COMMMENTS TO THE DRAFT-LAW ON CHANGES AND AMENDMENTS TO THE LAW ON AUDIO AND AUDIOVISUAL MEDIA SERVICES

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The media and the media sector in general are on the list of key areas identified by the Macedonian society and many international documents and reports that need to go through a process of thorough reforms, to ensure that Macedonia will be transformed into a truly democratic country with a pluralist and open society. The reforms of the media sector were included in the Report prepared by the group of senior experts led by Reinhardt Priebe, and also on the list of urgent democratic priority reforms prepared by the European Commission.

As a result of the talks facilitated and mediated by Belgian mediator Pieter Vanhoutte, in March 2016, five CSOs – organizations active in the area of media, professional associations and trade unions – presented the political parties with a draft-legislation proposing urgent changes to the Law on Audio and Audiovisual Media Services. The Draft-Law was endorsed by the then opposition in the Parliament and officially submitted for adoption by a group of MPs, in an urgent procedure. The Parliament, however, chose not to take the proposal into consideration, as it came right before the elections that were scheduled to take place one month later, in April 2016.

However, that Draft-Law has remained in play to this day, and the now ruling party has repeated on several occasions that it intended to submit it for adoption in its integral form, albeit, with the caveat that it was open to suggestions to amend certain provisions in it. The final version presented by the Ministry of Information Society and Administration as the Draft-Law on Amendments and Supplements to the Law on Audio and Audiovisual Media Services is generally true to such announcements. However, the fina version does list several additional provisions, primarily in the area of allocation of permits to broadcast programming services over the public electronic communication networks and the obligations of operators of public electronic communication networks.

This document offers the Media Development Centre's comments to certain provisions of the Draft-Law. It includes, in particular, those provisions that we find unnecessary, provisions for which there may be better solutions, provisions that could cause harm to the media sector and freedom of expression in the country,

because they fall out of commonly accepted legislative solutions and are opposed to internationally recognized standards.

In addition to its internal capacities, for the purposes of preparation of this document, MDC engaged the services of Klime Babunski, Ph.D, from association PRO MEDIA, expert in public service broadcasting and media policies.

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GENERAL COMMENTS

This Draft-Law, as already noted, is a continuation of the proposal of five CSOs (also known as the Vanhoutte Law, after Peter Vanhoutte, EU facilitator that participated in the drafting process) submitted to the Parliament in March 2016. At the time of its first submission to the Parliament, was strictly tied to a specific historic moment before the Early Parliamentary Elections, then scheduled to be held in April 2016. It was a product of the necessity to impose some limitations, to the extent possible, to the pro-government propaganda in the leading national terrestrial TV broadcasters, propaganda which fully disregarded the fundamental premises and standards of journalistic profession and media reporting.

The “Vanhoutte Law” re-emerged in the public discourse with the repeated announcements of the new Government that it intended to submit the Draft to the Parliament in its integral form. The proposal did go through some changes before it was officially submitted earlier this months (September 2017). The Draft-Law should be considered in the context of the current situation, especially in view of the scope, urgency and dynamics of reforms in the media scene and the behaviour and actions of ruling majority and the opposition in the Parliament. For that reason, we should be

aware of the necessity to modify some principled solutions through a pragmatic approach, that is, to adapt them to the existing political situation, to provide equally for the democratic process and the urgency of reforms in the media sphere.

The Draft-Law does not, by any means, exhaust the needs for reform. It merely provides the foundations for future changes that should proceed over a somewhat extended process and period of time. The process will have to be based on a comprehensive debate, with involvement of all stake-holders in Macedonian society. We believe that, in this first stage of the process, the priority should be placed on the changes in the composition and the very constitution of the regulatory authority and the Programming Council of MRT. They, in turn, should then take the helm and lead the process of definition of new legislative solutions, in line with identified needs.

There is a general consensus which those needs are - the political influence over AVMS and MRT; the unstable financing of the public broadcasting service; the insufficient adherence and/or active disregard for the professional standards of journalism and media reporting; the oversaturated market susceptible to media corruption, often involving abuse of public funds; the role and position of new online media; etc. Another important area that needs to be addressed by legislative intervention is the structure of media ownership which largely contributes, through client-patron relations between the owners of most influential media and the government, to the low resistance of media to political and economic pressure.

In that later stage of reform of media legislation, we should review the policies of access to media market, allocation of broadcasting permits; the new trends introduced by the digitalization of broadcasting as opposed to the accepted domestic "one broadcaster one programming service" approach and practice; the sustainability of media market; the domination of information over other public-service functions - entertainment and educational - of the broadcast media, etc.

With that in mind, some comments below will clearly refer to the dynamic and multi-stage nature of certain reform tasks, while other comments will emphasize the need for more pragmatic approach and solutions.

DRAFT-LAW ON CHANGES AND AMENDMENTS TO THE LAW ON AUDIO AND AUDIOVISUAL MEDIA SERVICES

Article 1

Paragraph 7 of Article 4 of the Law on Audio and Audiovisual Media Services (Official Gazette of the Republic of Macedonia Nos. 184/2013, 13/2014, 44/2014, 101/2014 and 132/2014), shall be changed to state:

"(7) The work and operation of the Agency shall be financed with funds provided from the Budget of the Republic of Macedonia, from income collected from fees and compensations prescribed by this Law, as well as from loans and other forms of financial and technical assistance. "

COMMENT: The proposed change will depend on the ultimate decision on the fate of the broadcasting license. Even if we adopted the proposal for MRT to be financed from the Budget of the Republic of Macedonia instead from the collected broadcasting license, several questions need to be answered: Will the existing broadcasting licence be replaced by a single budget line, or will the different activities and institutions that it funds will be divided into separate budget lines? If the first option prevails, than we find the provisions listed in Article 27 of the Draft-Law below, replacing the existing Article 105, acceptable.

Article 2

Paragraph (3) of Article 12 shall be deleted.

Paragraph (4) of the same article shall become Paragraph (3), shall be changed to state:

"(3) Members of the Council shall be professionally engaged in the Agency with full-time employment contract, and shall be entitled to:

- Monthly salary to the amount of up to four average monthly salaries in the Republic of Macedonia, according to the data published by the National Statistics Office, in accordance with the Rules of Procedure of the Agency,
- Compensation for travel costs for the members of the Council who live outside of Skopje, incurred to ensure their participation in the sessions of the Council, and
- Compensation of travel and accommodation costs, as well as business trip per diem allowances in accordance with the Law on Salaries and Other Allowances Paid to Appointed and Elected Officials in the Republic of Macedonia.

