

RECOMMENDATION No. R (96) 10

**OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON THE GUARANTEE OF THE INDEPENDENCE OF
PUBLIC SERVICE BROADCASTING**

*(Adopted by the Committee of Ministers on 11 September 1996,
at the 573rd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Recalling that the independence of the media, including broadcasting, is essential for the functioning of a democratic society;

Stressing the importance which it attaches to respect for media independence, especially by governments;

Recalling in this respect the principles endorsed by the governments of the member states of the Council of Europe set out in the declaration on the freedom of expression and information of 29 April 1982, especially as regards the need for a wide range of independent and autonomous means of communication allowing for the reflection of a diversity of ideas and opinions;

Reaffirming the vital role of public service broadcasting as an essential factor of pluralistic communication which is accessible to everyone at both national and regional levels, through the provision of a basic comprehensive programme service comprising information, education, culture and entertainment;

Recalling the commitments accepted by the representatives of the states participating in the 4th European Ministerial Conference on Mass Media Policy (Prague, 7-8 December 1994) in the framework of Resolution No. 1 on the future of public service broadcasting, especially respect for the independence of public service broadcasting organisations;

Noting the need to develop further the principles on the independence of public service broadcasting set out in the aforementioned Prague resolution in the light of the challenges raised by political, economic and technological change in Europe;

Considering that, in the light of these challenges, the independence of public service broadcasting should be guaranteed expressly at the national level by means of a body of rules dealing with all aspects of its functioning;

Underlining the importance of ensuring strict respect for these rules by any person or authority external to public service broadcasting organisations,

Recommends the governments of the member states:

a. to include in their domestic law or in instruments governing public service broadcasting organisations provisions guaranteeing their independence in accordance with the guidelines set out in the appendix to this recommendation;

b. to bring these guidelines to the attention of authorities responsible for supervising the activities of public service broadcasting organisations as well as to the attention of the management and staff of such organisations.

Appendix to Recommendation No. R (96) 10

Guidelines on the guarantee of the independence of public service broadcasting

I. General provisions

The legal framework governing public service broadcasting organisations should clearly stipulate their editorial independence and institutional autonomy, especially in areas such as:

- 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.

The provisions relating to the responsibility and supervision of public service broadcasting organisations and their statutory organs should be clearly defined in the governing legal framework.

The programming activities of public service broadcasting organisations shall not be subject to any form of censorship.

No *a priori* control of the activities of public service broadcasting organisations shall be exercised by external persons or bodies except in exceptional cases provided for by law.

II. Boards of management of public service broadcasting organisations

1. Competences

The legal framework governing public service broadcasting organisations should stipulate that their boards of management are solely responsible for the day-to-day operation of their organisation.

2. Status

The rules governing the status of the boards of management of public service broadcasting organisations, especially their membership, should be defined in a manner which avoids placing the boards at risk of any political or other interference.

These rules should, in particular, stipulate that the members of boards of management or persons assuming such functions in an individual capacity:

- exercise their functions strictly in the interests of the public service broadcasting organisation which they represent and manage;
- may not, directly or indirectly, exercise functions, receive payment or hold interests in enterprises or other organisations in media or media-related sectors where this would lead to a conflict of interest with the management functions which they exercise in their public service broadcasting organisation;
- may not receive any mandate or take instructions from any person or body whatsoever other than the bodies or individuals responsible for the supervision of the public service broadcasting organisation in question, subject to exceptional cases provided for by law.

3. Responsibilities

Subject to their accountability to the courts for the exercise of their competences in cases provided for by law, the boards of management of public service broadcasting organisations, or individuals assuming such functions in an individual capacity, should only be accountable for the exercise of their functions to the supervisory body of their public service broadcasting organisation.

Any decision taken by the aforementioned supervisory bodies against members of the boards of management of public service broadcasting organisations or persons assuming such functions in an individual capacity for breach of their duties and obligations should be duly reasoned and subject to appeal to the competent courts.

III. Supervisory bodies of public service broadcasting organisations

1. Competences

The legal framework governing public service broadcasting organisations should define clearly and precisely the competences of their supervisory bodies.

The supervisory bodies of public service broadcasting organisations should not exercise any *a priori* control over programming.

2. Status

The rules governing the status of the supervisory bodies of public service broadcasting organisations, especially their membership, should be defined in a way which avoids placing the bodies at risk of political or other interference.

These rules should, in particular, guarantee that the members of the supervisory bodies:

- are appointed in an open and pluralistic manner;
- represent collectively the interests of society in general;
- may not receive any mandate or take any instructions from any person or body other than the one which appointed them, subject to any contrary provisions prescribed by law in exceptional cases;
- may not be dismissed, suspended or replaced during their term of office by any person or body other than the one which appointed them, except where the supervisory body has duly certified that they are incapable of or have been prevented from exercising their functions;
- may not, directly or indirectly, exercise functions, receive payment or hold interests in enterprises or other organisations in media or media-related sectors where this would lead to a conflict of interest with their functions within the supervisory body.

Rules on the payment of members of the supervisory bodies of public service broadcasting organisations should be defined in a clear and open manner by the texts governing these bodies.

IV. Staff of public service broadcasting organisations

The recruitment, promotion and transfer as well as the rights and obligations of the staff of public service broadcasting organisations should not depend on origin, sex, opinions or political, philosophical or religious beliefs or trade union membership.

The staff of public service broadcasting organisations should be guaranteed without discrimination the right to take part in trade union activities and to strike, subject to any restrictions laid down by law to guarantee the continuity of the public service or other legitimate reasons.

The legal framework governing public service broadcasting organisations should clearly stipulate that the staff of these organisations may not take any instructions whatsoever from individuals or bodies outside the organisation employing them without the agreement of the board of management of the organisation, subject to the competences of the supervisory bodies.

V. Funding of public service broadcasting organisations

The rules governing the funding of public service broadcasting organisations should be based on the principle that member states undertake to maintain and, where necessary, establish an appropriate, secure and transparent funding framework which guarantees public service broadcasting organisations the means necessary to accomplish their missions.

