



BROADCASTING COUNCIL OF THE REPUBLIC OF MACEDONIA

**MANUAL FOR IMPOSING MEASURES  
AND THEIR EXECUTION ACCORDING TO  
THE BROADCASTING LAW**

Skopje, November, 2012

## **1. About the manual**

This manual is a technical aid intended for the Broadcasting Council of the Republic of Macedonia, the broadcasters and the operators of public communication networks, with respect to the imposition and execution of the measures. Its goal is to provide guidelines for a successful implementation of the regulations of the Broadcasting Law and in particular Article 11, Article 17, Article 38 and Article 109 to 119 of the Act.

The need of preparation of this manual has emerged from the stated ambiguities and inconsistencies that raise quandaries in the Broadcasting Council (in terms of, which measure to be imposed) and among the broadcasters (in terms of how to perform a certain measure). The conclusion is that the imposition of the measures should be individualized, not to be formalized. What does this mean? This does not mean that the Broadcasting Council should discriminate, but on the contrary, this regulatory authority in applying the regulations of the Broadcasting Law, as well as in the imposition of measures against the broadcasters, it is necessary to perceive all the aspects, i.e. the period of the committed offence, the intention of this action, the frequency of the offence (whether the broadcaster is performing the stated offence, in continuity), also whether the broadcaster had previously acted upon the pronounced measure, etc.

The manual on the one hand, provides the Council with guidelines for more efficient and more equitable application of the stated regulations of the Broadcasting Law, as well as an explanation for the broadcasters and the operators of public communication networks, on the other hand, in order to understand the manner of imposing measures and the criteria they are imposed for.

Proper application of the regulations of the Broadcasting Law is of great importance for both the Broadcasting Council, and the broadcasters and the operators of the public communication networks. The manual will provide higher legal security for broadcasters and operators and will increase their confidence in the regulator and his decisions.

## **I. BROADCASTERS**

### **2. Procedure in relation to Article 11 of the Broadcasting Law<sup>1</sup>**

<sup>1</sup> “Political parties, government bodies, state administration bodies, public enterprises, local government units, public office-bearers and members of their families, may not perform broadcasting activity neither to be founders, co-founders or take part in the ownership of the broadcasters.”

When it is determined that the working of a certain broadcaster is contrary to Article 11, relating to Article 18 of the Broadcasting Law, the Council shall point him out the established condition and shall charge him with a written notice, within 15 days of the receipt letter, to remove the stated law offences i.e. discrepancies.

If the broadcaster, in this timeframe fails to comply with the suggestion of the Council and fails to remove the stated law offences/ discrepancies, the Council shall initiate procedures for revoking the broadcasting license on the basis of Article 63, paragraph 1, line 3, in accordance with Article 64 of the Broadcasting Law.

The Broadcasting Council, following the initiation of the procedure for revoking the license, shall make a decision on revoking the broadcasting license after the end of the following 15 days. If the broadcaster after the initiation of the procedure, before the Council

makes a decision to revoke the license, removes the stated offences i.e. discrepancies in Article 11 and regarding the Article 18 of the Act, the Council shall stop the initiated procedures for revoking the license.

### **3. Procedure regarding Article 17 of the Broadcasting Law<sup>2</sup>**

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<sup>2</sup>”The broadcaster is obliged to inform the Council about any change in the ownership structure.

If the broadcaster or the related person by changing the ownership structure acquires a share i.e. shares that in the basic equity of other broadcaster represent more than 10% of his equity, he shall be obliged to file a request for approval to the Broadcasting Council for changing of the ownership structure, in the period counting from the day of the intended exceeding of the participation threshold by 10 %.

The Broadcasting Council is obliged to decide upon the request for change of the ownership structure within 60 days of the receipt of the appropriate and complete request from paragraph 2 of this Article.

If the Broadcasting Council establishes that the intended modification of the ownership structure will create illegal media concentration, he shall recommend to the broadcaster to adjust the changes in such a manner that he will avoid the illegal media concentration.

If the broadcaster fails to act in accordance with the Broadcasting Council's recommendations and makes a change in the ownership structure, so that some of the cases specified in paragraph 6 of this Article will take place, and the law regulations for termination of the validity of the broadcasting license shall be applied before the deadline expires.

