GRA
GIBRALTAR REGULATORY AUTHORITY

Public Consultation

Review of the Code on objectivity, impartiality, accuracy and undue prominence.

29th May 2024
BC03/24

FOREWORD

This consultation seeks stakeholders' views on proposed amendments to the Code (the "Code") on objectivity, impartiality, accuracy and undue prominence.

The responses to this consultation will assist the GRA in completing its review of the Code and determine whether any amendments are required, either in general or in response to certain issues raised, ultimately ensuring the Code remains up to date and fit for purpose.

CONTENTS

1. INTRODUCTION 1
   1.1 Scope of this review 1
   1.2 Background 1
   1.3 Review of the Code 1
2. PROPOSED AMENDMENTS 2
   2.1 Proposed Amendment 1 2
   2.2 Proposed Amendments 3
   2.3 GRA Reasoning for Proposed Amendment 1 3
   Question 1 3
   2.4 Proposed Amendment 2 2
   2.5 Proposed Amendments 2
   2.6 GRA Reasoning for Proposed Amendment 2 2
   Question 2 2
   2.7 Proposed Amendment 3 2
   2.8 Proposed Amendments 3
   2.9 GRA Reasoning for Proposed Amendment 3 3
   Question 3 3
   2.10 Proposed Amendment 4 4
   2.11 Proposed Amendments 4
   2.12 GRA Reasoning for Proposed Amendment 4 4
   Question 4 5
3. RESPONDING TO THIS CONSULTATION 5
4. OTHER SUGGESTIONS FROM STAKEHOLDERS OUTSIDE THE SCOPE OF THE REVIEW 5
5. COMPLETION OF THE PUBLIC CONSULTATION 6

1. INTRODUCTION

1.1 Scope of this review

1.1.1 In accordance with the provisions of Sections 22 and 23, and Schedule 3 of the Broadcasting Act 2012 (the "Act"), the Gibraltar Regulatory Authority (the "GRA") is required to issue codes of practice for the content of programs included in television and radio services in Gibraltar, on matters concerning news, political broadcasts, elections and referendums. Central to this role is the adherence to principles of objectivity, impartiality, accuracy, and the avoidance of undue prominence.

1.1.2 The purpose of this consultation is to allow stakeholders to put forward any recommendations or comments to the amendments as proposed in the Proposed Amendments section below. All comments and personal information submitted to the GRA as part of a response to this public consultation will be processed in line with the Privacy Notice published on the GRA's website.

1.2 Background

1.2.1 The broadcasting landscape plays a pivotal role in shaping public opinion and fostering informed discourse within society. On 6th September 2021, the GRA, after having consulted with relevant stakeholders, revised and issued Code No. BC06/21 - "Code on objectivity, impartiality, accuracy and undue prominence" (the "Code").

1.2.2 However, in recognition of the evolving media environment and societal expectations, it is imperative to periodically review and update the Code to ensure its relevance and effectiveness.

1.3 Review of the Code

1.3.1 As per Schedule 3 1(1) of the Act, the GRA has a duty to review the Code from time to time, in order to address the matters highlighted in Section 2 of this document.

1.3.2 The matters being consulted upon are specifically in relation to,

i. "Composition of panels", referring to the assembling of panels for a debate on Controversial Matters or Policy Matters, (pages 16-17 of the Code);
ii. "Political broadcasts not made in relation to any election or referendum", (pages 23-24 of the Code); and
iii. "Political broadcasts made in relation to an election or referendum" (pages 26-27 of the Code).

1.3.3 The purpose of the consultation is to gather feedback and insights from relevant stakeholders regarding proposed revisions to the Code. Additionally, this consultation will collect and consider, any and all views received, with a view to developing revisions to the Code in order to reflect contemporary standards.