The following principles should apply in cases where the funding of a public service broadcasting organisation is based either entirely or in part on a regular or exceptional contribution from the state budget or on a licence fee:

- the decision-making power of authorities external to the public service broadcasting organisation in question regarding its funding should not be used to exert, directly or indirectly, any influence over the editorial independence and institutional autonomy of the organisation;
- the level of the contribution or licence fee should be fixed after consultation with the public service broadcasting organisation concerned, taking account of trends in the costs of its activities, and in a way which allows the organisation to carry out fully its various missions;
- payment of the contribution or licence fee 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;
- the use of the contribution or licence fee by the public service broadcasting organisation should respect the principle of independence and autonomy mentioned in guideline No. 1;
- where the contribution or licence fee revenue has to be shared among several public service broadcasting organisations, this should be done in a way which satisfies in an equitable manner the needs of each organisation.

The rules on the financial supervision of public service broadcasting organisations should not prejudice their independence in programming matters as stated in guideline No. 1.

VI. The programming policy of public service broadcasting organisations

The legal framework governing public service broadcasting organisations should clearly stipulate that they shall ensure that news programmes fairly present facts and events and encourage the free formation of opinions.

The cases in which public service broadcasting organisations may be compelled to broadcast official messages, declarations or communications, or to report on the acts or decisions of public authorities, or to grant airtime to such authorities, should be confined to exceptional circumstances expressly laid down in laws or regulations.

Any official announcements should be clearly described as such and should be broadcast under the sole responsibility of the commissioning authority.

VII. Access by public service broadcasting organisations to new communications technologies

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.

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Explanatory Memorandum to Recommendation No. R (96) 10 on the guarantee of the independence of public service broadcasting

Introduction

1. The full and unrestricted exercise of the freedom of expression and information secured by Article 10 of the European Convention on Human Rights presupposes the existence of free, independent and pluralist media in accordance with the political principle upheld by the Committee of Ministers of the Council of Europe in the "Declaration on the freedom of expression and information" adopted on 29 April 1982. This requirement, vital to the existence of true democracy, applies to the press and broadcasting sectors alike, particularly having regard to the large audience of radio and television services and their potential impact on the formation of public opinion.

2. By virtue of the specific missions vested in them by law or other instruments (schedules of conditions, charters, agreements, licences, etc), public service broadcasting organisations are conspicuous among the media as influential agencies in the life of a democratic society. The characteristic of these organisations, which may be public or private, is indeed that they are required to offer a range of news, education, culture and entertainment programmes which mirror society and in particular the opinions of political, social and cultural groups, including those of minorities, and offer a platform for discussion so as to ensure a vibrant democracy. In this respect they are distinct from commercial broadcasting organisations, whose programming is essentially determined by the imperatives of commercial profitability.

3. Public service broadcasting organisations also contrast with their state-run counterparts in that they accomplish their missions independently and without interference from any external authority, public authorities in particular, a characteristic which sets them apart from state broadcasting organisations. The principle that public service broadcasters are independent, and hence accountable to the public for the way in which they accomplish their missions is crucial to the complete fulfilment of these missions, especially in the sphere of information.

4. Seeking to maintain and further the contribution which public service broadcasting makes to the functioning of a democratic society by offering scope for the pluralistic expression of outlooks, opinions and cultures, the Council of Europe has repeatedly had occasion to concern itself with the evolution of this sector. Accordingly, the First Ministerial Conference on Mass Media Policy held in Vienna on 9 and 10 December 1986 resulted in the adoption of a Resolution on public and private broadcasting in Europe in which the Ministers present at the Conference stressed their "commitment to maintaining the principles of public service broadcasting", having regard to "the interest of the public to receive a full range, high quality television service which contributes as a whole to the free formation of opinions and the development of culture".

5. A number of new developments, however, subsequently raised questions as to the prospects of the public service and in some instances the very feasibility of its preservation. One of these developments, and not the least significant, was the gradual penetration of the broadcasting sector by private enterprise in most countries of Europe. In addition to this regulatory and economic tendency, technological changes occurred in the 1980s with the development of cable and satellite transmission and more recently the advent of digital technology. Finally, the progressive breakthrough of democracy in the countries of Central and Eastern Europe as from 1989 raised the issue of converting former state broadcasting organisations into genuine public service broadcasting organisations.

6. These various developments prompted the Council of Europe to reschedule the question of the future of public service broadcasting among its current activities. This led to the adoption of a further Resolution on the future of public service broadcasting at the 4th European Ministerial Conference on Mass Media Policy held in Prague on 7 and 8 December 1995. In the resolution, the states participating in the Conference affirmed "their commitment to maintain and develop a strong public service broadcasting system", thereby refusing to countenance its gradual relegation to the fringe.

7. In support of this formal commitment, the participating states made a number of concrete undertakings in the Resolution to ensure the continuation of public service broadcasting. One such undertaking was "to guarantee the independence of public service broadcasting against political and economic interference". As this guarantee operates chiefly through the enactment of suitable provisions within the legislative and regulatory frameworks governing the missions, organisation and running of public service broadcasting organisations, the present Guidelines are intended to provide indications as to the desirable content of the necessary provisions, whatever the legal framework or the status, specific missions and structures of the public service broadcasting organisations.

8. The first consideration in applying the Guidelines should be the diversity of the media regulation powers operating in the member states. It is also necessary to take account of the domestic law provisions of each state which may in some way relate to the various matters covered by the Guidelines (for instance, provisions on civil and criminal liability which may apply to the boards of management of public service broadcasting organisations in respect of the functions which they perform; general rules of labour law applying to their staff; constitutional, legislative and regulatory provisions on times of emergency and war possibly affecting the activities and operation of public service broadcasting organisations; etc). Likewise, the Guidelines should be applied in the light of any decisions delivered by the supreme national courts with jurisdiction in the constitutional, judicial and administrative spheres, as well as obligations of the member States under international law. Lastly, due regard should be had to the diversity of the missions of public service broadcasting organisations, for instance depending on whether they provide national or international services.