Paragraphs (5), (6), (7) and (8) shall become paragraphs (4), (5), (6) and (7).

COMMENT: We fully agree with the proposed change, that is, for Members of the Council to perform their office as full-time employees. Nobody disputes the need for the AVMS Council to be transformed into a professional, expert body. The professionalization, on the other hand, will mean that compensations for living far from home (for those Members of the Council who come from other cities out of the capital of Skopje), travel and accommodation expenses, etc., should be regulated in more detail with by-laws, knowing that Council Members shall be expected to report to their workplace every day.

We propose a change in the composition, that is, reduction of number of members of AVMS Council. Our reasonings is based primarily on the proposed change of status of Council members to full professional position on full time employment contract. The change also reflects the size and the scope of media industry in the Republic of Macedonia. Finally, such change will provide for greater efficiency and reduced costs of operation of the Agency.

We also propose for paragraph 2 of article 12. The proposal envisions the Council as a professional, expert body, not a representative body. Therefore, professional quafilications and credibility should be the sole criteria for their

selection and appointment, making the requirement for the Concil's composition to "reflect the diversity in Macedonian society" a non-issue.

Article 3

Article 14 shall be changed to state:

"Article 14

Appointment of Council Members

(2) The Parliament of the Republic of Macedonia appoints the Members of the Council on basis of conducted public call and public discussion/hearing on the merits of the applicants for a position in the Council.

(3) The Parliament of the Republic of Macedonia shall announce a public call for applications for positions in the Council, not later than six months before the termination of the term in office of the incumbent Council Members.

(4) Candidates for membership in the Council shall submit an application in which they shall provide detailed account of their past working experience and achievements in their respective areas of expertise, a statement that they meet the criteria for selection listed in Article 16 of this Law and letters of endorsement from the following organisations:

- from two civic organisations that have been active for more than five years and have achieved relevant results in the areas of media and human rights, or
- from an association of journalists, or
- from the Independent Trade Union of Journalists and Media Professionals, or
- from two institutions of higher education with study programmes in the areas of communication sciences, journalism, culture, economy, law or other similar area of relevance for the performance of the competences of the Council.
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(5) The Committee on Elections and Appointments shall be obligated to check if the applicants meet the rules and criteria for existence of conflict of interest listed in Article 16 of this Law.

(6) The Committee shall organize, not later thatn one month after the closing of the public competition, a public debate on the applicants that meet the competition criteria of Article 16 of the Law, to which it shall invite the organisations that endorsed the applicants, other media organisations and professional organisations of journalists, NGOs working in the area of media and other relevant entities.

(7) After the completion of the public debate, the Committee on Elections and Appointments shall define the short-list of candidates for membership in the Council. The Committee shall adopt the final short-list of candidates for Members of the Council with a two-thirds majority vote.

(8) In the definition of the short-list of candidates for seats in the Council, the Committee on Elections and Appointments of the Parliament of the Republic of Macedonia shall pay due attention to the need to ensure fair and equitable representation of citizens of all communities that live in the Republic of Macedonia.

(9) The Parliament of the Republic of Macedonia confirms the appointments of Council members with a two-thirds majority vote.

(10) The Parliament of the Republic of Macedonia shall appoint a new member of the Council, not later than one month before the termination of the term in office of a sitting Council Member.

(11) The President of the Council shall inform the Parliament of the Republic of Macedonia about the imminent termination of the term in office of a Council member not later than six months before the termination."

COMMENT: There is a strong consensus in the expert community in Macedonia on two important characteristics of the regulatory authority: The body should be relatively small, professional and composed of experts in their respective areas, and (2) we should abandon the existing system of "authorized nominators" which has, throughout the history of broadcasting regulation, that is, regulation of audio and audiovisual media services, provided the main path of entry for

political and other forms of influence over the regulator. Therefore, we believe that the proposed system of mandatory presentation of endorsement letters is a variation of the system of authorized nominators and needs to be eliminated from the legislation. The AVMS Council should be an independent, professional and expert body, which means that the main criteria for selection of its members should focus on their qualifications and experience, that is, the extent to which they meet legal requirements and criteria. We shouldn‘t allow for a situation in which, for a variety of reasons (including vanities, prior misunderstandings, etc.), a fine candidate would be disqualified because he/she failed to secure the support from some of the organizations listed in the proposed changes to the Law. The second objection regarding the obligation to present endorsement letters refers to the fact that the list of organisations and entities noted in the proposed legislation is restricted and excludes important actors and stakeholders in the media scene, such as broadcasters or the advertising industry, in favour of journalist associations. The recognition of limited scope of partial interests, for instance the journalists and their associations, while excluding other partial interest, for example, those of the owners of broadcast media, is not a sustainable solution. That is contrary to the practice for regulatory authorities to have sitting representatives of related industries, like the advertising industry. The participation of civil society in the selection process should be ensured through active involvement of CSOs working in areas of media, human rights, freedom of expression, culture, professional associations of journalists, trade unions and industry associations, in the questioning of candidates by the competent commission for selection of Council members, which needs to be organized as an inquiry committee, allowing representatives of civic organisations, too, to ask questions of the candidates related to their programme and visions. The support/endorsement of such organisations is welcome, but only in the form of views and positions presented in a public discussion, not as a mandatory element that needs to be submitted in order to have a valid application. The support, for the precise reason that it shouldn't

equate some sort of "authorized nomination - endorsement" needs to be given only after the Commission decides on the short-list of valid candidates.

The two-thirds majority vote for confirmation of candidates is an ideal standard and indicator of a developed democratic political culture. On the other hand, to insist on such a high standard in conditions of political crisis, an opposition that remains unreformed and actually works against the reforms in the Parliament, will inevitably lead to delays of reforms. Therefore, it would be pragmatic – and it doesn't mean that it is undemocratic – to apply the standard of absolute majority (in our case 61 vote "for") which we find a much better and more appropriate solution.

