

THE MEDIA
IN MACEDONIAN SECONDARY LEGISLATION

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LIST OF ABBREVIATIONS

AEC	Agency for Electronic Communications
SEC	State Elections Commission
EU	European Union
ZAMP	Musical Copyrights Society of Macedonia
LCAR	Law on Copyrights and Associated Rights
LEC	Law on Electronic Communications
LBA	Law on Broadcasting Activity
PE MRD	Macedonian Broadcasting Public Enterprise
MMI	Collective rights management organization of phonogram producers and music performers "MMI" Skopje
BC	Broadcasting Council

INTRODUCTION

In the period January-August 2013, the Media Development Centre conducted a comprehensive analysis of the secondary legislation pertaining to the media, i.e. an analysis of all aspects and manners in which the secondary legislation touches and intervenes in the position and functioning of the media.

The aim of this analysis, titled “The Media in Macedonian Secondary Legislation”, is to determine the ways in which the by-laws and secondary legislation influence the functioning of the media, i.e. to identify the way in which authorized competent entities intervene and interfere with the operations of the media and the manner in which they perform their social functions.

The analysis uses as a starting point the investigation of the extent to which the by-laws are in line with the Constitution and the laws of the Republic of Macedonia. Among other things, it determines the synchronisation of the by-laws with international standards and the needs of the society. The analysis identifies the positive and especially the negative aspects and voids in the secondary regulation, which is necessary for efficient implementation of the legislation. This Analysis presents a series of recommendations how to overcome the detected weaknesses and appropriate interventions in laws and by-laws, but also in the established practices of the relevant entities.

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METHODOLOGY

This Analysis conducts a comprehensive study of the position of the media in the secondary legislation adopted by different entities and authorities in the Republic of Macedonia that have influence the functioning and operations of the media. More specifically, it analyses the by-laws adopted by the Broadcasting Council, the Agency for Electronic Communications, ZAMP and MMI. In the first instance, the by-laws were analysed from the point of view of their compatibility with the Constitution and the laws from which they arise, and than from the point of view of their compatibility with international standards, the local context and the needs of the citizens.

The by-laws were analysed from the aspect of their compatibility and synchronisation with the international instruments to which the Republic of Macedonia is a member, i.e. whether the state implements the international standards in its secondary legislation. At the same time, it takes into consideration the recommendations of the relevant international bodies and institutions, as well as the established practices in the EU and the member-states.

The analysis focused on the following secondary legislation:

- I. Rulebooks and regulations arising from the **Law on Broadcasting Activity**:
 1. Book of Rules and Procedures of the Broadcasting Council of the Republic of Macedonia
 2. Rulebook on the Funds for Representation of the Broadcasting Council of the Republic of Macedonia
 3. Rulebook on Protection of Minors and Underage Audience from Programmes that may have Harmful effects on its physical, psychological and moral development
 4. Comments to the Rulebook on Protection of Minors and Underage Audience from Programmes that may have Harmful effects on its physical, psychological and moral development
 5. Rulebook on Manner of Identification of Sponsors in Radio and TV Programmes
 6. Rulebook on procedures for financial and accounting operations of the Broadcasting Council of the Republic of Macedonia
 7. Rulebook on Technical and Organization Measures to Ensure Confidentiality and Protection in Processing of Personal Data in the Broadcasting Council of the Republic of Macedonia
 8. Instructions on the exercise of the right to short report from events on which other parties hold exclusive broadcasting rights
 9. Rulebook on Formats of Radio and Television Programming Services

10. Manual of implementation of provisions on protection and nurturing of cultural identity
11. Rulebook for the conduct of the broadcasters in the period before the start of the election campaign
12. Rulebook on Use of Special Tariff Telephone Services in the Programmes of Radio and Television Programming Services
13. Rulebook on European Audiovisual Works
14. Decision on approval of list of events of great importance for the Republic of Macedonia

II. By-laws arising from the provisions of the **Electoral Code**

1. Rulebook for the conduct of the broadcasters in the period before the start of the election campaign
2. Rulebook for equitable access to the media presentation during the election campaign

III. By-laws arising from the provisions of the **Law on Electronic Communications:**

1. Statute of the Agency for Electronic Communications
2. Rulebook on the type and contents of data that the public communication network operators and/or public communication service providers shall be obliged to publish the same in regard to the general conditions for access and use, the prices and tariffs and parameters of quality of the public communication services and the Rulebook for Changes and Amendments thereof,
3. Rulebook on the contents and form of the notification, the required documentation and the registration certificate
4. Rulebook on transparency of operations of the Agency for Electronic Communications and the manner of publication of data and information on the functioning of public communication network operators and/or public communication service providers,
5. Rulebook on Resolution of Disputes

IV. By-laws arising from the provisions of the **Law on Copyrights and Associated Rights:**

1. Statute of the Collective rights management organization of phonogram producers and music performers "MMI" Skopje
2. Statute of the Musical Copyrights Society of Macedonia
3. Rulebook on Compensation Fees for Use of Phonograms and Performances with a Book of Tariffs
4. Rulebook on the Use of Copyrighted Music with a Book of Tariffs

ANALYSIS

I. By-laws adopted on basis of the Broadcasting Law

1) Book of Rules and Procedures of the Broadcasting Council of the Republic of Macedonia

The Broadcasting Council adopted the Book of Rules and Procedures in 2006, in accordance with Articles 34 and 37 of the BL. It was changed and amended on two occasions, and the consolidated text of the Book of Rules and Procedures is available for viewing on the website of the BC.¹

The Book of Rules and Procedures of the BC copies numerous provisions straight from the BL. Thus, articles 2, 4, 12, 24, 25, 26, 27, 28, 33, 35, 39, 41, 42 and 45 of the Book of Rules and Procedures reiterate the provisions of articles 21, 33, 30, 41, 43, 47, 58, 59, 60, 66, 67, 109, 13, 15, 38, 41, 37, 39, 33 of the BL, respectively.

The Book of Rules and Procedures augments the legal provisions on the transparency and public oversight of BC's operations, pertaining to scheduling and holding of sessions, keeping of minutes and precise elaboration of acts adopted by the regulatory body (Chapter II). Of special interest are the provisions of Article 6, which regulate the manner of scheduling of sessions of the Council. Namely, the sessions are announced at least three days before the day on which they are held. That period can be shorter only exceptionally and in cases when the Council has to discuss matters of great urgency. Having in mind the fact that emergency sessions have been announced and scheduled with less than 24 hours notice, and in view of the provisions of Article 33, paragraph 3 of the LBA which prescribes an obligation for the BC to publish the proposed agendas of the sessions, it would be useful and prudent to specify the manner and timing of scheduling and announcement of emergency sessions. For example, the allowed time could be defined as "no less than 36 hours", in order to ensure that the public shall be informed in a timely fashion about the sessions and shall allow ample time of preparation to BC members.

¹ Book of Rules and Regulations of the Broadcasting Council of RM, available at <http://srd.org.mk/images/stories/pod-zakonski-akti/Delovnik%20za%20rabotata%20na%20Sovetot%20za%20radiodifuzija%20na%20RM.pdf>, accessed in February 2013

Also of interest is Article 9, paragraph 4, which provides a possibility to limit the "length of discussions and addresses when dealing with certain matters".² From the point of view of efficiency of operations, the possibility to limit the time allowed for debate and discussion is understandable. On the other hand, the lack of clear definition of the matters to which that provision shall apply, the question arises if it won't be abused in some cases. We believe it would be useful to provide a more precise definition of the matter on which the length of debate and discussion may be restricted.

Article 10, paragraph 3 of the Book of Rules and Regulations prescribes a review and adoption of the Minutes of the previous session. That is a good approach, but the practice shows that the rule is not fully adhered to.³

In the section on the acts adopted by the BC, it prescribes that the Council shall decide, among other issues, to "allow for extension of allowed time for paid political programming during an election campaign" (Article 11, paragraph 2 of the Book of Rules and Regulations). This provision is in line with the provisions of Article 95 of the LBA⁴, but is contrary to the Electoral Code (Article 75a) which doesn't provide an option for the BC to extend the advertising time with a decision. However, the responsibility for that conflicting situation doesn't rest with BC, but with the legislators that allowed for a normative conflict in the legislation and needs to resolve this matter with future changes and amendments to the legislation.

The Book of Rules and Regulations, in Article 20, compensates for the absence of legal definition of competences of the President of the BC. Of special interest are indents 11 and 12 which prescribe that the BC President shall decide on start and termination of employment, on basis of a decision adopted by the Council, but also on other matters pertaining to employment relations. It seems that the competences that the President has over employment issues are quite extensive, and his or her authority is regulated in an internal act of the Council. We recommend a review of those provisions to ensure that the Council shall have greater power of oversight and control.

Article 32 of the Book of Rules and Regulations prescribing that monitoring of broadcasters can be initiated on basis of submissions filed by citizens is worth praising. The question is, however, to what extent is that provision implemented in practice and, along that line of thought, to what extent the Council informs the citizens about that possibility. Therefore, we propose that the Broadcasting Council should actively promote the possibility for citizens to file submissions on

² Article 9, paragraph 4 of the Book of Rules and Procedures of the BC prescribes: "During a session, the chairperson can limit the length of individual presentations and discussion on certain materials considered in the session".

³ For instance, the 34th Session of this year reviewed and adopted the minutes recorded in 29th and 30th sessions.

⁴ Article 95 of the LBA prescribes: "In the course of an election campaign, by means of a special Decision, the Broadcasting Council may license up to 20% additional time for paid political advertising daily, i.e., 20% or 12 minutes additional time for broadcasting paid political advertising for one clock hour".

radio and television programmes and programming services and thus inform the citizens about that possibility.

In the section on changes of ownership structure in a broadcaster, in Article 37, paragraph 2 of the Book of Rules and Regulations, it should be added that a broadcaster shall be obligated to file the request mentioned in the provision to the Council "only in cases when the changes in ownership structure mean that a broadcaster, or other associated person or entity shall acquire a share of ownership that exceed 10% of the principal capital of another broadcaster". The standing provision in the Book of Rules and Regulations implies that a broadcaster is obligated to file a request to the Council on any changes of ownership, contrary to Article 17, paragraph 2 of the LBA, and it has to be changed.

RECOMMENDATION:

The Book of Rules and Regulations of the BC can be made far more consolidated and concise text, having in mind the fact that there is no need for it to reiterate the provisions already listed in the LBA. It needs to be further synchronized and brought in line with the LBA and a number of issues need more precise regulation. Of course, a number of issues raise questions and dilemmas that need to be taken into consideration in order to improve the effectiveness and efficiency of work of the regulatory authority.

2) Instructions on the exercise of the right to short report from events on which other parties hold exclusive broadcasting rights

The Broadcasting Council adopted, on June 9, 2006, the Instructions on the exercise of the right to short report from events⁵ on which other parties hold exclusive rights, with the aim to allow for the exercise of the right to inform the public about all important events and developments of importance for the general public, on which the exclusive rights were acquired by another party.

The Instructions set the terms and conditions for exercise of the right to inform the public, prepare and broadcast a short report from all important events on which exclusive rights have been acquired by another party, and to define the following terms: "Short report", "Important events", "Primary broadcaster", "Secondary broadcaster" and "Exclusive rights".

The Instructions then prescribes that every broadcaster shall be entitled, under equal conditions, to provide information on an event of importance to the public in a short report, through access of the location of the event or by recording the signal of the primary broadcaster. However, in the latter case, the secondary broadcaster can't broadcast the short report ahead of

⁵ BC, Instructions on the exercise of the right to short report from events on which other parties hold exclusive broadcasting rights, available at http://www.srd.org.mk/images/stories/Upatstvo_za_pravo_na_kratko_izvestuvanje.pdf, accessed in February 2013

the primary broadcaster (articles 7 and 10 of the Instructions). The short report can be aired only in regularly scheduled information programmes (news or sports news) (Article 9) and shall not be used more than once, unless it is directly related with another event (Article 12). Also, one cannot produce a whole programme composed of short reports on a series of related events; a short report shall not exceed more than 90 seconds in length (Article 7), and in exceptional cases it can be up to 5 minutes long (Article 160 of the BL).

Conclusions:

The Instructions are in accordance with the LBA (Article 160 and 161), but it should be taken into consideration if it wouldn't be better if the BC adopted this document in the form of rulebook, not a set of instructions, for the reason that the instructions are not legally binding for the broadcasters. Also, the framework of exclusive rights provided by the Instruction is too general, without any actual need for such an approach, and it would be prudent to provide a precise list that would specify exactly the events on which exclusive rights to air a short report could be acquired.

