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**AGENCY FOR AUDIO AND AUDIOVISUAL MEDIA SERVICES**

**AGENCY FOR AUDIO AND AUDIOVISUAL MEDIA SERVICES’ POSITIONS AND OPINION ON THE PROPOSED REFORMS IN THE MEDIA SECTOR**

**incorporated in the Programme of the Government of the Republic of Macedonia, Plan 369,**

**the Request for Urgent Media Reforms in the Five Associations/Organizations and**

**the March 2016 Draft Law on Amending and Supplementing**

**the Law on Audio and Audiovisual Media Services**

Many of the ideas presented in the documents on reforms in the media sector are aimed at improving the situation in the media and correspond with the Agency’s positions and considerations. However, some of the solutions offered may negatively affect conditions in this sphere.

The majority of proposed reforms boil down to amending media-related regulations, which have been harmonized with the EU’s Audiovisual Media Services Directive and the European standards pertaining to various fields, ranging from human rights and public broadcasting service to an independent regulatory authority. The Agency wishes to stress once more that the problems in the media sphere do not arise from the laws, but from their implementation. This does not mean that certain legal solutions should not suffer changes, but that these are certainly not urgent or related to the key reasons for the existing situation in the media sector for that matter.

A real reform in this sphere requires placing the focus on the following: media professionalization, i.e. their operation in accord with the journalist standards, principles and ethics; strengthening of the labour and professional rights of journalists and other media workers; improving the conditions for the performance of this business activity and, in particular, increasing the dignity of this profession, improving the safety and security of all media workers, ensuring adequate education for the journalists and strengthening media self-regulation.

The Agency considers that abolishing the broadcasting fee as a public tax would be a really bad decision, although this tax has unfortunately proven to be quite suitable for making all sorts of pre-election party promises.

**BROADCASTING TAX**

1. **As regards the proposal that the Agency and the Macedonian Radio and Television (MRT) should be funded from the Budget of the Republic of Macedonia, we consider that this decision would directly jeopardize the independence (both the political and the financial one) of both the regulator and the public broadcasting service.**

The Introduction of the March 2016 Draft Law on Amending and Supplementing the Law on Audio and Audiovisual Media Services states that *“the mode of financing the public broadcaster so far, based on which the largest portion of funds has been provided through the collection of broadcasting fee from the citizens, has not ensured sustainable or stable financing of the MRT, because the Public Revenue Office, which is responsible for collecting the broadcasting fee, does not manage to fulfill this legal obligation. The MRT is being brought into an absurd situation. The success rate of broadcasting fee collection is around 50 %, while MRT has to pay VAT calculated on the basis of the entire amount that is to be collected.”*

The data obtained from the broadcasting market analyses, which the Agency has been conducting since 2004, and which draw data from the annual financial reports of the MRT, prove the claim that the MRT does have sustainable or stable financing because of the Public Revenue Office to be totally untrue. The biggest decline in revenues resulting from broadcasting fee collection was marked in the period from 2005 until 2008 (when the broadcasting fee amounted to 2.5 % of the average net monthly pay in the preceding three months, and was first charged as part of the electricity bill; then, starting in November 2005, these funds began to be paid directly to the account of the Macedonian Radio and Television). In 2008, amendments and supplements were made to the Law on Broadcasting, which set the amount of the broadcasting fee at 130.00 Macedonian Denars. In November 2010, new amendments and supplements to the Law were adopted, prescribing that “matters relating to the calculation, definition and collection of the broadcasting fee … shall be done by the Public Revenue Office.” In January 2012, the amount of the broadcasting fee was set at 190.00 Macedonian Denars, following which, compared to the years before, the MRT’s revenues coming from this tax started to grow. According to data which are publicly available, ever since the Public Revenue Office took over this task, the success rate of collecting this fee has only been marking a rising trend, as follows: in 2013, the collection rate was 51.75 %, in 2014 – 68.14 %, in 2015 – 75.82 %, and in 2916 – 76.54 %.

Weather the amount of the broadcasting fee (some 37 Euros per year) is sufficient to meet the operational and mission needs of the public broadcaster is another issue. The Agency has also stressed before that the amount of this public tax should not be the result of political decisions, but of a serious and detailed analysis that would determine the size of funds the public broadcaster really needs. For purposes of comparison, the annual broadcasting fee in Slovenia is 153 Euros, in Croatia – 137 Euros, in Austria – from 223.32 Euros to 279.72 Euros for TV and from 65.52 Euros to 82.32 Euros for radio, in Germany – 215.74 Euros for both TV and radio.

Hence, the sustainable and stable financing of the MRT depends on the functionality of the mode of collecting the broadcasting fee and on the timely provision of sufficient funds from the Budget of the state for the programming services which, according to the Law, are financed from the Budget (satellite channels, the Parliamentary Channel, the radio programmes in foreign languages and the radio programmes intended for our expatriates). If the funds for the services financed from the broadcasting fee – to date, two television services (one in the Macedonian language and one in the 6 languages of the ethnic communities living in the RM, and, based on the latest amendments to the Law, one more service that will be broadcasting programme in Albanian only) and three radio broadcasting services – are not sufficient, the existing Law gives an opportunity to provide the remaining amount from the Budget of the RM. In this context, no less important is the issue of appropriately dimensioning the number of programming services provided by the MRT, considering the expenditures for their creation/production.