I. General provisions

Guideline No. 1

9. The resolution on the future of public service broadcasting adopted at the 4th European Ministerial Conference on Mass Media Policy provides that "participating states undertake to guarantee the independence of public service broadcasters against political and economic interference". Accordingly, Guideline No. 1 requires the principles of editorial independence and institutional autonomy of broadcasting organisations to be explicitly embodied in the legal framework governing these organisations, whether it consists, as is usually the case, of legislative texts, or of other rules or instruments such as charters, agreements or licences. Editorial independence means the right of public service broadcasting organisations to determine the content of their programmes freely and without interference from any external authority, within the limits prescribed by law or other rules in order to safeguard legitimate rights and interests (eg provisions on the broadcasting of programmes likely to shock the sensibilities of children and adolescents). It also covers the timing of the various programmes, subject to any special provisions made in this respect by statutes governing the operation of public service broadcasting organisations, and the choice of the persons taking part in the programmes.

10. Editorial independence implies that no external authority whether public or private may interfere with the day-to-day running of public service broadcasting organisations, eg by exercising a power of financial decision where they are concerned. It should be remembered that according to the principle in the Resolution on the future of public service broadcasting, "day-to-day management and editorial responsibility for programme schedules and the content of programmes must be a matter entirely for the broadcasters". Editorial independence further presupposes that the boards of management of these organisations as well as the staff employed by them should be afforded a number of safeguards against possible pressure or interference. Some of the guidelines presented below are designed to guard against the exertion of such pressure or interference.

11. Editorial independence goes hand in hand with the institutional autonomy of public service broadcasting organisations, ie the right of such bodies freely to organise and administer their activities, within the limits prescribed by law or other rules concerning in particular the responsibilities of their management and supervision bodies. However, the concept of institutional autonomy can be variously interpreted. It was therefore deemed expedient to specify in

Guideline No. 1 what the concept actually involves. Needless to say, the institutional autonomy of public service broadcasting organisations does not mean that their structures and operating arrangements cannot be reviewed by the public authorities, eg in order to rationalise their activities, provided that any such changes comply with the principles set forth in the various guidelines.

12. Guideline No. 1 contains a non-exhaustive list of the various areas in which the controlling bodies of broadcasting organisations must be able to act freely, without interference by any external authority. As stated above, this freedom does not preclude the application of certain controls to the activities of the boards of management, under the procedures and within the limits prescribed by law or other instruments governing their operation. Several of the guidelines presented below are intended to specify the cases and circumstances in which such controls may be applied.

13. The various areas encompassed by the principle of institutional autonomy form a whole, each part of which is inseparable from the rest. Otherwise, broadcasters' institutional autonomy and editorial independence could be rendered ineffective by indirect interference in their activities. Thus the freedom of broadcasting organisations to settle their own programming and to devise and produce their own programmes could be challenged in practice even where explicitly upheld by the statutes governing their operation, unless these also defined the principles of independent financial management and full legal capacity.

Guideline No. 2

14. As previously mentioned, the editorial independence and administrative autonomy of public service broadcasting organisations do not mean that these organisations need not answer for the way in which they accomplish their missions and use the resources which may be allocated to them by the community for this purpose. Thus the boards of management of public service broadcasting organisations, which according to Guideline No. 4 should be solely responsible for the day-to-day operation of these organisations, are accountable for the performance of their functions to their own supervisory bodies, as stipulated by Guideline No. 7.

15. Besides this internal supervision, public service broadcasting organisations must be amenable to the courts, particularly for infringements of various legitimate rights which may occur during their programmes, eg the right of individuals to respect for private life or reputation. Public service broadcasting organisations may in certain circumstances be accountable for the conduct of their activities not only before the courts but also to other external authorities provided that these are independent authorities. They may for instance be subject to supervision by regulatory bodies in the broadcasting sector. Likewise, the financial management situation of public service broadcasting organisations may undergo review by specialised authorities or courts as to the use of the public funds allocated.

16. According to the Resolution on the future of public service broadcasting, "the control and accountability of public service broadcasters, especially as regards the discharge of their missions and use of their resources, must be guaranteed by appropriate means". The grounds and the procedures for invoking the accountability of public service broadcasting organisations in this respect must be clearly specified by the statutes governing their operation. These may nevertheless be formulated in general terms and refer if appropriate to other provisions, for instance in the criminal law sphere.

17. As to the grounds on which public service broadcasting organisations may be held accountable for the content of the programmes broadcast, reference should be made to the provisions of Article 10 of the European Convention on Human Rights. Arrangements for financial supervision of public service broadcasting organisations, on the other hand, should conform to the provisions of Guideline No. 19. Lastly, regarding the accountability of the boards of management of public service broadcasting organisations, reference should be made to the provisions of Guidelines Nos. 7 and 8.

18. As well as before the above-mentioned authorities (courts, regulatory bodies in the broadcasting sector, etc), public service broadcasters must be directly accountable to the public as stipulated in the Resolution on the future of public service broadcasting. The practical consequence of the principle is that public service broadcasters should regularly publish information on their activities, eg by means of annual reports. This requirement of transparency towards the public should be taken in the broadest sense as covering not only the programme service or services which form the principal activity of public service broadcasters but also any related activities which they may have cause to undertake (eg agreements reached with public or private associates, activities by subsidiaries or joint ventures with public or private associates). The requirement of transparency should furthermore be equally applicable to programming questions and to those concerning the management of public service broadcasting organisations.

19. Moreover, the Resolution on the future of public service broadcasting provides that public service broadcasters should introduce procedures whereby viewers and listeners can comment on their performance of their missions. Various procedures for this purpose may be contemplated: organisation of information days and encounters with the public, installation of special telephone lines or telematic services enabling the public to give their comments on the programmes, etc.

Guideline No. 3

20. This guideline lays down a principle of fundamental importance for the independence of public service broadcasting organisations. Whatever the nature of the applicable controls and areas of accountability, it should not be possible for external persons or bodies to exercise any form of a priori control over their activities save in exceptional circumstances prescribed by law. Here a distinction must be drawn between matters of programming and matters of budgetary, book-keeping and financial practice. As to programming matters, it is essential that no form of censorship is exercised over such. This does not exclude the possibility of exercising a priori control over programmes in particularly essential circumstances (public danger posing a threat to the security of the nation, in times of war), provided that such circumstances are expressly prescribed by law. Any form of a priori control must be in accordance with precise procedures and be strictly necessary for the aims pursued. The prohibition of censorship does not mean that the courts cannot issue injunctions against public service broadcasting organisations to prevent the broadcasting of a particular programme on the grounds that it is not in line with defined standards (for example, standards on the programming time of programmes which may offend the sensitivity of children and young people). As regards financial supervision of..

public service broadcasting organisations, a priori control is admissible only in so far as it relates to the legality of acts constituting commitment of expenditure, within the limits of the provisions in Guideline No. 19.

