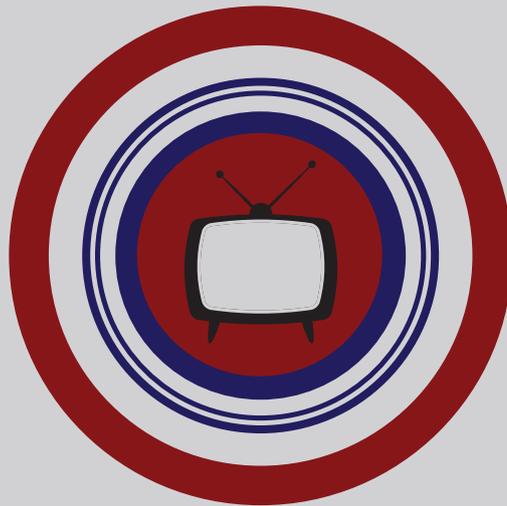




# ANALYSIS

of the Decisions Adopted by the Broadcasting Council  
(July 2011 – June 2013)



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**ANALYSIS OF THE DECISIONS  
ADOPTED BY  
THE BROADCASTING COUNCIL**

(July 2011 – January 2013)



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## Introduction

This analysis covers the work of the Broadcasting Council (hereinafter BC or the Council) on the implementation of the rules and regulations for pursuit of activities in the Macedonian media space, with the aim to provide directions and recommendations for future improvements. That aim arises from the need to ensure full and consistent realisation of the aim of the Law on Broadcasting Activity (hereinafter the LBA), as defined in Article 2 of the Law.<sup>1</sup>

The analysis focuses, above all, on BC's actions regarding the violations of the LBA committed by the broadcasters, and on a number of internal rules and regulations of the Council.

The analysis covers a period of 24 months, from July 1, 2011 to June 30, 2013. During that period, the BC conducted regular monitoring of the work and operations of broadcasters (in accordance with BC's monitoring programme and acting on submissions filed by the citizens). To be able to analyze the actions of the BC regarding the respect for electoral rules, we also analyzed the actions and procedures related to the Early Parliamentary Elections in April 2011 and the Local Elections held in March 2013. In the preparation of the analysis, we used the following materials:

- o Laws and By-Laws
- o The Law on Broadcasting Activity ("Official Gazette of RM" Nos. 100/2005, 19/2007, 103/2008, 152/2008, 6/2010, 145/2010, 97/2011, 13/2012 and 72/2013);
- o The Law on Electronic Communications ("Official Gazette of RM" Nos. 6p.13/2005, 14/2007, 55/2007, 98/2008, 83/2010, 13/2012, 59/2012, 123/2012 and 23/2013);
- o The Electoral Code ("Official Gazette of RM" Nos. 40/2006, 136/2008, 148/2008, 155/2008, 163/2008, 44/2011, 51/2011, 142/2012 and 31/2013 and 34/2013);
- o The Law on Copyrights and Associated Rights, ("Official Gazette of RM" Nos. 6p.115/2010, 140/2010 and 51/2011);
- o Law on Misdemeanours ("Official Gazette of RM" Nos. 6p.62/2006, 69/2006 and 51/2011);
- o Rulebook on Protection of Minors and Underage Audience from Programmes that may have Harmful effects on its physical, psychological and moral development ("Official Gazette of the Republic of Macedonia", No. 21/2007);
- o Rulebook on European Audiovisual Works ("Official Gazette of RM" Nos. 133/2006);
- o Rulebook for equitable access to the media presentation during the election campaign ("Official Gazette of the Republic of Macedonia" No. 60/2011);
- o Rulebook for equitable access to the media presentation during the election campaign ("Official Gazette of the Republic of Macedonia" No. 60/2011);
- o Book of Rules and Regulations of the BC (Consolidated text of January 31, 2012<sup>2</sup>, with the changes and amendments adopted on July 25, 2012<sup>3</sup>);
- o Minutes recorded in BC sessions held in the period from July 1, 2011 to June 30, 2013.

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1 The Law on Broadcasting Activity states, in Article 2, that its aim is to: "The freedom of expression in the broadcasting activity, in accordance with the Constitution of the Republic of Macedonia and the international treaties ratified and acceded to by the Republic of Macedonia; - the protection of interests of users; - the encouragement, improvement and protection of the cultural identity, educational and scientific development. Encouraging the development of creativity, the language and traditions in broadcasting activity; - the improvement and stimulation of competition in broadcasting activity and the development thereof; - transparency, independence and non-discrimination in regulatory processes; and - an independent and efficient public broadcasting service."

2 Available at <http://www.srd.org.mk/images/stories/pod-zakonski-akti/Delovnik%20za%20rabortata%20na%20Sovetot%20za%20radiodifuzija%20na%20RM.pdf>

3 Available at <http://www.srd.org.mk/images/Delovnik%20za%20izmenuvanje%20na%20delovnikot%20-%202029%20sednica.pdf>

Only the minutes publicly available on the website of the Council were taken into consideration<sup>4</sup>.

- o Analyses and reports prepared by the BC
- o Analysis of all implemented measures and issued warnings by the BC against broadcasters, and the most common violations committed by broadcasters in the period January 1-June 30, 2013<sup>5</sup>
- o Analysis of all implemented measures, reports and issued warnings by the BC against broadcasters, and the most common violations committed by broadcasters in the period July 1-December 31, 2012<sup>6</sup>
- o Analysis of all implemented measures, reports and issued warnings by the BC against broadcasters, and the most common violations committed by broadcasters in the period January 1-June 30, 2012<sup>7</sup>
- o Report from the monitoring of media coverage of Early Parliamentary Elections 2011<sup>8</sup>
- o Report from the Media Coverage of Election Campaign for the 2013 Local Elections<sup>9</sup>
- o Report on the Work of the BC for the period January 1-December 31, 2012<sup>10</sup>
- o Report on the Work of the BC for the period January 1-December 31, 2012<sup>11</sup>

The analysis offers an overview of the normative and functional framework that regulates the position of the BC and its rules of operation and conduct, taking into consideration the basic Law on Broadcasting Activity and the by-laws arising from it, as well as the specific rules that arise from the Electoral Code and function as *lex specialis* rules. On a parallel track, it analyses and makes adequate conclusions on BC's actions related to its obligation to monitor the adherence of the broadcasters to their rights and obligations, as set in the LBA and the Electoral Code.

In accordance with the selected methodology, this document analyzes the actions of BC from the point of view of the types of violations and the respective decisions and sanctions that the Council applied for the given violation to different broadcasters that committed it, and in cases of a broadcaster repeating one violation. That approach shall help us determine the general tendency of BC's actions on violations that are same by character (charged on the same legal grounds) committed by different broadcasters, and the actions against a single broadcaster repeating the same violations on several occasions. At the same time, we should bear in mind the fact that the information are mostly taken from the Minutes recorded in sessions of the Council and, due to the limited scope of information offered in the minutes, certain qualitative elements, such as the argumentation and the positions on certain issues are not always available in the scope necessary to fully analyze the case in hand. The description of the detected situation and the names of the involved broadcasters have been

4 Minutes from the 18th Session of April 10, 2013 and Minutes from the 17th Session of April 5, 2013 were not available; the minutes from the 32nd Session (August 2012), 47th, 48th and 49th Sessions (second half of October 2012) are not available on the website of the Council

5 Available at [http://www.srd.org.mk/images/Analiza\\_\\_\\_merki\\_jan-juni\\_2013\\_12\\_%D1%98uli\\_2013\\_docx\\_konecna\\_17\\_juli.pdf](http://www.srd.org.mk/images/Analiza___merki_jan-juni_2013_12_%D1%98uli_2013_docx_konecna_17_juli.pdf); Hereinafter Analysis 3

6 Available at [http://www.srd.org.mk/images/Analiza\\_\\_\\_merki\\_juli-dekem\\_2012\\_docx\\_t\\_iv\\_doc\\_docx\\_finalna.docx\\_po\\_sednica.pdf](http://www.srd.org.mk/images/Analiza___merki_juli-dekem_2012_docx_t_iv_doc_docx_finalna.docx_po_sednica.pdf); Hereinafter Analysis 2

7 Available at [http://www.srd.org.mk/images/stories/Analiza\\_merki\\_januari\\_juni\\_2012\\_final.pdf](http://www.srd.org.mk/images/stories/Analiza_merki_januari_juni_2012_final.pdf) hereinafter Analysis 1

8 Available at [http://www.srd.org.mk/images/stories/26082011\\_Izvestaj\\_za\\_Izborite\\_vo\\_2011\\_WEB.pdf](http://www.srd.org.mk/images/stories/26082011_Izvestaj_za_Izborite_vo_2011_WEB.pdf)

9 Available at <http://www.srd.org.mk/images/izvestaj-lokalni-izbori-2013-finalen.pdf>

10 Available at [http://www.srd.org.mk/images/Izvestaj\\_za\\_rabota\\_na\\_SRD\\_za\\_2012\\_-\\_ZA\\_VO\\_SOBRANIE\\_NA\\_RM.pdf](http://www.srd.org.mk/images/Izvestaj_za_rabota_na_SRD_za_2012_-_ZA_VO_SOBRANIE_NA_RM.pdf); hereinafter Report 2012.

11 Available at [http://www.srd.org.mk/images/izvestaj\\_za\\_rabota\\_na\\_srd\\_za\\_2011.pdf](http://www.srd.org.mk/images/izvestaj_za_rabota_na_srd_za_2011.pdf)

omitted, because this analysis is focused on the actual practices applied by the BC and not its approach or treatment of individual entities. If necessary, for reasons of better explanation of the description, broadcasters shall be given numerical designations.

At the same time, the analysis provides certain recommendations on actions that need to be taken to improve the detected situations. Those recommendations arise from the actual detected situations compared with the legal framework that regulates BC's actions. The recommendations aim to point out at the possibilities for improved work and operations of the regulatory body, as well as the necessary changes and amendments of the legislation arising from the actual practice and reality of functioning of broadcasters.

## 1. Brief Overview of Normative Framework for the Performance of Broadcasting Activity in the Republic of Macedonia

The performance of broadcasting activity in the Republic of Macedonia<sup>12</sup> is regulated primarily by the Law on Broadcasting Activity<sup>13</sup>. The first version of the LBA was adopted in 2005, replacing the 1997 Law on the Broadcasting Activity<sup>14</sup>, with the exception of provisions on the financing, i.e. the collection of the broadcasting fee. The 2005 Law, we could say, establishes and then, with series of changes and amendments, develops the fundamentals of a modern broadcasting system which pays special attention to technological development in the area of broadcasting.

The LBA regulates the terms and conditions and the manner of performance of broadcasting activity, as well as the issues of public interest in the area of broadcasting. First of all, the Law provides clear definitions of its goals and objectives, the basic terms of broadcasting activities, and the scope of implementation of the Law. The second chapter of the Law regulates the issues pertaining to broadcasters, their status and the cases of liquidation and bankruptcy of broadcasters. The third chapter defines the measures for protection of plurality, diversity and transparency of the work of broadcasters. The fourth chapter regulates the statutory issues of the Broadcasting Council, its competences and actions. The fifth chapter of the LBA regulates the matters pertaining to broadcasting licenses, the terms and manner of allocation and revocation of licenses. Chapters VI and VII regulate the specific obligations of the broadcasters related to programming standards, advertising, teleshopping (infomercials) and sponsorship. Those are of special importance knowing that the violations of those provisions provide the grounds to hold broadcasters responsible and for the BC to declare measures to sanction the broadcasters.

The transmission of programming services provided by domestic and foreign broadcasters through public communication networks is regulated in the eighth chapter of the Law.

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12 According to Article 3, paragraph 1 of the LBA, the broadcasting activity is defined as transmission of radio and/or television programme services, regardless of the transmission technology used, in coded or un-coded form, intended for public reception.

13 The Law on Broadcasting Activity ("Official Gazette of RM" Nos. 100/2005, 19/2007, 103/2008, 152/2008, 6/2010, 145/2010, 97/2011, 13/2012 and 72/2013).

14 The Law on Broadcasting Activity ("Official Gazette of RM" Nos. 20/1997 and 70/2003); hereinafter LBA/97. In accordance with Article 179 of the LBA, on the day of its entry into force, the Broadcasting Law (Official Gazette of the Republic of Macedonia, Nos. 20/97 and 70/2003) shall cease to be valid, with exception of provisions referring to financing, i.e. collection of the broadcasting fee and the Law on Establishing of Public Enterprise Macedonian Radio Television (Official Gazette of the Republic of Macedonia, Nos. 6/98, 98/2000 and 78/2004).

