



REPUBLIC OF MACEDONIA  
AGENCY FOR AUDIO AND AUDIOVISUAL MEDIA SERVICES

(courtesy translation)

**To:** Ministry of Justice  
**Attn:** Mr. Adnan JASHARI  
Minister of Justice  
**Subject:** **Information on Ambiguities Detected in the Provisions of the Electoral Code and Request for Clarification**

Dear Mr. Minister,

In accordance with its obligation under Article 76-c of the Electoral Code (*Official Gazette of the Republic of Macedonia*, Nos. 37/96, 80/99, 4/02, 43/03, 19/04, 81/05, 60/06, 73/06, 7/08, 139/08, 114/09, 51/11, 135/11, 185/11, 142/12, 166/12, 55/13, 82/13, 14/14, 196/15), the Agency for Audio and Audiovisual Media Services adopted a *Methodology for Monitoring Election Media Coverage by the Radio and Television Programme Services during Election Processes*, which is available at the following web page: [http://www.avmu.mk/images/Metodologija\\_za\\_monitoring\\_na\\_izbornoto\\_pretstavuvanje\\_preku\\_radio\\_i\\_televiziskite\\_programski\\_servisi.pdf](http://www.avmu.mk/images/Metodologija_za_monitoring_na_izbornoto_pretstavuvanje_preku_radio_i_televiziskite_programski_servisi.pdf).

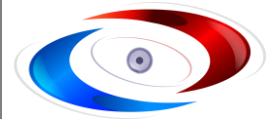
In the course of preparing the document, as well as during the public debate, a number of ambiguities were identified as were a number of dilemmas related to the Electoral Code provisions concerning media coverage. The Agency attempted to resolve some of the issues within the Methodology, but others require clarification.

In this context, we are informing you of the following:

1. The Code, in its Article 76-c, Paragraph 1, envisages that the Agency monitor the election media coverage by not only the broadcasters, but the “electronic media (Internet portals),” as well. The Agency took up a number of activities in order to determine the scope of the term “electronic media (Internet portals)” and the manner in which their monitoring would be conducted. It turned out that there are a number of reasons that make it impossible, above all, to define precisely what an “Internet portal” is, and

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ensure a just and fair, methodologically and scientifically based approach to such monitoring, i.e. impossible for the Agency to carry out monitoring of election media coverage by the electronic media (Internet portals). The regulatory authority summarized all these reasons into the *Agency's Stance regarding the Obligation to Conduct Monitoring of Election Media Coverage by Internet Portals*, which was put up for public debate and adopted by the Agency Council along with the Methodology. We are herewith enclosing the Stance, which is also available at [http://www.avmu.mk/images/Stav\\_na\\_Agencijata.pdf](http://www.avmu.mk/images/Stav_na_Agencijata.pdf).

2. Under the Law on Amending and Supplementing the Electoral Code, of November 2015, a new, Paragraph 2, was added prescribing that the Agency for Audio and Audiovisual Media Services is obligated to submit reports to SEC – weekly reports from the day of announcing the elections until the commencement of the electoral campaign, and daily reports during the campaign – and to publish all of these on its website. It is not clear what these reports are expected to contain. On one hand, the Agency, as an independent regulatory authority, publishes on its website each and every report on supervision conducted in line with the Law on Audio and Audiovisual Media Services and the Media Law, immediately after the report has been prepared and registered in the Agency's Archiving Office. It will be implementing the same practice during the 2016 electoral process, for all infringements of the Electoral Code detected on a daily basis (concerning ads on collecting signatures in support of independent candidates; broadcasting of campaigns financed by public funds; broadcasting paid political advertising before the start of the electoral campaign; rules concerning paid political advertising during campaigning; rules on free political presentation; announcements of results of public opinion polls, observance of the electoral silence, etc.). On the other hand, the assessment of whether the broadcasters have ensured balanced coverage of the elections is made on the basis of the analysis of the coverage throughout the entire election campaign. As explained in the *Agency's Methodology*, this is in tune with the Explanatory Memorandum of Council of Europe's Recommendation R (2007) 15 on the measures related to media coverage of electoral campaigns, which states that "... such a principle should be tested over the whole programme service of a broadcaster, over a period of time, and not necessarily in every individual programme. It is during the overall campaign period that broadcasters must be balanced and represent the different political viewpoints." This is also the principle implemented by the monitoring methodology of OSCE/ODIHR, and the principle that the Agency applied during the previous election processes. Hence, daily reports on the distribution of airtime within the broadcasters' news programmes cannot be published, as such reports are prepared after the end of the electoral campaign.