The proposed manner of financing from the Budget of the state does not ensure the regulator’s independence either. Experience of the regulatory authorities being financed from the state budget show that the provision of funds is being used to exert political influence, while the decision regarding the amount of funds the regulators receive influence the fulfillment of their legal competences. This was also noted in the 2008 Ministerial Committee Declaration on the independence and functions of the regulatory authorities in the broadcasting sector, which states that the usual practice among the majority of regulatory authorities in the CoE member states is to be financed directly from fees charged for the issuance of licenses so that they could be independent from the decisions of the government authorities. In at least one third of all the CoE member states where the regulator authority is financed from the state budget, there are no clear rules that would ensure that the endorsement of the financing of the regulatory authority does not depend on the freedom of decision-making of the state authorities. At the same time, it was noted that the governments in certain states deter from the agreed financing plans and/or use the financing decisions as an advantage in the fight for political superiority.

AGENCY FOR AUDIO AND AUDIOVISUAL MEDIA SERVICES

1. **As regards the proposal that the Members to the Council be engaged professionally with the Agency, working full time, and the intention to replace the current Members of the Council and the Director of the Agency immediately after amending the Law, we wish to point out the following:**

From 1997 to this date, several models have been tried in terms of the composition, election method, mandate duration and type of employment. These changes have often resulted in exerting political influence on the regulatory authority.

The first composition of the Broadcasting Council had nine members with a gradual mandate of two, four and six years, respectively, elected by the Parliament of the Republic of Macedonia on the proposal of the Parliamentary Committee for Election and Appointments. The only officials employed in the Council were the President and the Deputy President. Based on the then new, 2005 Law on Broadcasting Activity, the members of the Council were replaced in 2006, i.e. the mandates of the then members of the Council were interrupted. Under this law, the number of Council Members remained nine, as did their gradual mandates, and they were still being elected by the Parliament – only, this time they were proposed by four authorized proposers and hired as regular employees of the Council. Following the 2011 amendments to the Law, the number of members to the Council rose to 15, while the number of authorized proposers rose to eight. All the members of the Council (the additional six), appointed in line with these amendments, had a six-year mandate.

The Law on Audio and Audiovisual Media Services of 2014 reintroduced the opportunity to re-elect the composition of the Council, i.e. it interrupted the mandate of the then members. This Law established a completely new model of organization of the Agency (as the legal successor of the Broadcasting Council), with two organs: the Agency Council and the Director, with separate competences. The Council consists of seven members, appointed by the Parliament of the RM, on the proposal of six authorized proposers, while the Director is selected by the Agency Council, by way of a public competition. Both the Council and the Director have seven-year-long mandates, with the Director being the only one who has a full-time employment status.

This solution is virtually identical to the one presented in the new proposals for organizing the regulatory authority, the only difference being the increase in the length of work experience required – from 5 to 8 years, the reduced mandate – from 7 to 5 years, and the introduction of the right to one more mandate, which the current law does not envisage. These proposals are not preceded by any analysis of the functioning of the existing organs of the Agency, so as to detect the possible weak points and strengths. This can only lead to repetition of the previous practice where changes were made for the purpose of replacing the decision-making organs in the Agency.

In accordance with the European standards and regulatory practice, the mandate is essentially irrevocable so as to ensure independence from political influence. The mandate may be interrupted only in strictly specified cases prescribed by law. Amendments to the law should not be used to interrupt the mandate of the Council members in order to replace them by new persons, as practice so far has shown.

We wish to underline that the existing law provides mechanisms for the Council Members and the Director to be called to responsibility in case they make harmful decisions, i.e. violate the Agency’s interests. At the same time, it defines precisely the rules for guaranteeing their professional integrity and independence from political and economic pressure, and warding against conflict of interests.

As regards the proposal that the members of the Council should be professionally engaged as full-time employees, we wish to stress, based on the regulatory body’s previous experience, that this type of engagement of the Council Members is not a good solution, as it reduces the efficiency and effectiveness of the Agency while increasing its operational expenditures.

As a whole, the proposal is based on false allegations and has a tendency to discredit the Agency’s work and present the latter as unprofessional. No report by any domestic of foreign organization whatsoever has ever noted that the Agency is unprofessional – quite the contrary. The Agency is being accused of failing to act upon issues over which it has no legal competence (government advertising) or has not been given mechanisms to act upon (political pluralism, hate speech).

**LICENSE FEE**

1. **The 2017-2020 Government Work Programme and the Request for Urgent Media Reforms of the Five Associations/Organizations both propose reduction of the fees the broadcasters pay for their work licenses.**

The Agency wishes to remind that the amount of the license fee has been reduced significantly throughout the years. For purposes of comparison, back in 1998, the national television stations used to pay some 80,000 Euros for broadcasting concessions, while the national radios used to pay 42,000 Euros. These amounts were reduced in 2000, amounting to 64,000 Euros for a national TV concession, and 32,500 Euros for a national radio concession. In 2017, the fees for these licenses amount to some 44,500 Euros for national TVs, and around 20,000 Euros for national radios.