We propose an addition of a new Paragraph (3), to state:

"The candidates for position of members of the Council participating in the public call shall be obligated to submit an application with detailed account of their past working experience and achievements in their respective areas of expertise, accompanied with a statement that they meet the criteria listed in Article 16 of this Law."

We propose to add another new paragraph (4), to state:
"Any organization with more than five years of experience and relevant results and achievements in the media sphere - including the professional associations from the media and related industries, organisations working in the area of human rights, as well as higher education institutions with study programmes in communicology, journalism, culture, economy, law and other similar areas of relevance to the performance of competitions of the Council, shall have the right to present its opinion on each and every applicant to the Commission for Elections and Appointments, not later than three working days from the day of publication of the short-list of candidates. The Commission for Elections and Appointments shall consider such opinions freely and shall accept them or

dismiss them at its own discretion. The Commission shall be obligated to invite the organisations that presented opinions to participate in the public discussion."

Article 4

Article 15 shall be changed to state:

"Article 15

Term in Office of Council Members

(1) The Members of the Council shall be appointed for a term of five years in office.

(2) The Members of the Council shall have the right to be appointed to one more term in office.

(3) If a Member of the Council resigns or his/her mandate ends before the expiration of the term for which he/she was appointed, the Parliament of the Republic of Macedonia shall appoint a new Member of the Council in the same procedure prescribed in Article 14 of this Law.

(4) The Council shall be considered operational if at least five Members were appointed."

COMMENT: We believe that the term in office for Council Members should be of length that shall amount to at least one and half term for the members of the appointment body, that is, the Parliament. It means that the term in office for the Council Members should be at least six years long. We propose that the term in office for Council Members is set at seven years, without the right for reappointment for another subsequent term in office. Alternatively, a Council Member may be appointed for another, non-consecutive term in office, and may run for a sit on the Council after the passing of a full term in office since the end of their first term in office.

Article 5

In Article 16, Paragraph (1), the word “five" shall be replaced with the word “eight”.

Paragraph (3) shall be deleted.

Paragraph (4) shall become paragraph (3).

COMMENT: The proposed changes are acceptable. We also believe that the Draft-Law should include provisions for prevention of possible conflict of interest for Council Members after the end of their term in office, that is, provisions prohibiting them from taking a managerial or senior editorial position in broadcast media for a period of at least one year (for a 5-year term in office) or two years (if the term of Council Members is set at 7 years) after the end of their term in office. Such provisions are more or less standard for all officials that, during their term in office, were in position to decide on the situation and trends in their respective industry of sector of the economy.

Also, the list of appointment criteria of Article 16 should be amended to add the existing provision from Paragraph 1, indent 2 of Article 119 (Incompatibility of offices), which applies to the members of Programming Council of MRT, which prevents “persons who have held, in the period of last five years, public offices or performed the highest offices of governance of a political party or religious community" from being appointed as members of the Programming Council. Furthermore, in the case of AVMS Council, that period should be extended from five to eight years, to equalize it with the professional experience requirement listed in the criteria for selection and appointment of AVMS Council members.

Article 6

In Article 18, after indent 6, two new indents shall be inserted, to state:

"- Adopts decisions to implement measures, in accordance with this Law, in cases of violations of provisions of this Law and by-laws arising from it, and the terms of reference and obligations listed in the broadcasting licenses,

- Adopts decisions to implement measures of temporary restriction of transmission and reception of audio or audiovisual media services originating in other countries on the territory of the Republic of Macedonia,"

COMMENT: The competences of the regulatory body and their distribution among the Council and the Director should undergo a process of thorough review and changes, in favour of the Council. The review should be led by the principle that the regulatory authority needs to be sovereign in adoption and implementation of policies in its area of coverage, in this particular case, the area of audio and audiovisual media services. (See in the comments for the next Article 7 of the Draft-Law).

Article 7

In Article 19, paragraph (1) shall be changed to state:

"(1) The Council appoints the Director of the Agency in a public call procedure. The candidates need to hold a university degree and experience exceeding eight years in the fields of communicology, journalism, electronic communications, information and computing sciences, culture, economy or law, as well as prior experience in running an organisation".

After Paragraph (1), a new paragraph (2) shall be added to state:

"(2) The candidate for the position of Director of AVMS should not have been member of executive or steering bodies of political parties and can't have performed offices in the legislative and executive branches of power in the previous 10 years, counting back from the year in which his candidacy is submitted."

Paragraph (8) becomes paragraph (9) and shall be changed to state:

“(9) The provisions of paragraphs (1), (2), (3), (4) and (5) of this article shall apply to the Deputy Director of the Agency.”

Paragraphs (2), (3), (4), (5), (6), (7) and (8) shall become paragraphs (3), (4), (5), (6), (7), (8) and (9).

COMMENT: The main executive position of the regulatory body needs to be tied to the AVMS Council, that is, the President of the Council should simultaneously hold the office of Director General of the Agency, to represent the Agency in its external operations. The daily operational functioning of the regulatory body should be managed by a head of Agency's administration, a position subordinated to the Council in the hierarchy of the Agency. It means that a position of “Head of Administration” or “Executive Director” needs to be established, a person that will manage the administration, without any competences in areas for which the Council should be the sole decision making body, that is issues and matters related to the media system and media policies. Therefore, the key qualifications for the position of Executive Director should be in the areas of law, economy or organisation sciences, with past experience in electronic communications industry.

Article 8

Indents 8 and 9 in Article 20, paragraph (1) shall be deleted.

Paragraph (3) shall be changed to state:

"(3) The Director is appointed for a term of five years in office, with the right to be reappointed for another term in office."

COMMENT: The same comment as for the previous article 7 applies. As noted, there is a possibility to introduce a system of rotation of Members of the Council for the position of President of the Council. Even if the proposed solution stays, it seems natural for the Director's term in office to be equal to the term in office of the Members of the Council.

Article 9

Article 23 shall be changed to state:

“Article 23

Measures for violations of regulations

(1) In cases of violations of provisions of this Law and by-laws resulting from it, as well as terms of reference and obligations defined in the broadcasting permits and other acts of the Agency, the Council of the Agency may apply the following measures against media publisher, provider of on-demand audiovisual media services or operator of public electronic communication networks that re-transmit programming services:

- Warning,
- Shall file misdemeanour charges in those cases when, in spite of the issued warning and the possibility to correct their actions, the entities listed above continue with violation that earned them the warning over the next year,
- Shall adopt a decision to revoke the broadcasting permit, or
- Shall adopt a decision for deletion from the proper registry, in accordance with this Law.