According to the BC Professional Service, which prepared the Instructions, the short reports don't constitute a violation of copyrights because the reporting is restricted only to information programmes (news and sports news) and their length is limited. However, the Law on Copyrights and Associated Rights (Articles 30 and 35) which define the terms "public reporting" and "broadcasting", states that short reports constitute a violation of copyrights by broadcasters engaged in airing of short reports, with the exception of the primary broadcaster who holds the exclusive broadcasting rights.

RECOMMENDATION:

In view of the need for greater protection of the right to inform the public about all events of great importance, the Instructions should be adopted in the form of rulebook. Also, to avoid and prevent any copyright violations, and yet maintain the right to inform the public, changes to the Law on Copyrights and Associated Rights are necessary.

3) Decision on approval of list of events of great importance for the Republic of Macedonia

With the Decision on approval of events of great significance for the Republic of Macedonia⁶, adopted on April 7, 2006, BC determines the list of sports and other events of great significance for the population of the Republic of Macedonia and sets the criteria that an event needs to meet to be considered an event of great importance.

⁶ BC, Decision on approval of list of events of great importance for the Republic of Macedonia, available at http://www.srd.org.mk/images/stories/Odluka_za_listu_na_nastani_od_golemo_znacenje.pdf, accessed in February 2013

The listed criteria include the requirement for the event to be broadcast on television programming services that don't charge additional fees other than the broadcasting fee, i.e. the basic subscription for connection to a public communications network, and to have a wide audience in the Republic of Macedonia (Indent 5).

That requirement protects the right of the public to access events of great importance and eliminated the possibility for a broadcaster, upon securing the exclusive rights to broadcast an event, to deny the ability to follow the event to a large portion of the general population.

Point 5 of the Decision lists other criteria, such as:

- the broadcaster shall cover at least 80% of the population of the Republic of Macedonia with a signal,
- The programming service shall not be broadcast in coded form, and

The Decision prescribes that the events of great importance shall be broadcast in the language spoken by the majority of the population of the Republic of Macedonia (Point 5).

It is prescribed that the events are broadcast live and for their whole duration. In cases of two events taking place simultaneously, or if an event is broadcast between 24:00 and 06:00 hours, Macedonian official time, the qualified broadcasters shall be able to decide for themselves which event will be broadcast live and which will be recorded and broadcast with a delay. The delay of the broadcast of an event shall not exceed 24 hours counting from the moment it happened (Point 4).

Conclusions:

The Decision is questionable because it lists only sports events as events of great importance for the population of the Republic of Macedonia, which creates a possibility for undermining the right of the public to access information on the other events - cultural, artistic events or markings and observations of anniversaries and dates of importance to the Republic of Macedonia. This is due to the fact that the right to broadcast events of great importance for the population of the Republic of Macedonia (and are not sporting events) may be acquired by a broadcaster that doesn't cover the prescribed percentage of 80% of the population, or that broadcaster may charge additional fees for the broadcast of the event.

In the drafting and the adoption of the Decision, i.e. in the deliberation and definition of the list of events of great importance for the population of the Republic of Macedonia, attention was paid only to the required 20% viewers' coverage threshold, which is the main reason why the Decision lists only sports events.⁷

Also, the Decision has not been reviewed or amended to include new events since it was adopted on April 7, 2006.

At the time of adoption of the Decision, BC adhered to the provisions of the Broadcasting Law and the European Convention on Transfrontier Television.

⁷ The information was provided by the Professional Service of the BC

RECOMMENDATION:

The Rulebook needs to be amended to include other events of great importance for the population of the Republic of Macedonia, or adopt a new Rulebook to also cover other events of great significance and not just sports events. This for the reason that it seems absurd that only the events currently listed in the Rulebook should be considered to be events of great importance.

4) Rulebook on European Audiovisual Works

In the Rulebook on European Audiovisual Works, adopted on December 15, 2006,⁸ the Broadcasting Council prescribes the manner in which the broadcasters and the public broadcasting service will ensure the presence of European audiovisual works (refers to broadcasters with national coverage). The Rulebook provides a list of programmes that shall be considered to be European audiovisual works: Feature films and series; documentary programmes; documentary-entertainment programmes; educational; education-entertainment; current affairs documentary programme; cultural, artistic and programmes dedicated to humanities; concerts, music festival, folk dance, ballet and modern dance programmes; operatic performances; comedy shows/series shot on set and on site, and comedies fully filmed in studio; as well as original works in Macedonian language and in the languages of the non-majority communities living in the Republic of Macedonia (Article 2).

The obligation to ensure the presence of European audiovisual works in their programmes shall exempt the following: Television programming services dedicated exclusively to news, sports, games, advertising, teleshopping and teletext services; the television services of MRT that broadcasts in a language other than the Macedonian language that is spoken by at least 20% of the citizens of the Republic of Macedonia, the Parliamentary and the satellite services of MRT (Article 1).

Article 73 of the LBA prescribes that the broadcasts of European audiovisual works have to amount to at least 51% of the total annual broadcast programme, while the Rulebook prescribes that the percentage of European audiovisual works shall amount to at least 10% of the total broadcast programmes in the first year after the adoption of the Rulebook, and to increase by at least 10% per year afterwards, until the 51% threshold is reached (Article 5).

Regarding the broadcasts of European audiovisual works, the Broadcasting Law, in Article 123, prescribes higher percentages for MRT's programmes, i.e. MRT is legally bound to dedicate at

⁸ BC, Rulebook on European Audiovisual Works, available at http://www.srd.org.mk/images/stories/Pravilnik_za_evropski_audiovizuelni_dela.pdf, accessed in February 2013

least 60% of the total annual broadcasts to European audiovisual works, with exception of news programmes, broadcasts of sports events, games, advertising and teletext broadcasts.

Conclusions:

Articles 6 and 7 of this Rulebook prescribe that the broadcasters shall report to the BC, not later than one month from the end of the calendar year, on the manner of implementation of their obligation to ensure representation of European audiovisual works (Article 6). In a case of failure to meet those obligations, the broadcasters are obligated to inform the BC, in writing, about the reasons for their failure to meet their obligations and the measures they implemented to overcome the problem. The failure to meet their obligations doesn't imply that the broadcasters are relieved from the obligation to ensure representation of European audiovisual works in their programmes (Article 7).

The provisions of Article 7, paragraph 2 are not quite clear in terms of what they prescribe. It is likely that the BC, with that position, issues a "warning" to the broadcasters that, if they failed to meet their obligations, they will be sanctioned in accordance with the Broadcasting Law. The broadcasters do meet their obligations to present a report on the implementation of their obligation to ensure representation of European audiovisual bodies, as stipulated in Article 6, but according to the available information⁹, in practice it happens only after a warning was issued by the BC.

RECOMMENDATIONS:

We recommend that changes to Article 7 of the Rulebook are implemented to eliminate any dilemmas and unclear points, i.e. to provide more precise definitions of broadcasters' obligations and the corresponding sanctions for those who failed to adhere to those provisions.

5) Decision on Classification of Radio and Television Programmes

On February 16, 2007, the BC adopted the Decision on Classification of Radio and Television Programmes.¹⁰ It regulates the manner of classification of radio and TV programmes of broadcasters and mainly follows the following classification criteria: media function, programming contents and target group.

Later in the text, the Decision defines the types of programmes: news, information programmes, infotainment programmes, educational programmes, documentary programmes, documentary-entertainment programmes, entertainment, sports, music, arts/culture/humanities programmes,

⁹ Information received from Professional Service of BC

¹⁰ BC, Decision on Classification of Radio and Television Programmes, available at http://www.srd.org.mk/images/stories/Odluka_za_klasifikacija_na_rtv_programi.pdf, accessed in February 2013

games, reality shows, religious services and sermons, and physical culture and recreational programmes. The programmes are also classified in accordance to their target group – children and minors under the 18 years of age, and the Decision also defines several subtypes of programmes with explanation for each individual type and subtype of programme (Article 4).

Conclusions:

The Broadcasting Law doesn't classify the television and radio programmes and the BC adopted the Decision on Classification of Radio and Television Programmes to ensure proper implementation of the Law. Clearly, it was adopted with the aim to make distinction between programming contents, especially in view of the fact that the BC issues the broadcasting license on basis of the programmes broadcast by a broadcaster.

RECOMMENDATION:

Having in mind the fact that six years have passed since the adoption of the Decision, it should be reviewed and, if necessary, updated to accommodate for the changing views and positions.

6) Rulebook on Formats of Radio and Television Programming Services

In the Rulebook on the formats of radio and television programming services¹¹, adopted on October 30, 2006, the BC defines the formats of radio and television programming services and the values of the Kp quotient (0.75 to 1 and 1.15 to 1.5, depending on the format of radio and television programming services).

According to their format, the programming services can be general or specialized. So, a distinction is made between general and specialized formats (for the general formats, the Kp quotient ranges from 0.75 to 1, and for specialized formats, the quotient ranges from 1.15 to 1.5 (Articles 10 and 11).

Furthermore, depending on the amount of spoken contents as a share of total aired programmes, radio programming services may be classified as: Talk radio (over 25% of talk programmes), talk music radio (between 10 and 25 percent of talk contents), music-talk radio (between 5 and 10% of talk contents), music radio (up to 5% of talk contents) (Article 13). The

¹¹BC, Rulebook on formats of radio and television programming services, available at http://www.srd.org.mk/images/stories/Pravilnik_za_formatite_na_rtv_programskite_servisi.pdf, accessed in February 2013

format of talk and talk-music radio is determined on basis of the amount of talk contents, and vice versa.

Conclusions:

In addition to providing definition for the formats of radio and television programming services and the general legal framework of the Kp quotient, the Rulebook also provides detailed distinction of Kp quotients for each individual format. The quotients of radio and television programming services, depending on their format, ranges from 0.75 to 1.5 (articles 10, 12, 19, 21, 23 and 25).

According to the information we received from the BC Professional Service, BC doesn't adopt a Decision for collection of taxes and fees arising from the Law and this Rulebook, but presents the broadcasters with invoices.

RECOMMENDATION:

The fees collected by the Broadcasting Council on basis of said quotients should be charged and collected on basis of a decision, not on basis of presented invoice, having in mind that invoice payments are subject to charges of value added tax.

7) Manual of implementation of provisions on protection and nurturing of cultural identity

The Manual¹², adopted on October 17, 2006, prescribes the manner of implementation of the provisions on protection and nurturing of cultural identity in the broadcasters' programming services, and defines and explains the terms used by the Manual.

Regarding the original programmes produced in Macedonian language or the languages of the non-majority communities in the Republic of Macedonia, the broadcasters are obligated to meet their obligations related to the original programming in the language listed in their permit to perform broadcasting activity (Article 3).

For radio programming services, the mandatory share of originally produced programmes is calculated on the basis of the talk segment of the programme, as a share of the total broadcast time (Article 6).

If original programming has parts of contents spoken in a foreign language, those parts have to be translated into Macedonian language or the languages of the non-majority communities in the Republic of Macedonia (Article 8).

¹² BC, Manual on implementation of provisions on protection and nurturing of cultural identity, available at http://www.srd.org.mk/images/stories/Pravilnik_za_neguvanje_na_kulturniot_identitet.pdf, accessed in February 2013

Regarding the vocal-instrumental music in Macedonian language or the languages of the non-majority communities in the Republic of Macedonia, the mandatory percentage is calculated only for the vocal-instrumental music for a single day (instrumental music shall not be included in the calculation) (Article 2).

The broadcasters are obligated to meet their obligations related to the mandatory percentages in the language of broadcasts of the talk segment in accordance with their licence to perform the broadcasting activity (Article 3).

For MRT, the mandatory percentage of programmes intended for protection and nurturing of cultural identity is set much higher, between 40% and 45% (Article 124 of the LBA). MRT is obligated, on each of its radio programming services, to ensure that programmes originally produced in Macedonian language or the languages of the non-majority communities in the Republic of Macedonia shall amount to no less than 40% of the total daily broadcasts (Article 124 of the BL). MRT is obligated to provide that at least 45% of the total broadcast vocal-instrumental music shall be in Macedonian language or the languages of the non-majority communities in the Republic of Macedonia (Article 124 of the BL).

Conclusions:

In article 74 and 124, the LBA only defines the share of broadcasts of programmes originally produced in the Macedonian language or the languages of the non-majority communities in the Republic of Macedonia as percentage of total annual broadcast time. This Manual extends the solutions provided in the Law and regulates, in more detail, the issue of protection and nurturing of cultural identity.

RECOMMENDATION:

Having in mind the fact that seven years have passed since the adoption of the Rulebook, it should be reviewed and, if necessary, updated to accommodate for the changing views and positions.