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3. The Electoral Code (in accordance with the November 2015 amendments) envisages that the Public Broadcasting Service (PBS) should ensure equal access to informative programme (i.e. news programmes) at two levels. The first level is implemented in the way defined by Article 76-a, Paragraph 2, according to which airtime is allocated as follows: “30 % of the time for daily events in the country and the world, another 30 % of the time for the activities of the ruling political parties, yet another 30 % of the time for the activities of the political parties in the opposition, and 10 % of the time for the activities of the political parties that are not represented in the Parliament of the Republic of Macedonia”. The second level is implemented as follows: “the time for reporting about the campaigning activities of the political parties shall be distributed in accordance with the principles of balanced reporting” (Article 76-a, Paragraph 3). Article 76-a, Paragraphs 2 and 3, refer only to political parties, i.e. does not envisage any time within which the PBS would report about the independent candidates, i.e. the candidates of the groups of voters. Due to this, in its *Methodology*, the Agency has recommended to the Macedonian Radio and Television to broadcast the items on independent candidates within those 10 % of the news dedicated to the campaigning of the non-parliamentary political parties and their coalitions.
4. Also, in order to methodologically operationalize the implementation of the obligation under Article 76-a, Paragraphs 2 and 3, a need has occurred to define more precisely the scope of the terms “ruling political parties” and “political parties in the opposition”, due to the changes in the party coalitions and the MP composition of the Parliament of RM. Hence, the Agency has suggested in its *Methodology* that the first term refer to the “political parties that constitute the government coalition at the moment when the decision on announcing elections is made”, while the second term – to the “parliamentary opposition at the moment when the decision on announcing elections is made”.
5. The November amendments have added Paragraph 8 to Article 76 of the Code, under which broadcasters are prohibited from broadcasting free political presentation from the day of announcing the elections until their completion. There must be some kind of confusion here, i.e. this most likely refers to the ban on campaigns of public interest that are broadcasted free of charge and are marked appropriately. This type of broadcasting is different from free political presentation and is already prohibited by Article 83 of the Law on Amending and Supplementing the Electoral Code, published in *Official Gazette of the Republic of Macedonia*, No. 196/15, and Article 75-e, Paragraph 4 of the Electoral Code. If this is not a mistake, then the provision of Article 76, Paragraph 8 is in collision with the provisions on free political presentation by the Public Broadcasting Service contained in Article 76-a, Paragraphs 5, 6, 7, 8 and 9, as well as the obligation under Article 75, Paragraph 2. At the same time, it constitutes a ban on one



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of the legal forms of electoral media coverage, the so-called “direct access to voters”, defined in Article 2, Paragraph 1, Points 22, 24 and 25 of the Electoral Code.

6. The time for paid political advertising has increased under the latest amendments, i.e. Article 75-f, Paragraph 1, envisages 18 minutes of additional time per real hour of broadcasted programme dedicated exclusively to paid political advertising. If one bears in mind the fact that broadcasters also have the regular 12 minutes per real hour for commercial advertising, it turns out to be possible that, within one real hour, half of the time (30 minutes) may be some form of advertising. We must stress that this solution seriously jeopardizes the fulfillment of the legal obligations and programming terms defined by the broadcasters’ licenses.
7. Article 75-f, Paragraph 1, envisages that the time of 18 minutes for paid political advertising (PPA) per real hour be distributed in such a way that maximum 8 minutes shall be allocated to the ruling parties, another maximum of 8 minutes to the parties of the parliamentary opposition that have an MP group, one minute to the parties that have MPs in Parliament but do not have MP groups, and one minute to the political parties that do not have MPs in Parliament. This way of distribution raises the same dilemmas as the distribution of time within the news programmes of the Public Broadcasting Services explained above, in Points 3 and 4 of this letter. In its *Methodology*, the Agency has recommended that the PPA of the independent candidates be broadcast as part of that one minute per real hour dedicated to the non-parliamentary parties, while, with regard to the scope of the terms “position” (ruling parties) and (parliamentary) “opposition”, the positioning of the parties at the moment when the decision to hold elections is reached should be implemented in the PPA as well.

The following questions require additional explanation:

8. During the public debate on the text of the *Methodology*, the broadcasters pointed out that they had dilemmas concerning the sale of time for paid political advertising, within the limits for the government and the opposition. Namely, in line with Article 75-f, Paragraph 1, out of the 18 minutes of additional time for paid political advertising, maximum 8 minutes are for the ruling parties, while a maximum of another 8 minutes are for the political parties of the opposition represented in the Parliament of the Republic of Macedonia. The dilemma raised by the broadcasters, which they seek to be clarified, is whether they may sell all eight minutes dedicated to the ruling parties to a single party or they must set aside time for all, i.e. if they may sell all eight minutes assigned to the parliamentary opposition to one of the opposition parties or they must



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reserve time for all parties of this category participating in the election process, regardless of whether the latter are interested in buying advertising time.

In addition, some of the Agency's indications presented in our previous correspondence regarding the Electoral Code and its amendments still apply. Namely, the ambiguities presented in our letter of 2 November 2015 (our Ref. No. 03-6299/1) remain. These refer to:

1. Free political presentation on the Parliamentary Channel. Although the previous provision on free presentation has been amended, the formulation within Article 76-a, Paragraph 8, on the "three hours" of free political presentation of the campaigns of the political parties represented in the Parliament of the Republic of Macedonia each, i.e. "one hour" of free political presentation of the campaigns of the submitters of lists that are not represented in the Parliament of the Republic of Macedonia, remains unclear. The ambiguity refers to whether the "three hours" and the "one hour" apply to the entire period of the election campaign, or constitute obligations on a daily basis.
2. The issue of paid political advertising by non-governmental organizations in favour of participants in the electoral process remains unregulated.

The remarks contained in the Agency's letter of 18 November 2015 (our Ref. No. 03-6593/1), in which we informed you that no measures had been envisaged against failure to observe the bans on broadcasting advertisements financed from public funds and paid political advertising under Article 82, Paragraph 1, and Article 83 of the Law on Amending and Supplementing the Electoral Code, published in the *Official Gazette of the Republic of Macedonia*, No. 196/15, as well as the printing error in Article 182, Paragraph 1, Indent 3 of the Electoral Code, still apply, as well.

We hope that you will take into consideration these remarks of the Agency for any future revision of the Electoral Code and that you will reply to our dilemmas at your earlier convenience, so that we can ensure consistent observance of the electoral regulations in the forthcoming electoral process.

Yours faithfully,

Agency for Audio and Audiovisual Media Services  
Director,

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(original signed and stamped)

Zoran TRAJCEVSKI, Ph. D.



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