The chapter lists provisions on the obligations of the entities rebroadcasting programming services via public communications network, as well as the terms and conditions for the rebroadcasting. The next, the ninth chapter of the LBA regulates the issues pertaining to the public broadcasting service in the Republic of Macedonia, a function performed by the Macedonian Radio and Television, i.e. its financing and programming services. Chapter 10 is very short and it regulates that the functions of public operator for transmission of radio and television programmes in the Republic of Macedonia are performed by the Public Enterprise “Makedonska Radiodifuzija – Skopje” (Macedonian Broadcasting PE Skopje) and refers to the special Law on Establishment of PE “Makedonska Radiodifuzija – Skopje” for specific regulations on the activities, manner of organisation and functioning of the public enterprise. The issues of financing of production and broadcasting of programmes, technical and technological development of the public broadcasting services, the maintenance, use and development of the public broadcasting network, of the regulation and development of the broadcasting activity in the Republic of Macedonia are regulated in Chapter XI of the Law. The procedures that broadcasters need to follow in terms of the right to correction and response to broadcast false or incomplete information that violates the legitimate rights or interests of a person, especially its dignity, honour or reputation, are regulated in Chapter XII of the Law. The rights of broadcasters to access information and to protect their sources of information are regulated, albeit in not too great detail, in Chapters XIII and XIV of the Law. Chapter XV regulates the issue of monitoring and supervision of implementation of the Law and distributes the competences in different aspects of implementation among the BC, the Agency for Electronic Communications, the Ministry of Transport and Communications and the Ministry of Culture. The penultimate, Chapter XVI of the Law regulates in detail the misdemeanour sanctions for detected violations of the Law.

A series of special laws also appear as legal sources that regulate matters pertaining to performance of broadcasting activity. The Law on Electronic Communications<sup>15</sup>, in accordance with Article 3, Paragraph 2 of the LBA, regulates the technical conditions for installation and operation of radio-stations, i.e. the terms and conditions for construction, maintenance and use of networks and means of broadcasting of programmes and the terms of transmission over the public communication networks.

The Electoral Code<sup>16</sup> regulates the actions and conduct of broadcasters in the area of media presentation of candidates running in elections in the Republic of Macedonia, a matter that we shall touch in greater detail later in this analysis.

The Law on Copyrights and Associated Rights<sup>17</sup> regulates the terms and conditions for broadcasts and rebroadcasts as components of the right to public information, the authorisation of which is the exclusive right of the copyright holder.

The normative framework also includes the by-laws adopted in accordance with the LBA and the Electoral Code, which regulate in detail certain issues and matters that fall within the scope of activities of the BC, referring to the performance of broadcasting activity.

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15 The Law on Electronic Communications (“Official Gazette of RM” Nos. 6p.13/2005, 14/2007, 55/2007, 98/2008, 83/2010, 13/2012, 59/2012, 123/2012 and 23/2013)

16 The Electoral Code (“Official Gazette of RM” Nos. 40/2006, 136/2008, 148/2008, 155/2008, 163/2008, 44/2011, 51/2011, 142/2012 and 31/2013 and 34/2013)

17 The Law on Copyrights and Associated Rights, (“Official Gazette of RM” Nos. 6p.115/2010, 140/2010 and 51/2011)

## 2. Broadcasting Council

### Status, Composition and Operations of the Broadcasting Council

The Broadcasting Council is an independent, regulatory, non-profit body with public authority in the area of broadcasting activity, as defined by the LBA. Its primary goal, as defined in Article 21, Paragraph 3 of the LBA, in the performance of its competences, is to take care to ensure the freedom and pluralism of expression, the existence of diverse, independent media, economic and technological development of the activity and protection of interests of citizens in broadcasting activity.

The BC is composed of 15 members, appointed and dismissed by the Parliament of the Republic of Macedonia<sup>18</sup>, who perform their office professionally. The LBA defines the length of their term in office and the procedure for nomination of Council members (article 28 and 29).

The Council works and deliberates in sessions and Article 31 of the LBA stipulates that the Council shall be obligated to hold at least one session per month. The sessions are chaired by the President<sup>19</sup> of the BC, i.e. his/her deputy in cases when the President is unable to participate in the session. Article 33 of the LBA explicitly prescribes that the work of the BC is public, i.e. that it works and deliberates in sessions open to the public. The public can be excluded in cases when confidential information are presented and discussed by the Council. The BC is obligated to publish information on its activities regularly (information on calls for participation and competitions, the number of applications, its decisions, minutes recorded in the sessions, proposed agendas of its sessions) in the media and on the website of the BC, and is obligated to inform the public about its work and operations through the mass media at least once every three months. At the same time, Article 33 Paragraph 4 of the LBA prescribes that BC shall hold public sessions with participation of all stakeholders at least once every three months, to allow them to be informed about the work of the Council and to present their views and opinions on possible improvements of the situation in the field of broadcasting.<sup>20</sup>

The work and operations of the BC, in accordance with Article 34, Paragraph 1 of the LBA, are regulated in detail in the Book of Rules and Regulations of the BC. The Book of Rules and

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18 In accordance with Article 24 of the LBA, the members of the Broadcasting Council are elected by the Parliament of the Republic of Macedonia upon nomination submitted by authorized nominators. The LBA lists, in Article 26 (referring to article 27), the following authorized nominators: The Macedonian Academy of Arts and Sciences shall nominate candidates for one seat in the Broadcasting Council. The Inter-University Conference shall nominate candidates for three seats in the Broadcasting Council. The Majority Journalists' Association of Macedonia shall nominate candidates for two seats in the Broadcasting Council. The President of the Republic of Macedonia proposes two members of the Council. The Association of Local self-government of the Republic of Macedonia proposes two members of the Broadcasting Council. The Commission for Protection of Competition proposes one member of the Broadcasting Council. The State Commission for Prevention of Corruption proposes one member of the Broadcasting Council. The LBA defines the terms and conditions for appointment of members of the Broadcasting Council in Article 25, paragraphs 2 and 3, in relation to Article 26.

19 In accordance with Article 31, paragraph 1 and 2, the Broadcasting Council elects the President and Deputy President of the Council from the ranks of its members. The President and Deputy President are elected for the duration of their term in office as members of the Broadcasting Council. The President, i.e. his/her deputy in cases of absence of the President, chairs the sessions of the Council and represents the Council (Article 31, paragraph 2).

20 This should not be understood to be in collision with provisions of paragraph 1 of the same article that states that the work of the Council is public. The sessions open to the public allow for active participation of interested persons and stakeholders in the work of the Council.

Regulations<sup>21</sup> regulates, in detail, the manner of operation, the procedures for adoption of decisions and other matter important for the work of the BC (Article 1). The Book of Rules and Regulations also provides precise regulation for the presence of the media and the general public in Council sessions (Article 4).

## Competences of the BC

The competences of the regulatory bodies are defined in Article 37 of the LBA.<sup>22</sup> Among other matters, the BC has the authority to grant and revoke licenses to perform broadcasting activity, supervises and monitors the work of the broadcasters, adopts measures against broadcasters that fail to perform their obligations in accordance with the Law, the licenses and BC's acts, informs the body competent for protection of copyrights and associated rights<sup>23</sup> in cases of suspected violations, etc.

Regarding its competences to monitor and supervise the work of the entities performing broadcasting activities related to the respect and adherence to the provisions of the LBA, the broadcasting license and the acts of the BC that cover the programming contents, the LBA also lists special provisions that define the measures and sanctions in cases of violations, as well as provisions that regulated, specifically and in great detail, the monitoring and supervision activities. Article 163 of the Law prescribes specifically that the BC shall conduct the monitoring of the implementation of the provisions of the Law on adherence to programming principles, programming demands and limitations, and the terms and conditions of the broadcasting license. The violations of the obligations of the broadcasters are defined as misdemeanour offenses and the Law defines the misdemeanour sanctions (in Chapter XVI). The BC conducts the supervision through monitoring of the programming

21 Book of Rules and Regulations of the BC (Consolidated text of January 2012, available at: <http://www.srd.org.mk/images/stories/pod-zakonski-akti/Delovnik%20za%20rabotata%20na%20Sovetot%20za%20radiodifuzija%20na%20RM.pdf>) And the changes and amendments to the Book of Rules and Regulations, available at: <http://www.srd.org.mk/images/Delovnik%20za%20izmenuvanje%20na%20delovnikot%20-%2029%20sednica.pdf>

22 Article 37 of the LBA states that: "The Broadcasting Council performs the following activities: 1. Implements the Strategy for Development of Broadcasting Activity in the Republic of Macedonia; 2. Decides on the allocation, revokation and renewal of licences to pursue broadcasting activities; 3. Coordinates the activities with the Agency for Electronic Communications when adopting the Plan for Allocation and Use of Radio Frequences, in the part relating to broadcasting; 4. Supervises the work and operations of the entities involved in the pursuit of broadcasting activity in terms of their compliance with the provisions of this Law, the licence to pursue broadcasting activity, and the by-laws adopted by the Broadcasting Council regarding the programme contents; 5. Adopts decisions, rules, conclusions, recommendations, instructions and other acts, adopts views and proposals for implementation of the Law on Broadcasting Activity; 6. Informs the competent body on matters of protection of copyrights and related rights about any suspected violations of copyrights and related rights which it can back up with evidence; 7. Reviews the requests and petitions submitted by citizens regarding the radio and television programmes and programme services retransmitted through the public communication networks, as well as the work of the broadcasters, and informs the public about the measures it has taken, on regular basis; 8. Undertakes legal measures against the broadcasters that fail to fulfil their duties laid out by the Law, the licence to pursue broadcasting activity and the acts of the Broadcasting Council; 9. Adopts opinions and participates in the drafting of legislation, regulations and other acts regarding the broadcasting activity, as well as in the conclusion and accession of the Republic of Macedonia to international treaties in the field of broadcasting and provides for their full implementation; 10. Approves the List of Major Events for the public in the Republic of Macedonia and undertakes measures for the protection of the right of the public to access such events, to prevent that a broadcaster, by virtue of securing the exclusive rights to broadcast the event, should deny a significant portion of the population the possibility to follow the event; 11. Adopts acts on the organization and systematization of work and tasks of the professional service; 12. Issues certificates of registration of radio and television programme services retransmitted via a public communication network; 13. Adopts and implements measures defined by this Law, initiates misdemeanour and criminal procedures and performs other activities as defined by this and other Law; 14. Performs other activities as defined by this Law.

23 The exact term is "copyrights and associated rights", so it is suggested that this technical correction is implemented in a future round of changes and amendments

services of broadcasters, in accordance with its defined Programme of Activities, but also acts on filed submissions by the citizens and on demand presented by other competent bodies and institutions.<sup>24</sup>

To ensure that BC shall be able to perform its competences, the bodies of state administration, state bodies and institutions, the bodies of local self-government, institutions established by law and broadcasters are obligated to present the necessary documents, data and information to the Council. On the other hand, the BC, in performance of its functions, cooperates with other state bodies and institutions on matters related to the broadcasting activity. The LBA prescribes mutual obligation for the BC, the Agency for Electronic Communications and the Commission for Protection of Competition to exchange data and information necessary for the performance of their respective activities, and the scope of the exchange of information is limited to those data and information necessary and proportionate to the aims for which they are exchanged (Article 39).

## BC's Operations in Practice

During the period covered by this analysis, the Council held a total of 99 sessions, at an average of four sessions per month.<sup>25</sup> It is also worth noting that the number of sessions held in 2012 is almost three times higher than the number of sessions in 2011<sup>26</sup>, and the trend of growing number and frequency of sessions and deliberations of the Council continued in 2013 (31 sessions were held in the period from the start of the year through June 30, 2013).

Of that total, according to the available minutes, seven (7) were public sessions, as follows: The 17th Session of September 30, 2011<sup>27</sup>; the 21st Session of December 27, 2011; the 7th Session of April 6, 2012; the 20th Session of June 7, 2012; the 33rd Session of August 22, 2012; the 48th Session of October 24, 2012; and the 2nd Session of January 9, 2013<sup>28</sup>. The public sessions were dedicated to the current and ongoing operations of the Council (six out of the seven) and one session was held to present a study. The minutes clearly indicate the presence of the public in the Council's discussions.