8) Rulebook on Technical and Organization Measures to Ensure Confidentiality and Protection in Processing of Personal Data in the Broadcasting Council of the Republic of Macedonia

The Rulebook on Technical and Organization Measures to Ensure Confidentiality and Protection in Processing of Personal Data in the Broadcasting Council of the Republic of

Macedonia¹³, adopted on February 9, 2012, prescribes the technical and organisation measures implemented by the BC to ensure the confidentiality and protection of personal data held and processed by the BC.

Using the definition of “personal data” from the Law on Protection of Personal Data¹⁴ as a starting point, the implication is that the Rulebook on Technical and Organization Measures to Ensure Confidentiality and Protection in Processing of Personal Data in the Broadcasting Council of the Republic of Macedonia protects the personal data of all employees of the BC (whether it refers to some data related to the private, professional or public life). The employees sign a statement on confidentiality and protection in the processing of personal data, accepting the obligation to adhere to the standards and principles of personal data protection, and to implement the measures to secure and protect the confidentiality and protection in the processing of personal data.

The Rulebook was adopted on basis of provisions of Article 37, paragraph 1, indent 5 of the LBA and Article 52 of the Law on Protection of Personal Data which obligates the physical persons and legal entities engaged in processing of personal data to align their operations with the provisions of the Law.

Conclusions:

One general conclusion is that this Rulebook is almost an exact copy of the Rulebook on Technical and Organization Measures to ensure confidentiality and protection in Processing of Personal Data adopted by the Directorate for Protection of Personal Data¹⁵, on basis of the Law on Protection of Personal Data.

In the segment that regulates the management of the media, i.e. the destruction, erasing or clean-up of media, the Rulebook refers to other regulations and rulebooks, specifically to the BC Rulebook on the manner of destruction of documents and the manner of destruction, erasing and clean-up of media and the BC Rulebook on Creation, Archiving and Safe-keeping of Back-up Copies and restoration of retained personal data. We emphasize that the Rulebook on Technical and Organization Measures to ensure confidentiality and protection in Processing of Personal Data of the Directorate for Protection of Personal Data regulates itself those issues and doesn't rely on special rules and regulations and regulates those matters itself.

¹³ Rulebook on Technical and Organization Measures to Ensure Confidentiality and Protection in Processing of Personal Data in the Broadcasting Council of RM, Official Journal of RM, No. 26 of February 21, 2012

¹⁴ Article 2, paragraph 1, point 1 of the Law on Protection of Personal Data defines “personal data” as any information referring to an identified physical person or physical person whose identity can be determined directly or indirectly, especially on basis of the Unique Master Citizen Number, or on basis of one or more distinctive features of his physical, physiological, mental, economic, cultural or social identity.

¹⁵ Rulebook on technical and organization measures to ensure confidentiality and protection in processing of personal data, adopted by the Directorate for Protection of Personal Data, Official Gazette of RM, No. 38, of March 18, 2009

According to the Directorate for Protection of Personal Data, and this Rulebook invokes its opinion, the Rulebook is in compliance with the existing regulations on protection of personal data.¹⁶

RECOMMENDATIONS:

We recommend that a new rulebook is adopted which would also cover and regulate the issues regulated in the Rulebook on the manner of destruction of documents and the manner of destruction, erasing and clean-up of media with recorded information, and the Rulebook on Creation, Archiving and Safe-keeping of Back-up Copies and restoration of retained personal data.

9)Rulebook on procedures for financial and accounting operations of the Broadcasting Council of the Republic of Macedonia

The Rulebook on procedures for financial and accounting operations of the Broadcasting Council of RM¹⁷, adopted on May 25, 2012, prescribes the procedures for financial and accounting operations of the BC, book and accounts keeping, the necessary documents for data processing, recognition and admission of income and expenses, assets inventory, calculation of amortisation and revalorisation, financial reports, calculation, billing and collection of annual fee for the license to perform the broadcasting activity, and other issues related to the financial and accounting operations of the BC.

This Rulebook was adopted on basis of several acts – the Broadcasting Law, Law on Accounting in Non-Profit Organisations, the Rulebook on Accounting in Non-Profit Organisations, the Rulebook on Accounting Plan and Balances of Non-Profit Organisations, as well as the Book of Rules and Regulations of the BC.¹⁸

Regarding the financial and accounting operations of the Broadcasting Council, the LBA prescribes, in Article 145, that the funds for creation and broadcasts of programmes and technical and technological development of the public broadcasting service; maintenance, utilisation and development of the public broadcasting network; regulation and development of broadcasting activity in the Republic of Macedonia shall be secured from the broadcasting fee and from the Budget of RM, in order to achieve and maintain higher degree of programming, technical and technological development of the public broadcasting service.

¹⁶ Opinion of the Directorate for Protection of Personal Data, No. 03-21/1 of January 4, 2012

¹⁷ Rulebook on procedures for financial and accounting operations of the Broadcasting Council of RM, Official Gazette of RM, No. 64 of May 28, 2012

¹⁸ Article 19, paragraph 2, indent 10 which prescribes that the Council adopts decisions, rulebooks, conclusions, instructions, recommendations and other acts.

Article 7 of the Rulebook prescribes that the recognition and admission of income and expenses shall be conducted on bases of adherence to the principle of modified emergence of business changes, i.e. transactions, meaning that the income shall be admitted for the accounting period in which they were created or within 30 days from the expiration of the accounting period, provided that the payment liability was created during the accounting period, in accordance with Article 13 of the Law on Accounting in Non-Profit Organisations.

Conclusions:

The Rulebook has not been synchronized with the changes of the Law on Accounting for Non-Profit Organisations of February 3, 2011, on several important points.¹⁹ Namely, Article 10, paragraph 1 of the Rulebook, copied in full from the Law on Accounting for Non-Profit Organisations, states: "Long-term and short-term assets are listed at purchase value. The procurement value of long-term and short-term assets consists of the purchase price with calculated import customs tariff, the value added tax, transport costs and other expenses that can be directly added to the purchase value, i.e. to procurement costs".

The provision is copied in the Rulebook, but it omits the word "long-term" in the second sentence of the provision.

The Rulebook (adopted in May 2012) also disagrees with the changes to the Law on Accounting for Non-Profit Organisations (adopted in February 2011) in Article 14 of the BC Rulebook which states that the long-term material assets are classified as small inventory, up to 100 Euro in the Rulebook, and up to 300 Euro in the Law.

In the other aspects and segments, the Rulebook is in line with the Law on Accounting for Non-Profit Organisations. Also, the section on the accounting, billing and collection of annual broadcasting license fee is fully in accordance with the LBA and leaves no opportunity, whatsoever, for abuses by the BC.

RECOMMENDATION:

We recommend that the Rulebook is changed to synchronize it and get it in line with the Law on Accounting for Non-Profit Organisations with appropriate interventions in Articles 10 and 14 of the Rulebook.

10) Rulebook on the Funds for Representation of the Broadcasting Council of the Republic of Macedonia

¹⁹ Law on Accounting for Non-Profit Organizations, Official Gazette of RM, No. 24, of April 4, 2003

The Rulebook on the Funds for Representation of BC²⁰, adopted on April 24, 2012, regulates the manner of use of representation funds, the authority to use representation funds, responsibility for purposeful utilisation of those funds, the types of representation activities and procedure for use of representation funds in the Broadcasting Council.

The Rulebook on the Funds for Representation of BC was adopted in accordance with Article 37, paragraph 1, indent 5 of the Broadcasting Law, and Article 19, paragraph 2, indent 10 of the BC Book of Rules and Procedures.

Conclusions:

This Rulebook lists the cases in which representation funds can be used (visits of representatives of state institutions of the Republic of Macedonia, visits of representatives of religious, non-governmental and sports organisations and citizens' associations, etc. (Article 4), but doesn't list specific amounts for individual categories.

Also, Article 5 lists the types of representation funds, i.e. it prescribes that representation funds can be used to serve alcoholic beverages, non-alcoholic beverages, pay for official lunches, brunches, etc., special event gifts (souvenirs, scarves, ties, notebooks, etc.).

Furthermore, Article 7 prescribes that the President of the Broadcasting Council of the Republic of Macedonia or a person authorized by the President shall give approval and consent for the use of representation funds.

RECOMMENDATIONS:

We recommend that some sort of limitation or restriction should be put in place, in terms of the amount or percentage of the total annual representation funds that can be used, for each individual case of use of representation funds.

The same goes for the types of representation listed in Article 5. Although representation funds are provided for in the BC Financial Plan, it still needs a precise definition of the amount of funds that can be used for representation purposes, for each type of representation activity individually. Otherwise, there is space for abuse of representation funds, especially knowing the fact that all members of the Council are entitled to representation funds, not just the President or the Vice-President of the Council.

Also, we recommend to the Council to reconsider the need for the consent and approval to use representation funds to be given by all members of the Council, not just the President of the Council, and for related issues to be decided and reviewed in Council sessions which are open to the public.

²⁰ Rulebook on the Funds for Representation of the BC, available at http://srd.org.mk/index.php?option=com_content&view=article&id=666&Itemid=226&lang=mk, accessed in February 2013

II. POSITION OF MEDIA IN ELECTION PROCESSES

The position of the media in the Republic of Macedonia in election campaigns is regulated with the Electoral Code²¹ and the LBA²². More detailed rules of conduct of broadcasters before and during election campaigns are provided in two by-laws: the Rulebook on the Conduct of Broadcasters Before the Start of the Election Campaign, and the Rulebook on Equitable Access to the Media Presentation in Election Campaign.²³

11) The Position of the Broadcasting Council

The Rulebook on the conduct of broadcasters in the period before the start of election campaign and the Rulebook on fair and equal access to media presentation in the election campaign were adopted pursuant to Article 75, paragraph 1 of the Electoral Code. However, the very provision prescribing the adoption of those acts conflicts with other regulations. Namely, the very provision that prescribes the adoption of those acts is in collision with the 2005 LBA (adopted one year before the Electoral Code), which states in Article 80, paragraph 5 that the "Parliament of the Republic of Macedonia shall hold the competence to adopt decisions on the rules of media presentation in the election campaign via the broadcasters".

Also, we have to bear in mind that the Broadcasting Council adopts the rulebooks after securing a prior opinion by the State Elections Commission. However, the SEC's opinion shall not be binding for the BC. So, it strengthens, in no uncertain terms and without any ambiguity, the position of the Broadcasting Council that, in accordance with Article 21 of the LBA, as an independent regulatory non-profit body with public competencies, takes care, among other things, about the freedom and plurality of expression, independence of the media and protection of citizens' interests in the field of broadcasting.

In this case, the secondary legislation was adopted without securing a prior opinion of the SEC. Namely, the SEC²⁴ reported that it has not issued an opinion on the said rulebooks, and the Minutes of the 9th Session of the BC of April 13, 2011, state on p.6 that: "The members of the

²¹ Electoral Code, consolidated texts (Official Gazette of RM, No. 54 of April 14, 2011), Law on Changes and Amendments to the Electoral Code (Official Gazette of RM, No. 152, of November 13, 2012), Law on Changes and Amendments to the Electoral Code (Official Journal of RM No.31 of February 27, 2013), Law on Changes and Amendments to the Electoral Code (Official Gazette of RM No. 34 of March 3, 2013)

²² Law on Broadcasting Activity (Official Gazette of RM Nos. 100/2005, 19/2007, 103/2008, 152/2008, 6/10, 145/10, 97/11)

²³ Rulebook for Conduct of Broadcasters in the Period Before the Start of Election Campaign and Rulebook for Equitable Access to Media Presentation during the Election Campaign (Official Gazette of RM No. 60 of April 27, 2011)

²⁴ State Election Commission, Correspondence No. 03-1107/3 of July 10, 2013

Council discussed the letter sent by the SEC informing the Council that it can't give an opinion on the Council's rulebooks and demanding additional information on the public debate on those documents. The Council members agreed that such an approach constitutes interference in the competences of the Council and that the adoption of the rulebooks can't be delayed any longer..."

By adopting the rulebook without securing the prior opinion by SEC, the Council raises questions about constitutionality and legality of the procedure and the acts. On the other hand, there is a danger, should SEC postpone and hesitate with providing its opinions, that BC won't be able to adopt the rules.

We should also have in mind Article 145 of the Electoral Code which states that the rules for equitable access to media presentation for the Elections for President of the Republic, after completion of full term in office, are adopted by the Assembly, on a proposal presented by the Broadcasting Council.²⁵ This legal solution is in line with the LBA which states that the Assembly of RM shall have the competence to adopt the rules of media presentation in election campaigns.

At the same time, it should be noted that in accordance with Article 76a, paragraph 2 of the Electoral Code, the Broadcasting Council is the authorized entity that, after determining a violation has taken place, will initiate misdemeanour procedures in front of the a competent court against a broadcaster found in violation of legal provisions.