(2) For the measures of indents 1 and 4, the AVMS Council shall adopt a corresponding decision. For the measure prescribed in indent 2, the Council shall adopt a Proposal to initiate misdemeanor charges. For the measure prescribed in indent 3, the Council shall adopt a Decision. The entities against whom such decisions were declared shall be entitled to challenge them in the Court of Law, in accordance with Article 24 of this Law.

(3) Before it issues a public warning, the AVMS Council shall invite the broadcaster to present its case and explain its actions that led to the violation of the Law or related by-laws, or the terms and conditions of the permit to broadcast programming services and other acts of the Agency in writing.

(4) Before the declaration of a concrete measure for violation or regulations listed in paragraph 1 of this article, with exception of the measure public warning, the Council shall be obligated to organize a public session in which a representative of the media outlet shall present its case and explain the actions and the reasoning for its actions.

(5) In exception to the provision of paragraph (1), indent 2 of this Article, the Council of the Agency shall file initiative for misdemeanour charges for violations of provisions of Article 91 of this Law without a need to first issue a warning.

(6) The decisions to implement the measures of paragraphs (1) and (2) of this article, with a full rationale, shall be published by the Agency on its web-site, no later than three days from the day a decision was adopted."

COMMENT: The proposed changes are acceptable in principle. We believe that the list of measures listed in Paragraph 1 of the proposed article should be amended to add the measure "temporary suspension of broadcasting permit", with the period of suspension not longer than one week. On the other hand, the issue of competences of the Agency, the sanctions it may declare, especially measures for content-related violations other than the existing provisions sanctioning inappropriate actions and behaviour in advertising or protection of minors related sanctions, should be subject of a comprehensive public debate and part of the long-term reforms in the area of regulation of audio and audiovisual media services.

Article 10

Paragraph (1) of Article 30 shall be changed to state:

"(1) Expert supervision shall be performed by the employees of the expert service of the Agency authorized by the Council of the Agency, for the sole purpose of verification of realization of the technical requirements, as per the Request for granting a permit for television or radio broadcasting.

COMMENT: The programming concept, the contents of broadcast programmes should be and are an important element of the permit for broadcasting and should be equally subject of supervision. We have the example of Croatia, where the regulatory body can and has suspended the broadcasting concession for a broadcaster, for a period of several days, over serious violations of legal provisions (in that particular case, over broadcasts that contained serious hate-speech).

Article 11

Article 48 shall be changed to state:

“Article 48

Special prohibitions

(1)The audio and audiovisual media service must not contain programmes that threaten national security, call for violent overthrow of constitutional order of the Republic of Macedonia, call for military aggression or armed conflict, incite or spread discrimination, intolerance or hatred on basis of sex, race, colour, gender, membership of marginalized group, ethnic background, language, nationality, social background, religious belief or faith, other beliefs, education, political affiliation, personal or social status, mental or physical impairment, age, family or marital status, property, health condition, or any other grounds prescribed by law or by ratified international treaty or agreement.

(2)The Special prohibitions of paragraph (1) of this article shall be in line with the case-law of the European Court of Human Rights.”

COMMENT: We agree with the proposal to extend the list of special prohibitions with a comprehensive definition of hate-speech.

Article 12

After article 62, two new articles 62-a and 62-b shall be inserted, to state:

“Article 62-a

Political pluralism in the news and daily information programmes

(1) Broadcasters that air news and daily information programmes shall be obligated to provide in them an impartial, fair and balanced presentation of different political and ideological views, in accordance with Article 2 of this Law.
(2) When reporting on matters that are subject of debate between political entities or subject of a general debate in society, the news and daily information programmes shall allow for as many as possible different and/or opposed view to weigh in, both in each individual newscast and in a series of subsequent newscasts.
(3) The news and daily information programmes shall not overemphasize or favour the views and opinions of a single concrete person, institution or organization.
(4) An overemphasis of a concrete specific viewpoint shall mean that such a viewpoint was reserved significantly more air-time in the news that the other views on the same issue and that the journalistic approach to the presentation of that view is biased.
(5) The presenters of news and journalists shall not express their own personal views in news and daily information programmes.
(6) The views and facts may not be misrepresented.

COMMENT: Proposed Article 62a and 62b are another illustration of the fact that his Draft-Law is closely tied to a specific historical moment that existed in March 2016. Back then, in addition to prevent the biased reporting of majority of national DVB-T broadcasters in favour of the Government, there was the crucial need to ensure fairer treatment of the government and the opposition in the context of the coming election campaign and the debate programmes aired during that period. Therefore, the provisions listed in the two proposed articles are better suited to

be incorporated in the electoral legislation. In essence, the provisions of that type should refer to a wider understanding of pluralism that shall not be reduced to the mere issue of political pluralism, that is, the treatment of political parties in power and those in opposition. Therefore, any future attempt for legal regulation of those principles should use the title "Pluralism", without the denominator "political".

The proposed provisions are also related to the issue whether, following the example of Great Britain, we shall adopt a policy to impose on the media a legal obligation to be duly impartial and neutral, that is, to deny them the right to "editorialize". In continental Europe such provisions are rare. While laws set the standards for "due impartiality" and fortify the professional standard of separation of commentary and reporting, in terms of presentation of comments or views, as is the case in Croatia, the demand is primarily to make it perfectly clear and evident whose comments or opinion are presented, or to mark appropriately the editorial opinion or positions. On the other hand, we have the example of Sweden and other countries, where the principle of impartiality is mandatory only for the public broadcasting service.

There is the related issue of the care for implementation of proposed provisions. Having in mind the fact that those are matters covered by journalist and media ethics and professional standards, it is unacceptable to define such standard in legislation and they should be left to members of the profession. Again, we could find the British example useful, with the 2003 Communications Act charging the regulatory body OFCOM with the task to regulate in detail and implement that regulation, and OFCOM then adopted the so-called Broadcasting Code that defines the actions of broadcasters, including in reporting of news and in information programmes, as well as sanctions for violations of the Code. The adoption of such provisions should necessarily lead to at least co-regulatory solutions, an issue related to the supervision of broadcasters mentioned above in Article 10 of the Draft-Law, and to the possibility for the broadcasting authority to sanction violations detected through the supervision process.