II. Boards of management of public service broadcasting organisations

21. It should be observed that according to the existing structures of public service broadcasting organisations, their boards of management may consist either of corporate bodies (administrative councils, boards of governors, etc), or persons acting in an individual capacity (president, director general, general administrator, etc), or the two together. In applying the Guidelines, no distinction should be drawn between corporate management bodies and persons performing like functions in an individual capacity.

1. Competences

Guideline No. 4

22. The boards of management of public service broadcasting organisations, as well as the services or persons responsible for programming matters within these organisations, should be solely responsible for the day-to-day operation of the latter. This principle, which at first sight may appear self-evident, is meant to state explicitly that interference in the day-to-day management of the activities of public service broadcasting organisations is prohibited not only for all authorities outside the organisations but also for their own supervisory bodies. It is indeed important to establish a strict separation of powers between management and supervision bodies, notwithstanding which of the activities of the former may be supervised by the latter.

23. Even so, it may be accepted that certain especially important acts relating to the management of the service may be subject to the prior approval of the supervisory bodies, in so far as such acts are restrictively defined in the statutes governing the operation of public service broadcasting organisations - as for example contracts for the purchase of equipment or of programmes in excess of a particularly significant amount.

2. Status

Guideline No. 5

24. In order to guarantee the independence of the boards of management of public service broadcasting organisations, it is essential that the boards are not subject to any form of political or other interference in the exercise of their functions, it being understood that the expression by the public of opinions on the activities of public service broadcasters (cf. paragraph 19) cannot be considered as a form of interference. The applicable rules governing such boards should thus be defined in a way which prevents any such interferences, irrespective of whether these concern the appointment of the boards, their functions, etc. Special attention must be given to the arrangements for appointing members of boards of management when the latter are collegiate bodies (administrative board, board of governors, etc). Although such bodies may include representatives appointed by the government and/or parliament, any such representatives must not, however, be in a position to exercise a dominant influence on the board of management (by virtue of their numbers or the particular powers entrusted to them). It is equally essential that these representatives exercise their functions in complete independence vis-à-vis the political powers. Stricter provisions might, as appropriate, be laid down - for example, that the status of a member of a board of management of a public service broadcasting organisation is incompatible with the exercise of a political mandate at the national and/or European regional or local level.

Guideline No. 6

25. In order to preserve the independence of public service broadcasters, the members of their boards of management, if the latter are collegiate bodies or persons assuming such functions in an individual capacity, must exercise their functions strictly in the interest of the broadcasting organisation which they represent and manage and, beyond this, the interest of the public in general. This principle, which is intended to avoid boards of management being under the influence of specific interests, does not exclude the possibility that representatives of the state may sit on the boards, given that the latter, by virtue of their functions, are mandated to represent the general interest.

26. Besides political interference, public service broadcasting organisations must be protected from all economic interference as stipulated in the Resolution on the future of public service broadcasting. Guideline No. 6 accordingly lays down the principle that the boards of management of these organisations or the persons assuming such functions in an individual capacity may not maintain links with enterprises or other organisations in media or media-related sectors (advertising firms, telecommunications enterprises or agencies, manufacturers of production or broadcasting equipment, programme production companies, etc) where this would cause a conflict of interest with their functions in the public service broadcasting organisation which they administer.

27. Conversely, the guideline does not prohibit plurality of functions where it is not liable to cause a conflict of interest (eg where a member of the board of management of a public service broadcasting organisation concurrently performs functions in another public service broadcasting organisation, a consortium of public service broadcasters or an enterprise in which interests are held by the public service broadcasting organisation represented by the person in question). However, states are free to make more stringent provisions by prohibiting all plurality of functions even where it would not cause a conflict of interest. The question of shareholding by members of boards of management in enterprises in the media sector or in media-related sectors is not covered by Guideline No. 6. It is for each state to determine whether specific restrictions should apply to this case in order to guard against possible conflicts of interest.

28. As well as in cases of concurrent functions or office, the boards of management of public service broadcasting organisations or the persons acting as such in an individual capacity may forfeit their independence through the intervention of external authorities seeking to give them assignments or specific instructions on the manner of running the service. Such outside intervention should be expressly prohibited by the instruments governing public service broadcasting organisations, subject to exceptional cases provided for by law. These exceptional cases could include court orders issued to broadcasting organisations concerning, for instance, the granting of a right of reply to a person

implicated during a programme. They could also cover exceptionally grave circumstances (threat to the life of the nation, time of war) in which the public authorities may call upon public service broadcasting organisations to perform, or to refrain from performing, certain acts. Save for exceptional circumstances, the provision set out in the third indent of Guideline No. 6 does not imply that officials who may possibly represent the state on the board of management cannot take instructions from the administration which appointed them since, as noted previously, by reason of their very functions, such officials represent the general interest.

3. Responsibilities

Guideline No. 7

29. This guideline establishes the essential principle that the boards of management of public service broadcasting organisations may be called to account for their functions only before the competent bodies, whether internal (eg supervisory board) or external (eg parliamentary commissions). The aim of the guideline is again to prevent any authority not expressly empowered to do so from interfering with the operation and independence of public service broadcasting organisations by assuming an arbitrary power of control over them. Needless to say, this does not exempt the boards of management of public service broadcasting organisations from having to answer to the courts either for non-compliance with the provisions governing their programming activities or, where applicable, for reasons relating to their budgetary, book-keeping and financial practice.

Guideline No. 8

30. As stated in paragraph 10, it is essential that the members of the boards of management of public service broadcasting organisations or persons performing such functions in an individual capacity should enjoy certain guarantees, in particular to guard against the risk of arbitrary decisions which might be taken concerning them by the competent supervisory bodies (eg decision of a supervisory body to dismiss a director general of a public service radio or television company on political grounds). This guideline therefore lays down two requirements to be fulfilled by any measure taken against members of the boards of management of public service broadcasting organisations or against persons acting as such in an individual capacity for breach of the duties and obligations vested in them.