There is no obligation for the BC to report to or inform the SEC, even in cases of detected violations by the broadcasters, denying the SEC from using its legal competence, mentioned in Article 83, Paragraph 3 of the Electoral Code, to initiate misdemeanour procedures. Thus, the Electoral Code turns the BC into a body that only prescribes the rules of conduct for broadcasters before and during an election campaign, monitors the conduct of the broadcasters, determines if violations were committed and is, de facto, the sole entity authorized the initiate misdemeanour procedures.

CONCLUSION: The BC holds to wide authority in the election process. In absence of control over the rules the implementation of which is overseen by the BC, i.e. the non-adherence to the prescription that BC's rules should be confirmed by the Assembly, and the absence of the legally defined connection to the SEC in terms of mandatory consideration of its opinions on the rulebooks, an obligation to present information on detected irregularities, complaints, etc., the BC goes beyond the framework of being an auxiliary body to the SEC in the election process. Legally, the BC is a body with

²⁵ Article 145 of the Electoral Code states:

„ (1) The Broadcasting Council shall submit a proposed decision about the rules for equal presentation in the media during the election for President of the Republic of Macedonia due to cessation of the mandate in the Parliament of the Republic of Macedonia, at the latest 15 days after elections are called. The Parliament shall adopt the decision within two days after receiving it.

(2) The decision of paragraph 1 of this article shall be published immediately, at the latest within 24 hours, in the "Official Gazette of the Republic of Macedonia".

excessive powers in the election process, which clearly opens the door for abuses by both BC and the broadcasters.

RECOMMENDATION:

The next changes in the Electoral Code should ensure that it will synchronize with the LBA in the segment of who shall be competent to adopt the rules for media presentation in election processes. The relationship between SEC and BC needs to be defined clearly, to prescribe for mandatory reporting on detected irregularities, filed complaints, etc., to allow SEC to use its legal capacity to initiate misdemeanour procedures.

12) Necessity to Adopt Rulebooks

Nobody disputes the need to define the rules for media presentation and conduct of broadcasters during an election campaign. The need arises from the constitutional freedoms guaranteed in Article 16 of the Constitution of the Republic of Macedonia (freedom of public expression of thought, public appearance, public information, freedom of access to information, reception and imparting of information, etc.) and, as a consequence, from the positive obligation of the state to implement all necessary measures to ensure effective exercise of rights and freedoms.

That need was evident already at the time of adoption of the LBA in 2005, when it prescribed that the rules of conduct of broadcasters during an election campaign shall be adopted by the Parliament, on a proposal presented by the BC.

The Electoral Code, however, provides the legal grounds for regulation of broadcasters' conduct not only during, but also before the start of an election campaign. That is a problematic point, knowing that any attempt to put a framework around the freedom of expression means an attempt to restrict that freedom. The adoption of rules that regulate the conduct of broadcasters from the moment an election was called to the official start of the election campaign is a silent admission that, in that period, the political parties and coalitions start with activities for promotion of their candidates, which is especially obvious at the time of election of candidates by party bodies and their official presentation to the public.

If the legislator intended to limit the media presentation of parties and coalition before the start of an election campaign, changes are needed either in terms of the length of election campaign, the start of which de facto coincides with the time the elections are called, or to provide more precise instructions which activities shall be considered prohibited, for example, the paid political advertising but not the broadcasting of debate shows.

The rulebooks are also related to the election campaign, i.e. the length of the campaign. Using that as a starting point, we can identify numerous consequences of the fact that the election

campaign doesn't coincide fully with the whole period since the day on which the elections were called.

Namely, the Electoral Code prescribes that no more than 90 and no less than 70 days shall pass from the day on which elections were called and ballot day (Article 12, Paragraph 4). Article 69a defines that length of election campaign which "starts 20 days before election day and, in the first and the second round of elections, and no campaign activities shall be allowed 24 hours before and on election day". It follows that the period referred to in the Rulebook can't be longer than 70 and shorter than 50 days.

Conclusions: The introduction of regulation on conduct of broadcasters before the start of an election campaign is questionable. It is a sort of restriction of the freedom of expression which, in some circumstances, can open the door to abuses.

Knowing the length of the period from the day on which elections are called to ballot day, it turns out that the period covered by the Rulebook can't be longer than 70 and shorter than 50 days. That is at least two and a half times longer than the election campaign.

RECOMMENDATION: The need to ensure healthy political debate imposes the need to reconsider the necessity of a regulation of conduct of broadcasters in the period before the start of the election campaign. If the view that the conduct of broadcasters should be placed within a certain framework is accepted, then there is a need to reconsider the length of the election campaign or to reconsider the activities that broadcasters may engage in, i.e. the actual moment in time when certain obligations emerge (see below).

13) Rulebook for the conduct of the broadcasters in the period before the start of the election campaign

The Rulebook for the conduct of the broadcasters in the period before the start of the election campaign was adopted on April 21, 2011. Article 1 of the Rulebook defines the area of regulation, i.e. the contents that will be considered forms of election media presentation and which are prohibited in the period before the start of the election campaign, as well as the conduct of broadcasters from the day on which elections were called to the day of the official start of the election campaign.

The Rulebook, in Article 2, defines three terms, as follows: media presentation related to elections, daily-information programmes and special information programmes. Of special importance is the definition for "election media presentation" which is defined as "promotion (direct or indirect) of the views, programmes, platforms, achievements and activities of political parties, coalitions, groups of voters and their representatives".

Article 3 reaffirms the position of the law that the broadcasters are independent and responsible in the creation of programmes and creation of editorial policies. With that, the BC distances itself from any interference and meddling in the operations of the broadcasters, with exception of actions defined by the Law.

Article 4 provides a general prohibition for broadcasters to air election media presentation and determines that from the day on which elections were called to the start of the election campaign, all information on elections can be aired only in daily-information programmes, i.e. in news programmes.

The general prohibition on election media presentation mentioned above, i.e. the direct or indirect promotion collides with several other provisions of the Rulebook. Namely, Article 14 provides an opportunity to the broadcasters to cover elections in special information programmes, which include also talk shows and debates with representatives of political parties, coalition and groups of voters.²⁶ That possibility opens widely the door for indirect promotion of candidates and their programmes. That is especially evident in view of paragraph 3 of Article 14 which states specifically that candidates confirmed by the competent bodies can't take part in such special programmes.

The Electoral Code ties many activities and deadlines to the acts of competent election bodies, i.e. with the confirmation of candidates and candidate lists. There are special deadlines for publication of confirmed lists by the SEC, i.e. for presidential elections, set at no later than 30 days before election day, while for MPs and members of municipal councils, it is set at no later than 25 days before ballot day.²⁷

²⁶ Article 14 prescribes: "The broadcasters can treat the elections as a topic in special informative programs too. In the special informative programs which include discussions or statements of interlocutors, as well as in the programs realized in form of debates with representatives of political parties, coalitions, groups of voters, the broadcasters should enable equitable representation of the political subjects of the ruling and the opposition parties. Candidates confirmed by the competent electoral bodies must not take part in the specialized informative programs."

²⁷ Article 69 prescribes: „(1) The State Election Commission shall publish the verified list of candidates for Election of President of the Republic in the "Official Gazette of the Republic of Macedonia", at the latest 30 days prior to Election Day.

(2) The State Election Commission shall publish the verified lists of candidates for Members of Parliament in the Electoral Districts in the daily newspapers, of which one shall be in the language of the community spoken by at least 20% of the citizens of the Republic of Macedonia, at the latest 25 days prior to Election Day.

(3) State Elections Commission through the Ministry of Foreign Affairs shall deliver to the DCO unified lists for their publication within 48 hours.

(4) The Municipal Election Commission i.e. Election Commission of the City of Skopje shall announce the verified single lists of candidates for Members of Council i.e. lists of candidate for Mayor, by displaying them in all inhabited places and in the polling stations in the municipality, at the latest 25 days prior to Election Day.

(5) The Municipal Election Commissions i.e. Election Commission of the City of Skopje shall post the verified lists of candidates for Members of Parliament in the polling stations in the municipality for which they are competent."

CONCLUSION:

Having in mind the legal deadline for confirmation of lists of candidates, it seems that the prohibition for participation of confirmed candidates in special information programmes, at worst (if candidate lists are announced at the last possible moment), will last for ten days for presidential elections and five days for other elections. For the rest of the time, the broadcasters can organize special information programmes with representatives of political parties and coalitions and their candidates. That situation, when conversation is focused on the achievements and the activities of candidates running in elections can only be viewed as electoral media promotion. That is in collision with Article 4 of the Rulebook!

Obviously, the "confirmation of candidacy" is used as a moment to which the launch of many activities is tied which, in certain circumstances, as in the case with the special information programmes, can be used²⁸ and, eventually, abused. It is a clear consequence of the fact that political parties and coalitions announce their candidates officially long time before the final announcement of the confirmed lists is made by the SEC.

RECOMMENDATION:

The changes of the by-laws on media presentation during elections need to take into account the fact that the media are an extremely important actor in the process of ensuring a healthy political debate in a democratic society. They also have the role to ensure impartial and independent public information. Therefore, the law needs to express the special nature and importance of the media and it means, among other things, that the deadlines need to be tied to other moments, for example, the official announcement of candidates by political parties and coalitions which, surely, won't be in collision with the Electoral Code.

Also, Article 7 of the Rulebook on conduct of broadcasters in the period before the start of election campaign prohibits the airing of advertisements and announcements commissioned by state and municipal bodies, ads and announcements financed from the Budget of the Republic of Macedonia and municipal budgets, from the moment the elections were called to their conclusion. Article 7 of the Rulebook on Election Campaign Period extends that prohibition to advertisements and announcements financed by persons that hold public competencies. That is a fine solution and we recommend that it is included in the Electoral Code.

²⁸ For example, the "Jadi Burek" talk show aired by SITEL 3 TV, on February 18, 2013, before the official announcement of the lists of candidates by SEC, had as guest Vladimir Todorović, the incumbent Mayor of Centar Municipality running for another term in office for VMRO-DPMNE party. The show, hosted by Janko Ilkovski, consisted of actual, and quite legal, promotion of Mr. Todorović as a candidate running for mayor.

14) Rulebook for equitable access to the media presentation during the election campaign

The Rulebook for Equitable Access to the Media Presentation during the Election Campaign (hereinafter the Rulebook), adopted on April 21, 2011, in Article 1, states that it regulates the forms of media presentation during the election campaign, the manner of ensuring equitable access to the media presentation for all participants in the election process, and the manner of reporting during the campaign silence period. It reiterates that the Rulebook doesn't interfere in editorial policies or independence of broadcasters.

Article 2 of the Rulebook defines the terms it uses, providing definitions for seven terms and expressions: "organizers of election campaign", "forms of election media presentation", "daily information programmes", "direct access to the audience/voters", "free of charge political presentation", "paid political advertising" and "special information programmes".

The first conclusion is that the definitions have several defects. Namely, the first term "organizers of election campaign" doesn't correspond to the definitions of terms in the Electoral Code, which defines, in Article 2, point 14, the organizer of election campaign as "a person authorized by a political party, coalition or group of voters that organizes the election campaign". The Rulebook extends the meaning of that term to cover "candidates, political parties, coalitions or groups of voters that organize and/or participation in election campaign". Thus, all entities and persons participating in an election campaign are considered to be organizers of election campaign, without being a concrete authorized person.

Articles 3 to 10 elaborate on the general principles of media presentation during an election campaign. So, the Rulebook defines the obligation of the media to cover the elections in a fair, balanced and impartial manner, and to allow equal conditions for access to all forms of election media presentation. One obstacle to such an equitable access to all forms of election media presentation is the possibility given to broadcasters and print media to appear as donors to campaigns (see below in the section on the Electoral Code).

Also questionable is Article 5 which states that, in addition to forms of election media presentation²⁹, "broadcasters shall have editorial freedom to use **other programmes** for election coverage", while respecting the principle of balanced reporting and allowing equal access to the media to all organizers of election campaigns. Article 5 exempts from that rule the programmes intended for children and minors. In a situation in which the "other programmes" that can be used for election coverage are not precisely defined, Article 5 opens the room to use, in fact, all programmes to provide election coverage. That is clearly in collision with Article

²⁹ Article 2, point 2 of the Rulebook defines that "Forms of electoral media presentation are the daily informative programs, programs that enable direct access of organizers of the election campaign to the audience/voters and the specialized informative programs"

76, paragraph 4 of the Electoral Code which defines that "Broadcasters may not air paid political advertising in news programmes, special information programmes, educational and programmes intended for children, and in broadcasts of religious, sports, cultural, entertainment and other events".