As with other matters proposed in this Draft-Law, we believe that the issue should be resolved in the later stages of legislative reform.

We propose that, at this stage, the proposed new articles 62a and 62b should be scratched, and the existing Article 61 of the LAAVM (Principles) should be amended with a new indent to state "The views and opinions of the editorial office on various social issues and affairs should be clearly and appropriately market as 'editorial comments' and to be separated from the other elements of the information programmes".

Article 62-б

Political pluralism in debate, current affairs and contact programmes and talk-shows

(1) Debate, current affairs and contact programmes and talk shows should adequately represent all different viewpoints of the given topic of discussion in the programme.
(2) The presenters and hosts of debate, current affairs and contact programmes and talk shows may express their own opinion on the debated matters or issues, but may not favour a single viewpoint, that is, exclude all other alternative views of the topic that is subject of discussion in the programme.
(3) The debate programmes shall present the views and facts objectively. "

COMMENT: The previous comment under Article 62a applies equally to this Article 62b.

Article 13

In article 76, after paragraph (1), two new paragraphs (2) and (3) shall be inserted, to state:

"(2) Programming service for television broadcasting over a public electronic communication network shall be of specialized format only. Before the allocation of

new permits for television or radio broadcasting over a public electronic communications network that doesn't use a limited resource, or over the satellite, the Agency shall prepare an analysis to establish the existing situation from the viewpoints of pluralism, audience needs and economic conditions for operation of broadcasters in the media market. To determine the audience needs for television or radio broadcasting in the corresponding service area, as well as the type and format of programming services for which new permits need to be allocated, the Agency may conduct a public opinion poll.

"(3) Before the allocation of new permits for television or radio broadcasting over a public electronic communications network that doesn't use a limited resource, or over the satellite, the Agency shall be obligated to inform the public in a transparent manner and inform all interested parties about the possibility to file requests to be issued a permit."

Paragraphs (2), (3), (4), (5), (6), (7), (8) and (9) shall become paragraphs (4), (5), (6), (7), (8), (9), (10) and (11).

COMMENT: Proposed provisions on allocation of permits for broadcasting of programmes over public electronic communication networks fail to pass the test of elementary logic of functioning of that area of provision of audiovisual media services. Broadcasting of programmes over public electronic communication networks and over the satellite is regulated with permits which, while based on the same criteria as permits for broadcasting using a limited resource, are allocated on demand, without an obligation to open a public call. The fact that no public call is necessary annuls the provision of paragraph (3) on the necessity to inform the public and the interested parties. Regarding the provisions of proposed new paragraph (2), in the European practice, they are reserved for the terrestrial broadcasting that uses limited public resource, while broadcasting over the satellite and over public communication networks is considered primarily as a commercial agreement between the broadcaster and the operator of a public communication network and is separated from the system of strict regulation that covers the DVB-T

segment (regardless of availability of carrying capacity in the multiplexes). Macedonian broadcasting market is, indeed, oversaturated and overcrowded by some degree of magnitude, but such a strict regime of regulation of market access should be reserved for the DVB-T broadcasting, and MDC believes that the policy of allocation of DVB-T licenses (on national, regional and local levels) is in need of a serious and thorough review. We should also consider the possibility for reintroduction of the system of concessions, with the decision to open a public call for specific formats should depend on the assessment of the regulatory body, based on proper in-depth research and analysis of existing needs in the market and needs of the audience, and not on the initiative or the wish of potential broadcasters and interested investors.

The proposed provision of the new paragraph (2) that restricts the permits for broadcasting over public electronic communication networks only for specialized format broadcasters raises a series of questions. First, although it is in line with the predominant global trend, and primarily in the US television market, that sees primarily specialized format broadcasters being carried by cable (and IPTV) platforms, the question is whether such a limitation wouldn't be considered excessive and unaaceptable restriction of media freedom to choose and set its own programming and editorial policy. In most markets, it was the nature of the markets and the opportunity for profitable operation that dictated the trend for cable TV to specialize – documentary and scientific programming, education, music, film and serial drama (often further specialized by genre or topic – comedy, Science fiction, police procedural drama, etc.). The decision to establish a specialized format programming service is motivated commonly by the intent to access a specific audience that can then be sold to specific advertisers. Second, the restriction of cable TV permits to specialized formats only should, by default, lead to elimination of the existing practice to tie those permits in Macedonia with a specific allotment zone – local, regional or national. Namely, a specialized format programming service, for instance, a sports channel registered in Ohrid,

should be free to sell its packages to an operator of a public electronic communication network in Kumanovo, and vice versa.

Article 14

In Artile 80, paragraph (2), the formula shall be changed to state:

"((N x GDP/200,000) x Pt x Kn) + A) x 0.8"

COMMENT: As with all other aspects of financial operations of the media, the calculation of the license fee for broadcasting of programming services is a complex issue that needs to follow only after a decision is made whether, and in what manner, we regulate access to broadcasting market, propoer analysis of the market from the view point of needs of the accessible audience (population) market's economic capacities, as well as needs and purchase power of existing and potential advertisers.

Article 15

Article 92 shall be changed to state:

"Article 92

Obligations of broadcasters to broadcast programmes in Macedonian language or in the languages of communities in the Republic of Macedonia

(1)Commercial broadcasting companies that air television and radio programming service shall be obligated to air daily at least 30%, the public broadcasting service shall air at least 40%, of original programming created by Macedonian authors or authors from ethnic communities that are not majority in the Republic of Macedonia.

(2)The provision of paragraph (1) shall not apply to programming services with specialized format.

(3)Broadcasters shall be obligated to air at least one half of the prescribed quota of paragraph (1) of this article in the period between 7.00 and 19.00 hours.

(4)The rules for implementation of obligations of this Article shall be regulated in more detail by the Agency."

Article 16

Article 92-a shall be deleted.

Article 17

Article 92-b shall be deleted.

Article 18

Article 92-c shall be deleted.

Article 19

Article 92-d shall be deleted.

Article 20

Article 92-e shall be deleted.

Article 21

Article 92-f shall be deleted.

Article 22

Article 92-g shall be deleted.

Article 23

Article 92-h shall be deleted.

Article 24

Article 92-i shall be deleted.