31. Firstly, the measure in question should be grounded so that the person or persons concerned are acquainted with the reasons given to justify the measure. The statement of grounds should be sufficient to identify exhaustively and precisely the acts or possible omissions complained of. Therefore it should not merely state a complaint in general terms but should mention precise facts which can be contested by the person or persons implicated. Points of reference may be found if necessary in legislation and regulations applicable to the recitals of administrative decisions. Secondly, the measure should be appealable before the appropriate courts, whether civil, administrative or financial. This basic principle does not exclude the possibility of invoking independent arbitration procedures.

III. Supervisory bodies of public service broadcasting organisations

1. Competences

Guideline No. 9

32. As mentioned earlier, it is essential to avoid any conflict of jurisdiction between the boards of management and the supervisory bodies of public service broadcasting organisations and in particular to prevent the latter from encroaching on the management functions which the former should be able to discharge with complete independence, subject to any controls prescribed. This guideline accordingly lays down the principle that the instruments governing the operation of public service broadcasting organisations should clearly and accurately define the competences of their supervisory bodies. As the Guidelines are concerned with the single question of guaranteeing the independence of public service broadcasting, not with its general organisation, they do not specify in detail what should be the exact responsibilities of the aforementioned supervisory bodies. Each state is therefore free to define these responsibilities, which will usually include the appointment of the controlling bodies of the organisation concerned (administrative council, president, director general, etc), the adoption of its articles and the monitoring of its activities, in particular in relation to programming.

33. The responsibilities of public service broadcasting organisations' supervisory bodies should nevertheless be determined in accordance with the principles laid down by several of the Guidelines. Firstly, the supervisory bodies are to have no jurisdiction over the day-to-day management of public service broadcasting organisations, which rests exclusively with the boards of management in accordance with Guideline No. 4, subject to the possible exceptions mentioned in paragraph 23. Furthermore, the responsibilities assigned to the supervisory bodies in the programme sector should comply with the provisions of Guideline No. 10.

34. The sharp division of responsibilities between boards of management and supervisory bodies naturally does not imply that they should have no contacts. On the contrary, this may greatly benefit the satisfactory operation of the service. It may therefore be worthwhile to specify the forms of contact in the instruments governing the operation of public service broadcasting organisations. For instance, provisions empowering the supervisory bodies to settle the internal regulations of public service broadcasting organisations could usefully specify that the regulations are adopted after consultation with the boards of management. Likewise, provisions on meetings of the supervisory bodies could usefully specify that the heads of the boards of management are entitled to attend unless otherwise decided by the supervisory body concerned. Public service broadcasting organisations should, as appropriate, be able to modify their internal regulations, subject to the obligation to inform their supervisory bodies.

Guideline No. 10

35. As stated above, programming and the design and production of programmes should rest exclusively with the boards of management of public service broadcasting organisations. Accordingly, the supervisory bodies of such organisations may in no circumstances exercise any a priori control over programming. This does not preclude that they may be called upon to advise the boards of management on programming matters and possibly to assist them in this

area. These bodies may even enjoy competence to define programming standards or strategies (for example, as regards taste and decency) and to supervise the application of such standards.

36. It is recalled that certain restrictively enumerated acts of particular importance (see paragraph 23 above) may be made subject to the prior consent of the supervisory bodies, as in the case of programme purchase contracts exceeding a particularly significant amount. A power of this kind should not, however, permit the supervisory bodies to exercise a priori control over the programmes, its sole purpose being to ensure sound financial management of the service.

2. Status

Guideline No. 11

37. The supervisory bodies of public service broadcasting organisations may vary in their nature, being either external (parliamentary commissions, broadcasting sector regulating agencies), internal (public service broadcasting organisation superintending boards, etc) or a combination of both. The actual composition of the supervisory bodies of public service broadcasting organisations and the manner of their appointment may also vary considerably. Whatever the composition and the appointment procedures, the rules governing the status of the supervisory bodies should be defined so as to avoid them being subject to any political or other interference. Attention is drawn in this connection to the stipulation in the Resolution on the future of public service broadcasting adopted at the Prague Ministerial Conference: "the independence of public service broadcasters must be guaranteed by appropriate structures such as pluralistic internal boards or other independent bodies".

Guidelines No. 12

38. The requirement stipulated in Guideline No. 11 has as its corollary that the members of the supervisory bodies should be appointed in a transparent manner, namely according to clear and specific procedures enabling the public to ascertain which rules govern their appointment. In this respect, the term "appointment" should not be understood as involving an official act on the part of a public authority. Furthermore, the members of the supervisory bodies must be appointed in a pluralistic manner. This means that they should not represent only one point of view, political tendency or population group but should as far as possible reflect the diversity of current political trends or of society's constituent groups. This can be achieved by applying various procedures. For instance, where all or some of the members of a supervisory body are to be appointed by Parliament, the stipulation of a qualified majority will ensure that a majority party in Parliament does not dominate the supervisory body. Another possible procedure is for the various parliamentary groups to appoint representatives to the supervisory body according to the number of seats held in Parliament.

39. A further method would be to prescribe that the supervisory bodies of public service broadcasting organisations must comprise representatives of various groups so as to reflect the intrinsic diversity of society (churches, organisations representing employers and employees in the various sectors of activity, consumer organisations, representatives of the arts, culture, the sports world, etc), with special care being taken to ensure representation of women and men in equal proportions and of foreign nationals on the supervisory bodies.

40. Guideline No. 12 also provides that for the principle that members of the supervisory bodies represent collectively the interests of the public in general. The reason for this stipulation is that public service broadcasting organisations carry out a public interest mission. This implies that the supervisory bodies themselves, being responsible for verifying the due performance of this mission, serve the general public. This principle does not exclude the possibility that members of the supervisory bodies, individually, may represent the interests of particular groups, especially minority groups, which reflect social diversity. The corollary of this principle is that the members of the supervisory bodies are immune from dismissal, suspension or replacement during their term of office by any body or authority other than the one which appointed them, unless the supervisory body on which they serve duly certifies that they are incapable of exercising their functions or prevented from doing so.