2. PROPOSED AMENDMENTS

2.1 Proposed Amendment 1

2.1.1 In respect to composition of panels and the broadcaster's duties set out in section 24(1)(b) of the Act with regard to the broadcast treatment of current affairs, the Code at Standard 3 (Page 16) provides guidance as follows:

> *When assembling a panel for a debate on Controversial Matters or Policy Matters, a broadcaster must bear in mind the provisions of the Act and the Code and, particularly, the criteria of fairness, objectivity and impartiality.*
>
> *A broadcaster may invite representatives of political parties and/or independent members of Parliament to form part of a given panel but need not do so. If, however, a broadcaster chooses to invite such representatives, it must decide whether panellists are being invited as:*
>
> *(a) representing the Government, that is, representing those who occupy the Government benches in Parliament;*
>
> *(b) representing the opposition, that is, representing those who occupy the opposition benches in Parliament;*
>
> *(c) representing political parties whether these be represented in Parliament or otherwise but who have put forward candidates at the last general election to the Gibraltar Parliament; or*
>
> *(d) independent members of Parliament.*
>
> *The editorial responsibility for the composition of a given panel lies with the broadcaster. As a guideline however, it would be more appropriate for a broadcaster to invite panellists who represent political parties and/or are independent members of Parliament (as opposed to representing the Government or the opposition as the case may be) in a situation where the Government and/or the opposition are comprised of more than one political party and/or independent members and the views of those political parties and/or independent members (as the case may be) differ on the issue or issues that are the subject of the debate.*

2.2 Proposed Amendments

2.2.1 The GRA proposes to replace the paragraph that follows point (d) above with:

> *"The editorial responsibility for the composition of a given panel lies with the broadcaster. In order to avoid undue prominence, it would not be appropriate for a broadcaster to organise a panel for a debate, of members of different political parties who stood or are standing for election under the same manifesto.*
>
> *The editorial responsibility for the composition of a given panel lies with the broadcaster. In order to avoid undue prominence, the broadcaster should take care to ensure that panels are appropriately balanced, in order that views can be expressed fairly. Therefore, the broadcaster should, where possible, do its utmost to ensure that the views of multiple parties who stood or are standing for election under the same manifesto, are expressed collectively and not by means of independent representation from each party."*

2.3 GRA Reasoning for Proposed Amendment 1

2.3.1 The GRA considers that the extant wording was not providing the necessary clarity. The GRA's main concern is that failure to adhere to the requirements, as it currently stands, could potentially lead to an uneven representation regarding the composition of a panel, and leading to instances of undue prominence.

2.3.2 The GRA is of the view that this amendment to the Code is needed in order to cater for such instances where representation in a panel by two or more parties who form an alliance, would outnumber the remaining panellists, creating the situation whereby a certain political view or ideology for example, would be given greater prominence in the debate. This has the potential to cause the broadcaster to fail in its obligations under the Code.

Question 1

Do you agree with the Code being changed to reflect the proposed amendment? Please provide reasons for your reply.

2.4 Proposed Amendment 2

2.4.1 In respect to Government Ministerial Statements regarding political broadcasts not made in relation to any election or referendum, point 6 of Part 1 of the Code (page 24) reads as follows:

> *A Gibraltar public service broadcaster (for example, The Gibraltar Broadcasting Corporation) shall include Government Ministerial Statements in its radio and television broadcasting schedules. Government Ministerial Statements are statements that Government Ministers may make on television or radio for the purpose of communicating information, explaining legislation passed by Parliament or seeking the co-operation of the general public on a given matter. Government Ministerial Statements shall not exceed 15 minutes' duration per broadcast.*
>
> *Should the Opposition seek to reply to such statements on the grounds that the matters raised are of public or political controversy, public debate or relate to current public policy (as those terms are defined in the Guidance Notes to Standard 1 of Part 2 of the First Section of the Code) the public service broadcaster that has broadcast the Government Ministerial Statement shall allocate time to the Leader of the Opposition to enable the opposition to respond. Such a broadcast shall not exceed the duration of the Government Ministerial Statement or 10 minutes, whichever is the lesser.*

2.5 Proposed Amendments

2.5.1 The GRA proposes to amend the first paragraph above as follows (underlined for ease of reference):

> *A Gibraltar public service broadcaster (for example, The Gibraltar Broadcasting Corporation) shall include Government Ministerial Statements in its radio and television broadcasting schedules. Government Ministerial Statements are statements that Government Ministers may make on television or radio for the purpose of communicating information, explaining legislation passed by Parliament or seeking the co-operation of the general public on a given matter. Government Ministerial Statements may not be related to matters of party politics. Government Ministerial Statements shall not exceed 15 minutes' duration per broadcast.*

2.6 GRA Reasoning for Proposed Amendment 2

2.6.1 The GRA is of the view that the wording as currently drafted with regards to *"communicating information"* under point 6*,* is essentially open to interpretation. Therefore, the GRA believes it would be prudent to provide further clarity by expanding upon this wording to ensure, to the greatest extent possible, that any statements made by Ministers under this part of the Code does not refer to actions, decisions, or events that are influenced by a particular political ideology, agenda, or party affiliation.