Article 25

Article 92-j shall be deleted.

Article 26

Article 92-k shall be deleted.

COMMENT: The proposed deletion of a series of provisions is justified only as a short-term measure and remedy to address the issue of "polluted" media policies. The long-term solution of that matter should be based on a comprehensive analysis of the existing situation and needs, an obligation that logically enters the scope of competences of the regulatory authority.

The issue of the obligation to air domestically produced programmes and the issue of stimulation of domestic (both in-house production by the media and production by independent producers) should be considered carefully, separated from the obligation to air a certain quota of European audiovisual works. The media industry is, among other things, a cultural industry, and experiences from abroad indicate that, especially in small media markets that service small linguistic communities like the Macedonia, that obligation is a necessity to balance the cultural influence of the big and powerful media and cultural markets. On the other hand, the existing system of mandatory quotas and subsidies for production of feature and documentary production has been perceived as a major channel for abuse of public funds, especially in view of the relatively low quality of the output. We believe that the main obligation as producer and curator, incubator if you want, of feature and documentary audiovisual production should be placed with the public broadcasting service, naturally, with proper financial support. The obligation to broadcast certain quotas of domestic production shouldn't be eliminated entirely, but it has to be reconsidered and adapted to the capacities and potentials of domestic media industry and market. Also, any future quotas should not be limited to feature and documentary programmes, but should include entertainment genres, such as variety and other show programmes (for instance, quiz shows). Finally, the possibility to finance or subsidize production of feature (and documentary) audiovisual contents should not be left in the hand of the Government, or some sort of inter-ministerial commission. The existing Macedonian Film Agency should be restructured following the example of the

Croatian Audiovisual Centre (HAVC) or the Slovenian Film Centre, as main source of public funding for production of both film and audiovisual content.

Article 27

Article 102 shall be deleted.

COMMENT: Article 25 that proposes the deletion of Article 102 of the LAAMS should be deleted, that is, Article 102 should remain. All entities listed in the article should refrain from any such expenditure, which is the actual current situation. The reason is that the deletion of Article 102, without simultaneous or prior intervention in a series of acts that regulate the functioning of bodies of government, state and public institutions or local self-governments listed in Article 102 in order to eliminate the possibility for them to have and dispose of budgets for promotion of their activities and fund public campaigns, shall lead to a situation in which the existing promotion budgets could be spent in a non-transparent manner, without adherence to the provisions of the legislation that regulates public procurement procedures.

This doesn't mean that we don't support the initiative to prevent the Government, its ministries and other institutions that have at their disposal public funds and budgets, filled with taxpayers' money, from the possibility to conduct media buying and purchase advertising time or space, especially in the broadcast media. That change, however, should be left for the later stages of reforms of the legislation. Furthermore, those changes need to define the difference between public interest information campaign and advertising campaign, and the decisions for such expenditures should also involve the regulatory authority.

Article 28

Article 103 shall be deleted.

COMMENT: The fate of this provision shall depend on the decision which approach to the financing of MRT we shall adopt. The fact is that most public service broadcasters financed from the broadcasting licence supplement

those funds with commercial activities, including airing audiovisual commercial communications (advertising). The sale of advertising time for the public broadcasting service is completely banned in the UK (for BBC only) and in Sweden. At the same time, certain services and productions of the BBC are directly financed by the Government, while in some cases, BBC is allowed commercial operations. In other countries, sales of advertising time account for major part of total generated income of the public broadcasting services. As far as MRT is concerned, its total reported income earned from sales of advertising time is very small. Still, in view of the size of available advertising revenue on national level, its amount is not completely insignificant from the viewpoint of commercial broadcasters. Both the European Broadcasting Union (EBU) and the Council of Europe recommend a mix of sources of financing, not a reliance on one and exclusive source of financing of the public service media.

Article 29

Article 105 shall be changed to state:

“Article 105

Financing of MRT

"(1) The work and operation of MRT shall be financed with funds provided from the Budget of the Republic of Macedonia, to the amount equal to one percent (1%) of the Budget of the Republic of Macedonia for the ongoing year, in accordance with this Law and the Law on Control of State Assistance.

(2) The funds of paragraph 1 shall be distributed as follows:

- 74.5% for MRT, to cover the costs of production and broadcasting of programmes and technical and technological development;

- 19.5% for PE Macedonian Broadcasting (ЈП Македонска радиодифузија) for maintenance, use and development of public broadcasting network; and

- 6% for the Agency for Audio and Audiovisual Media Services.

(3) An additional source of finances for MRT is the funds earned from broadcasting of audio and audiovisual commercial communications, donations, sales of programmes and services.

(4) The donations of paragraph (3) of this article shall not influence or jeopardize the editorial independence of MRT.

(5) For procurement of audio or audiovisual works, that is, programme contents, MRT shall be obligated to sign individual contracts with providers of audio or audiovisual works, that is, programme content.

(6) The manner and procedure for conducting public competitions, the manner and procedure for procurement of audio and audiovisual works, that is, programme content, and the contract award shall be regulated in an act adopted by the Director of MRT, which should ensure transparency, cost-effectiveness, efficiency and effectiveness in the management of MRT's financial assets, in accordance with the Annual Programme for operations of MRT for the following year, this Law and the acts adopted thereof.

(7) Additional funds from the Budget of the Republic of Macedonia may be allocated for the specific purpose to achieve and maintain higher levels of programming and technical and technological development of the public broadcasting service.

(8) If MRT doesn’t spend all the funds provided from the Budget of the Republic of Macedonia for the given year, the remaining funds, as determined by the Annual Balance Sheet, shall be paid back to the Budget of the Republic of Macedonia. “

COMMENT: We oppose the proposal to terminate the broadcasting licence, especially not without first preparing a proper detailed plan of annual needs for broadcasting and production of MRT, which will ensure that the financing of the public broadcasting service shall be sufficient and adequate, stable and predictable, at least mid-term. The decision on the budget should be based on expert and professional argument and should result from an analysis that is properly discussed by the expert community. It should not be a result of

political wheeling and dealing, or decision of a political body or institution. For that reason, it is wrong and inadequate to set budget, and judge it as sufficient and adequate, as a percentage of the Budget of the Repuglic of Macedonia. The sole criteria of adequacy for the budget of any public broadcasting service, including MRT, should be if the dedicated budget allows for production of planned programmes and realization of other obligations contained in public broadcasting service's remit.