The Broadcasting Council shall not approve the change of the ownership structure if he determines that it creates illegal media concentration, especially:

-If the broadcasters, merging with the change of the shares of the physical or legal entities in the ownership structure of the organizations, are gaining a dominant position in the advertising market, so that their share in the total sale in the advertising time on radio or television is more than 30%;

-If the broadcasters merging with the change of the shares of the physical or legal entities in the ownership structure of the organizations, are gaining a dominant position in the formation of the public opinion, so that their share in the total ratings is more than 40% and;

-If the broadcasters on regional and local level, which merge with the change of shares of the physical or legal entities in the ownership structure of the same, provide a coverage of up to the maximum of 50% of the population in the Republic of Macedonia.

The advertising market mentioned in Paragraph 6, line 1 of this Article shall be calculated on the basis of all broadcast advertising incomes indicators, in the year preceding the merger.

The total ratings referred to in paragraph 6, line 2 of this Article shall be calculated on the basis of indicators of the regular audience measuring, for all 12 months in the year preceding the merger.

The broadcasters are obliged to inform the Broadcasting Council, about any kind of change in the ownership structure, by which it makes a change of more than 10% of the broadcaster's nominal assets.

When it is established that the broadcaster, made a change of the ownership structure that represents more than 10% of its capital, without the Council's permission, the Council shall send him a written notice, shall indicate the established state and shall oblige

him to return the ownership structure to the previous position, i.e. in the position before the change without approval took place, within 15 days from the receipt of the letter.

If the broadcaster in this timeframe does not comply with the instructions of the Council and does not return the ownership structure in the previous position before the change took place, the Council shall initiate procedures for revoking of the broadcasting license on basis of Article 63, paragraph 1, line 3 and pursuant to Article 64 of the Law.

The Broadcasting Council, following the initiation of the procedure for revoking of the broadcasting license, is obliged to make a decision for revoking the license, after the expiration of the next 15 days.

If the broadcaster after the initiation of the proceedings before reaching the decision for revoking the license, aligns its working with the regulations of the Act, i.e. return the ownership structure in the previous position, the Council shall stop the initiated procedures for revoking of the license.

#### **4. Procedure relating to the measures of Article 38 of the Broadcasting Law<sup>3</sup>**

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The coverage percentage of the population mentioned in paragraph 6, line 3 of this Article, shall be calculated on the basis of indicators of the latest population census in the Republic of Macedonia.”

<sup>3</sup>“If the Broadcasting Council in carrying out duties that are under his jurisdiction, states infringement of the regulations of this Law and the enacted provisions based on this Law, as well as the conditions determined in the license for conducting broadcasting activities, the broadcaster may be sentenced with one of the following measures:

- a written notice ;
- a written notice with a request for announcement;
- an interim ban on advertising and teleshopping in the period from one to seven days; and
- an interim ban on broadcasting of the program service in a period of maximum three months.

The measure written notice shall be imposed in the case of any kind of offence, mentioned in paragraph 1 of this Article.

The measure a written notice with a request for publishing is imposed in case of when the broadcaster, despite the written warning shall continue performing the same offence for which he has been given the written warning.

The measure an interim ban on advertising and teleshopping in the period from one to seven days shall be imposed in case of violation of the regulations mentioned in Chapters VI and VII of this Law.

The measure of interim ban on broadcasting/transmitting the program service in a period of maximum three months is imposed in the case when the broadcaster, despite imposing the interim ban on advertising and teleshopping continues performing the same violation for which he got the interim ban on advertising and teleshopping.

The measure interim ban on broadcasting program service in a period of maximum three months may be imposed as a first measure of the violation of Article 20, paragraph 12, Article 69 and Article 70 of this Law.

With the decision by which the measures are imposed, paragraph 1 of this Article, it shall also be determined the time limit which cannot be less than seven days and no longer than ten days, in which the offences of this Law must be removed, the introduced regulations based on this law and the conditions determined with the license for conducting broadcasting activity.

#### 4.1 Measures in general

The Broadcasting Law (Official Gazette of the Republic of Macedonia, No. 100/05) has arranged the terms, the manner of broadcasting and the public interest matters in the field of broadcasting.