Article 6 of the Rulebook elaborates on the principle of balanced election coverage by prescribing that, for presidential and mayoral elections, media presentation needs to be conducted in accordance with the principle of equality, while in elections for members of parliament and municipal councils, the principle that applies is the proportionality in accordance with the number of confirmed lists of candidates. Later, Article 13 defines the obligation for the broadcasters to ensure, in the reporting in daily-information programmes, balanced coverage of activities in accordance with the principle of proportionality, while Article 18 provides an obligation for the public broadcasting service to provide free-of-charge political presentation in accordance with the principle of proportionality. The same principle applies for the special information programmes, in accordance with Article 28 of the Rulebook.

The provisions mentioned above seem to award the BC too extensive discretionary right to set the rules for media presentation. Namely, Article 6 regulates the obligation of the broadcasters to ensure equitable access to election media presentation, mentioned in Article 75, paragraph 5 of the Electoral Code, yet, it does it with definition of additional principles.

It is a logical question, first, whether the authority to adopt rulebooks includes the discretionary right of the BC to define additional principles. Furthermore, we ask if it is acceptable for the aim of a healthy political debate to depend on the confirmed lists of candidates. Of course, the presentation needs to follow certain criteria and comparison with the practices abroad shows that it is most commonly done in accordance with the size of political parties or the number of seats won in previous elections.³⁰

Article 7 is a fine solution which is justified from the point of view of true political contest, but it has to be included in the Electoral Code (see above, in the section on the Rulebook, Point 12).

Article 22, paragraph 1 of the Rulebook allows for broadcasts of 15 minutes of paid political advertising per real hour of broadcasts. On the other hand, the Electoral Code defines that same time limit as "additional" advertising time. The BC's intent doesn't differ from the intent of the legislators, as stated in the Electoral Code, which is evident from the reading of Article 23 of the Rulebook which states that the additional advertising time, in accordance with Article 93 of the LBA, can't be used to air paid political advertising. However, Article 95 of the LBA allows for "at most 20% of additional tie for paid political programmes, i.e. 12 minutes of additional time dedicated to broadcasts of paid political programmes per real our of broadcasts.

³⁰ ACE Electoral Knowledge Project, The ACE Encyclopedia: Media and Elections, available at <http://aceproject.org/ace-en/topics/me/onePage>, accessed on August 15, 2013, pp. 106-109

The solutions on the additional advertising time offered by the Rulebook and the Electoral Code (Article 75a) are contrary to the Law on Broadcasting Activity. The first question that arises is why does the Electoral Code regulate an issue already defined by the LBA (in Article 93), which regulates all issues in the area of broadcasting. The additional time, as defined by the Broadcasting Law, probably is not sufficient for the political parties. However, we should not miss the fact that one international instrument, the Convention on Transfrontier Television, ratified by the Republic of Macedonia in 2003, in Article 12, paragraph 2 provides precise definition of the advertising time that can't exceed 20% of an hour of broadcasts.³¹ **Such a legal set-up in the Electoral Code is a violation of accepted international obligations and, by extension, the provision is also in collision with the Constitution.**³²

Article 25 of the Rulebook is also very interesting. It reiterates the legal solution of Article 75a, paragraph 4 of the Electoral Code which states that price lists for paid political advertising can't be changed during an election campaign. It is interesting, however, that the provision prescribes that the prices defined by the commercial broadcasting companies "have to be the same for all organizers of election campaigns". Does it mean that in practice there are different price lists for different election campaign organisers?

Article 27 of the Rulebook prohibits the paid political advertising, in spite of the fact that it is already prohibited by the provisions of Article 76, paragraph 3 of the Electoral Code. There is, however, a major difference: The Rulebook prohibits the paid political advertising in "**live broadcasts of religious, sports, cultural, entertainment and other events**" while the Electoral Code places a ban on all broadcasts, live or delayed. The wording of the provision in the Rulebook opens enough space for abuses and violations of legal provisions.

The special information programmes, in accordance with articles 28 and 29 of the Rulebook, need to ensure an equitable access to the media, in accordance with principles of proportionality, i.e. equality, and can't be used as a form of paid political advertising. The Electoral Code, in Article 76, prohibits the paid political advertising in the special information programmes, while the Rulebook explicitly prohibits the use of such programmes as a form of paid political advertising. However, it is clear that the application of the principle of proportionality *de facto* puts the special information programmes as a function of political promotion and presentation which opens the door to abuses.

Regarding the section of the Rulebook that refers to the publication of findings of public opinion polls, the question is if paragraph 2 of Article 31 of the Rulebook needs to be reviewed and revised. Namely, that paragraph prescribes that the results of public opinion exit polls conducted on ballot day can't be aired before 19:00 hours, the time of closing of ballot stations. First of all,

³¹ Law on Ratification of European Convention on Transfrontier Television and the Protocol for changes to the European Convention on Transfrontier Television (Official Gazette of RM, No. 18 of March 21, 2003)

³² Article 118 of the Constitution states "The international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law."

if certain violations of proper voting procedure are detected, polling stations can be closed before 19:00 hours. However, even if no violations took place, the counting of ballots is conducted after 19:00 hours. The question is whether the airing of public opinion polls should be conducted after a set time.

In the section on campaign silence, the Rulebook states, in Article 33, that the campaign silence period starts 24 hours before ballot day and ends at 19:00 hours on ballot day, after the closing of polling stations. This is especially problematic matter, knowing that the Electoral Code, in Article 69a, paragraph 2, prohibits campaigning activities on ballot day, without setting a specific timing for the end of the prohibition. So, one by-law restricts the time frame defined by the Electoral Code, which will surely have effect on the behaviour and conduct of broadcasters. We also have to bear to mind that the regular shortening of the campaign silence amounts actually to five hours, but if there are incidents and a need to close polling stations early, the campaign silence will end for those ballot stations before 19:00 hours on ballot day.

At the same time, Article 34, paragraph 2 specifies all media activities of the broadcasters that may constitute violations of campaign silence. According to the Rulebook, however, at the closing of polling stations, that ban is lifted and broadcasters are free to air any information that functions as instrument of some entity's campaign, which is a problem knowing that at that time, the election process is ongoing and is in the stage of counting the ballots, filing of reports, etc.

Article 36 of the Rulebook regulates the fact that, on ballot day, before 19:00 hours and the closing of ballot stations, broadcasters can't air statements of candidates running in the elections, organizers of election campaigns, politicians, political party leaders and holders of offices in the government. The second indent states that the broadcasters can't air "statements by citizens and other entities and persons the work as a function of election campaign". The question is, which are the said "other entities and persons". It would be useful if that provision is more detailed and specific!

Conclusions: The definitions of terms don't correspond to the definitions provided by the Electoral Code. The elaborated principle of balanced media presentation seems to give too great discretionary rights to the BC. The solutions on the additional advertising time offered by the Rulebook and the Electoral Code are contrary to the Broadcasting Law and ultimately, in collision with Article 12 of the Convention of Transfrontier Television.

Furthermore, the Rulebook narrows down the ban on paid political advertising only to live broadcasts. It also provides for a shorter length of campaign silence period.

RECOMMENDATIONS: Interventions are necessary in the Rulebook to synchronize its definitions with the definition provided by the Electoral Code. We recommend a review of the principle of balanced media presentation. To adhere to the accepted international obligations arising from the Convention on Transfrontier Television, intervention is need in both the legal provisions and the solutions offered in the by-laws.

Interventions are needed in several articles of the Rulebook to align them with the legal solutions provided by the Electoral Code, eliminate some inconsistencies and specify some issues and make them more precise.

III. PROTECTION OF MINORS AND YOUTH

The media go through a process of dramatic and rapid changes. The technical and technological development leads to a situation in which the media are increasingly accessed by the young audience via mobile devices, including video games, and the number of on-demand media services grows constantly. Also, the social networks gain importance in both individual and social sense domain.

The progress opens many new possibilities for the young audience, but in terms of protection of youth and minors, it primarily presents a challenge to the parents in terms of realisation of their responsibility for the upbringing of their children, but also for the state which has to ensure the freedom of information for children and protect their physical, psychological and moral development.

15) EU Practice

The protection of young audience in the media is an issue increasingly in the focus of interest in the European Union. On basis of two recommendations of the European Council and the European Parliament³³, the European Commission prepared, in 2011, the “Protecting Children in the Digital World” report.³⁴ The report states that providers of services increasingly implement measures to fight the illegal and harmful contents through self-binding steps/ethical codes, but the protections differ and the EU calls for constant advancement and monitoring of existing instruments. It recommends introduction of phone-lines for reporting harmful contents and

³³ 1998: Council Recommendation of 24 September 1998 on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity (98/560/EC, OJ L 270, 07.10.1998 P. 48–55

(<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998H0560:EN:NOT>)

2006: Recommendation of the European Parliament and of the Council on the protection of minors and human dignity and on the right of reply in relation to the competitiveness of the European audiovisual and online information services industry of 20 December 2006 (2006/952/EC, OJ L 378, 27.12.2006, p. 72–77 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006H0952:EN:NOT>))

³⁴ European Commission, REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on the application of the Council Recommendation of 24 September 1998 concerning the protection of minors and human dignity and of the Recommendation of the European Parliament and of the Council of 20 December 2006 on the protection of minors and human dignity and on the right of reply in relation to the competitiveness of the European audiovisual and online information services industry - PROTECTING CHILDREN IN THE DIGITAL WORLD-, COM(2011) 556, Brussels, 13.9.2011

greater involvement of internet providers in protection of young audiences. The restriction of access for young audiences is conducted, on one hand, with categorisation according to age and classification of contents, and on the other hand through adherence to the categorisation and classifications which is the primary responsibility of the parents.

In terms of categorisation by age and classification of audiovisual contents presented in cinemas, on DVD, television or the internet, there are legal obligations in 21 member-states³⁵ and in Norway, while in 13 member-states there are coregulatory and self-regulatory obligations.³⁶ Denmark plans to introduce coordinated classification and categorisation for films, DVDs, television and on-demand services and the system would cover all technologies and all contents that could cause serious harm on the young audiences.

Also, 13 EU member-states believe that the system of categorisation needs to be improved, and some countries emphasize the lack of sufficient control of contents in films made for cinema and DVDs. 16 member-states apply different classifications for the same contents depending on whether they are screened in a cinema, published on DVD, aired on television or posted on the internet, and the lack of consistency between the member-states is noted as a problem for consumers to understand the system. Although nine member-states believe that cultural identity is more important and that there is no need for cross-media classification systems, the majority of the member-states – 15 of them - believe that a pan-European classification system would help and should be established.

The European Union rules on protection of minors in television programmes are part of the Audiovisual Media Services Directive³⁷, which introduces a system of so-called "gradual regulation" in accordance to which the rules for protection of minors in regard to on-demand services are less restrictive than the rules that apply to traditional broadcasters. The explanation lies in the fact that the users of on-demand services can decide what and when they will watch, an option that is not available to the viewers of television programmes.

In **14 member-states³⁸**, **television broadcasters have established a system of co-regulation/self-regulation in the area of protection of minors.** Eleven of those systems also include codes of conduct.³⁹

³⁵ Austria, Belgium (French linguistic community), the Czech Republic, Denmark, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, the Netherlands, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and the United Kingdom.

³⁶ Austria, Bulgaria, the Czech Republic, Estonia, Germany, Greece, Latvia, the Netherlands, Poland, Slovenia, Sweden and the United Kingdom.

³⁷ The EU Audiovisual Media Services Directive 2010/13/EU

³⁸ Austria, Belgium, Bulgaria, Cyprus, Finland, Germany, Greece, Italy, Luxembourg, the Netherlands, Poland, Romania, Slovenia and Spain.

³⁹ Austria, Belgium, Bulgaria, Cyprus, Finland, Germany, Italy, Luxembourg, Romania, Slovenia and Spain. In the Czech Republic there is no common unified system for the broadcasters. The individual broadcasters adhere to their own ethical codes dedicated to the protection of minors.

In Greece, the media legislation demands from broadcasters to join multilateral self-regulatory agreements. The Swedish media council calls on the broadcasters to implement self-regulation instruments. In Estonia, a self-regulation system for protection of minors is in the process of preparation. Portugal doesn't have an integrated system of co/self-regulation, but the three leading broadcasters have signed agreements that define a system for classification of television programmes. In Poland, a self-regulatory system has been established because broadcasters didn't act in accordance with their declared positions on the matter. In the UK, the regulatory authority Ofcom has signed a co-regulatory agreement with the Advertising Standards Authority which covers the area of television advertising. In Hungary, the two commercial broadcasters with national coverage have adopted a code of ethics covering the afternoon and evening programmes.

Regarding the legal force and execution of ethical codes, in Bulgaria and Spain, the failure to act in accordance with the self-regulatory codes constitutes a violation of administrative law and operators may face adequate sanctions.