Previous practice has shown that the reduction of the fees has led to decline in media professionalism, the amounts they invest in the programmes and development in general.

The amount of the broadcasting license fee has never constituted an obstacle for entering or the media market or staying there. This claim finds support in the number of existing radio and television stations and the constant requests for new licenses.

Still, the media business differs from any other, as, apart from its own economic interest it should meet the public interest as well. Media play an important role in democratic societies, particularly with regard to freedom of information and pluralism of views. Hence, in our conditions, the amount of this fee should not be made easily accessible to everyone who shows interest to do this business. Consequently, proposals to reduce the fees should be based on realistic assessments of all positive and negative aspects of the solutions proposed.

**QUOTAS FOR THE PROTECTION OF CULTURAL IDENTITY**

1. **As regards the proposal to remove Article 92 of the Law on Audio and Audiovisual Media Services, which refers to quotas for broadcasting music, originally created music and production of domestic documentary and feature programmes,** we hereby stress the following:
* **in principle, quotas should be retained** because protection of cultural identity is one of the goals of media-related regulations and is particularly important for the countries with small production capacities and languages spoken on a geographically limited area; **however,**
* **quotas should be changed in a way** that will not jeopardize editorial freedom and will not constitute too much of a burden for the broadcasters (a smaller percentage required for originally created programme; a new solution with regard to music that would not impose an obligation for its obligatory broadcasting on TV, nor will it impose genre limitations in the selection of music, but will reduce the percentage required from the radios);
* **a new mode should be found to stimulate domestic production,** which would not create direct relations between the broadcasters and the budget funds and state bodies that decide about the amount of these funds, nor will it impose unrealistic, unreasonably short deadlines for the production and broadcasting of programmes subsidized by state budget funds.

**FAIR, BALANCED AND UNBIASED REPORTING**

1. **The Agency agrees in principle with the proposal to supplement the Law with additional provisions concerning political pluralism in the news and daily information programmes.** However, one should bear in mind the fact that the rules on impartial, fair and balanced presentation of diverse political viewpoints, the manner of implementation and the criteria for their assessment should all be defined clearly and precisely. In this, one should make sure in particular that they must not restrict the freedom of expression of either the media or the journalists.

**BUDGET FUNDS SPENDING AND PUBLIC CAMPAIGNS**

1. **As regards the proposals to ban any kind of state advertising in the commercial media outlets and define precisely the term ‘public campaigns’ that will be allowed to be aired free of charge only by the public broadcaster,** we wish to underline the following:
* the request to restrict state advertising is acceptable, however, the restriction should apply to all entities financed by public funds. Nevertheless, one should reconsider the stance demanding a total ban, since some of the activities of the public institutions which the latter need to inform the public about are not covered by the term ‘campaigns of public interest’.
* the campaigns of public interest, according to the European standards, are not interpreted in the broadest sense, but include campaigns that have altruistic goals and are of considerable relevance for the population’s majority. Their broadcasting should be limited only to the public broadcaster because these campaigns should reach the widest audience possible.

The Agency submitted a request for amending the Law on Media to the competent ministry and SEP (Secretariat for European Affairs) some time ago. It requested to define more precisely the obligation for transparency in media financing. Namely, it was requested that the broadcasters submit to the Agency quarterly reports on the entities that have made the orders to air audio and audiovisual commercial communications, while the state bodies, the organs of state administration, the public enterprises, the local governance units, the public establishments and institutions, as well as the legal entities performing public office, should submit quarterly reports about the advertising spots and announcements of public interest they have ordered to be aired free of charge as part of the broadcasters’ programmes. The goal was that the Agency publish these reports on its website so that the public could have an insight into the budget funds spent for advertising.

**GOVERNMENT’S COMMUNICATION VIA THE PUBLIC BROADCASTER**

1. **With regard to the Government’s stance on transmitting communication with the citizens through the public broadcaster, we wish to remind that** the role of the Public Broadcasting Service is to be independent from any state body, public legal entity or trade company and perform an activity of public interest that includes production and provision of radio and television programmes and programming services, by fulfilling its programming obligations, standards and principles strictly defined by Law. Hence, **the MRT is not a service of the public institutions, so that it would air all information that they want to share with the public.**

**PENAL PROVISIONS**

1. **With regard to the penal provisions, the Agency’s stance is that the amounts of fines should be reconsidered, as they need to be proportionate to the weight of the offence committed by a particular media outlet and the amount of influence it has on the public (which depends on the type of the media outlet – radio or TV, and on the level of broadcasting – national, regional or local).**

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Based on the implementation of media-related laws so far, it has been realized that in the interest of protecting the users of the services, there are other legal solutions that can be improved as well – the rules for media ownership, illicit media concentration, the right to reply and correction…

Considering the role and importance that media play in society, the Agency appeals that all legal amendments be well-thought-through and be adopted through an inclusive and transparent process, where all parties concerned would take an active part.