41. The rule set out in Guideline No. 6 on the accumulation of interests should apply *mutatis mutandis* to the supervisory bodies of public service broadcasting organisations. Reference should be made to paragraphs 26 and 27 on the application of these rules.

Guideline No. 13

42. Again in the interests of transparency to the public, as stipulated above concerning the appointment of the supervisory bodies of public service broadcasting organisations, this guideline is meant to acquaint the public with the rules governing payment of persons belonging to these bodies. Payment means any form of emolument in respect of the functions performed by these persons within the supervisory bodies. It should be emphasised that this guideline, while stipulating that the rules governing such emoluments are to be made known, does not require disclosure of the amount.

IV. Staff of public service broadcasting organisations

43. The independence secured to public service broadcasting organisations requires their staff to be protected by a number of specific provisions against risks of external pressure whether originating from political powers or from elsewhere, as well as against the adoption of any measures affecting them which are not strictly founded on the manner in which they discharge their allotted duties. The following guidelines are intended to establish a number of fundamental guarantees applicable in all circumstances to the staff of public service broadcasting organisations. Consequently, they draw no distinction between the various categories of employees which a public service broadcasting organisation could comprise.

44. Considering that journalists are invariably the prime target of attacks on the independence of the media, it may nevertheless be deemed expedient to incorporate special provisions into the statutes governing the operation of public service broadcasting organisations in order to safeguard the freedoms of journalists employed by them. Indications concerning arrangements to safeguard the freedoms of journalists (in particular access to information and confidentiality of sources) are to be found in the Resolution on journalistic freedoms and human rights adopted at the 4th European Ministerial Conference on Mass Media Policy (Prague, December 1994). It should also be pointed out that specific

measures to secure the independence of public service broadcasting organisation employees can be applied within each organisation (for instance, rules on the authorised activities of journalists outside the public service broadcasting organisation employing them).

Guideline No. 14

45. One of the most widespread albeit not always most apparent interferences with the independence of public service broadcasting organisations is to recruit and dismiss staff or develop their careers chiefly according to political orientation and not on the sole criterion of professional abilities. In order to prevent such practices, this guideline establishes the essential principle of non-discrimination in the recruitment and service of public service broadcasting organisation staff. This non-discrimination is to be maintained at every stage and at all times in their working life. Thus no disciplinary measure may be taken against a public service broadcasting organisation employee on any of the grounds set out in Guideline No. 14. Nor can discrimination on any of these grounds be condoned as regards staff recruitment, salaries, training and, generally speaking, the rights and obligations of staff. This shall not affect the right of public service broadcasting organisations to take into account the need for variety in the programme content to be broadcast including with respect to the selection, employment and occupation of those staff members who are involved in designing programmes.

Guideline No. 15

46. Freedom to engage in trade union activities and the right to strike are among the fundamental economic and social rights whose exercise must be secured to the staff of public service broadcasting organisations, in particular so that they may assert their independence in the face of possible pressure from outside. Here one should bear in mind the principle established by the European Social Charter that "all workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests", amplified by Article 5 (The right to organise) of the Charter which provides that "the Contracting Parties undertake that national law shall not be such as to impair ... this freedom". It is further stressed that under paragraph 4 of Article 6 (The right to bargain collectively) of the European Social Charter, the Contracting Parties recognise "the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into".

47. Nevertheless, the consideration that public service broadcasting organisations carry out missions in the public interest, notably with regard to information, may justify certain limitations on the exercise of these freedoms. Such limitations must comply with the provisions of Article 31 (Restrictions) of the European Social Charter as interpreted by the case-law of the bodies supervising its application. Under the terms of this article, any restrictions or limitations on the rights and principles set forth in the Charter and on the effective exercise thereof must be "prescribed by law" and "necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals". The freedom to engage in trade union activities and the right to strike may be regulated by separate provisions according to whether the public service broadcasting organisations are constituted under public or private law.

48. In the specific case of the right to strike, limitations on the exercise of this right by public service broadcasting organisation staff may be warranted by the need to ensure the continuity of the public service missions of these organisations, particularly with regard to information. The exercise of the right to strike must indeed be reconciled with the public's right to receive information. Such limitations may, for instance, involve an obligation to broadcast essential programmes, particularly information programmes, during strikes. Other limitations may be contemplated, for instance, strikes contrary to morality or law and order. Lastly, regard should be had to Article 30 (Derogations in time of war or public emergency) of the European Social Charter, stipulating that "In time of war or other public emergency threatening the life of the nation any Contracting Party may take measures derogating from its obligations under this Charter to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law".

Guideline No. 16

49. The independence secured to public service broadcasting organisations implies that their employees may not receive any instructions whatsoever from individuals or bodies outside the organisation employing them. Obviously this principle need not prevent an employee of a public service broadcasting organisation who also discharges functions outside the organisation from receiving instructions in that connection from authorities entitled to supervise the external functions (as in the case of a journalist concurrently employed by a public service broadcasting organisation and a press undertaking). It may be considered expedient in some circumstances to lay down internal rules of conduct specifying the cases where and the conditions under which employees of public service broadcasting organisations may discharge functions outside the organisation. This would prevent possible conflicts of interest between the external functions and those performed within the public service broadcasting organisation employing the person concerned.

50. Nor does Guideline No. 16 rule out the possibility that employees of public service broadcasting organisations, even in the course of their duties with these organisations, may occasionally receive instructions from outside authorities subject to the prior approval of the superior or superiors directly in charge of the staff members concerned (this would apply, for instance, to a staff member of a public service broadcasting organisation working under someone else's authority in a co-production by the public service broadcasting organisation employing him and another broadcasting organisation or film or television production company). This principle does not preclude that the supervisory bodies of public service broadcasting organisations may give instructions to the employees of these organisations, as long as they are entitled to do so by the texts governing the latter. In the exceptional cases where staff of public service broadcasting organisations may be requisitioned by the public authorities to discharge functions on their behalf, the staff should remain under the authority of their normal immediate superiors and receive instructions only through them.