As far as the issues of warnings about harmful contents, the EU Directive⁴⁰, in Article 27, prescribes an obligation for the member-states to ensure that the programmes carried in an uncoded form shall be marked with an acoustic warning or visual symbol for the duration of the broadcast. However, **in 14 member-states⁴¹, there is a legal requirement for on-screen icon accompanied by acoustic warning about programmes with potentially harmful contents**, while in Italy that issue is regulated in a code of conduct. In Bulgaria, Cyprus, Denmark, the UK and in the German and Flemish communities in Belgium, the law allows the broadcaster to choose between on-screen icon and an acoustic warning. In some states, the law requires only placing of an on-screen icon⁴², while in Estonia, the law demands only acoustic warning.

In 13 member-states⁴³, the broadcasters use technical filtering equipment or software, usually integrated into the TV decoders or hard-disc recorders, in order to prevent minors from accessing the harmful programmes. In Spain and in Cyprus, such equipment is available only for TV channels that require subscription.

In Germany and Romania, there are so-called pre-locking systems which require from the viewers to enter a four-digit PIN code to open the programmes. In Germany, the digital providers can pre-lock potential harmful programmes, while in Romania the digital providers are obligated to use pre-locking for transmissions of programmes intended for persons over 18 years of age.

⁴⁰ The EU Audiovisual Media Services Directive 2010/13/EU

⁴¹ The Czech Republic, Finland, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Malta, the Netherlands, Romania, Slovenia, Spain and Sweden.

⁴² Austria, France, the French linguistic community in Belgium, Poland, Portugal and Slovakia.

⁴³ Austria, Belgium (the French speaking community), Bulgaria, Cyprus, Germany, Italy, Latvia, Poland, the Netherlands, Romania, Spain, Sweden and the United Kingdom.

Regarding the **on-demand audiovisual media services (non-linear services)** eight member-states⁴⁴ have established a system of co/self-regulation, and the methods used to restrict the access include the following: classifications on bases of age of audience, combined with the time of airing; restrictions of the technical access, such as filtering, encryption, pre-locking/PIN codes and other systems for verification of age.⁴⁵

The European Commission concludes that member-states increase their efforts in terms of implementation of measures to protect minors in the media. It recommends as the best the policies that include significant component of self-regulatory measures that respond to the needs in a flexible and appropriate manner. It found, however, that the regulatory and self-regulator measures in the member-states lack ambition and consistency with the measures applied in other member-states, as well as effective implementation of those measures. Therefore, the European Commission calls for further measures, in accordance with best practices in the member-states.

Practices in Individual EU Member-States

The protection of children from harmful influence of the media is based on shared responsibility between the state and the parents, as evident in the control of providers and categorisation of programmes. It provides a balance between the right of parents to upbringing their children, in accordance, of course, with certain strict conditions. Thus, the right of the parents to ultimately decide what they may see as harmful for their children is respected. On the other hand, the practices in terms of categorisation of programmes differ greatly between different member-states.

In **Germany**, the federal Law on Protection of Minors prescribes that if an audiovisual product intended for cinematic and media distribution/sale doesn't produce risk for minors, it should be classified. The classifications according to the age of viewers are: "Without age restrictions", "For viewers above 6 years of age", "For viewers above 12 years of age", "For viewers above 16 years of age" and "X-rated". The responsible bodies for classification are the Supreme Regional Youth Bodies, supported by two self-regulatory bodies (Self-regulatory Organization of the Film Industry and the Self-regulatory Organisation of the Entertainment Software Industry). The oversight is implemented by the regional regulatory authorities and their responsible body – the Commission for protection of youth from harmful media influence. Therefore, in Germany there is a co-regulatory system in place. The providers meet their obligations through restricted time of broadcasts, classification of contents or blocking/encryption. Furthermore, the Self-Regulatory Organisation of Providers of Multimedia Services introduced software for age-based

⁴⁴ Bulgaria, Belgium (French speaking community), the Czech Republic (only for advertising), Germany, Ireland, Poland, Sweden and the United Kingdom.

⁴⁵ In Latvia, the providers must cover the harmful pictures and indecent language is covered with beeping tones.

categorisation of programmes⁴⁶ so that every programme passes through the software and is allocated a designation the is carried for the whole duration of the broadcast/transmission.⁴⁷

Finland, too, has introduced a co-regulatory system of content control. In accordance with the Law on Audiovisual Programmes, the classifications in accordance to the age are as follows: "For all viewers" or for viewers above 7, 12 or 16 years of age, respectively. Programmes intended for adults are not classified. The access to contents for children is regulated with selection of time of transmission, use of technical means or other methods to confirm the age of viewers. Aired/transmitted contents have to be marked with an appropriate age symbol and pictogram describing the contents. In accordance with a Law adopted in 2012, the Finish Centre for Media Education and Audiovisual Programmes, working under the auspices of the Ministry of Education and Culture, is responsible for the implementation of the legal provisions.⁴⁸ The Centre keeps a register of responsible persons of media providers and responsible for classification of audiovisual programmes, and the introduction of software for classification of programmes is also prescribe.

In **France**, there is a co-regulatory instrument for protection of children, in accordance with the 1986 Freedom of Communications Act (it was last amended in 2009). In accordance with the Law, the audiovisual contents are classified in accordance with the following age-groups: Category I (all ages), Category II (older than 10 years), Category III (over 12 years of age), Category IV (over 16 years of age) and Category V (inappropriate for children and youth under the 18 years of age). There is also an obligation to mark the programme with a pictogram, including at every mention of the respective programme, for example, in catalogues or advertisements.

Providers of on-demand services can air Category IV programmes in the watershed between 22:30 and 05:00 hours. The contents intended exclusively for adults can be offered only by subscription and pay-per-view services. Since July 2012, the access to adult contents has to be protected special personal code activated at the first use. Before July 2012, Category V contents could be aired only at specific times of the day. Services that require check of age are provided after the user has submitted a copy of the personal ID card.⁴⁹

The Netherlands changed its legislation in 2008 and in 2009, to bring it in line with the EU legislation. The Law on Media establishes a co-regulatory system for the providers and most of the contents they distribute. It is composed of a self-regulatory body supported by the television broadcaster, and the oversight and control are conducted by the media regulatory authority (Commissariat voor de Media). The classification of contents in accordance with age and monitoring of classification is entrusted to the Netherlands Institute for Classification of

⁴⁶ See at www.alterklassifizierung.de

⁴⁷ European Audiovisual Observatory, Protection of Minors and Audiovisual Content On-Demand, IRIS Plus 2012-6, Strasbourg, pp.13-16

⁴⁸ See at http://meku.fi/images/meku_laki_711_2011_en.pdf,

⁴⁹ European Audiovisual Observatory, Protection of Minors and Audiovisual Content On-Demand, IRIS Plus 2012-6, Strasbourg, pp.18-19

Audiovisual Media (NICAM), established in 2001. The system covers the contents unsuitable for minors under 16 years of age.

NICAM's membership is composed of film producers and distributors of audiovisual contents, as well as public and private broadcasters. The Law on Media prescribes that the NICAM rules shall apply to the public broadcasting on-demand services, but they are also mandatory for the commercial providers that agreed to adhere to NICAM rules.

NICAM created a system in which trained members of the personnel of the media providers (so-called coders) classify a given content through completion of an online form. The rating is provided by the software ("For all ages", "Over 6 years of age", "Over 12 years of age", "Over 16 years of age") on basis of the information entered by the coders, and simultaneously one or more pictograms are assigned that illustrate the risks brought about by the content.

Television broadcasters members of NICAM can broadcast only material that "might" be harmful for the development of children. The commercial providers of non-linear audiovisual media services may transmit contents that can seriously harm the development of children only if they provide guarantees that such material usually can't be accessed by an audience that needs protection.⁵⁰

In **Slovakia** the protection of children from media contents is implanted, among other things, with the following designations: "For all audiences", "Over 7 years of age", "over 12 years of age", "Over 15 years of age" and "over 18 years of age". The obligation for classification falls on the producer of the audiovisual work, or the distributing company. The oversight and control are conducted by the Slovakian Broadcasting and Re-Transmission Council.⁵¹

In **Slovenia**, the Agency for Postal and Electronic Communications (APEC) conducts the oversight of television broadcasters and providers of on-demand audiovisual media services, in accordance with the legal provisions on protection of children and minors. The rules on protection of children are listed in a bylaw adopted by APEC, and the competent minister adopts and act that regulates the visual and audio warnings about contents. It is prohibited to air contents that can cause serious harm to physical, mental or moral development of children. The ban is not so strict for the providers of on-demand services, provided that they have in place proper technical protection.

Then, contents inappropriate for children under 12 years of age can be broadcast in the watershed after 21:00 hours, the contents inappropriate for children under 15 years of age can be broadcast after 22:00 hours, and contents inappropriate for children under 18 years of age can be broadcast in the watershed between 24:00 hours and 5:00 hours on the following

⁵⁰ European Audiovisual Observatory, Protection of Minors and Audiovisual Content On-Demand, IRIS Plus 2012-6, Strasbourg, pp.19-20

⁵¹ European Audiovisual Observatory, Protection of Minors and Audiovisual Content On-Demand, IRIS Plus 2012-6, Strasbourg, pp.20-22

morning. At the same time, the contents need to be accompanied with proper visual and auditory warning about their harmful nature.⁵²

16) Protection of Children in the Media in the Republic of Macedonia

One study of the differences of rating of films in the countries of Europe emphasizes that, in spite of the common aim which is to protect the children, the differences between individual countries originate in the different concepts of childhood, adolescence, and the role the state and the parents play in the upbringing of the children.⁵³ It notes that the harmonization of standards in protection of children in the media in Europe requires understanding of the cultural context, the mentality, philosophy and even the world-view, as well as the concepts of childhood, adolescence and upbringing.⁵⁴

The understanding of cultural context of others assumes that one understands, in the first place, his or her own cultural context and environment. In that regard, the Republic of Macedonia has to work to improve the protection of children in the media, which means an overview of achieved positive results, detection of weaknesses, analyses, implementation of proper measures and activities, etc.

The protection of young audience in the media is an issue very much in the focus of attention of LBA. Thus, we have Article 27, paragraph 3 which bans special-tariff phone services in education and children programmes, as well as airing of advertising and teleshopping spots in programmes for children with planned airtime not exceeding 30 minutes (Article 100, paragraph 2).

The provisions dedicated specifically to protection of children and minors are listed in Articles 70, 71 and 88 of the LBA. Article 70 prohibits broadcasts of pornographic contents, gratuitous

⁵² See at <http://www.apek.si/protection-of-children-and-minors>

⁵³ For example, the British society accepts the assumption that the youth have limited self-control and lack emotional strength, that they easily identify with unacceptable behavioral models, so the legislators have the responsibility to decide what is good/bad and the state has prominent role in the upbringing of children. The situation is similar in Germany where the opinion prevails that the youth can't reach their own opinion based on experience and the state has to do it for them. There is little trust in the capacity of parents to have effective influence on the upbringing of children, and that task is entrusted on a state supervisory body, with emphasized need for greater control and restriction of children's access to media contents. Regarding younger audiences, there is a belief that screens depicting problematic subjects, like divorce procedure or domestic violence, can have especially harmful effect.

France, Sweden, Portugal and Ireland emphasize the role of parents in the upbringing of children. They believe that the young people are more capable to understand the abstract forms of violence, but they do consider scenes of realistic violence to be especially harmful and emphasize the responsibility of parents to raise their children to use the media responsibly.

⁵⁴ Büttner Christian, The Protection of Minors Against Harmful Media Content in Europe, available at http://www.nordicom.gu.se/common/publ_pdf/180_121-130.pdf, accessed on March 18, 2013

violence and other harmful programmes.⁵⁵ Article 71 defines the time and conditions under which the programming contents harmful for the physical, psychological and moral development of young audiences can be broadcast/transmitted, and prescribes that the BC shall adopt mandatory rules to regulate the manner of categorisation, the forms of acoustic and visual warnings and the times in which contents harmful for young audiences can be broadcast.⁵⁶

Also, Article 88 prohibits advertising and teleshopping aimed at or depicting children to contain messages that can harm their interests and development. It also prohibits advertising and teleshopping from promoting various negative phenomena and activities to children and minors.⁵⁷ Paragraph 3 of Article 88 is especially important and it prohibits involvement and inclusion of children and minors in paid political advertisements during and out of an official election campaign.

55 Article 70 of the LBA prescribes: “The programmes of the broadcasters may not contain pornography, excessive violence, or other programmes that may cause serious damage to the physical, mental and moral development of children and youth.

Excessive violence shall mean distribution of textual, verbal and visual messages which, in time periods available to minors, glorify physical, verbal or psychological forms of violence that are an aim in and of themselves, and that can in no way be justified by the context of the genre, nor by the motives inherent to the fabula of the broadcast programme.

Programme services with pornographic contents may be retransmitted over the public communication networks only in encrypted form”.

