to refer to *owners*. It makes it virtually impossible to identify actual owners (beneficial owners, i.e., natural persons who own media outlets). The Law on the Press uses only the term *funder*; the Broadcasting Code uses the terms *funder*, *shareholder* and *owner* in an inconsistent and irregular manner leaving the impression that these terms have conceptually different meanings. On the other hand, the special legislation on commercial enterprises (the Law on Limited Liability Companies, the Law on Joint-Stock Companies) uses specific terms such as *shareholder*, *associate* and *participant* to refer to owners. At the same time, the Election Code requires broadcasters to declare their *owners* at the onset of an electoral campaign.

Taking into consideration European legislation that established the term *owner* to refer to various forms of exercising the right of ownership of media outlets, the terminology in the Moldovan legislation on commercial enterprises, including mass media, should be unified. There are two proposals: 1) to establish the term *owner* as a generic term to refer to various forms of ownership or 2) to concurrently use all forms of exercising the right of ownership over mass media outlets (*shareholder*, *associate*, *participant*, *member*). In addition, Moldova should adopt a definition of the term *beneficial owner* and introduce it into legislation on mass media.

The subject of transparency of ownership of broadcasters and service providers (cable operators) is covered by the Broadcasting Code superficially and implicitly in several articles that contain general provisions regarding concentration of ownership (Articles 7, 23, 27). Although the code gives weight to information on media ownership for licensing and generally in ensuring pluralism, these provisions are inefficient declarations. The code requires the BCC to ensure media pluralism by limiting concentration of ownership but offers no tools or mechanisms to the regulatory authority to fulfill this obligation.

Add provisions to the Broadcasting Code that would require broadcasters and service providers to present information about their legal owners and beneficiaries to the BCC both when competing for licenses and annually after the broadcasting license or the authorization for retransmission has been obtained. At the same time, the BCC must ensure the information is published and that there is free access to it.

Although in Article 27 the Broadcasting Code imposes the penalty of withdrawing the broadcasting license for violations of the ownership regime, neither the NAPC nor the BCC regulates or looks for violations. Moreover, the information that the BCC can access via the code is very limited and offers absolutely no possibility to discover the real ownership of broadcasters.

It is recommended to clearly specify the responsibilities of the BCC and the NAPC in safe-

guarding competition and controlling concentrations of property. Since the Broadcasting Code enables the BCC to penalize violations of the ownership regime, the law must provide tools and mechanisms by which the BCC can perform this function.

Controlling the concentration of ownership requires a clear mechanism for ensuring ownership transparency and vice versa. Therefore, to achieve the goal of a free and pluralist media market, there is need not only for clear provisions regarding ownership transparency but also a system for controlling concentration. From this point of view, it is necessary to substantially modify the current Broadcasting Code so as to give the necessary power to the proposed provisions and to reach the final goal of requiring transparency in media ownership (these provisions have been proposed by APEL in a new draft broadcasting code).

Article 41 of the Broadcasting Code which contains the obligations of the BCC and which, *inter alia*, stipulates that the BCC shall ensure transparency in broadcasting media ownership is only a declaration since the code provides no mechanism by which the BCC can fulfill this obligation.

Add specific responsibilities to the Broadcasting Code so the BCC can ensure media transparency. The BCC needs to have the legal authority to request any information necessary for ensuring the fulfillment of this responsibility.

Article 66 of the Broadcasting Code (“Private Broadcasters”) requires broadcasters in paragraph (6) to inform the public of the name and address of the administration, the name of the producer of programs, the signals of the radio station and the symbol of the TV station. This obligation does not refer to the structure of ownership of the broadcaster.

Add information about the structure of ownership and the obligation to inform the BCC about any modifications occurring in it to Article 66 of the Broadcasting Code. The obligation to obtain prior approval of the BCC or to inform the BCC in advance about modifying the structure could also be introduced. Also, special consideration should be given to provisions regarding ceding broadcasting licenses that can be used by broadcasters as a simpler solution for modifying the structure.