In the period from 2005 up to this point (mid-November 2012), the Broadcasting Law has undergone several modifications and amendments.

The competences of the Broadcasting Council are enacted in Article 37 of the Broadcasting Law. Among other things, the Council supervises the work of the entities that are carrying out broadcasting activities in terms of respecting the regulations of the Act, the broadcasting license and the Broadcasting Council's acts that are related with the program content and take the provided measures against the broadcasters that do not carry out their duties defined by law, the broadcasting license and the Council's acts.

The Council in accordance with his competences organizes both regular and ad hoc monitoring of the broadcaster's program services. If the Council states a violation of the regulations of the Broadcasting Act and the regulations brought on the basis of the same, as well as the conditions stipulated with the broadcasting license, The Council takes measures in accordance with Article 38 of the Act.

The Council has adopted several laws relating to the program content such as: Rules/ regulations for protection of juvenile audience of the programs that might adversely affect their physical, mental and moral development (Official Gazette of the Republic of Macedonia No.21/07), Conditions of telephone services use, with special charges in programs on radio and television program services (Official Gazette of the Republic of Macedonia No.72/07), Rulebook on the identification of sponsors in radio and TV programs (Official Gazette of the Republic of Macedonia No. 72/07), the Regulation of European audiovisual works ("Off. Gazette of the Republic of Macedonia , No.133/06), Rules for application of the provisions relating to the protection and nurturing the cultural identity ("Official Gazette No.113/06), Rules for the formats of radio and television program services ("Official Gazette of the Republic of Macedonia, No. 113/06, 130/06), Decision on the approval list of events of great importance for the Republic of Macedonia ("Official Gazette of the Republic of Macedonia , No.69/06), Guidelines on the right to short reporting on events that are acquired exclusive broadcasting rights ("Official Gazette of the Republic of Macedonia" No. 133/2006), Decision on classification of radio and television programs ("Official Gazette of of the Republic of Macedonia " No. 21/2007).

#### 4.2 Types of measures and activities

The Broadcasting Council, according to the Law on Broadcasting, may impose one of the following measures to the broadcaster:

- A written notice;
- A written notice with a request for publishing.

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Against the decision of paragraph 7 of this Article, can be filed a lawsuit against to the authorized court within 15 days of receiving the decision. Proceeding in front of the competent court is urgent. The complaint does not postpone the execution of the decision. Measures of paragraph 1, line 1 and 2 of this Article shall exclude the initiation of the infringement proceedings in the case the offences are removed."

- An interim ban on advertising and teleshopping in the period from one to seven days, as follows:

- An interim ban on advertising and teleshopping in a period of one day;
- An interim ban on advertising and teleshopping in a period of two days;
- An interim ban on advertising and teleshopping in a period of three days;
- An interim ban on advertising and teleshopping in a period of four days;
- An interim ban on advertising and teleshopping in a period of five days;
- An interim ban on advertising and teleshopping in a period of six days;
- An interim ban on advertising and teleshopping in a period of seven days.

In case of repetition of the same/identical offence or performing a new offence, it is not necessary to impose an interim ban on advertising and teleshopping, that it is longer in duration than the previously pronounced.

-An interim ban on broadcasting on the program service in a period of 1 day to a maximum of three months (90 days)

An Interim ban on broadcasting on the program service is imposed in days and months. In case of repetition of the same / identical offence or a new offence, it is not necessary to impose an interim ban on transmitting on the program service, that it is longer in duration than the previously pronounced.

-Other activities

The Broadcasting Council, towards the broadcasters, may take the following actions:

- to make suggestions;
- to submit notifications;
- to carry out training.

#### 4.3 Methods and criteria for imposing the measures

The Broadcasting Council, assessing the severity of the stated offence, the previously applied measures, fulfillment performance / non-fulfillment of the pronounced measure by the broadcaster etc. imposes the above measures. They are pronounced as follows:

- A written notice –the Council imposes it in the case of any violation of the provisions of the Broadcasting Act and the regulations adopted on the basis of the Act as well as for breaching of the conditions determined in the license for performing broadcasting activity;
- A written notice with a request for publishing –The Council imposes it only in the case when the broadcaster despite the warning continues to perform the same violation which has been given the written warning, for;