⁵⁶ Article 71 prescribes: “Programme contents that could seriously impair the physical, mental and moral development of children and minors, and are not foreseen by Article 70 of this Law may be broadcast only in the watershed between 24:00 and 05:00 hours. The programmes mentioned in paragraph 1 of this Article must be labeled before the start of their broadcasting, with an acoustic or visual warning, noting that they are not recommended for viewing by certain segments of the audience.

The manner of categorization, the forms of acoustic and visual presentation, including the watersheds listed in paragraph 1 of this Article in which contents that may be harmful to the physical, mental and moral development of children and minors may be broadcast, shall be determined by the Broadcasting Council by mandatory rules, as stipulated by this Law and the international treaties ratified or acceded to by the Republic of Macedonia.

The Broadcasters shall be obligated to comply with the provisions of paragraph 3 of this Article.”

57 Article 88, paragraph 2 prescribes: “Advertising and teleshopping shall not:

- Directly encourage children and minors to purchase goods or services through abuse of their inexperience and innocence;
- Directly encourage children and minors to demand from their parents or other persons to purchase the advertised goods and services;
- Abuse the special trust between the minors and their parents, teachers and other persons;
- Present children and minors in dangerous situations.”

Violations of provisions of Article 71 shall result in misdemeanour charges against the perpetrators and the BL, in Article 166, paragraph 1, indents 11-13, prescribes fines of €4,000 to €5,000, payable in Denars.

17) Rulebook on Protection of Minors and Underage Audience from Programmes that may have Harmful effects on its physical, psychological and moral development

The Rulebook on Protection of Minors and Underage Audience from Programmes that may have Harmful effects on its physical, psychological and moral development (hereinafter: the Rulebook) was adopted in February 9, 2007.⁵⁸

The Rulebook was adopted in accordance with Article 1, point 5 of the BL, which authorizes the BC to adopt by-laws for implementation of the Broadcasting Law. The specific authority to adopt the Rulebook is listed in Article 71 of the Broadcasting Law which states, in Paragraph 3.⁵⁹

More than six years have passed since the adoption of this Rulebook. In a situation of constantly improving legislation and development of new technology, the question is whether the Rulebook still meets fully the legal requirements in the area of protection of underage audience. We should especially have in mind the technical and technological development that renders media contents increasingly accessible to the young audiences, while from the point of view of a country candidate for EU membership, we have to follow the measures and activities that the Union implements in order to improve the situation in that area.

Article 3 of the Rulebook prescribes mandatory categorisation of the total broadcast programmes of radio and television services, with exception of news and information programmes. The responsibility for the harmful contents aired in news and information programmes shall fall on the editors, and the Rulebook also prescribes an obligation for the anchor/programme host to give a warning with a comment to announce news stories or other elements of the news and information programmes that include harmful contents (Article 4). **The question here is why there is no obligation to air a visual warning signal for the duration of the story/article, if it depicts pictures/scenes harmful for the young audience? That is the recommended approach having in mind that persons with impaired hearing are also part of the audience.**

Article 5 prescribes mandatory acoustic and visual warning only in television programmes, but not in radio programmes.⁶⁰ **This provision is questionable because the LBA, in Article 70**

⁵⁸ Rulebook on protection of underage audience from programmes that may have harmful effect on its physical, psychological and moral development. (Official Gazette of RM, No.21 of February 22, 2007).

⁵⁹ Article 71, paragraph 3 of the LBA prescribes that "The manner of categorisation, the forms of acoustic and visual presentation, including the watersheds listed in paragraph 1 of this Article in which contents that may be harmful to the physical, mental and moral development of children and minors may be broadcast, shall be determined by the Broadcasting Council by mandatory rules, as stipulated by this Law and the international treaties ratified or acceded to by the Republic of Macedonia. "

and 71, doesn't make a distinction between television and radio in regard to their obligation to transmit and categorize the contents. On the other hand, we have all sorts of programmes and ads on radio that can have harmful effect on the development of children.⁶¹

Article 6 of the Rulebook prescribes the categorisation and the watershed hours in which individual categories of programmes may be broadcast. There are several categories of programmes in the Republic of Macedonia: First category (intended for all audiences), Second category (programmes that may disturb young audiences and parental control is recommended), Third category (programmes that are not recommended for children under 12 years of age and parental or custodian control is necessary), Fourth category (programmes not recommended for children under 16 years of age with necessary control by parent or custodian), and Fifth category (programmes not suited for audiences under 18 years of age). Article 10 provides clear definitions for the warning signals which are combinations of textual, verbal, acoustic and visual warnings.

Representatives of the BC administration note that the categorisation based on the age of viewers and the 12, 16 and 18 years of age thresholds were chosen after a comparison of experiences in the Netherlands and Great Britain.

It is evident that the categorisation is similar to the systems existing in other European countries. However, regarding the 2nd Category programmes, the Rulebook doesn't mention that they are not recommended for children under 8 years of age, although that remark is included in the Commentary to the Rulebook.⁶² Also, the only difference in the warning signals for the 1st and 2nd category programmes, as defined in Article 10, is in the colours they use and the wording of the disclaimer. It may be good to reconsider a clearer distinction, having in mind that the current set-up raises the question if parents can recognize the differences. We should also have in mind that explanation in the Comments on the Rulebook which states that the Second category programmes may treat serious subject matters, such as deviant behaviour, domestic violence, racism, etc.

In comparison, the regulations in other countries are clear that the programmes are not recommended for children under 6 or 7 years of age. Following the practice in other Western European countries, like Germany, Finland, the Netherlands and Slovakia, a much clear

⁶⁰ Article 5 prescribes: „The acoustic and visual warning is mandatory applied to television programming only, including:

- all types of featured programme and
- those types of documentary, docutainment, entertainment and sport programme, which as a whole or through their parts might harm the physical, mental and moral development of minors.

The warning is not applied to radio programming.“

⁶¹ In the programme “Petar for breakfast and break”, aired by Radio Metropolis every week day between 09:00 am and 12:00 hours, language is used that is not appropriate for small children.

⁶² BC, Comments to the Rulebook on Protection of Underage Audience from Programmes that may have harmful influence on its physical, psychological and moral development, available at http://srd.org.mk/index.php?option=com_content&view=article&id=85&Itemid=50&lang=mk, accessed on March 15, 2013, p.6

statement that Second category programmes are suited for children over 8 years of age is necessary.

The schedule of broadcasts of categorized programmes is defined in Article 7 of the Rulebook⁶³, in accordance with European rules and practices.

Article 8 of the Rulebook places the responsibility for the categorisation of programmes on the editor-in-chief, who shall rely on his assessment based on motives, functionality of information and possible ethical and other social consequences. **The question is if such a responsibility could be entrusted on editors and their capacities for evaluation and assessment, having in mind the fact that the persons responsible for categorisation need to pass special training. Furthermore, in certain cases, the true categorisation can have an adverse effect on the viewers so it is realistic to expect abuses and assigning lower categorisation to the programmes.**

Articles 11, 12 and 13 regulate the manner of use of warning signals, i.e. their airing at the start and during television programme, their duration and the placement on the television screen. It also prescribes that teasers and trailers of programmes can't contain contents that are potentially harmful for underage audiences, that they will carry mandatory visual sign off the appropriate categorisation which should also be present in the programme schedules published in the teletext and in the daily newspapers and periodicals.

The use of warning signals is well regulated in the Rulebook on underage audiences. It remains to be seen how effectively those rules will be implemented by broadcasters, whether BC initiated disciplinary procedures, their outcome, etc.

From the point of view of general public, it is important that the audiences have an option to react in cases of broadcasts of contents harmful for the underage audience. How does the BC stays in contact with the public, has it promoted a phone-line for reporting of harmful contents, etc. It is of equal importance to properly inform the parents about the warning signals and explain their meaning, knowing that the Comments to the Rulebook offer good explanations of different categories of programmes.

RECOMMENDATION: We recommend that the prohibition of advertising and teleshopping in certain programmes listed in Article 89 of the LBA is strengthened with a prohibition that would state that advertisements and teleshopping can't carry contents

63 Article 7 of the Rulebook prescribes: "Depending on the expected composition of audience, the above-mentioned categories of programmes may be broadcast in the following time slots:

- First Category to be broadcast throughout the day and night;
- Second Category to be broadcast from 17:00 until 05:00;
- Third Category to be broadcast from 21:00 until 05:00;
- Fourth Category to be broadcast from 22:00 until 05:00;
- Fifth Category to be broadcast from 00:00 until 05:00"

harmful for the physical, psychological and moral development of children. Also, the categorisation provided for in the Rulebook should also apply to radio programmes.

In view of the fact that childhood is an extremely important period for the development of children, it would be useful if the BC's recommendation from the Comments was made mandatory, i.e. the Second category programmes to be accompanied with a disclaimer that they are not recommended for children under 8 years of age, which would be clearly stated in the warning signal.

We also recommend reconsideration and review the system of categorisation of programmes. The responsibility should be placed on a body that would ensure an objective categorisation of programmes.

Finally, we recommend that parents are properly informed about the warning signals, with explanation of their meaning, and about the possibility for citizens to react in cases of broadcasts of harmful contents.

IV. ELECTRONIC COMMUNICATIONS AND THE MEDIA

18) Rulebook on the contents and form of the notification, the required documentation and the registration certificate

This Rulebook⁶⁴ prescribes the contents and the form of the notification, the required documentation and the registration certificate that legal entities and physical persons need to present to the Agency for Electronic Communications before they start the construction and/or use of public electronic communication networks and/or provide public electronic communications services, any changes in the provided public electronic communications services, or termination thereof.

The notification is an important document that legal entities and private persons have to present to register as users of public electronic communications networks or services, and its importance is reiterated by the fact that, in accordance with the Law on Electronic Communications, a fine of 7-10% of the total annual earnings shall be levied against entities that fail to present a notification.

The notification procedure is regulated in Article 28 of the Law on Electronic Communications, but this Rulebook provides a more detailed regulation of its contents and form.

⁶⁴ Rulebook on the contents and form of notification, required documentation and registration certificate, Official Gazette of RM, No. 143 of November 27, 2009.

The real issue is the basis for the adoption of the Rulebook, having in mind that it was adopted on basis of a provision that was changed with the amendments to the Law on Electronic Communications adopted in 2010. Unlike the old text⁶⁵, the new Article 14, point (a) provides the authority to the Commission to adopt a Statute after it secures prior consent and approval from the Assembly of the Republic of Macedonia. The conclusion that follows is that the Rulebook is not synchronized with the 2010 changes and amendments to the Law on Electronic Communications.

RECOMMENDATION: The Rulebook needs to be amended in line with the changes to the Law on Electronic Communications.

19)Rulebook on the type and contents of data that the public communication network operators and/or public communication service providers shall be obliged to publish the same in regard to the general conditions for access and use, the prices and tariffs and parameters of quality of the communication services

The Rulebook on the type and contents of data that the public communication network operators and/or public communication service providers shall be obliged to publish the same in regard to the general conditions for access and use, the prices and tariffs and parameters of quality of the communication services was adopted by the Director of the AEC on March 18, 2011.⁶⁶ It was changed twice⁶⁷, and adopted on basis of Article 17, point (h) and Article 52, 95 and 97 of the LEC. It regulates the type and contents of data that the public communication network operators and/or public communication service providers shall be obliged to publish, in regard to the general conditions for access and use of public communications services⁶⁸, together with a list of prices and tariffs.

⁶⁵ Article 14, point a) of the LEC (Official Gazette of RM, Nos.13/2005, 14/2007, 55/2007 and 98/2008) stated: „The Commission has the following competences: a) adopts the Statute and other acts of the Commission“.

⁶⁶ Rulebook on the type and contents of data that the public communication network operators and/or public communication service providers shall be obliged to publish the same in regard to the general conditions for access and use, the prices and tariffs and parameters of quality of the communication services, Official Gazette of RM, No. 35 of March 22, 2011.

⁶⁷ Rulebook on changes and amendments to the Rulebook on the type and contents of data that the public communication network operators and/or public communication service providers shall be obliged to publish the same in regard to the general conditions for access and use, the prices and tariffs and parameters of quality of the communication services, Official Gazette of RM, No. 89 of July 16, 2012 and Official Gazette of RM, No.124 of October 5, 2012.