The analysis of the minutes also demonstrates that not all members of the Council take equal participation in the debates and deliberations, although all of them (those who were present) take part in the adoption of decisions.

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24 See Articles 31 and 32 of the Book of Rules and Procedures

25 Minutes from 47<sup>th</sup>, 48<sup>th</sup> and 49<sup>th</sup> Session of 2012 are not available

26 We take into consideration nine of the total of 21 sessions of the Council that were held in 2011. In 2012, 59 sessions were held, and in 2013, up to June 30, 31 sessions were held.

27 The website of the Broadcasting Council (in the section on Sessions-agendas) states that the 17th session is open to the public, although the minutes from the session are not yet available.

28 There are no minutes available from the 17<sup>th</sup> and 18<sup>th</sup> sessions in 2013. Having in mind the dates on which they were held, we assume that one of them was open to the public, knowing that the Council usually adheres to the obligation to schedule one session every three months (there is little deviation between the sessions at the end of 2011 and the start of 2012, when three months and ten days passed between two public sessions of the Council).

In the process of analysis, we noted on several occasions that certain matters were discussed prior to the session, or were later directed to be discussed in so-called **coordinations**<sup>29</sup>. We couldn't find any more details what such "coordinations" were, how are they scheduled and held, or what was the manner of decision-making, if decisions are made in them, on matters within the scope of competences of the Council, in any of the normative acts that regulate the operations of the Council. Therefore, the question arises what is the role and the meaning of "coordination" in the decision-making process of the Council. The minutes recorded in the session indicate that a "coordination" is, in fact, a consultation session of the council closed to the public (the public is excluded and it is not reported to the public) held to discuss certain matters or issues within BC's scope of competences that are later not discussed and debated by the Council but are put for a vote directly. We find such conduct and actions not completely in line with the Law and the Book of Rules and Regulations which insist on the transparency of Council's operation and the participation of the public. The public, especially the stakeholders and the expert community, is not interested just in the majority necessary to adopt a decision, but it also needs to see the argumentation (the views and values supporting a case) behind the adopted decision. Therefore, we believe that the Council should either regulate that practice precisely in its acts or abandon it altogether.

**Recommendation**

Precise regulation, in BC's acts, of the coordination as a form of operation of the BC. The acts need to prescribe clearly how, and on which matters, the members shall coordinate their view and positions. In no case should coordinations emerge as a decision-making form or forum of the Council.

29 As an illustration, in the 13th session of July 22, 2011, a matter was referred to be debated in a coordination, and one member of the BC noted that *"the members of the Council have held prior coordinations, but not like this, to discuss that matter in the session itself"* (see p.2 of the Minutes of the 13th Session of 2011). In the 18th session of 2011, for example, the Minutes state that a decision was made to revoke the misdemeanour charges against a broadcaster (see p.8 of the Minutes). In the 19th session, one member of the Council state that *"the proposal to amend and change the Book of Rules and Procedures of the BC should first be reviewed in a coordination where members of the Council will take it into consideration and discuss that issue"* (See p.2 of the Minutes). In 2012, that practice continued and several instances of referring certain matters to coordination were noted. For example, in the 2nd Session, the remarks on the Competition for Allocation of Broadcasting Licenses for Performance of Activity of Broadcasting and Transmission of Television Programming Services on national level via public communications networks were referred to be reviewed in a coordination (see p.14 of the minutes). In the 4th session, it was mentioned that the postponement of one entry of the Agenda was agreed in a coordination held earlier (see p.1 of the Minutes). On basis of the Minutes of the 5th session of 2012 (see p.26) it could be concluded that it could happen for the Members of the Council to have one position on a given matter in a coordination, and to later change that position in a regular session. For example, the 19th session of the Council of April 17, 2013, the remarks to the Draft-Law on Media and Audiovisual Media Services were referred to be reviewed by the professional services and the members of the Council in a coordination that should be held as soon as possible (see p.8 of the Minutes).

### 3. Measures Imposed by BC and their Execution in Accordance with the Law on Broadcasting Activity

In accordance with Article 37, paragraph 1, indent 5 of the LBA, the Broadcasting Council adopts decisions, rules, guidelines, conclusions, recommendations and other acts, defines positions and proposals on the manner of implementation of the Law on Broadcasting Activity. In accordance with Article 38 of the LBA, if BC detects, in the performance of activities within its competences, a violation of the provisions of the Law and regulations arising from the Law, or violation of the terms and conditions defined in the broadcasting license, it can pronounce one of the following measures against a broadcaster:

- Written warning;
- Written warning with request for the warning to be aired;
- Temporary prohibition on broadcasts of advertising and infomercials (teleshopping) for a period of 1 to 7 days
- Temporary prohibition of broadcasting of the programming service for a period of up to three months.

The pronouncing and the execution of measures against broadcasters in cases of violations of provisions of the LBA, by-laws and the broadcasting licence was regulated in detail with the Rulebook on Imposition and Execution of Measures against Broadcasters for Violations of the Provisions of the Law on Broadcasting Activity, by-laws and broadcasting license<sup>30</sup>. However, in 2011, the Council decided to annul that Rulebook<sup>31</sup>.

In November 2012, the BC adopted the Manual for Imposing Measures and their Execution According to the Broadcasting Law<sup>32</sup>. The Manual is an “instrument designed to assist the Broadcasting Council, the broadcaster and the operators of public communication networks in the area of pronouncing and execution of measures. It aims to provide the directions for successful implementation of the provisions of the Broadcasting Law, especially Article 11, 17, 38, and articles 109-113 of the Law”.<sup>33</sup>

Although the introduction to the Manual states that it aims to provide guidelines, it **does regulate issues and matters that, by their very nature, would be more appropriately regulated with a by-law adopted by the Council. Such matters, for example, are the other activities that BC may implement in cases of violations of the Law, as well as the issues related to the manner of pronouncement of measures.**

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30 Official Gazette of the Republic of Macedonia, No. 53/2008

31 Decision No. 02-87/1 of January 17, 2011 (Official Gazette of the Republic of Macedonia, No. 6/2011). The Decision doesn't list information on the reasons for the termination of the Rulebook. It could be concluded from the discussions recorded in the Minutes of the session held on January 13, 2013, that the reason for the termination of the Rulebook was that it contained weak points which restricted the options available to the Council when deliberating on pronouncement of measures against broadcasters. Also, opinions were presented in the discussion that this matter needs to be regulated in greater detail in the Law, or that a new Rulebook needs to be adopted, but no action has been taken in that regard to this day.

32 The Manual on imposing measures and their execution in accordance with the Broadcasting Law (hereinafter the Manual on measures) was adopted in November 2012 and published on [http://www.srd.org.mk/images/USVOEN\\_NA\\_SEDNICA\\_-\\_Priracnik\\_2\\_Praven.pdf](http://www.srd.org.mk/images/USVOEN_NA_SEDNICA_-_Priracnik_2_Praven.pdf) (last accessed on August 20, 2013).

33 For more information, see the Manual, p.2

## Types of Measures and their Imposition

The **Written Warning**, in accordance with Article 38 paragraph 2 of the LBA, and also in accordance with point 4.2 indent 1 of the Manual for Imposing measures, is pronounced for any violation of the provisions of the Law and the by-laws arising, as well as the terms and conditions defined in the broadcasting license.

The **Written Warning with request for the warning to be aired**, in accordance with Article 38 paragraph 3 of the LBA, and also in accordance with point 4.2 indent 2 of the Manual for Imposing measures, is pronounced in the cases when a broadcaster, after being issued a written warning, continued to commit the same violation for which the written warning was imposed.

It has to be noted that the pronouncement of the measures of Written Warning and Written Warning with request for the warning to be aired exclude the filing of misdemeanour charges if the broadcaster removed the infringements for which they were pronounced (Article 37, Paragraph 9 of the LBA).

The **Temporary Prohibition of broadcasting of advertisements and teleshopping from 1 to 7 days**, in accordance with Article 38 paragraph 4 of the LBA, and also in accordance with point 4.2 indent 3 of the Manual, is pronounced for any violation of the provisions of Chapters VI (Programming Standards)<sup>34</sup> and VII (Advertising, Teleshopping and Sponsorship) of the Law.

The **Temporary prohibition to broadcast the programming services for a period of up to three months**, in accordance with Article 38 paragraph 5 of the LBA, and also in accordance with point 4.2 indent 4 of the Manual, is pronounced in the cases when a broadcaster, in spite of the temporary prohibition to broadcast advertising and teleshopping, continued to commit the same violation for which the temporary prohibition to broadcast advertising and teleshopping was imposed. Article 38, paragraph 6 of the LBA prescribes that the temporary

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34 Chapter VI (Programme Standards) prescribes the following prohibitions, i.e. obligations of the broadcasters: - Programme contents aimed at the violent overthrow of the constitutional order of the Republic of Macedonia, programmes which encourage or invite to military aggression or incite national, racial or religious hatred and intolerance shall be prohibited from the programmes of broadcasters and in programmes retransmitted via public commercial networks (Article 69); - 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 (Article 70); - adherence to the categorisation, forms of acoustic and visual designation, the watershed for broadcasts of programming contents that may threaten the physical, psychological and moral development of children and youth (Article 71); - the obligations referring to minimal length of daily broadcasts (Article 72); - the obligation to broadcast European works (article 73); - the obligations regarding the minimal percentages of daily broadcasts dedicated to programmes originally produced in the Macedonian language or the languages of the ethnic communities that are not majority in the Republic of Macedonia (Article 74); - the prohibition of use of telephone services with special tariffs in the programmes of the public broadcasting services and the non-profit broadcasters (Article 75); - prohibition to organize and broadcast lottery games other than those organized by an entity that holds license to organize lottery games and the prohibition to organize and broadcast sports betting games (Article 76); - the obligation to produce and broadcast programmes with regulated copyrights and associated rights and to present, upon request, documents to prove that copyrights and associated rights have been regulated (Article 77); - the prohibition to broadcast live, or by deferred transmission, from events of great importance, domestic and foreign, on basis of exclusive rights if such a live or deferred transmission restricts the rights of major swaths of the population to follow the event (Article 78); - the prohibition for local broadcasters to create systems for broadcasting of joint programmes without informing the Broadcasting Council first, and the limitation of such joint programmes to no more than 4 hours of broadcasts per 24 hours, in accordance with the terms defined by the Law (Article 79); - the obligations related to following and coverage of elections and election campaigns (Article 80); - Obligations referring the displaying of the name, trademark or the short identification sign of the broadcasters (Article 81); - the obligations regarding broadcasts of programmes translated into Macedonian and the languages of non-majority communities (Article 82 and 83); - the obligation to appoint editor/s-in-chief and the obligation to display their names (Article 84); – obligation to keep records of the broadcast programme and to record the output signals of their programmes (Article 84).

prohibition to broadcast the programming services can be issued as the first measure for violations of Article 20, paragraphs 1 and 2<sup>35</sup>, article 69 and Article 70 of the LBA.<sup>36</sup>

The Broadcasting Council, in accordance with the Manual (Point 4.2, indent 6) can implement other measures and activities against broadcasters: make suggestions, submit notifications and carry out trainings.

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35 Article 20, paragraphs 1 and 2: "Broadcasters shall be obligated, once per year, and by March 31 at the latest, to publish a report on their operations for the previous year, including: - Changes in ownership structure; - Statutory changes of the broadcaster; - Changes in the managing and governing bodies; and - Sources of financing. Broadcasters shall be obligated to publish the data of Paragraph 1 of this Article in at least one daily newspaper, and on its own programme, at least three times per year, at prime time."

36 Article 69 of the LBA states that: "Programme contents aimed at the violent overthrow of the constitutional order of the Republic of Macedonia, programmes which encourage or invite to military aggression or incite national, racial or religious hatred and intolerance shall be prohibited from the programmes of broadcasters and in programmes retransmitted via public commercial networks. Article 70 of the LBA states: 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."

## How are the measures pronounced?

The Law on Broadcasting Activity doesn't prescribe special rules on the manner (the sequence) of pronouncement of measures. The Rulebook on Measures (now defunct) proposed a sequence of imposition of measures<sup>37</sup>. It prescribed that prior behaviour of the perpetrator of the infringement shall be taken into consideration and play a role in the deliberation which measure shall apply, which has been kept a part of the regular practice of the Council.