V. Funding of public service broadcasting organisations

51. Funding is plainly one of the key factors in the independence of public service broadcasting organisations, given that

both the source and the scale of their financial resources can substantially determine the latitude available to them in carrying out their missions. This has become a very sensitive issue throughout Europe in recent years, particularly after the gradual penetration of the broadcasting sector by private enterprise. Demands have been voiced in certain quarters in both Western and Eastern Europe to finance the public broadcasting service from radio/television licence fees and allow commercial broadcasting organisations exclusive access to advertising.

52. Meanwhile, the general public have expressed objections to the increase in licence fees or the very obligation to pay them, as some sectors of the public see no reason or no further reason to pay for the reception of programmes which are less regularly viewed now that a wider range of radio and television services is available. Furthermore, in the specific case of the East European countries, there has arisen the problem of transition from public funding (subsidies) to a form of funding uncoupled from state intervention (licences, advertising, etc). These various trends, notably the impact of commercial broadcasters on the advertising revenue market, compounded by the difficult economic situation which Europe has undergone in recent years, have placed some public service broadcasting organisations in an awkward financial position and have raised questions concerning their prospects.

53. The Resolution on the future of public service broadcasting adopted at the Prague Ministerial Conference offered reassurance in the form of an undertaking by the participating states to "guarantee public service broadcasters secure and appropriate means necessary for the fulfilment of their missions". Guidelines Nos. 17 to 19 specify the funding procedures which should be applied in order to secure the independence of public service broadcasting organisations.

Guideline No. 17

54. This guideline reaffirms the undertaking made by the member states in the Resolution on the future of public service broadcasting to "maintain and, where necessary, establish an appropriate and secure funding framework which guarantees public service broadcasters the means necessary to accomplish their missions". In addition, it specifies that the funding framework must also be transparent. Secure funding of public service broadcasting organisations is indeed a crucial requirement if they are to accomplish their missions in a fully independent manner, even where, for instance, the authority responsible for providing such funding runs into financial difficulties. As already indicated in the aforementioned Resolution, there are several sources of funds to sustain and promote public service broadcasting: the licence fee; public subsidies; advertising and sponsorship revenue; proceeds of sales of products (like audio-visual works) and services, programme agreements, etc. For the purposes of these Guidelines, the term "licence fee" takes in certain similar forms of funding by the public (taxes levied on users' electricity bills or on other transactions in order to supply the budgets of public service broadcasting organisations).

55. It should be noted that the Guidelines do not favour any particular method for the funding of public service broadcasting in respect of the need to ensure its independence, provided that the provision of public funding (subsidies or licence fee) respects the principles set out in Guideline No. 18. Furthermore, the raising of financial resources other than public funding should be one of the areas to which the principles contained in Guideline N° 1 should apply.

Guideline No. 18

56. While no specific type of finance should automatically be favoured, public funding (subsidies, licence fees, etc) may in fact expose public service broadcasting organisations to interference in the manner in which they are run unless it carries a number of safeguards to preserve their independence. Guideline No. 18 defines the nature of these safeguards. Special attention should be paid in this context to the principle established in the 1st indent, given that the most direct and powerful kind of threat to the independence of public service broadcasting organisations is for outside authorities to use their financial weight to interfere in the broadcasters' activities, programming in particular.

57. This threat, however, should not overshadow the other cases where the independence of public service broadcasting organisations may be placed at risk by financial considerations. These are alluded to in the provisions of the 2nd to 5th indents, together with the appropriate counter-measures. The 2nd and 3rd indents clarify two aspects of the principle established by the Resolution on the future of public service broadcasting that "the level of licence fee or public subsidy should be projected over a sufficient period of time so as to allow public service broadcasters to engage in long term planning".

58. Firstly, public service broadcasting organisations should be consulted for the purpose of determining the level of the contribution or licence fee with which the activities of the organisations are to be financed. Such consultation is justified by the fact that it is for these organisations, using the finance derived from the contribution or fee, to guarantee the implementation of the missions assigned to them. Secondly, these two indents highlight the importance of the way in which contributions or fees are paid. Indeed, ill-conceived collection and payment methods or irregular or delayed payment may endanger the continuity of public service broadcasting activities. In the specific case of the licence fee, close attention should be paid to the possible repercussions of exemption from payment for certain categories on the resources of the public service broadcasters and hence on the fulfilment of their missions.

59. The 4th indent is the necessary and inseparable counterpart to the principle of institutional autonomy laid down in Guideline No.1. This principle, it will be remembered, does not exempt the competent bodies of public service broadcasting organisations, particularly the boards of management, from being called to account for the manner in which the financial management of the organisations is performed. Another point to note is that above and beyond any agencies mandated to review the financial management, these bodies are ultimately accountable to the public in this regard. Lastly, the 5th indent is designed to ensure that the funds allocated to public service broadcasting organisations are equitably apportioned according to the specific needs of each organisation. The missions peculiar to each organisation and the human, technical and financial resources it must deploy to accomplish them should constitute the basis for apportionment.

Guideline No. 19

60. As stated above, the price which public service broadcasting organisations pay for their necessary institutional autonomy is accountability for the way in which they accomplish their missions. Their accountability extends to the use

of their resources, as specified in the Resolution on the future of public service broadcasting, particularly in the case of public resources. Accordingly, internal or external auditing of public service broadcasting organisations is permissible. Financial supervision of this kind must nevertheless be circumscribed by the specific purpose which it is meant to serve, ie to verify the proper management of the service with regard to administration, book-keeping and finance. It therefore cannot include supervision of programming. Nonetheless, certain particularly important acts involving commitment of expenditure in respect of programmes (eg programme purchase contracts above a certain value) may be subject to approval by specified authorities, as indicated in paragraphs 23 and 36 above.

61. It is to be observed that depending on the public law or private law status of public service broadcasting organisations, variations may occur in the rules on supervision of their administrative, book-keeping and financial practice and in the rules governing the accountability of their constituent bodies. This makes it necessary to consult the relevant provisions in the applicable areas of law (company law, public law), while ensuring that their application to the public service broadcasting organisations in question complies with the principle stated in Guideline No. 19.