⁶⁸ The public communication services covered by the Rulebook are: public fixed telephony services, public mobile telephony services, public talk services via package commutation networks (Internet Protocol and other protocols), public services for transfer of data, public

The Rulebook obligates the public communication network operators and/or public communication service providers to public the general conditions⁶⁹ for access and use of public communications services on their websites and at their retail sale points. It also obligates the AEC to publish it on its website in order to allow the citizens to make an informed choice of communication services that they will use. Also, the Rulebook prescribes that the access is provided on basis of signed contract, upon prior request to conclude a subscription agreement. In a case of technical inability to satisfy a request, it is placed on a waiting list, and in a number of limited cases, such as natural disasters, *force majeure*, state of war or state of emergency, an order in which the requests will be considered is defined.⁷⁰

In accordance with Article 8 of the Rulebook, the subscriber status is considered established on the day of signing of subscriber agreement, and the rights and obligations shall enter into force on the day of activation of service. Also, it defines in detail what information every subscriber agreement should contain to allow that users are fully informed, and it specifies that the annexes and the forms signed to activate/deactivate a service, as well as the electronic recordings from operators' records (SMS messages, audio recordings, web-mail, electronic mail, etc.) shall be an integral part of the subscriber agreement.

Article 8, paragraph 6 determines that the mandatory period of contractual obligation shall be set at 12 months, while the longest mandatory period to be covered by a subscriber agreement is set at 24 months. Also, the obligations arising from subscriber agreements can't be renewed or extended by default. The deadlines in which a subscriber can request a termination of a subscriber agreement is left to be determined by operators and/or providers of services (Article 26).

The prices and charges for access and use, defined in the pricelists, have to be publicly available and accessible to the users in the retail sales points of operators and/or providers of services and on their websites (Article 13), and it also specifies the manner of payment of compensation fee for use of public communications services (Article 15) and the reimbursement

services of rental of lines, public services of distribution of radio and television programs via cable or other public communication network, added value services.

⁶⁹ The general conditions listed in Article 3 of the Rulebook refer to: manner of access and conclusion of subscriber agreement; list of services; list of prices and tariffs; manner of payment; rights and obligations of the operator and/or provider of services; rights and obligations of subscribers; quality parameters; information on conditions and manner of use of terminal equipment by subscribers in accordance with technical specifications; limited or interrupted access; shutting down a subscriber; the right to complain and appeal; termination of subscriber agreement.

⁷⁰ The order defined in Article 6 is as follows:

- the bodies of state administration and units of local self-government;
- the Army of the Republic of Macedonia;
- state bodies, organizations, institutions and enterprises and commercial companies performing public competences;
- the broadcast media.

of funds in certain cases (Article 17). The Rulebook also specifies the obligations of operators and/or providers of services (Article 19), and the rights and obligations of subscribers (articles 20 and 21). It determines the approved list of cases in which the access to public communication services can be limited or interrupted (Article 22), as well as the cases in which a subscription can be terminated.

It is important that it guarantees the right to complaint and appeal to the subscribers (Article 25). At that, it prescribes short deadlines for legal action (15 days to file a complaint or appeal and 15 days for the decision to be made), which means that it aims to make the procedures urgent and efficient. The subscribers have the right to seek protection from AEK, and the Agency has 42 days to rule on the initiative. That period of time seems excessively long.

From the viewpoint of the media, the Rulebook is important because it regulates the public services of distribution of radio and television programmes via cable network or other public communication network (Article 40). It prescribes an obligation for the operators and/or providers of services to develop the network in a manner that would ensure connection to all entities active in its area of operations, and that the distribution of radio and television programmes shall be simultaneous, full and uninterrupted. It also prescribes a ban for operators and/or providers of services to turn off an existing common antennae system. It provides that, on request submitted by a subscriber, technical possibility should be put in place to ban the access to certain channels or to install an activation code for access to those programmes. An additional provision prescribes that subscriber agreement shall define the minimal number of different radio or television channels that will be delivered for the duration of a subscriber agreement, and an obligation to publish information whether the format of transmission of broadcasters' programmes shall be done in SD or HDTV technology.

CONCLUSION: The period left to AEC to decide on subscribers' complaints and appeals seems too long.

RECOMMENDATION: The period left to AEC to decide on subscribers' complaints and appeals seems should be reconsidered. It should correspond to the nature of each individual communication services and, if necessary, different deadlines should be defined for different services. The aim should be to meet the interests of the users of public communication services in a timely and effective fashion.

|| 20) *Rulebook on Resolution of Disputes*

The Rulebook on resolution of disputes, published on AEC's official website⁷¹, was adopted by the AEC Commission on September 1, 2008. It is based on the provisions of Article 14, point (a), and related to Article 9, point (u) and articles 122 and 123 of the Law on Electronic Communications (Official Gazette of the Republic of Macedonia, Nos. 13/2005, 14/2007, 55/2007 and 98/2008).

The Rulebook is entered in AEC records under No. 11-201/1, on September 1, 2008, and is signed by Sofče Jovanovska, AEC President. The Rulebook was not published in the Official Gazette of the Republic of Macedonia, and it states, in Article 54, that it shall be published on the Agency's notice board and its website, and shall enter into force one day after its publication on the notice board.

On the official website of AEC, the Rulebook on changes and amendments to the Rulebook on Resolution of Disputes is posted, adopted by AEC on February 25, 2011. However, no records number is listed, it carries no signature by an authorized person, and has no provisions on entry into force, publication, etc.

There are many open and problematic issues surrounding this Rulebook, which raise the question of its legal power. First, there is the question of the basis for adoption, since the Rulebook was adopted on basis of a provision in the LEC what was changed in the amendments adopted in 2010. Unlike the old text⁷², the new Article 14, point (a) provides the authority to the Commission to adopt a Statute after it secures prior consent and approval from the Assembly of the Republic of Macedonia. The conclusion that follows is that the Rulebook is not synchronized with the 2010 changes and amendments to the Law on Electronic Communications.

Furthermore, the Rulebook on changes and amendments to the Rulebook on resolution of disputes was adopted in 2011 and it changes the old, unsynchronized Rulebook. Also, it was adopted on basis of Article 14, point (f) of the LEC which mentions cooperation with other bodies⁷³, and Article 13, point (c) indent 10 of the Statute which prescribes that the Commission shall adopt the general acts necessary for the operations of the Agency. The legal grounds are problematic knowing that the legal provisions invoked by the Rulebook regulate other issues.

There is also the question of Commission's competence to adopt the Rulebook on resolution of disputes, knowing that Article 14, paragraph (j) authorizes the Commission to adopt general

⁷¹ AEC, Rulebook on Resolution of Disputes, available at http://www.ace.my/index.pup?option=com_content&view=article&id=273%3A2011-07-15-08-10-44&cited=48%3Tawakoni&Itemid=91&Lang=my, accessed on March 21, 2013

⁷² Article 14, point a) of LEC stated: "The Commission has the following competences: a) adopts the Statute and other acts of the Commission".

⁷³ Article 14, point h) of the LEC prescribes: "The commission has the following competences: ... to cooperate with other state bodies and institutions, units of the local self-government and non-governmental organizations and associations of citizens in the Republic of Macedonia; "

acts for operation of the Agency, and in 14th Chapter of LEC, the legislators didn't provide an authority for adoption of by-laws that would regulate the rules on resolution of disputes.

There can be no equation sign made between the rules of operation of AEC with the rules on resolution of disputes, having in mind that the latter touch on the interests of third parties, i.e. the entities that can enter disputes in accordance with articles 122 to 133 of the LEC.

Article 122, paragraph 3 of the LEC prescribes that "Unless otherwise stipulated by this Law, the Agency shall apply the provisions of the Law on General Administrative Procedure to the dispute resolution procedures of the Agency". Contrary to that provision, the Rulebook on resolution of disputes introduces provisions (Article 5, 7 and 11) that derogate the provisions of the Law on General Administrative Procedure and introduces subsidiary application of the Law on Mediation (Article 12-20). The provisions on arbitration (Article 21-52) define the rules of standing arbitration, which is in collision with Articles 131 and 132 of the LEC that prescribe greater disposition of will of the parties on the manner in which the procedure will be led.

Finally, its legal power is questioned in view of the fact that the Rulebook is not published in the Official Journal of the Republic of Macedonia. Article 52 of the Constitution of the Republic of Macedonia prescribes mandatory publication of laws and regulations in the Official Gazette of the Republic of Macedonia.⁷⁴ The general by-laws have to be published in the Official Gazette to be able to get the status of integral part of the legal order in the Republic of Macedonia and to produce legal effects. That is not the case with the Rulebook on Resolution of Disputes and its amendments.

CONCLUSION: The legal grounds invoked by the AEC Commission for the adoption of the Rulebook and its amending with the existing positive law regulate other matters. The Rulebook is not published in the Official Journal of the Republic of Macedonia, which questions its legal power.

RECOMMENDATION: In accordance with the changes to the LEC, the first recommendation is to review the competence of the AEC Commission to adopt a by-law to supplement and further elaborate the legal provisions on resolution of disputes defined by the LEC. In order to be adopted, a rulebook needs to be in accordance with the legal provisions. Finally, the Rulebook has to be published in the Official Gazette of the Republic of Macedonia.

⁷⁴ Article 52 of the Constitution states: "Laws and other regulations are published before they come into force. Laws and other regulations are published in "The Official Gazette of the Republic of Macedonia" at most seven days after the day of their adoption. Laws come into force on the eighth day after the day of their publication at the earliest, or on the day of publication in exceptional cases determined by the Assembly. Laws and other regulations may not have a retroactive effect, except in cases when this is more favourable for the citizens."

21) Rulebook on transparency of operations of the Agency for Electronic Communications and the manner of publication of data and information on the functioning of public communication network operators and/or public communication service providers,

The Rulebook on transparency of operations of the Agency for Electronic Communications and the manner of publication of data and information on the functioning of public communication network operators and/or public communication service providers, published on the official website of AEC⁷⁵, was adopted by the AEC Commission on September 1, 2008. It was adopted in accordance with the provisions of Article 14, point (a), and related to Article 9, points (s), (x) and (bb) of the Law on Electronic Communications (Official Gazette of the Republic of Macedonia, Nos. 13/2005, 14/2007, 55/2007 and 98/2008).

The Rulebook is entered in AEC records under No. 11-201/1, on September 1, 2008, and is signed by Sofce Jovanovska, AEC President. The Rulebook was not published in the Official Gazette of the Republic of Macedonia, and it states, in Article 29, that it shall be published on the Agency's notice board and its website, and shall enter into force one day after its publication on the notice board.

The Rulebook elaborates in detail the legal provisions on transparency of AEC operations. There are, however, several problematic issues.

First, there is the question of the basis for the adoption of the Rulebook, having in mind that it was adopted on basis of a provision that was changed with the amendments to the Law on Electronic Communications adopted in 2010. Unlike the old text⁷⁶, the new Article 14, point (a) provides the authority to the Commission to adopt a Statute after it secures prior consent and approval from the Assembly of the Republic of Macedonia. The conclusion that follows is that the Rulebook is not synchronized with the 2010 changes and amendments to the Law on Electronic Communications.

Then, Article 3 of the Rulebook states that "The Agency shall publish its decisions and other acts and publicly available information and data on the notice board of the Agency or in the Official Gazette of the Republic of Macedonia, in the mass media and on its website". Article 52 of the Constitution of the Republic of Macedonia prescribes mandatory publication of laws and

⁷⁵ AEC, Rulebook on transparency of operations of the Agency for Electronic Communications and the manner of publication of data and information on the functioning of public communication network operators and/or public communication service providers, available at http://auk.my/index.pup?option=com_content&view=category&id=48&Itemid=91&Lang=my&limit_start=10, accessed on August 10, 2013

⁷⁶ Article 14, point a) of the LEC used to state: "The Commission has the following competences: a) adopts the Statute and other acts of the Commission".

regulations in the Official Gazette of the Republic of Macedonia.⁷⁷ The general by-laws have to be published in the Official Gazette to be able to get the status of integral part of the legal order in the Republic of Macedonia and to produce legal effects. The same is true of the Rulebook on transparency of operations of the Agency for Electronic Communications and the manner of publication of data and information on the functioning of public communication network operators and/or public communication service providers.

CONCLUSION: The legal grounds invoked by the AEC Commission for the adoption of the Rulebook and its amendments regulate other matters. The Rulebook on transparency of operations of the Agency for Electronic Communications and the manner of publication of data and information on the functioning of public communication network operators and/or public communication service providers was not published in the Official Gazette of the Republic of Macedonia, a fact that brings into question the Rulebook's legal power.

RECOMMENDATION: The Rulebook needs to be amended in line with the changes to the Law on Electronic Communications. Finally, the Rulebook has to be published in the Official Gazette of the Republic of Macedonia.

⁷⁷ Article 52 of the Constitution states: "Laws and other regulations are published before they come into force. Laws and other regulations are published in "The Official Gazette of the Republic of Macedonia" at most seven days after the day of their adoption. Laws come into force on the eighth day after the day of their publication at the earliest, or on the day of publication in exceptional cases determined by the Assembly. Laws and other regulations may not have a retroactive effect, except in cases when this is more favourable for the citizens."

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