On the other hand, in accordance with the Manual on measures, the Law doesn't prescribe special rules regarding the sequence of implementation of measures, nor it insists on such a sequence. Thus, as noted in Point 4.2 indent 4 of the Manual, in a case of repeat of the same infringement, or infringement of the same class, or emergence of a new infringement not belonging to the same class, it shall not be mandatory to pronounce a temporary prohibition of broadcasts of advertisements or teleshopping for a period longer than the period covered by the previously pronounced temporary prohibition.

### Recommendation

Re-evaluate the old rules of pronouncement of measures vis-à-vis the guidelines provided in the Rulebook on Measures and identified practices of the Council, and adoption of respective by-law to regulate the matter in greater detail

## Definition of the Manner of Execution of Measures

The Law prescribes (in Article 38, paragraph 7) that the period of time in which the committed infringements need to be removed shall be determined in the decision pronouncing the respective measure. That period of time can't be shorter than seven or longer than ten days. The Law doesn't offer any additional guidelines on the execution of

37 The Rulebook on Measures, in Article 4, prescribes the following sequence of measures, unless otherwise prescribed by Law:

1. Written warning;
2. Written warning with request for publication;
3. Temporary prohibition on broadcasts of advertising and infomercials (teleshopping) for a period of 1 to 7 days, as follows:
  - temporary prohibition on broadcasts of advertising and teleshopping for one day
  - temporary prohibition on broadcasts of advertising and teleshopping for three days
  - temporary prohibition on broadcasts of advertising and teleshopping for five days
  - Temporary prohibition on broadcasts of advertising and teleshopping for seven days;
4. Temporary prohibition of broadcasting of the programming service for a period of up to three months, as follows:
  - Temporary prohibition of broadcasting of the programming service for a period of eight days;
  - Temporary prohibition of broadcasting of the programming service for a period of 16 days;
  - Temporary prohibition of broadcasting of the programming service for a period of 30 days;
  - Temporary prohibition of broadcasting of the programming service for a period of 60 days;
  - Temporary prohibition of broadcasting of the programming service for a period of 90 days.

In accordance with Article 10, paragraph 1 of the Rulebook on Measures, the "temporary prohibition to broadcast advertisements and teleshopping from one to seven days" and "temporary prohibition to broadcast the programming services for a period of up to three months" can be pronounced against a broadcaster, for repeated violation, several times, for various durations of time. The second paragraph emphasizes that the duration of the measures has to be longer with every repeated pronouncement.

Regarding the measure "temporary prohibition to broadcast advertising and teleshopping for a period of one to seven days", in accordance with Article 11, paragraph 2 of the Rulebook on Measures, for the first violation for which the measure "written warning with request for publication" was pronounced, the measure "temporary prohibition to broadcast advertising and teleshopping for one day" shall be pronounced", and for every subsequent violation the duration of the prohibition shall be extended to three, five and finally seven days.

For the first violation for which the measure "temporary prohibition to broadcast advertising and teleshopping for seven days" was pronounced against a broadcaster, in accordance with Article 12, paragraph 1 of the Rulebook on Measures, the measure "temporary prohibition to broadcast the programming services for a period of eight days" shall be pronounced, and for each subsequent violation the duration of the period of the prohibition shall be extended to 16, 30, 60 and 90 days.

measures by the broadcasters, with the exception of the written warnings.

The Manual provides the guidelines for execution of the measure “written warning with request for the warning to be aired”, determining that the broadcaster shall be obligated to execute it in the following manner: - For television programs services the text “written warning with a request for publishing” to be written on a caption on the entire screen and simultaneously while broadcasting the caption, the text “written warning with a request for publishing” to be read by the speaker and in radio program services the text “written warning with a request for publication” to be read by the speaker; - While announcing the text “written warning with a request for publishing” it is obligatory to specify the following elements: the authority that has pronounced the measure, the title of the measure that is stated; date and time of committing the offense which the measure is imposed for; description of the offense (on which program service the offence was done, within what show, the manner of doing/ the description of the offence, etc...), the number of the Article of the Law that is broken; the publication should be announced in the period from 17:00 to 20:00 pm on the television program services, and between 08:00 and 10:00 on the radio program services. Also, it is not permitted to broadcast any comment on the “written warning with request for the warning to be aired”. Those guidelines are cited in the decisions of the Council on the manner of execution of the measure. **The Council doesn’t provide any guidelines on the manner of execution of other measures.** In its decisions, the Council leaves a possibility for the broadcasters to choose, within 3 days, the day/days on which it will not broadcast advertisements and teleshopping and to inform the Council about its decision. The Council later controls the execution of the measure on the day designated by the entity that committed the infringement. There is no information on the reasons why the Council doesn’t determine the manner of execution of a measure in the decision to pronounce the measure. Therefore, the question arises whether, and to what extent, the aims of sanctioning were achieved if the broadcaster didn’t align its operations (especially its marketing plans) with the execution of the measure and, thus, avoids significant consequences.

## Misdemeanour Liability of Broadcasting Companies

The Broadcasting Council can file misdemeanour charges against broadcasters for violations and infringements of their legal obligations. The Law defines, in articles 166 and 167, the fines that shall be levied for individual infringements - fines ranging from €4,000 to €5,000 (payable in Macedonian Denars) for one category of infringements, and fines ranging from €1,500 to €3,000 (payable in Macedonian Denars) for another category of infringements.

In a great number of cases, the same infringements that are subject to punitive measures can provide the grounds for start of misdemeanour procedure. However, the fact that the Council has already pronounced the measures “written warning” and “written warning with request for warning to be aired”, in accordance with Article 38, Paragraph 9 of the LBA, excludes the possibility to start misdemeanour procedure for the same infringement, provided that the broadcaster removed the infringements for which the measures were pronounced.

The Manual on measures prescribes that the Council may file misdemeanour charges in cases when broadcasters failed to execute the pronounced measures: “temporary

### Recommendation

Re-evaluate the Council’s policy to let the broadcasters decide, at their discretion, on the manner of execution of pronounced measures, i.e. the decisions for pronouncement of measures should prescribe the manner of execution.

prohibition to broadcast advertisements and teleshopping from one to seven days” and “temporary prohibition to broadcast the programming services for a period of up to three months”; and for repeat of the same/similar infringement by a broadcaster for which the Council has already pronounced “temporary prohibition to broadcast advertisements and tele-shopping from one to seven days” and/or “temporary prohibition to broadcast the programming services for a period of up to three months”.

## BC’s Practice of Pronouncement of Measures and Warnings for Violations of Provisions of the Law on Broadcasting Activity and Related By-Laws

This analysis found that, in the period from July 1, 2011 and June 30, 2013, the Broadcasting Council of the Republic of Macedonia pronounced a total of 476 measures and warnings against broadcasters, on grounds of violations of 44 provisions of the LBA and the secondary legislation.

The following table presents the structure of the **pronounced measures and warnings**:

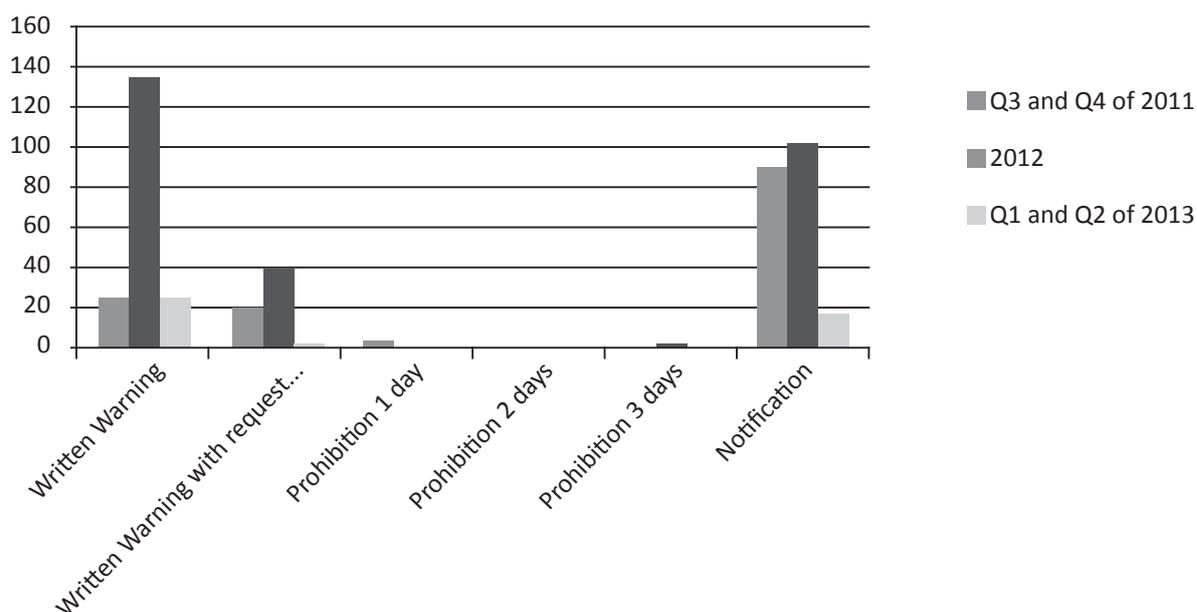
Measure	01.07– 31.12.2011	01.01. – 31.12.2012	01.01. – 30.06.2013	Total per measure
Written warning;	25	135	25 <sup>38</sup>	185
Written warning with request for the warning to be aired;	19	40	12	71
Prohibition to broadcast advertisements and teleshopping for two days	3	1	3	7
Prohibition to broadcast advertisements and teleshopping for two days	1	/	/	1
Prohibition to broadcast advertisements and teleshopping for three days	/	3	/	3
Notification	90 <sup>39</sup>	102 <sup>40</sup>	17 <sup>41</sup>	209
<b>Total</b>				<b>476</b>

38 There is a notable deviation from the reviews included in Analysis 3 (2013) of the BC. Namely, the decision 03-80 of April 26, 2013 is registered twice, both on the list of written warnings (No.16) and on the list of written warnings with request for publication (No.7). A check of the Minutes of the corresponding session concluded that the true decision was written warning with request for publication. For that reason, we report 25 written warnings and not 26 as listed in the Analysis 3.

39 There is a notable deviation from the reviews included in Report on the work of BC in 2011. The overview of issued notifications, attached as Annex 1 to the Report repeats twice the information about the decision to pronounce written warning against one broadcaster, using the same archival number (as No. 109 and No. 112), so the total number pronounced measures for that period was reduced by one.

40 There is a notable deviation from the reviews included in Analysis 2 (second half of 2012). In Analysis 2, we noted a repeat (the same measure - notification issued to one broadcaster was listed twice) so that in that period, our calculation shows there were 24 and not 25 notifications, as noted in the Analysis. Together with the 78 notifications issued in the first half of 2012 (listed in Analysis 1), the total number of notifications is 102 and not 103 as the two analysis covering 2012 would lead us to believe (Analysis 1 and Analysis 2).

41 Analysis 3 (2013) lists information about issued notification, with the corresponding decision number, but we couldn’t find the information on that notification in the minutes recorded in the period in which that notification was issued, so it was exempt from this analysis.



The most common violations for which measures and warnings were pronounced (more than 50) refer to violations of Article 97, paragraph 1 of the Law on Broadcasting Activity (violations of the obligation for clear designation, with optical or acoustic means, to distinct the advertisements and teleshopping broadcasts from the other programmes). The second most numerous, accounting for more than 40 pronounced measures and warnings, were violations of Article 71, paragraph 3 of the LBA and Article 7 of the Rulebook on Protection of Minors (broadcasting in time-slots unsuitable for underage audiences), and Article 71, paragraph 3 of the LBA and Article 12 of the Rulebook (marking the programmes to designate them unsuitable for underage audiences).

More than 30 measures and warnings were pronounced for violations of the obligation to release to the public the information on financial operations (Article 20, paragraphs 1 and 2), and for violations of the obligation to file reports on economic and financial operations for the previous year (Article 20, paragraphs 3 and 4). Violations of the obligation to ensure that at least 30% of the broadcast vocal-instrumental music will be performed in Macedonian language (Article 74, paragraph 2 of the LBA) were grounds for pronounced measures in more than 30 cases.