In the current system of penalties for broadcasters, it is virtually impossible to immediately implement any provisions regarding transparency in media ownership. Currently, failure to fulfill the obligation of disclosing ownership in an annual report can be subjected to a penalty with greater impact only in the third year of operation.

Reform the system of penalties for broadcasters and service providers. The current system of penalties has proved inefficient over its six years of operations and has demonstrated that it hampers adequate and timely fulfillment of the BCC’s responsibilities in broadcasting.

The Law on the Press has reduced its applicability to a very narrow range of subjects and situations and has for some time fallen into disuse. Although it regulates periodical publications regardless of their legal form of organization, the periodicals registered with the SRC as commercial enterprises are not covered. Therefore, introducing the obligation to ensure the transparency of print media ownership into the Law on the Press would have a very narrow scope and would be inefficient. In contrast, national and international journalistic circles insist on the need for self-regulation of the press.

Transparency in print media ownership should be encouraged as part of self-regulation. The codes of conduct for print media should include specific provisions on transparency. At the same time, with a press deeply infiltrated by political interests, currently transparency has no chance of becoming a philosophical tradition. Therefore, there are two distinct proposals: 1) amend the Law on the Press by adding information that must be published by print media (Article 13),

namely the information provided by Recommendations nos. (94)13 and (2007)2 of the Committee of Ministers of the Council of Europe (information on the “interests held in other mass media by an editorial structure or by the persons or bodies that participate in it, persons or bodies other than those directly involved in the editorial structure that are prone to exercising a significant influence over the editorial orientation of the media outlet or outlets administered by them, editorial policy or political orientation of the media outlets as well as data about the financial standing of the editorial structure and about the dissemination of the media outlet or outlets it uses”) and by explaining and establishing relevant terms or to develop and adopt a special legal act ensuring transparency of ownership that covers all types of mass media. Adopting a specific, distinct legal act would have the advantage of covering online media that are not regulated by the Law on the Press or by the Broadcasting Code.

The Law on the Press prohibits editing publications that fail to indicate all the reference data in Article 13 which is an ineffective provision *ab initio* since the law does not prescribe adequate penalties. Therefore, amendments should also introduce an adequate penalty for the failure to declare mandatory information.

According to Recommendation (94)13 of the Committee of Ministers of the Council of Europe, citizens should have the right to request reference data on mass media outlets from their editorial boards. The right of citizens to request information about the ownership, sources of funding, editorial policy or political orientation of mass media outlets as well as an adequate penalty for the violation of this right should be legislated.

Abolish the SRC fees for requests for information by media outlets. This would improve access to information and would avoid financial, bureaucratic and logistic obstacles to researching subjects of public interest such as those about media owners and ownership.

The acquisition of mass media outlets by offshore companies is not regulated in national legislation. Both the Law on the Press and the Broadcasting Code limit the ownership rights of foreign legal persons over Moldovan mass media to at most half of the shares/share capital. Several obstacles hinder access to information about media owners due to legislation on offshore zones that protects the confidentiality of the owners of companies. Both domestic and international studies have proven that when offshore companies own media outlets, the real owners are hidden and are often politicians or civil servants. There is no single approach to this issue in Europe; instances when member states regulate it are very few. For instance, Greece imposed restrictions to the acquisition of media ownership by off-shore companies, and Georgia introduced in 2011 into the Law on broadcasting the interdiction to issue broadcasting licenses to companies registered in off-shore zones

Initiate discussions, including political ones, regarding the problem of the media ownership by offshore companies. When adopting any decisions either limiting or prohibiting it, consider at a minimum the following aspects. In most cases, there are several commercial enterprises that participate in ownership at different levels; the new law will apply only to future situations and the period when intervention is desired (in the future, only at the stage of licensing, or for the entire validity of the license) must be determined since they pose distinct problems.

Moldovan legislation should require entities registered offshore to provide information about their beneficial owners when founding or buying mass media outlets.

A lack of transparency in media ownership leads to concentration in the hands of interest groups and it jeopardizes media pluralism, the consumer’ right to information and the freedom to form opinions.