-An interim ban on advertising and teleshopping in the period from one to seven days- the Council imposes it in the case of violation of the provisions of Chapters VI and VII of the Broadcasting Law and

-An interim ban on broadcasting on program service in the period up to three months- the Council imposes it in the case when the broadcaster despite the interim ban on advertising and teleshopping shall continue to perform the same violation which he got the temporary ban on advertising and teleshopping for. The measure interim ban on broadcasting on program service up to three months may be imposed as a first measure in violation of Article 20, paragraphs 1 and 2 of the Broadcasting Law(the duty of the broadcasters, once a year, and no later than March 31, is to publish the date relating to their work in the previous year, as defined in the law), Article 69 (the ban on the broadcasters' program, as well as the programs that are broadcasted through the public communication network, to broadcast programs that are directed towards the violent overthrow of the constitutional Order of the Republic, or at encouragement or incitement to military aggression and flaring-up ethnic, racial, gender or religious hatred and intolerance) and Article 70 (ban on the broadcasters'

programs to contain pornography, excessive violence, or other programs that may seriously jeopardize physical, psychological and moral development of children and youth)

#### 4.4 Methods and criteria for taking other actions

When the Council concludes that the broadcaster had done the violation, under such extenuating circumstances that makes it particularly easy, he can suggest to the broadcaster, with a request, to remove the established violations.

When the Council concludes that the broadcaster incorrectly interprets or applies the indication, to the broadcaster can be sent a notification for further clarification for proper interpretation and application of the implication.

When the Council concludes that the broadcaster/broadcasters have doubts about the application of primary and secondary legislation, in order to prevent his violations, he carries out their training.

#### 4.5 Execution of measures by the broadcasters

The Broadcasting Council is authorized to impose measures, but when it comes for their execution, then it is a broadcasters' obligation.

The measure "written notice" according to the Broadcasting Law is not carried out because the law stipulated a mechanism for not taking actions upon this measure. By imposing the measure written notice to the broadcasters, they must remove the done violations, within 7 days of the receipt of the decision.

While imposing the measures: written notice with a request for publishing, an interim ban on advertising and teleshopping in the period from one to seven days and an interim ban on broadcasting on the program service for a period of maximum three months, in the act that imposes the measure, it is stated the way according which the broadcaster is obliged to carry out the pronounced measure.

-The measure "written notice with a request for publishing", the broadcaster is obliged to perform as follows:

-For television programs services the text "written notice with a request for publishing" to be written on a caption on the entire screen and simultaneously while broadcasting the caption, the text "written reprimand with a request for publishing" to be read by the speaker and in radio program services the text "written reprimand with a request for publication" to be read by the speaker;

-While announcing the text "written notice with a request for publishing" it is obligatory to be specified the following elements: the authority that has pronounced the measure, the title of the measure that is stated; date and time of committing the offense which the measure is imposed for; description of the offense ( on which program service the offence was done, within what show, the manner of doing/ the description of the offence, etc...) , the number of the Article of the Law that is broken; the publication should be announced in the period from 17:00 to 20:00 pm on the television program services, and between 08:00 and 10:00 on the radio program services.

On the published "written notice with a request for publishing" it is not permitted to broadcast any comment.

-The broadcaster's measure "temporary ban on advertising and teleshopping in the period from one to seven days", obliges him immediately and no later than 7 (seven) days of the receipt of the decision, to remove the violations of the Broadcasting Law.

Also, the broadcaster is obliged within 30 (thirty) days from the date of the receipt of the decision to enforce the measure i.e. not to broadcast advertising and teleshopping within the specified period and within eight (8) days from the date of the receipt of the decision, to

notify the Broadcasting Council about the days in which he will not broadcast advertising and teleshopping on its program service.

-The measure “an interim ban on broadcasting on program service in a period of up to three months” is pronounced in the case when the broadcaster, despite the pronounced “an interim ban on advertising and teleshopping”, continues to perform the same/ identical offence which he got the stated measure for.

With the decision to impose measures against the broadcasters because of violating the provisions of the law, the secondary legislation and the broadcasting license, the Council shall determine the deadline which may not be less than seven and no longer than ten days, in order to remove the violations of the law, the regulations based on this law and the conditions stipulated with the license for broadcasting and the deadline in which the measure has to be performed.