Regarding the types of measures pronounced for individual violations, the Council exhibits a general tendency to use one measure for the same violation for all broadcasters, with notable trend to progress the severity of sanctions in cases of repeat of the same violation. We have noted a number of cases with deviation from that practice.

Because of the great scope of pronounced measures and warnings, the analysis shall focus on the most common violations of the Law and by-laws, i.e. in those areas in which the Council's actions follow some characteristic features.

Article 68 of the LBA (Programme Standards)

In February 2013, the Council pronounced one prohibition to broadcast advertisements and teleshopping for one day to a local TV station, to sanction broadcasts of contents that may incite to religious intolerance and hatred. The violation is not listed among the special principles of the LBA (indents of paragraph 2 of the article).

Article 68, paragraph 2, indent 2 (Fostering and development of humane and moral values of human beings, and protection of privacy and dignity of each person)

The Council pronounced one warning for a violation of this programme standard in April 2012, and another two written warnings against a single broadcaster (nationally broadcasting television) in July 2012, for two different violations (disclosure of identity and violation of dignity of a victim of traffic accident with presentation of explicit video footage, and discrimination on grounds of sexual orientation through stigmatisation of homosexuality), detected in the same monitoring period.

Article 68, paragraph 2, indent 3 (prohibition of discrimination)

In July 2012, the Council issued a written warning against the same broadcaster mentioned above for airing of news article that discriminates on basis of one's sexual orientation.

Remark and recommendation

Although, from the formal point of view, we could consider each violation on its own, in the cases of violations of provisions of Article 68, paragraphs 2 and 3, committed by a single broadcaster, it turned out that the broadcaster committed three violations that threaten the constitutionally guaranteed rights and undermine the principles and standards for radio and television programmes. In that regard, we recommend to the Council to adopt a position on situations of accumulated violations, i.e. extended misdemeanour, as pursuant to Article 27 of the Law on Misdemeanours. Additionally, we noted that, eight months later, the Council issued a much more severe punishment for the same violation to another broadcaster. There was no information if that broadcaster previously committed a violation of the same type so a stricter measure was declared for repressive and preventive purposes.

Article 71, paragraph 3 of the LBA and Article 7 of the Rulebook on Protection of Minors (Broadcasting programmes in unsuitable time-slots)

The violations of provisions on suitable time-slots for broadcasts of certain categories of programmes were among the most common violations in the period covered by this analysis. A wide range of measures were pronounced, but that is due primarily to the adherence of the give sequence of measures, in view of past actions of the broadcaster regarding the adherence to norms. The Council has acted in more than 45 cases and issued notifications and pronounced written warnings, written warnings with request to air the warning, and one prohibition to broadcast advertisement and teleshopping for one day. The warnings were the most commonly pronounced sanction. The sequence of measures is evident in the actions of the Broadcasting Council on violations committed by several broadcasters. When deciding on the measures, the Council takes into consideration the previously pronounced measures for violations of the same provision, and gradually pronounces stricter measures. The Council has taken into consideration the fact that broadcasters engage in activities that violate those rules, however, them being of different scope and duration has led to different stratifications. This is especially true in the cases in which notifications were issued where the Council has moved - as evident from the deliberations recorded in the minutes, it cites the fact that the broadcaster in question had no priors or the infringement was of a scope that it didn't warrant a sanction – for measures that, in addition to having repressive function, should act preventively. However, in one case it is evident from the recorded minutes that the Council has issued a notification in spite of the fact that it has already issued a notification for a similar prior violation (in August 2011 and July 2012, respectively), and has noted that the reason for its leniency was the fact that the broadcaster has not committed previous infringement of that kind.

Article 7, paragraph 3 of the LBA and Article 12 of the Rulebook on Protection of Minors (airing of signals to warn the underage audiences and minors)

The Broadcasting Council has pronounced more than 40 notifications and other measures for violations of these provisions. It should be noted that about one third of them were pronounced in 2011. The most common sanction, but not by a wide margin, are the notifications. We didn't register adherence to the sequence of measures, and in a number of cases we noted a repeat of notifications after they had been already pronounced for similar infringements, and there were also cases of pronouncement of written warnings as the first sanction, although no prior notifications were issued for that type of violation (during the period covered by this analysis). There were no indications or explanations in the minutes for the issued notifications and written warnings (more serious measures were not pronounced) in the minutes consulted for the purposes of this analysis (the measures are pronounced without prior discussion).

Article 71, paragraph 3 of the LBA and Article 13, paragraph 1 of the Rulebook on Protection of Minors (contents of announcements and promotional spots and indication of category of programmes that they announced)

During the period covered by this analysis, we noted more than 20 violations of those provisions, and most commonly pronounced measures were notifications and written warnings. The Council pronounced two written warnings with request for the warning to be aired, and one prohibition to broadcast advertisement and teleshopping for one day. There is no visible tendency for gradation of measures. In one notable case, the Council chose, in spite of already having pronounced a written warning (once) and written warning with request for the warning to be aired (twice), to just issue a notification for the fourth similar violation in a row by one broadcaster.

<p>Remark and recommendation</p>	<p>Having in mind the total number of issued warnings for violations of provisions of Article 71, Paragraph 3 of the Law, it is evident that they constitute the most common violation of the provisions of the LBA with more than 110 notifications and other measures, accounting to almost a quarter of the total number of pronounced measures.</p> <p>The Council is relatively consistent and sticks to the practice of gradation sequence of measures, although the minutes don't offer clear explanation for the pronouncement of one measure or another, nor the scope of the violation which is actually listed in the monitoring report on the respective broadcaster. The monitoring reports are not available to the public. While it is evident that the incidence of violations drops over time, the actual number of violations and infringements indicates the need for intensified education of broadcasters to act preventively, because the alternative would be to apply increasingly repressive measures.</p>
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Article 73 of the LBA and Article 5 and 6 of the Rulebook on European Works (representation of European works and reporting on implementation of that obligation)

While not particularly numerous, the violations of the rules on representation of European works in the programmes of broadcasters are specific in terms of the manner in which they are approached by the Council. Namely, the Council, in the treatment of the more than 10 violations of those provisions, strictly sticks to the word of the Law and issued only written warnings and written warnings with request for the warning to be aired, and didn't issue a simple notification in a single case. Also, in the three cases of repeat violation, it chose to apply the stronger measure. The reasons for that stricter sanctioning policy for those violations, compared to the other violations of the Law, are not evident from the minutes of the sessions of the Council.

Article 74, paragraph 1 of the LBA (obligation to broadcast a minimum amount of programming originally produced in the language for which the broadcasting license was issued)

During the period covered by this analysis, the Council pronounced a total of 30 notifications, written warnings (the most numerous) and written warnings with request for the warning to be aired for cases of violations of the obligation to broadcast a minimum of programmes originally produced in the language of the broadcasting license. The Council consistently applies a stronger measure in cases of repeat violations. The analyzed information indicates that the Council takes into account the degree of deviation from the legally prescribed minimum broadcasts and consequently, when that degree is small it issued a warning. As evident in the Minutes, in cases of greater deviation from the prescribed minimum, the Council applies stronger measures adequate to the violation. This illustrates the Council's practice to take into account the actual scope of the violation committed by a broadcaster in the deliberation which measure to apply.

Article 74, paragraph 2 of the LBA (obligation to broadcast a minimum amount of vocal-instrumental music in the language for which the broadcasting license was issued)

Over 30 notifications and other measures, most of them written warnings, were issued for violations of that legal obligation. The majority of measures (more than a half of the total number) were issued against radio stations. The minutes of the sessions in which those measures were adopted don't indicate the degrees to which the broadcasters' actions deviated from the legally prescribed minimum for us to be able to estimate whether the Council follows the same logic in the decisions to apply measures for violations of Article 74, paragraph 1 of the LBA. On the other hand, there are notable deviations by the Council in terms of proper sequence and gradation of measures. However, due to the noted lack of indicators of the degree of violations, we can only presume that it is not related to the degree of deviation of the respective infringement. We noted one obstacle in the implementation of these provisions, also registered by the members of the Council, and it refers to the difficulty to meet the minimum at the radio stations that broadcast predominantly instrumental music, for example radio stations dedicated to jazz and classical music. They, for example, may broadcast music exclusively, 100% created by authors from the Republic of Macedonia, and yet fail to meet the legal minimum.

Remark and recommendation	In future changes of the legislation that regulates this matter, we recommend to take into account the situation regarding the implementation of Article 74, paragraph 2 of the Law, i.e. the difficulty to meet the obligations by the broadcasters that air predominantly instrumental music, arising from the wording of Article 74, paragraph 2 of the Law.
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Article 83, Paragraph 1 (mandatory translation of foreign programmes)

While these violations may not be as numerous as other infringements, we do make a special note of them in this analysis because of the specific features of the deliberation on applied measures. Namely, of the total of nine noted violations during the period covered by the analysis, four were committed by broadcasters as repeat offenders. In one of those cases, first a notification was issued and then a written warning was issued for the repeated violation. In the case of the other broadcaster, the first pronounced measure was a written warning with request for the warning to be aired, only for the BC to again pronounce the same measure for the repeat violation two months later. Of great interest is a part of the discussion of the members of the Council who argued for the (repeat) application of the same measure. In the discussion, it was noted that the broadcaster, which has high viewer ratings, commits similar violations frequently and that it was not an isolated incident that transpired on the day of the monitoring. The repeat of the same violation in a period of two months supports that observation of the Council regarding the actions of the broadcasters. However, the dilemma remains if the Council should base its decisions on pronounced measures on the observations of Council members outside the implemented (regular or ad hoc) monitoring.

Remark and recommendation	The Broadcasting Council undoubtedly has the discretionary right to pronounce one of the legally prescribed measures for a detected violation, with adherence to the rules on pronouncement of measures. However, in view of the continuous efforts of the Council to treat all broadcasters equally and the inability to conduct constant monitoring of all broadcasters, we recommend that the Council should avoid situations in which its decisions will be justified with the personal observations of Council members which are not supported with actual monitoring findings. In situations of noted significant deviation from the rules, the Council should, within the scope of its competences, implement activities to ensure stronger and more frequent monitoring of a broadcaster that engages in such behaviour.
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Article 93, Paragraph 3 of the LBA (limits on total air-time of marketing and advertising programmes)

During the period covered by this analysis, the Council pronounced more than 40 measures and notifications for violations of rules on maximum allowed airtime for all forms and shapes of advertising. The consulted minutes do not always show the scope of the committed violations, as that information is listed in the monitoring reports which are not publicly available. The Council, in debate, usually mentions only very major or very minor violations. One characteristic of BC's actions in such cases is that it pronounced a great number of written warnings with request for publication compared to violations of other provisions of the LBA and by-laws. Another specific aspect is that it doesn't treat repeat violations the same for all broadcasters. For example, one broadcaster repeated the same violation three times during the period covered by this analysis (once in 2011 and twice in 2012) and in all those cases, the Council pronounced the same measure - written warning with request for publication. In the case of another broadcaster (with national coverage) one violation was repeated four times: once in 2011 for which a prohibition to broadcast advertisements and teleshopping for one day was pronounced; two times in 2012 for which written warning with request for publication was pronounced; and once in 2013 for which a written warning was pronounced. It appears, lacking precise information on the actual scope of the violations, that the Council took into consideration only the past actions for the ongoing year. On the other hand, when pronouncing the prohibition to broadcast advertising and teleshopping for one day, the Council explains in the minutes that the violation was of extraordinary magnitude, and notes the fact that a written warning was pronounced against that broadcaster earlier.

Remark and recommendation	The analysis of procedures and discussions in the pronouncement of measures for violations of rules on duration of marketing blocs demonstrates that the BC undoubtedly aims to simultaneously implement two principles of sanctioning: The sanction should correspond to the nature of the committed violation and, when deciding which sanction to use, to have in mind past actions of the perpetrator of the infringement. However, the Council has not been able to achieve balance of the two principles in all cases. Therefore, the need arises for the Council to dedicate greater attention to the issues related to its policy of sanctions. Also, we recommend - based on the analysis of the legal rights and obligations of the Council and the documents of the Council that regulate the matter of sanctioning and its practices - that the Council should take a clear position on several issues to ensure the maximum effect of its sanctions. We recommend that it adopts precise guidelines on which sanctions will apply to a certain scope of the given violation.
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Article 94, paragraph 4 of the LBA (prohibition to broadcast advertisements in informercial/teleshopping windows)

During the period covered by this analysis, the Council decided on about a dozen of violations of these rules. A repeat of a violation was noted with one broadcaster – the same infringement was committed twice over a period of four months, and in both cases a written warning was issued.

