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PSM GOVERNANCE: PROTECTING THE INSTITUTIONAL AND EDITORIAL INDEPENDENCE OF PSM

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PSM Governance : Protecting the institutional and editorial independence of PSM

Independent PSM is the cornerstone of a democratic society, providing citizens with a reliable and trustworthy source of information and a public forum where different views can be expressed. Only if PSM is truly independent can it fulfil its function as a watchdog, monitoring the conduct of those in power.

However Politicians have a huge interest in getting visibility and support from the media and in limiting the impact of critical voices. How far they go in exercising influence on the media in general – and PSM in particular – may depend on their personal integrity and the general political culture. But it will certainly also depend on the *safeguards for independence which are built into the governance system*. Typically those should include :

- open and transparent appointment procedures based on objective criteria;
- a pluralistic composition of supervisory bodies;
- accountability to the public, the citizens, and not just the politicians;
- an appointment of top managers based on merits, and an assessment of their performance based on clear objectives (and not on political favours);
- protection of the integrity of decision-making processes by conflict-of-interest rules and insulation from outside interference; and
- internal codes of conduct ensuring high professional standards, in particular as far as editorial decisions are concerned.

Ensuring independence is not only a matter of governance; independence must also be supported by the definition of the remit (which should not be ideologically biased) and, most importantly, by the funding system.

Whenever PSM organizations depend on politicians to decide on their level of funding, it becomes very difficult for them to operate independently, and not to exercise at least some sort of self-censorship to please the relevant politicians. The level of funding should therefore be determined in a legally binding way for a fixed, multiannual period, and at a level that is appropriate and sufficient, so that PSM does not depend on extra ad hoc funding from the government.

Unfortunately, in reality, PSM are often dependent on yearly budget decisions by governments or parliaments, or they suffer systemic underfunding and are therefore in desperate need of extra government funds - which are often granted only for a specific purpose, or with strings attached.

Basic constitutional requirements for PSM governance can be drawn from the European Court of Human Rights 2009 *Manole* case concerning Moldovian PSM. The Court held that the European Human Rights Convention – Article 10 on freedom of expression – requires that, when Member States set up PSM, the national law and practice guarantees that the PSM system provides a pluralistic service. In a second step, the Court deduced that the management and supervisory bodies of PSM must be politically balanced and that there must be effective safeguards against interference from the ruling party in these bodies' decision-making and functioning. This case sets out important principles for the appointment, composition and status of the governance bodies of PSM.

So what are the specific requirements for PSM Supervisory and management bodies?

Firstly, such bodies must *exist*. It is necessary to have distinct supervisory and management bodies for PSM, and these bodies need to be distanced from political powers. Consequently, it is not for any political institution, neither the government nor parliament, to take on the role of the PSM governing bodies. The supervisory body should act as a buffer between PSM management and political powers, and can help to prevent over-politicization and play a neutralizing role. It is also logical in such a system that the supervisory body has the main responsibility for selecting and appointing the management.

Secondly, the composition of such bodies must be politically balanced. In other words, there must be effective safeguards that no political group can gain a dominant influence within the supervisory body. The biggest danger certainly comes from the government and the political parties supporting it, but of course, the opposition must also be prevented from gaining a dominant influence. In practice, this means that the number of people representing the government and the governing parties within supervisory boards must be limited, for example to one third. The German Constitutional Court, in its ZDF decision, went even further and limited the number of representatives of all State bodies and of all political parties together to one third of the membership of the two supervisory bodies, the ZDF Fernsehrat and Verwaltungsrat. It thus reserved two-thirds of the seats for representatives of civil society organizations, of so-called socially relevant groups.

Thirdly, the functioning of PSM must be protected against any undue outside interference. Members of its governing bodies must act in the interest of society as a whole. Strict incompatibility rules should be put in place to avoid conflicts of interest, and there should be "waiting periods" before, for example, politicians may become supervisors. Moreover, members of supervisory bodies must not take instructions from outside the organization, and this includes the bodies that have nominated them. In the same vein, they must enjoy protection against any politically motivated dismissal.

Ombudsmen or women can also help support independence but have a distinctive role. A number of PSM organizations have appointed them with the aim of organising and improving the interaction with users, viewers and listeners. As they enjoy an important degree of autonomy, they can draw attention to complaints by the audience, for example in cases where programmes were not in line with professional standards or principles such as impartiality.

To conclude, Parliaments have a huge responsibility in putting in place safeguards to protect the independence of PSM. It is for Parliaments to determine the legal framework for PSM, which includes the governance and funding system. It is absolutely crucial that this framework contains strong safeguards to protect and promote the independence of PSM, in particular by setting up independent and politically balanced supervisory bodies.

On the other hand, it is not for Parliament itself to take on the task of supervising PSM, or appointing its management: otherwise, PSM would always be in the hands of the political majority. PSM would risk becoming over-politicized and entering a vicious circle of unstable and ineffective management.

Where Parliament is involved in the nomination of members of independent supervisory bodies, which is the case in many countries, such decisions should ideally be based on a consensus between the different political groups; the requirement of a qualified majority can sometimes help to achieve this.

All this should help avoid the dilemma, which often arises after democratic elections, where the new government has a problem with PSM because it fears that it is still dominated by partisans of the former government. What do new governments tend to do in such a situation? Either they do everything in their power to weaken or discredit PSM, or they try to find a way to replace the current members of supervisory boards and the management, if possible with immediate effect. In both cases, the results can be disastrous.