2.6.2 The GRA is of the view that adding "*Government Ministerial Statements may not be related to matters of party politics*", will ensure that such statements cannot give rise to the promotion of a Government's accomplishments and/or referring to the Opposition or any other elected member of the Gibraltar Parliament in a manner to promote a political gain. This may be further exacerbated given that Government Ministerial Statements can allow Ministers to avail themselves of the maximum time limit of 15 minutes.

2.6.3 By way of clarification, if a Government Ministerial Statement relates to a New Year's message for example, it must be party-politically neutral, otherwise it should be considered as a Political Broadcast subject to the provisions of point 1 of Part 1 of the Code (page 23).

2.6.4 This amendment is twofold in so far as it also provides the GRA with further regulatory clarity when acting in its capacity as a mediator in respect of any potential breaches of the Code, whilst also tackling potential difficulties faced by a public service broadcaster, such as the Gibraltar Broadcasting Corporation (the "GBC"), when interpreting the requirements of the Code.

Question 2

Do you agree with the Code being changed to reflect the proposed amendment? Please provide reasons for your reply.

2.7 Proposed Amendment 3

2.7.1 In respect of the number of political broadcasts not made in relation to any election or referendum, point 1 of Part 1 of the Code (page 23) provides:

> *Each calendar year, a Gibraltar public service broadcaster (for example, The Gibraltar Broadcasting Corporation) shall allocate a number of television broadcasting periods to the parties and independent members (if any) that comprise the Gibraltar Parliament. These periods will be no more than 17 in number and will be allocated pro rata between the Government on the one hand and the opposition on the other.*

2.8 Proposed Amendments

2.8.1 The GRA proposes to amend the above paragraph as follows:

> *Each year, commencing on the day that a new Gibraltar Parliament is constituted, a Gibraltar public service broadcaster (for example, The Gibraltar Broadcasting Corporation) shall allocate a number of television broadcasting periods to the members that comprise the Gibraltar Parliament. These periods will be no more than 17 in number and will be allocated pro rata between the Government on the one hand and the opposition on the other. For the avoidance of doubt, the term "opposition" in this case is intended to mean all Members of the Gibraltar Parliament who do not form part of the Government.*

2.9 GRA Reasoning for Proposed Amendment 3

2.9.1 As it currently stands, the allocation of television political broadcasts is based on an annual allocation process that commences each calendar year. This annual allocation occurs irrespective of specific events such as when there is a general election. Nonetheless, the GRA acknowledges that this wording lacks clarity in instances when a general election occurs at any point during the calendar year. In such cases, the public service broadcaster would need to determine the allocation of broadcasting periods and distribute them proportionally and pro-rata among all members of the Gibraltar Parliament. The GRA is of the view that this approach has the potential to be restrictive and impact fair allocations to members of the Gibraltar Parliament. By way of example, the 2023 elections took place in October and therefore the calendar year was not up yet. The result was that there was uncertainty as to how many (if any), television political broadcasts should be allocated for the remainder of the calendar year.

2.9.2 In order to provide further structure and availability to members of the Gibraltar Parliament, as well as afford the public service broadcaster greater flexibility in terms of the scheduling and timings of broadcasts, the GRA includes a proposed amendment which focuses on an "election-triggered" allocation process that begins immediately after the constitution of a new Gibraltar Parliament. In these circumstances, the allocation of television broadcasting periods would renew on the anniversary of when the Gibraltar Parliament was constituted. This would ensure that all members of the Gibraltar Parliament have access to their full quota of slots.