Article 97, paragraph 1 of the LBA (obligation to clearly mark and separate the advertising from informercial/teleshopping broadcasts)

The failure to distinct and separate the marketing segments from the rest of the programmes is the most common violation of LBA provisions. During the period covered by this analysis, we noted more than 50 violations of those provisions by 39 broadcasters. Six broadcasters engaged in repeat violations, for which the measures written warning and written warning with request for publication have been pronounced. Thus, the Broadcaster<sup>142</sup> was issued a written warning for a violation committed in August 2011, another written warning in February 2012, a written warning with request for publication in May 2012, a written warning in August 2012 and yet another written warning in January 2013. To the Broadcaster<sup>2</sup>, written warning with request for publication was issued in September 2011, written warnings with request for publication were pronounced in February and in May 2012, followed by two more written warnings in August and November 2012, and a written warning with request for publication in June 2013. To the Broadcaster<sup>3</sup>, in both cases of violation of these provisions, in September 2011 and March 2013, written warnings with request for publication were pronounced. To the Broadcaster<sup>4</sup>, for an infringement committed in June 2012, a written warning with request for publication was pronounced. For the next violation, in September 2012, a written warning was issued. Broadcaster<sup>5</sup> received written warnings for both violations, in September 2012 and June 2013. The same applied to Broadcaster<sup>6</sup> which received written warnings for the two violations in September and November 2012, respectively. The explanations of the deliberations of the Council are not equally detailed in all cases, which makes it impossible to see the reasons for the decision to keep the same level of sanctions or, indeed, the decision to increase the severity of the sanctions. In a number of cases in which a stronger measure was pronounce, the explanation offered is that the scope and magnitude of the infringement increased. In addition, it should be noted that radio stations lead the way, well ahead of TV broadcasters, accounting for two thirds of the total number of broadcasters that committed violations of these provisions.

<sup>42</sup> As noted in the introduction, we shall not give the names of the broadcasters against which measures were pronounced. To make the situation clearer, we shall enumerate them appropriately Broadcaster 1, Broadcaster 2, etc.

Article 98, paragraph 1 of the LBA (prohibition to broadcast surreptitious advertising and surreptitious teleshopping)

Almost 30 sanctions (including notifications) were pronounced for violations of this provision of the law. Of the 20 sanctioned broadcasters, five have repeated the violations at least once. For example, Broadcaster1, for an infringement committed in September 2012, was issued a notification, while for the repeats of the same violation in February and May 2012, written warnings were pronounced. Broadcaster2 violated the prohibition in September 2011 and in February 2012 and was issued written warnings in both saces. A written warning was pronounced against Broadcaster3 for a violation committed in May 2012, while for the repeat violation in July 2012, a notification was issued. Broadcaster4 received written warnings for its violations in July and October 2012. Broadcaster5 was first notified that it violated the law in March 2012 and then, at the repeat violation a written warning was pronounced. The Minutes offer no details on the reasoning of the Council and the arguments it used in the deliberations on the sanctions to be applied.

Article 99, paragraph 1, indent 4 of the LBA (minimal period of time that needs to pass between broadcasts of advertising blocs)

Among the dozen or so measures pronounced for violations of the rules on schedule of advertising blocs, repeat violations were noted for three broadcasters. Broadcaster1 was issued a written warning for two subsequent violations in May and July 2012. Broadcaster2 was first notified that it violated the law in March 2012 and then, at the repeat violation a written warning was pronounced. Broadcaster3 was issued two notifications for violations committed in April and July 2012, and the Council decided to pronounce written warning for the third violation in January 2013. According to the Minutes, the reason for such differences lies in the different scope and prior behaviour of broadcasters regarding adherence to the rules.

Article 106, paragraphs 1 and 2 of the LBA (identification of sponsors and prohibition of encouragement of sales, purchases and rentals of goods and services supplied by the sponsor)

More than 20 measures were pronounced for violations of the rules on format and contents of sponsored programmes, more than a half of them to broadcasters encouraging use of sponsor's goods or services. In one case of a repeated violation of Article 106, paragraph 1 (identification of sponsors) by one broadcaster, in September 2011 and in May 2012, the same measure was pronounced: written warning with request for publication. Regarding the prohibition to encourage consumption of a sponsor's goods or services, in one case of repeated violation first a notification was issued (February 2012) to be followed by a written warning in May 2012. In another case, first a written warning was pronounced (in January 2013) and for the repeat violation (May 2013) a written warning with request for publication was pronounced.

<p>Remark and recommendation</p>	<p>Article 38, paragraph 3 of the LBA is adamant that the measure written warning with request for publication is pronounced when a broadcaster, in spite of the written warning, continued engaging in the same violation for which the written warning was issued. In the cases covered by this analysis, we note that the Broadcasting Council doesn't adhere consistently to this principle and, albeit in a small number of cases, pronounces the same measure for repeat violations. For violations of Article 94, paragraph 4 of the LBA, one broadcaster was issued a written warning in two cases. In at least two of all noted cases of repeat violations of Article 97, paragraph 1, two consecutive written warnings were pronounced. In three of the five analyzed cases of repeat violations of Article 98, paragraph 3, the involved broadcasters were issued consecutive written warnings. Written warnings were pronounced for several subsequent violations of provisions of Article 99, paragraph 1, indent 4.</p> <p>There were also cases in which, after previously having issued a written warning with request for publication, for a repeat violation the Council has pronounced, conditionally speaking, a more lenient measure, a written warning. Although Article 38 prescribes that the failure to respect the lighter measure should be followed with a stricter measure - written warning with request for publication should be followed by temporary prohibition to broadcast the programming services for a period of no more than three months (Article 38, paragraph 4), there is no actual obstacle that would prevent the Council to react to cases of repeat violations after a pronounced written warning with request for publication with pronouncement of prohibition to broadcast advertising and teleshopping from one to seven days, having in mind that Article 38, paragraph 3 provides that it is pronounced for violations of provisions of chapters VI and VII of the LBA, which include the provisions on advertising and sponsored programmes.</p> <p>The Council surely evaluates the scope of each individual violation, but in the cases mentioned above, it is legally obligated to pronounce the stronger measure for repeat violations. Therefore, we recommend to the Council to deliberate on its decisions on bases of exact and precise information about the grounds of its previous pronouncements of measures, and review of past measures that were already pronounced against the broadcaster for the actions that are being sanctioned.</p>
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<p>Article 154, Paragraphs 1 and 3 of the LBA (publication of corrections and replies)</p>	
<p>Violations of the rules on publication of correction and/or response to a broadcast inaccurate or incomplete information that violates the legitimate rights or interests of a person, and especially a person's dignity, honour or reputation, were noted for two broadcasters, one of which has repeated the offense on three separate occasions. For violations committed in 2011 (in November and December of that year, respectively), the Council first issued written warnings and, after the broadcaster failed to remove the infringement, pronounced a written warning with request for publication. The same broadcaster repeated the violation for the third time in December 2012, for which it was issued a notification.</p>	

Article 20, Paragraphs 1 and 2 of the LBA (publication of information on operations for the previous year)

The violations of provisions of the rules on transparency are also very common (36 pronounced notifications and measures). In a number of cases, it is evident that the Council predominantly follows the rules on gradation of pronounced measures. As a general rule, for the first violation the broadcaster is notified, and if the violation is repeated, a written warning is issued. For a third violation the Council pronounces written warning with request for publication. A fourth violation of the rules on transparency invokes prohibition to broadcast advertising and teleshopping for one day, while a fifth repeat results in a prohibition to broadcast advertising and teleshopping for three days (noted in two separate cases)<sup>43</sup>. However, the analysis registered several cases in which a broadcaster was sanctioned, for violations committed in July, November and December of 2012, with successive written warnings, although for similar violations committed in the previous year a prohibition to broadcast advertising and teleshopping for three days was pronounced.

Article 20, paragraph 3 and 4 of the LBA (obligation to present the Broadcasting Council with final balance sheet and information on earnings from advertising, teleshopping and sponsorships)

The Council has taken action for violations of these rules against 25 broadcasters and pronounced 36 notifications and measures. Seven broadcasters repeated the infringements, but the tendency of sanctioning differed. The Broadcaster1 was issued three gradual sanctions for three subsequent violations: notification, written warning and written warning with request for publication, in November 2011, June 2012 and July 2012, respectively. However, for the fourth violation in November 2012, only a written warning was pronounced. Broadcaster2 was sanctioned in June and July 2012 with written warning and written warning with request for publication, but previously, in May 2012, a prohibition to broadcast advertising and teleshopping for one day was pronounced against it. The sanctions against Broadcaster3 and Broadcaster4 are gradual, from written warning to written warning with request for publication (in June and July 2013). In the case of Broadcaster5, it is worth noting that the violations were committed in October 2012 and then in May 2013, but in both cases it received only written warning. Broadcaster6 was first issued a notification in November 2011 and then a written warning in June 2012. In the case of Broadcaster7, it was first issued a notification in December 2011, and in June 2012 a written warning with request for publication was issued against it for repeat of the violation.

43 The information that the same violation was repeated for the fifth time was found in the Report/2011

Remark and recommendation	<p>Although the Council could have pronounced “temporary prohibition to broadcast the programming service for a period of no more than three months”, which is prescribed by Article 38 Paragraph 6 of the Broadcasting Law as the first measure for violations of Article 20, Paragraphs 1 and 2, the fact that the Council refrained indicates an intention for preventive and educational action. On the other hand, the Council stuck to the same, more lenient measures, even in the cases when broadcasters repeated the violations of the rules on transparency and accountability listed in Article 20. That approach, however, undermines the repressive function of sanctions. At the same time, without a real possibility to engage in more detailed analysis because of the lack of sufficient information in the minutes, it is noticeable that for (an assumed) same action that constitutes violation (“failure to meet fully the obligations”) different broadcasters were issued different measures. Without information on the reasons for such actions of the Council, due to the fact that the minutes don’t offer details on the violations, we can’t conduct proper analysis of the reasons for that behaviour, reducing our input to mere speculation. Therefore, we recommend to the Council to conduct internal analysis of its practices and to adopt a position that would ensure consistency of decisions. On the other hand, in view of the fact that the minutes could serve as basis for analyses of its operations by the public and expert community, it would be good if all minutes could provide more information about the facts on which the Council based its decisions.</p>
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### **BC’s Practices Regarding Filing Misdemeanour Procedures for Violations of Provisions of the Law on Broadcasting Activity and Related By-Laws**

The BC’s experience and practice in terms of its performance of competences to start misdemeanour procedures for violations of the LBA and the by-laws are rather limited. During the period covered by this analysis, the Council started five misdemeanour procedures, all of them in 2011.

Of them, four were charges against broadcasters that have committed repeated violations of provisions of Article 20, paragraphs 1 and 2 of the LBA, i.e. they didn’t publish information on their financial operations for the previous year or didn’t submit that information to the Council. In the fifth case, charges were brought against a broadcaster which allowed surreptitious advertising in its programmes (5 programmes, all broadcast in a single day), in violation of provisions of Article 98, paragraph 1 of the LBA. In accordance with the Law on Misdemeanours, a settlement procedure was initiated in those cases, but none was successfully completed.

## 4. Measures Imposed in Cases of Violations of Rules on Media Coverage of Elections

### Types of Measures and their Imposition

The Law on Broadcasting Activity, in Article 80, prescribes an obligation for the public broadcasting service to follow the elections and election campaign, and also prescribes special rules for those commercial companies that choose to cover the elections. A separate set of rules on the media coverage of Elections is provided in the Electoral Code<sup>44</sup>.

The Electoral Code prescribes that the Broadcasting Council, after securing an opinion from the State Election Commission, shall adopt the Rulebook on Conduct of Broadcasters in the Period before the Start of Election Campaign and the Rulebook on Equitable Access to the Media Presentation During the Election Campaign (Article 75, paragraph 1 of the Electoral Code).