The independence of public broadcasting services doesn't depend solely on the size of its budget, but also on the manner in which the budget is defined and accumulated, as well as what the budget coveres and in which manner. The internationally accepted standards that aim to ensure democratic governance of public service broadcasting remove the decisions on budget planning and execution from government ministries or the parliament and transfer the authority to the steering nbodies of the public service broadcaster. Ultimately, the Parliament does adopt and confirm the budget of the public broadcasting service. That standard is present in the exising Law, and it is the Programming Council of MRT that is charged with the task to define the programme and the budget necessary for its production and implementation, while the Parliament approves and confirms both the programme and the budget.

Therefore, the change of the model of financing of MRT, in a manner that by-passes the Programming Council as the body with legal mandate to plan MRT's budget and its execution, without a public debate in the general public and expert communities, and without clear idea what kind of programming shall be financed with the new budget, is contrary to the internationally accepted standards; fails to secure the democratic governance of MRT and does, in fact, lead to further domination of party politics over the public service broadcasting in Macedonia.

At the same time, we are aware of the financial situation and problems faced by MRT, as well as the fact that its steering bodies – especially the

Programming Council - are lacking in professional capacity, a situation that we protested and objected repeatedly over the past several years.

In view of the weaknesses and insufficient quality of the proposed changes to Article 29 of this Draft-Law, it is necessary for the new AVMS Council and the new Programming Council of MRT, within six months and on basis of proper analysis and public debate – involving in particular the expert community – to prepare and submit to the Parliament a proposal with legislative changes regarding the financing of MRT.

To avoid further deterioration of situation at MRT and its basic operations, in view of the serious financial situation at MRT, we should apply the least harmful solution, that is, to secure the necessary funding through application of Paragraph 7 of Article 27 of this Draft-Law, or paragraph 5 of Article 105 of the existing Law. While the term "higher levels… of development" remains underdefined or underspecified, the Government, in line with its declared intent to work and operated openly and transparently, and the Programming Concil, should provide transparent reports and information on the spending of additional funding for MRT, secured from the stage Budget.

The regulator should, in future changes of this section of the Law, and in order to overcome such weaknesses, introduce two new institutions: an independent commission to define the mid-term and annual budgets of MRT; and an Agreement between the Government and MRT. The members of the Independent Commission should be appointed by the regulator, and the contents of the Agreement should be defined in cooperation between AVMS Council and Programming Council of MRT.

Article 30

Article 106 shall be changed to state:

"Article 106

Annual Report and Annual Programme of Operations of MRT

(1) MRT shall be obligated to adopt five-year strategy for development, with annual action plans that will be reviewed annually on basis of analysis of implementation of the strategy.

(2) MRT shall adopt Annual Programme of Operation for the next year and will submit it to the Parliament of the Republic of Macedonia no later than October 30 of the ongoing year. The Annual programme shall list specifically:

- working programme for the next year with planned activities, especially activities regarding implementation of programming obligations of MRT under this Law, and

- financial plan for the next year that lists the planned income and expenses of MRT for the next year, grouped by structure and organizational structure of MRT, as well as the planned capital investments of the public service broadcaster for the next year.

(3) The Annual Programme of Operations of MRT for the ongoing year shall be attached to the Annual Programme of Operations of MRT for the next year.

(4) The Financial Plan of Paragraph (2), indent 2 of this Article shall be adopted and confirmed by the Parliament of the Republic of Macedonia, no later than December 31 of the ongoing year.

(5) MRT shall be obligated to adopt an Annual Report for the previous year and submit it to the Parliament of the Republic of Macedonia for review and confirmation no later than March 31 of the ongoing year. The Annual Report shall list specifically the following:

- Report on the realization of the Programme of Operations for the previous year,

- Financial Report on the realization of the Financial Plan for the previous year and an Annual Balance Sheet with data on realized income, expenses, outstanding

claims and liabilities for the previous years, grouped by structure and units of organizational structure of MRT, and

- Audit Report prepared by an independent international authorized audit house and Audit Report from the State Audit Office, if such an audit was conducted, as well as MRT's comments on the results and findings of the audit reports.

(6) The Annual Programme of Operations of MRT for the previous year shall be attached to the Annual Report of MRT for the previous year.

(7) The Annual Report and the Annual Programme of Operations for the next year shall be published on the web-site of MRT."

COMMENT: The idea of five-year strategic planning is fine and should be adopted. Unfortunately, it has not been developed in accordance with needs and tasks and even indicates lack of understanding of the very idea of strategic planning. The strategic planning, in this particular case at MRT, shouldn't disregard the actual existing environment, that is, should not be conducted without active involvement of the regulator – the AVMS Council, having in mind the fact that it is an obligation of the Regulator to prepare the national strategy for development of electronic media (audiovisual media services). Also, the strategic planning of MRT can't be conducted without enhanced activity of the Programming Council of MRT and its members, other bodies of MRT, and the Law should define, in principle, the roles played by the different actors and the need for a wider and comprehensive public debate. The less that adequate conception of the strategy for development is especially visible in the fact that the proposed provisions don't prescribe its mandatory publication, both as working material or in its final form, while proposed article prescribes the publication of the annual report and working plan.

The MRT Development Strategy should not be instituted as a legal obligation before the constitution of the instruments and institutions mentioned in the previous article – the Independent Commission for definition of mid-term and annual budgets of MRT and the Agreement to be signed by the Government

and MRT, which should allow us to overcome the unsustainably general nature and vagueness of Article 27, paragraph 7 of this Draft-Law. The Agreement between the Government and MRT should be a legal obligation, to meet the purpose of additional and precise definition of mutual rights and obligations in the areas in which the Government and the public service broadcaster meet. The aim of the agreement is to balance and distinguish the competences between the Government and the Programming Council of MRT in the matters that fall within the scope of competences of each of the two institutions. Such areas are, for example, the financing of the public service media, but also some distinct educational or cultural obligations of the public service media, or some special services, such as programmes intended for audiences abroad, or programmes for the diaspora.

Therefore, we propose, due to the lack of proper elaboration of the concept of strategy for development of MRT, to delete the proposed changes in the Law and to charge the regulatory body, the AVMS Council, to propose proper and adequate legal changes within a period of six months.