The broadcaster is obliged not later than three working days before the execution of the measures takes place: “a written notice with a request for publishing”, “an interim ban on advertising and teleshopping” and “an interim ban on broadcasting on the program service in a period of up to 3 months” to notify the Council of the day (days) and the time when the measures will be carried out.

The days in which the measure is carried out must be consecutive.

#### 4.6. Initiation of infringement procedure

The measures “a written notice” and “a written notice with a request for publication” exclude the initiation of the infringement proceedings, in the case when the broadcaster will remove the violations which these measures were imposed for.

The Council may submit a request for initiation of infringement procedure in the case of:

-Non-compliance with the imposed measures: “an interim ban on advertising and teleshopping in the period from one to seven days” and “an interim ban on broadcasting on program service in the maximum period of three months” by the broadcaster, and

-Committing the same / identical offense by the broadcaster, for which the Council had previously pronounced the measure: “an interim ban on advertising and teleshopping in the period from one to seven days”, and “an interim ban on broadcasting on the program service in the period of up to three months.”



## **II. PUBLIC COMMUNICATION NETWORK OPERATORS**

### **5. Procedure in terms of Chapter VIII of the Broadcasting Law<sup>4</sup>**

#### **<sup>4</sup>VIII TRANSMISSION OF PROGRAM SERVICES VIA PUBLIC COMMUNICATION NETWORKS**

##### **Article 109**

Based on a prior agreement on arranged copyrights and related rights, domestic and foreign program services of the broadcasters are transmitted via the public communication network. The entities that re-broadcast program services via the public communication network are obliged to register the program services in the Council as a whole in a form of a package and at the same time to submit a certificate of arranged copyright and related rights issued by the Ministry of Culture.

The Council shall be notified of any change in the registered package/ program services packages.

The Broadcasting Council shall order an exclusion of a particular program service, unless it meets the conditions of paragraph 1, 2 and 3 of this Article.

##### **Article 110**

The packages of program services that are broadcasted via the public communication network obligatorily and free of charge, contain the program services of public service broadcasting that are financed by the broadcasting fee, aside from the obligations arising from the collective protection of copyright and the related rights.

##### **Article 111**

The packages of program services that are rebroadcasted via the public communication network may contain the program services of broadcasters, only in the area on which they have obtained a broadcasting permission, on the basis of arranged copyright and related rights.

##### **Article 112**

The public communication network shall not obstruct the free reception of radio and television programs, that are transmitted via terrestrial transmitter.

##### **Article 113**

The public communication network operator is obliged to establish an internal TV channel that can only publish information on the functioning and the services provided via its own network.

The Public communication network operator is obliged completely and without interruption to record the output signal of the internal TV channel referred to in paragraph 2 of this Article, and to keep the recordings for at least 30 days following the broadcasting.

##### **Article 114**

The public communications network operator is obliged to provide program services that originate from countries that have not yet ratified the Convention on Transfrontier Television and to be in accordance with Article 69 and 70 and the provisions of Chapter VII of this law."

The public communication network operators shall:

- transmit program services on domestic and foreign broadcasters, which are registered in the Broadcasting Council as a whole in the form of packages, based on a prior agreement on arranged copyright and related Rights and an issued certificate of arranged copyright and related rights of the Ministry of Culture,
- inform the Broadcasting Council about any kind of change of the registered program package,
- rebroadcast - broadcast program services only to broadcasters who are licensed to broadcast for the area in which the rebroadcasting is performed,
- not to interfere the free reception of radio and TV programs rebroadcasted via terrestrial transmitter and,

-establish an internal TV channel which can only publish information on the functioning and the services that they provide via its network.

When it is determined that the public communication network operator, does not comply with the previously mentioned obligations, the Council shall point him out the established condition and shall immediately order him no longer than three (3) days of the receipt of the order, to exclude the program service/ program services that he is not allowed to rebroadcast, i.e. to turn on the program service/ program services that he is obliged to rebroadcast i.e. to set up an internal TV channel.

If, following the conducted supervision, it is established that the operator failed to act upon the order, the Council shall submit a request for initiating an offence procedure at the competent court of law.

**Broadcasting Council  
President**

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**m-r Zoran Trajcevski**