The Rulebook on the Conduct of Broadcasters in the Period Before the Start of the Election Campaign<sup>45</sup> prescribes the types of contents which will be considered forms of media election presentations and those which shall not be permitted in the period before the start of the election campaign, as well as the conduct of broadcasters in the period starting with the day on which elections were called to the day designated as the official start of the election campaign<sup>46</sup>. The Rulebook for Equitable Access to the Media Presentation during the Election Campaign<sup>47</sup> 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 that the broadcasters will apply during the campaign silence period<sup>48</sup>. The broadcasters, in accordance with the Rulebook shall be obligated, in their programming services, to ensure equitable access to election media presentation in the election campaign for all participants in the electoral process.

Regarding the paid political advertising, the Electoral Code offers clear rules on the composition and publication of lists of tariffs, providing equal opportunities to all political entities and the manner of marking and designation of paid political advertising. One specific aspect is that, regarding the length of time for paid political advertising, the Electoral Code, in Article 75a, paragraph 1, allows for increase of additional 15 minutes of total advertising per hour of aired programmes which will be dedicated exclusively to paid political advertising. Of that total, no more than 10 minutes can be given to one participant in the election campaign. A similar provision is listed in Article 95 of the LBA which prescribes that, during a election campaign, with a special decision, the Broadcasting Council can allow additional 20% of daily advertising time to paid political advertising, i.e. 20% or 12 minutes of additional advertising airtime per clock hour. Therefore, the provisions of the LBA on this

#### Recommendation

We recommend to synchronize the rules on the additional time for paid political advertising in the Electoral Code (Article 75-a, paragraph 1) and the Law on Broadcasting Activity (Article 95)

44 The Electoral Code ("Official Gazette of RM" Nos. 40/2006, 136/2008, 148/2008, 155/2008, 163/2008, 44/2011, 51/2011, 142/2012 and 31/2013 and 34/2013).

45 "The Official Gazette of RM" No. 60/2011

46 See Article 75, paragraph 2 of the Electoral Code and Article 1 of the Rulebook

47 "The Official Gazette of RM" No. 60/2011

48 See Article 75, paragraph 3 of the Electoral Code and Article 1 of the Rulebook

matter are in collision with the provisions of the Electoral Code. However, the provision of the Electoral Code shall apply because it is a *lex specialis* and derogate the rules listed in the general law on broadcasting. Nevertheless, for purposes of legal certainty, we recommend that legal solutions on this matter are properly synchronized.

The legislators place the responsibilities and competences to monitor and supervise the adherence to the rules of media presentation listed in the Electoral Code and the secondary legislation with the Broadcasting Council. In accordance with Article 76b, the Council is obligated to follow the electoral media presentation and the programming services of broadcasters in the Republic of Macedonia from the day elections are called to the conclusion of voting on Election Day. For any detected violation of the rules, the Council is obligated to file a misdemeanour charges at the competent Court against the offending broadcaster. The Electoral Code also prescribes that the procedure is urgent and lists especially short deadlines for court procedures in the courts in first and second jurisdiction.

At the same time, the Electoral Code (in articles 181 to 183a) prescribes high fines for violations of the rules of media presentation before and during an election campaign, which are to be levied against both the broadcaster and its editor-in-chief<sup>49</sup>.

As we mentioned before, the Electoral Code, as a *lex specialis*, derogates the provisions of the LBA. Therefore, the sole manner of sanctioning of the violations is a misdemeanour procedure and proper settlement, i.e. continuation of the procedure in front of a competent body. There are no other options to be arising from any acts (formal or otherwise), because the Electoral Code prescribes it as a legal obligation of the Council.

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49 The Electoral Code: Article 181: (1) A fine of 1,500 to 3,000 EUR in MKD equivalent for a misdemeanour shall be imposed to a broadcaster if: it does not comply to the rules from article 75, paragraph 2 and 3 of this Code; and - it does not provide equitable presentation of the participants of the electoral process (article 75, paragraph 5 and article 75 - a, paragraph 1). (2) A fine of 300 to 1,000 EUR in MKD equivalent shall be imposed to the editor-in-chief for the activities from paragraph 1 of this article. Article 182: (1) A fine of 3,000 to 5,000 EUR in MKD equivalent for a misdemeanour shall be imposed to a broadcaster or print media if: - broadcast additional time of paid political advertising per real hour, contrary to article 75-a, paragraph 1 of this Code; - do not determine a pricelist for paid political advertising of election programmes of the participants in the electoral process (article 75, paragraph 2); - do not publish the price list in the period from commencement and conclusion of the election campaign (article 75-a, paragraph 3); - make changes to the pricelist during the election campaign (article 75-a, paragraph 4); - do not submit the pricelists to relevant authorities (article 75-a, paragraph 5); and - do not allow for equitable presentation of the participants in the electoral process (article 75-a, paragraph 6). (2) A fine of 500 to 1,500 EUR in MKD equivalent for an offence shall be imposed to the editor-in-chief for activities from paragraph 1 of this article. Article 183: (1) A fine of 3,000 to 5,000 EUR in MKD equivalent for a misdemeanour shall be imposed to a broadcaster if: - broadcasts the election advertising without referring to it as paid political advertising and without separating it from other programmatic contents (article 76, paragraph 1); - does not make clear indication of who is the client of the paid political advertising (article 76, paragraph 2); - broadcasts election advertising involving minors in paid political advertising (article 76, paragraph 3); - broadcasts paid political advertising in news, information, education and children programmes and during live coverage of religious, sport, cultural and other events (article 76, paragraph 4); (2) A fine of 500 to 1,500 EUR in MKD equivalent for an offence shall be imposed to the editor-in-chief for activities from paragraph 1 of this article. Article 183-a: A fine of 1,500 to 3,000 EUR in MKD equivalent for a misdemeanour shall be imposed to a broadcaster if: - publishes the results of the opinion polls contrary to article 77 paragraph 1 of this Code; and - publishes the results of the opinion polls without indicating the data stipulated in article 77 paragraph 2 of this Code."

## **The Practice of the Broadcasting Council**

The analysis of the minutes recorded in the Sessions of the Broadcasting Council and the Report on the Media Coverage of the Election Campaign for the Early Parliamentary Elections in April 2011 and the Local Elections 2013, points out, above all, to a qualitative difference that needs to be taken into consideration. Namely, the secondary legislation adopted on the bases of changes of the Electoral Code adopted in 2011 entered into force during election campaign activities. Therefore, we should expect that broadcasters would have greater level of knowledge of the matter and the rules of conduct two years later, at the time of the 2013 Local Elections. Thus, although ignorance of the Law is not an excuse, it would have been expected to see more violations committed by the broadcasters during the 2011 Early Parliamentary Elections, as well as for the Council to demonstrate greater understanding of that fact. Such expectations, on the other hand, should be completely unfounded in 2013 for both the broadcasters and the Council.

The analysis of the work of the Council in the two election years finds that it is consistent in its actions in cases when one violation was committed by several broadcasters. It is evident, however, that the Council, in certain cases of violations and infringements, issued notifications which are not prescribed as a sanctioning measure in the Electoral Code or the by-laws arising from it, or in the LBA, regardless of the fact that it doesn't apply in this particular case.

Namely, as noted earlier, the Electoral Code explicitly prescribes an obligation for the Council to file misdemeanour charges for all violations of the provisions of the Electoral Code. On one hand, the Electoral Code prescribes the manner of conduct and institutes an obligation to act in accordance with the rules listed in the by-laws that arise from the Electoral Code. That is evident in the provisions on misdemeanour procedures which prescribe fines for failure to act in accordance with the provisions of Article 73, paragraphs 2 and 3, which refer to the respective rulebooks.

While we should, in principle, greet the decision of the Council to act preventively and to educate, the question remains how effective such actions are when they refer to issues related to elections. That especially in view of the fact that certain broadcasters were not sanctioned for several consecutive violations of the rules. The minutes of the discussions of the Council regarding the reports on conducted monitoring of election coverage lack explanations why a decision was made, in a given case, to issue a notification and not file for misdemeanour procedure.

## **Analysis of Implemented Measures and Procedures for Violations of the Electoral Code and the Rulebook for the conduct of the broadcasters in the period before the start of the election campaign**

### **Issue of Notifications**

In 2011, the Broadcasting Council issued 4 notifications to 4 broadcasters for violations of one provision of the Electoral Code and the Rulebook for the conduct of the broadcasters in the period before the start of the election campaign. In 2013, the Council issued 25 notifications to 24 broadcasters, for violations of 5 different provisions. In the period before the start of election campaign of the 2011 Early Parliamentary Elections, the Broadcasting Council issued notifications to four broadcasters for violations of the provisions of Article

84a of the Electoral Code – broadcast of advertisements of state institutions and the City of Skopje, financed from the Budget of the Republic of Macedonia and the Budget of the City of Skopje.

Two broadcasters were notified that they engaged in violations of Article 75, paragraph 2 of the Electoral Code and Article 4, paragraph 1 of the Rulebook (The broadcasters before the start of the election campaign cannot air electoral media presentation) during the 2013 Local Elections.

One notification was issued for violation of Article 75, paragraph 2 of the Electoral Code and Article 5 of the Rulebook (Editors, journalists, program hosts and presenters engaged in preparation of broadcasters' programs must not take part in pre-election activities of the organizers of election campaigns) in the period before the start of the election campaign for the 2013 Local Elections.

Twelve notifications were issued to broadcasters and programming services for violations of provisions of Article 75, paragraph 2 of the Electoral Code and Article 7 of the Rulebook (The broadcasters are not allowed to air announcements and advertisements of the state bodies, municipal bodies and the City of Skopje, financed by the Budget of the Republic of Macedonia, the municipal budgets and the Budget of the City of Skopje since the day of calling of the elections until their completion).

In 2013, six notifications were issued to 5 broadcasters for violations of provisions of Article 75, paragraph 2 of the Electoral Code and Article 12 of the Rulebook (Reporting on the regular activities of the state bodies, the municipal bodies and the city of Skopje, the state institutions and organizations, as well as the activities of legal and other entities authorized to perform public activities by law, in the programs of the broadcasters, in the period since the day of calling of the elections until the day set for start of the election campaign, must not be in function of electoral media presentation of any political subject). One of the notified broadcasters repeated the violation less than 10 days after the first notification was issued.

Four broadcasters violated the provisions of Article 75, paragraph 2 of the Electoral Code and Article 14, paragraph 3 of the Rulebook (Candidates confirmed by the competent electoral bodies must not take part in the specialized informative programs) before the start of the election campaign of the 2013 Local Elections.

It should be noted that the grounds for the issued notifications in 2011 (Article 84a of the Electoral Code) correspond to Article 7 of the Rulebook, which were used as grounds for 12 notifications for violations related to provisions of Article 75, paragraph 2 of the Electoral Code). In fact, a total of 16 violations were committed on the two grounds that refer to essentially the same conduct – broadcasting advertisements commissioned by state bodies and institutions and financed from the Budget.

### **Implemented Settlement Procedures and Filed Misdemeanour Charges**

In 2011, the Broadcasting Council started 13 procedures against 12 broadcasters, on four grounds of violations of the Electoral code and the Rulebook on conduct of broadcasters in the period before the start of election campaign. In 11 cases, the procedures were completed successfully with settlement, and in two cases misdemeanour charges were filed. In 2013, the Council did not start any procedures for violations of the rules on media conduct before the start of election campaign.

For a violation of Article 75, paragraph 2 of the Electoral Code and Article 13 of the Rulebook

(reporting the results from a public opinion poll, without ensuring sufficient information as basis for the public to assess the trustworthiness of the survey), procedure was started against one broadcaster and it wasn't successfully settled.

One broadcaster violated the provisions of Article 75, paragraph 2 of the Electoral Code and Article 13, paragraph 2 of the Rulebook by publishing in its news programmes results of unscientific and unrepresentative public opinion surveys, such as televoting polls, polls conducted on the internet, etc, and it timely paid the fine levied for the violation.

Two broadcasters were found in violation of Article 75 paragraph 2 and Article 15, Paragraph 1 of the Rulebook (airing of paid political advertising in the period before the start of the election campaign). The settlement procedure was completed successfully in one case, and in the other misdemeanour charges were filed.

Procedures for violations of Article 75a, paragraph 5 of the Electoral Code and Article 18, paragraph 4 of the Rulebook (pricelists for paid political advertising of electoral programmes and candidates of the participants in the electoral process) were started against eight broadcasters.

## **Analysis of Implemented Measures and Procedures for Violations of the Electoral Code and the Rulebook for Equitable Access to Media Presentation During the Election Campaign**

For violations of the Electoral Code and the Rulebook on Equitable Access to Media Presentation During the Election Campaign during the 2011 Early Parliamentary Elections and 2013 Local Elections, the Council has issued notifications, implemented settlement procedures and filed misdemeanour charges against broadcasters and editors-in-chief.