2.9.3 In the event that all 17 television political broadcasts have been consumed on a year in which an election is intended to take place but before the Gibraltar Parliament is dissolved, no further television political broadcasts may be allocated until such time as a new Gibraltar Parliament is constituted.

Question 3

Do you agree with the Code being changed to reflect the proposed amendment? Please provide reasons for your reply.

2.10 Proposed Amendment 4

2.10.1 In respect of allocation, length and frequency of political broadcasts made in relation to an election at the time of an election, point 2 of the Code at Page 27 reads:

(1) A broadcaster will, in relation to any election, provide equal broadcasting time and opportunity to each candidate to an election (whether the candidate is a member of a political party or an independent) to explain his or her electoral programme.

(2) These broadcasts must be carried in peak-time, with the precise time of the broadcast being decided by the broadcaster.

(3) The length of the political broadcast at the time of an election shall not exceed 10 minutes.

(4) In the application of the provisions of the Third Section of the Code, the Authority shall bear in mind that the Gibraltar Broadcasting Corporation is currently the only public service broadcaster in Gibraltar.

2.11 Proposed Amendments

2.11.1 The GRA proposes to amend the (3) above as follows:

> *"The length of the political broadcast at the time of an election shall not exceed 10 minutes except when, in the informed opinion of the Gibraltar Broadcasting Corporation and having taken into account the number of candidates standing for election, compliance with (1) and (2) above would prove impossible. In such eventualities, the Gibraltar Broadcasting Corporation, in consultation with all candidates, should determine an appropriate time for the length of such political broadcasts."*

2.12 GRA Reasoning for Proposed Amendment 4

2.12.1 The scheduling and length of political broadcasts is a recurring theme that has been raised on numerous occasions. As it currently stands, the maximum length of political broadcasts made in relation to an election or referendum is 10 minutes, and the precise scheduling is the responsibility of the GBC.

2.12.2 This proposed amendment affords the GBC greater flexibility in terms of the scheduling and timings of broadcasts. This is especially so, in instances where, for example, there are three parties fielding ten candidates contesting the election as well as any independents. In situations like these, and based on the current wording of the Code, there exists the potential for the GBC to face difficulties in their scheduling of political broadcasts. One of the requirements of the Code, is that political broadcasts must be

carried in peak times. However, the GBC have in the past made representations to the GRA that in situations as explained above, they would not have sufficient time slots during peak times resulting in some broadcasts being scheduled for transmission outside of peak times.

Question 4

Do you agree with the Code being changed to reflect the proposed amendment? Please provide reasons for your reply.

3. RESPONDING TO THIS CONSULTATION

3.1 The GRA welcomes comments from stakeholders on the questions posed in this public consultation.

3.2 The GRA would like to receive views and comments on the issues raised in this document by Friday 5th July 2024.

3.3 All submissions should include contact details in case we need to contact the respondent to clarify any issues with the submission. If the comments are submitted on behalf of an organisation, then this must be clearly stated. If parts of a submission are to be treated in confidence, then this must be clearly stated or labelled.

3.4 Comments and responses to this consultation should be submitted in writing to broadcasting@gra.gi

4. OTHER SUGGESTIONS FROM STAKEHOLDERS OUTSIDE THE SCOPE OF THE REVIEW

4.1 Although the purpose of this consultation is to allow relevant stakeholders to make representations to the proposed amendments above, it also provides the opportunity for stakeholders to make representations to the GRA if they have any additional concerns, comments or suggestions as regards any aspects of the Code.

4.2 The GRA will take the upmost regard of stakeholder's comments before making its final decision as regards any changes to the Code.

5. COMPLETION OF THE PUBLIC CONSULTATION

5.1 On the basis of the responses, the GRA will complete its review of the Code and determine whether any amendments are required, or the issues raised may be resolved by additional guidelines or by a GRA decision. Subsequently, in order to promote further openness and transparency, the GRA will publish the names of the respondents and their responses on its website.

5.2 Stakeholders should note that the format and numbering of the final version of the Code will change for ease of reference.

CONTACT US

Gibraltar Regulatory Authority

2nd Floor, Eurotowers 4, 1 Europort Road, Gibraltar

(+350) 20074636

broadcasting@gra.gi

www.gra.gi