VI. The programming policy of public service broadcasting organisations

62. The programmes of public service broadcasting organisations, particularly news bulletins and current affairs programmes, must reflect the diversity of viewpoints and opinions expressed in society at large. In this connection, reference should be made to the requirements laid down in the Resolution on the future of public service broadcasting, particularly the stipulation that public service broadcasters should have the mission of providing a forum for public discussion in which the widest possible spectrum of views and opinions can be expressed. Attention is also drawn to the requirement that public service broadcasters transmit impartial and independent news, information and comment.

63. The Guidelines set out to define a number of basic principles which should govern the programming of public service broadcasters, whatever their status, in order to secure their independence. It is reiterated here that the concept of independence applies not only to interventions of a political nature but also to influences which stem from economic agencies or other sectors of society. It may thus be useful to include provisions on advertising and sponsorship in the statutes regulating the activities of public service broadcasting organisations in order to prevent advertisers or sponsors from interfering in any way with the programmes transmitted by the broadcasters. Items of relevance to this question may be found in Chapters III and IV of the European Convention on Transfrontier Television and the Explanatory Report thereto.

Guideline No. 20

64. This guideline recalls the basic principle set out in Article 7, paragraph 3 of the European Convention on Transfrontier Television. This principle is even more important for public service broadcasters since, as stressed in Resolution No 1 of the Prague Ministerial Conference, they must "provide a forum for public discussion in which as broad a spectrum as possible of views and opinions can be expressed" and must "broadcast impartial and independent news, information and comment". In this context, emphasis is placed on the importance of ensuring equal access to the media and especially to the facilities of public service broadcasting organisations for political parties during election campaigns. Equality of access does not necessarily mean that all political parties should be allowed the same airtime without regard to their representativeness. It nevertheless requires that the various political parties are allotted sufficient airtime to present their platforms. This specific case illustrates the general criterion of balance which should guide the programming of public service broadcasting organisations. Different arrangements may be envisaged so as to ensure respect for the above-mentioned requirements, even within public service broadcasting organisations and/or outside these, for instance via independent regulatory authorities.

Guideline No. 21

65. While it is normal and even desirable in a democratic society for public authorities to report on their action via the media, and via public service broadcasting organisations in particular, the conditions under which such reports are made should nonetheless be precisely regulated so that public service broadcasters do not become the voice of the public authorities. Guideline No. 21 therefore establishes the principle that the broadcasting of official messages, declarations or communications from public authorities should be confined to exceptional circumstances, it being understood that information campaigns on matters of public interest such as health campaigns are not covered by this guideline. Exceptional circumstances should be understood to mean special events in the life of the nation, whether recurrent (broadcasting of speeches to mark the national commemoration day or the Government's presentation of its general policy programme to Parliament) or extraordinary (broadcasting of speeches in times of crisis or national disasters).

66. Outside these special circumstances, the question often arises whether public authorities should have regular access to the airwaves of public service broadcasting organisations to present current policy, and whether a right of reply should in that case be granted to the political groups forming the opposition to the ruling government. In this matter, official announcements should be distinguished from the normal programmes of public service broadcasting organisations. In principle, any official announcement unconnected with the exceptional circumstances mentioned above should be excluded.

67. Even assuming that the principle of such communications is accepted, they should be explicitly regulated and placed at suitable intervals. Although the definition of a fixed interval between successive statements is neither possible nor necessarily desirable, the interval should be reasonable. Daily, weekly or monthly statements are thus inadmissible. Furthermore, a certain amount of airtime should be automatically granted to the opposition groups when the ruling government secures regular access to the airwaves of the public service broadcasting organisations for official communications. This right of reply should be defined in such a way that the various opposition groups represented in Parliament can put their views.

68. Reports on current government policy made during regular transmissions by public service broadcasting organisations (news bulletins and magazines, debates and meetings, interviews, etc) should in all cases comply with the principles of impartiality and balance.

Guideline No. 22

69. Official announcements transmitted by public service broadcasters, whether or not in exceptional circumstances, should at all events be identified as such when transmitted. There should be no uncertainty in the public's mind as to the origin and purpose of these communications, set apart from the normal programmes of public service broadcasting organisations. Various procedures may be applied for this purpose (eg specifying the official nature of the communication in the credits or the announcer's presentation). As these official announcements are unrelated to the normal programmes of public service broadcasting organisations, the logical consequence is that they should be broadcast under the sole responsibility of the commissioning authority.

VII. Access by public service broadcasting organisations to new communications technologies

70. New communications technologies, especially digitisation, are without doubt a major new element for the future of the broadcasting sector. The new technologies make it possible to create new types of services, especially paying ones, which can be targeted in accordance with the particular areas of interest of different sections of society. These new changes require reflection on the future role of public service broadcasters in a new context characterised by a multiplication of programmes on offer: will the public service still have a special role to play, and if so, how can this role be justified? If there is a continuing role for public service broadcasting in the future, what means should be available to it to enable it to continue to fulfil its missions? What possible limits need to be established so that the adaptation of the public service to the new broadcasting environment will not operate to the detriment of its specific characteristics?

71. Resolution No 1 adopted at the Prague Ministerial Conference replied to these various questions, especially by affirming "the vital function of public service broadcasting as an essential factor of pluralistic communication accessible to everyone" and by recognising "the need to guarantee the permanence and stability of public service broadcasting". These statements were given concrete substance in the commitments undertaken by the participating states "to maintain and develop a strong public service broadcasting system in an environment characterised by an increasingly competitive offer of programme services and rapid technological change".

72. The capacity of the public service to sustain itself and develop implies, as stated in resolution No. 1 of the Prague Ministerial Conference, that public service broadcasters "should be able to exploit new technologies necessary for the fulfilment of their missions". Guideline No. 23 reaffirms this basic principle, it being understood that these missions are those entrusted to public service broadcasters under law in the broader meaning of the term (laws, regulations or other texts such as licence specifications, charters or concessions). Without this, public service broadcasting would run the risk of rapid marginalisation and could in the long term lose its independence.

73. In addition, Guideline N° 23 sets out the principle that public service broadcasters should be able to develop new services based on the above-mentioned technologies, as long as they are authorised to do so by the authorities which enjoy competence with respect to their missions and activities.