### **Issue of Notifications**

The council issued 22 notifications to 16 broadcasters on eight grounds of violations of the legislative framework during the election campaign and campaign silence period in the 2011 Early Parliamentary Elections. Of the total number of broadcasters charged with violations, four engaged in repeated violations.

During the election campaign for the 2013 Local Elections, the Council issued 27 notifications to 21 broadcasters and public broadcasting service on nine grounds of violations of the rules of coverage of election campaign and campaign silence period.

In 2011, three notifications were issued to three broadcasters for violations of Article 75, paragraph 3 of the Electoral Code and Article 22 of the Rulebook (exceeding the limits of 15 minutes of paid political advertising in one clock hour, and allocating more than 10 minutes per one hour to one participant in the election campaign).

For violations of Article 75, paragraph 3 of the Electoral Code and Article 24 of the Rulebook (Paid political advertising should be appropriately and visibly marked as "paid political advertising" for the whole duration of the broadcast and should be separated from the rest of the program and from the other advertisements, teleshopping spots as well as other types of advertising by a disclaimer at the beginning and at the end), one notification was issued in 2011 and six notifications were issued in 2013.

Notifications for violations of Article 75, paragraph 3 of the Electoral Code and Article 26 of

the Rulebook (The orderer must be clearly indicated in all types of paid political advertising) were issued to eight broadcasters.

For violations of the prohibition to use the special information programmes as a form of paid political advertising (Article 75, paragraph 3 of the Electoral Code and Article 29 of the Rulebook) eight notifications were issued to six broadcasters in 2011. Two of them repeated the violation in both rounds of election. The number of similar violations dropped significantly in 2013 – two notifications were issued to two broadcasters.

For failure to ensure sufficient information to allow the public to assess the trustworthiness of the reported results of a public opinion survey, which constitutes violation of Article 75, paragraph 3 of the Electoral Code and Article 30 of the Rulebook, the Council issued notifications to five broadcasters in 2011 and to two broadcasters in 2013.

One broadcaster was issued a notification for violation of Article 73, paragraph 3 of the Electoral Code and Article 24, paragraph 2, point a, indents 1 and 2 of the Rulebook, i.e. broadcasting, on campaign silence day of 2011 Parliamentary Elections, information and audio and audiovisual footage related to any candidate in the election process, respectively with any organizer of the election campaign and their election headquarters, as well as material related to politicians, representatives of the government bodies whose media presentation is in the function of the election campaign and could affect the voters' decision.

Three broadcasters aired a documentary film in which candidates running in the elections appeared during the campaign silence period of the 2011 Parliamentary Elections, in violation of Article 75, paragraph 3 of the Electoral Code and Article 34, paragraph 2, point a, indent 7, and were issued notifications.

For violations of Article 75, paragraph 3 of the Electoral Code and Article 31, paragraph 1 of the Rulebook, which stipulates that results of public opinion surveys shall be published no later than five days before the Election Day, notifications were issued to five broadcasters and programming services.

In 2011, one broadcaster was notified for violation of rules on campaign silence period defined in Article 75, paragraph 3 of the Electoral Code and Article 35 of the Rulebook. In 2013, the violations are qualified as violations of paragraph 1, indents 2 and 3 (The broadcasters can report about irregularities during the voting, and also on incidents made in or outside the polling stations, but they should: - Those elements of information from official sources which present violation of silence (example: revealing the identity of the political party and/or individuals involved in election incident) should not be published before the closure of the polling stations i.e. until 19:00 hours; - Candidates in the election process, respectively organizers of the election campaign, their monitors and headquarters are not considered as official sources;), so that notification were issued to three broadcasters.

One broadcaster was notified that for violation of Article 75, paragraph 3 of the Electoral Code and Article 36, paragraph 1 of the Rulebook (On the Election Day, before 19:00 hours i.e. before the closing of the polling stations, the broadcasters should not broadcast: - Statements from candidates in the election process, organizers of the election campaign, political party leaders, functionaries in the government bodies and politicians; - Statements from citizens and other actors in the function of the election campaign), so that notifications were issued to three broadcasters.

## **Implemented Settlement Procedures and Filed Misdemeanour Charges**

In the 2011 Early Parliamentary Elections, in 26 cases procedures were started, on 16 different grounds, against media whose conduct during the campaign and campaign silence period was seen as constituting violations of the norms of the Election Code and the Rulebook on Equitable Access to Media Presentation During the Election Campaign. In three cases the procedures referred to continuous violations. In 17 of those cases the settlement procedures failed and misdemeanour charges were filed to the competent court.

In 2013, the Council started 41 settlement procedures for violations of electoral rules (on five grounds, including violations of campaign silence rules). Of that total, 22 were successfully settled, and in 19 cases misdemeanour charges were filed.

Misdemeanour procedures were started against eight broadcasters for violations of Article 75, paragraph 5 of the Electoral Code, actions in violation of the obligation to secure equitable access to media presentation during the election campaign to all participants in the election process, in accordance with the Rulebook. Of the total number of settlement procedures, just two were completed successfully and in the remaining cases misdemeanour charges were filed to the competent court.

For violations of Article 75, paragraph 3 of the Electoral Code and Article 7 of the Rulebook (During the period of election campaign and the election silence, broadcasters are not allowed to broadcast announcements and advertisements financed from the Budget of the Republic of Macedonia, the municipal budgets and from the budget of the City of Skopje, and of all other entities authorized to perform public activities by law), two procedures were filed in 2011 against broadcasters and editors-in-chief, and in both cases the settlement procedure failed. In 2013, three misdemeanour procedures were started against broadcasters and editors-in-chief. In two of those cases, the settlement procedure was completed successfully.

In 2011, procedures were started against six broadcasting companies for violations of Article 75, paragraph 3 of the Electoral Code and Article 22, paragraph 1 of the Rulebook, i.e. exceeded total advertising time and time allocated to one participant (15 minutes of paid political advertising in one clock hour, and allocating more than 10 minutes per one hour to one participant in the election campaign) and four of the six cases were successfully settled. In 2013, the violations of those were the most common violation (a total of 24 violations were processed). 15 of those cases were successfully settled, and for the other nine misdemeanour charges were filed with the competent court.

In 2011, two broadcasters violated the provisions of Article 75, paragraph 3, and Article 24 of the Rulebook and procedures were started against them. One of them paid the fine within the prescribed deadline. Against the other, misdemeanour charges were filed.

For violations of Article 75, paragraph 3 of the Election Code and Article 27 of the Rulebook (Paid political advertising cannot be broadcast in: - news and other daily informative programming; - children, school and educational programming; - live broadcast of religious, sports, cultural, entertainment and other events; - special informative programs), during the 2011 Elections, two procedures were started against one broadcaster and its editor-in-chief, and both were successfully settled. In 2013, six procedures were started against broadcasters and editors-in-chief, and half of them were successfully settled.

For violations of the deadline for publication of results of public opinion polls (no later

than five days before the Election Day), i.e. for violations of Article 75, paragraph 3 of the Electoral Code and Article 31, paragraph 1 of the Rulebook, procedure was started against one broadcaster in 2011.

Four broadcasting companies were found in violation of the provisions of Article 75, paragraph 3 of the Electoral Code and Article 34, paragraph 2, point a of the Rulebook. Three violations were committed through broadcasts of audiovisual materials related to a candidate running in the elections, i.e. an organizer of election campaign during the campaign silence period (Article 34, paragraph 2, point a, indent 1 of the Rulebook), as follows: Two broadcasts of surreptitious media reporting in the function of election campaign that could affect the voters' decision, and one broadcast of programmes otherwise unrelated to the elections, but with appearances of representatives of governing bodies. Only one procedure concluded in settlement with the broadcaster, and against the other broadcasters misdemeanour charges were filed with the competent courts.

## 5. Conclusions and recommendations

1. The Broadcasting Council plays an important role to ensure the legal functioning of the broadcasters, in accordance with accepted principles. Faced with the wide scope of competences it has and, on the other hand, the huge number of broadcasters, as well as the inability to conduct 24/7 monitoring of operations of all media, it tries to perform its supervisory function through regular and ad hoc monitoring operations. The supervision is performed as a part of its regular activities and the regular operations of the broadcasters, but also in accordance with the provisions on media coverage and presentation of electoral activities listed in the Electoral Code.

2. From the viewpoint of legislation, the legal framework that regulates the work of the Council is relatively complete. There are certain inconsistencies on the horizontal plane which, although rather minor, should be eliminated. Also, the need is identified to regulate the matters related to sanctioning of broadcasters that fail to meet their legal obligations with an appropriate secondary legislation. That should provide the Council with clear rules of action.

3. This analysis shows that the Council relies on the practice to direct certain matters and issues to be discussed in so-called "coordination" of the Members of the Council before they are submitted to be reviewed in a proper session of the council. That practice is not regulated in any normative act that regulates the work and operations of the Council. In view of all of the noted above, the Broadcasting Council should terminate the practice of "coordination". Alternatively, it needs to be regulated properly and in detail and it should never, under no circumstances, be used to by-pass the public and adopt decisions "behind closed doors".

4. The analysis of Council's conduct towards different broadcasters found in violation of the same norm shows that its approach is relatively levelled. In its deliberations on which measure to pronounce, the Council, as a rule, assesses the scope and the degree of the violation committed by a broadcaster, as well as the prior behaviour regarding the adherence to the norms. It is evident from the work of the Council that it intends to act preventively,

not repressively towards the broadcasters. Certain inconsistencies were noted in the actions against broadcasters that engage in repeat violations of one norm, in the sense that the Council, in the effort to educate, occasionally repeats the same measures or refrains from pronouncing stricter measures, which in some cases means that the sanction doesn't produce the effect of preventing a repeat violation.

## **RECOMMENDATIONS:**

1. The terms and definitions from the area of copyrights used by the Law on Broadcasting Activity should be synchronized and aligned with the terminology and definitions used by the Law on Copyrights and Associated Rights.
2. Termination or precise definition and regulation of the so-called "coordination" as a form of work of the Broadcasting Council in the acts of the Council in a manner that will not undermine the transparency of Council's work and operations.
3. The Council should adopt a by-law that will regulate in detail the pronouncement of measures in cases of violations and the manner of their execution. That is especially true in view of the fact that the Council, in its regular practice, in addition to the measures also implements other activities in cases of detected violations, for example, it issues notifications to offending broadcasters. Also, in those cases where it is possible to quantify the actual deviation from the set norm (for example, the length of marketing and advertising slots), it should be set as a norm that would provide the basis for assessment of the scope of the violation and, by extension, the type of sanction that should apply.
4. The Council should re-examine its policy to leave it to the perpetrator of the violation to choose the manner and the timing (the day or days) on which the measure shall be executed.
5. The Council needs to strengthen its sanctioning policies for violations of basic principles of radio and television broadcasting, especially in cases of broadcasts that violate the fundamental human rights and freedoms.
6. Activities need to be implemented to raise the awareness and improve the conduct of broadcasters in terms of protection of minors and underage audiences.
7. The wording of Article 74, paragraph 2 of the LBA makes it difficult to consistently meet the obligation for minimal representation of musical programmes in a given language by broadcasters that predominantly air instrumental music. We recommend that a clear distinction is made in that regard.
8. Implement measures to ensure ad hoc monitoring of cases in which increased frequency of violations of certain rules by some broadcasters were detected, thus avoiding the danger that the behaviour of a broadcaster that has not been properly recorded could influence the pronounced measures.
9. We recommend consistent implementation of graduation of measures in those cases where gradation of measures is prescribed by the Law on Broadcasting Activity (Article 38, paragraphs 3 and 4).

10. The Council should consider the possibility to release the information collected by the monitoring to the public, as integral parts or annexes to the minutes of Council's sessions, having in mind their importance as a source of information for the expert and scientific communities.

11. We recommend synchronisation of rules on additional time for paid political advertising in the Electoral Code (Article 75a, paragraph 1) and the Law on Broadcasting Activity (Article 95).

12. The Council should reassess its practice to issue notifications in cases of violations of Electoral Code and by-laws arising from it, having in mind its explicit provision that the Council shall be obligated to start misdemeanour procedures for violations of the rules of media presentation by the broadcasters.