The two new institutes and instruments - the Independent Commission and the Agreement between the Government and MRT should be part of the detailed future reforms of the media legislation, which should follow after the completion of the primary task, to elect and appoint new compositions of the AVMS Council and the Programming Council of MRT.

Article 31

Paragraph (7) of Article 107 shall be changed to state:

“(7) The editorial responsibility for the Parliamentary Channel of Paragraph (6) of this Article shall be held by MRT, and the programming schedule of the Parliamentary Channel shall be designed in cooperation with the Parliament of the Republic of Macedonia."

Article 32

In Article 109, paragraph (1), the phrase “broadcasting tax” shall be replaced with the phrase “finances from the Budget of the Republic of Macedonia”.
In Article 109, paragraph (3), the phrase “broadcasting tax” and the “,” shall be deleted.

COMMENT: We believe that the Parliamentary Channel should be placed under full control of the Parliament of the Republic of Macedonia and should be cut off from the system of the public broadcasting service, among other things, because at the moment MRT uses the Parliamentary Channel as a "reserve capacity" for broadcasts of other types of programmes that don't, in any way or fashion, concern the work and activities of the Parliament and its working bodies (this includes broadcasts of sports matches that can’t make it to the First or Second channels of the public broadcaster).

In the existing solution, it is necessary to fully separate the editorial responsibility and the financial/book-keeping operations, as two main principles that illustrate the difference between a public service medium and a Parliamentary channel.

In fact, the Parliamentary Channel should not be some sort of classical mass media outlet, that is, it shouldn’t replicate the media and journalistic production capacities and practices, or engage in production of any special programme contents outside of its standard role of "televising" the work of the Parliament. That is the main reason why the editorial responsibility for the Parliamentary Channel shouldn't be located at MRT. The editorial responsibility within the Parliamentary Channel should be well thought out and condensed in a proper act that will provide the design of the Parliamentary Channel not only in terms of its programme contents, but also in terms of internal organisation – number, structure and hierarchy of employees, and functionally, according to the main tasks of the Parliamentary Channel: (1)

Providing TV coverage of the work of the Parliament and its bodies, (2) archiving the recorded material, and (3) providing unconditional and free-of-charge access to the material, on basis of submitted request. The design of the Parliamentary Channel should also have in view the financial and/or accounting aspects, to avoid "duplication" of costs between MRT and the Parliamentary Channel.

In addition, if MRT accepts certain obligations to provide specific services to the Parliament under the auspices of the Parliamentary TV channel, it would be necessary for the Parliament and MRT to sign a proper agreement to precisely define their rights and obligations. The new institute - the Agreement between the Parliament and MRT should be part of the detailed future reforms of the media legislation, which should follow after the completion of the primary task, to elect and appoint new compositions of the AVMS Council and the Programming Council of MRT.

Article 33

Article 117 shall be changed to state:

“Article 117

Authorized nominators of members of the Programming Council of MRT

(1) The Parliament of the Republic of Macedonia appoints and terminates the term in office of the Members of the Council on basis of conducted public competition and public discussion on the applicants for a position in the Council.

(2) The candidates for members of the Programming Council of MRT should be citizens of the Republic of Macedonia, holding university degree, with working experience of at least eight years and to be prominent persons known in public for their efforts in advocacy of democratic values and principles, rule of law, building and upholding the highest values of constitutional order in the Republic of Macedonia, development of civil society, protection of human rights and freedoms and freedom of expression.

(3) Candidates for membership in the Programming Council of MRT who apply to the public call shall submit an application in which they shall provide detailed account of their past working experience and achievements in their respective areas of expertise, a statement that they meet the criteria for selection pursuant to Articles 117 and 1198 of this Law, and letters of endorsement from the following organisations:

- At least three civic organisations that have been active for more than five years and have achieved relevant results in the areas of advancement of human rights, media and democracy;

- At least one association of journalists;

- At least two associations working in the area of culture (associations of artists, writers, film authors, etc.);

- At least two institutions of higher education with study programmes in the areas of communicology, journalism, culture, economy, law or other similar area of relevance for the programming functions of MRT.

(4) The Committee on Elections and Appointments shall be obligated to check if the applicants meet the rules and criteria for existence of conflict of interest listed in Article 119 of this Law and shall organize a public debate on the candidates to which it shall invite the organisations that endorsed the applicants, other media organisations and professional organisations of journalists, NGOs working in the area of media and other relevant entities.

(5) After the completion of the public debate, the Committee on Elections and Appointments shall define the short-list of candidates for membership in the Programming Council of MRT. The Committee shall adopt the final short-list of candidates for Members of the Council with a two-thirds majority vote."

COMMENT: This comment shall also apply to the next Article 34 of this Draft-Law. The fact that the Draft-Law prescribes almost identical procedure for appointment of members of both the Programming Council of MRT and the Council of AVMS, favouring partial interests, makes the proposal equally bad

as the one prescribed by the existing Law. At the same time, it fails to make the necessary distinction between the two bodies, which have different tasks, a fact that needs to be reflected, among other things, in the procedure of their constitution. Therefore, it is of key importance for the list of authorized nominators to avoid favouring any particular interest (representatives of certain professions should not sit in the Programming council: Journalists, writers, film professionals, because it could lead to conflicts of interest), and it should, in fact, ensure the presence of numerous and important separate interests as main actors of the general public interest.

To achieve that goal, the body that makes the strategic decisions and is at the top of the governing hierarchy of the public broadcasting service has to represent as many and as diverse segments of the society as possible, meaning that it has to abandon the concepts of both the existing Law and the Draft-Law.

Knowing that the Programming Council of MRT should be a representative body, the nomination is only the final stage of their appointment, which is only confirmed by the Parliament.

The issues of composition and appointment of members of the Programming Council (which also has the role of board of directors) have to be revisited and reviewed carefully, knowing that, as we noted, it has to be representative body for all relevant social groups in order to ensure representation of their interests in the programmes of MRT (one of the basis of the public broadcasting service's remit). It necessary would make it a relatively large body, in terms of the number of sitting members. In terms of groups that will be represented as socially relevant, the number of representatives each of them will have sitting in the council, the manner of their nomination, a fine example may be found in the media authorities (*medienanstalten*) of the German federal states, which are commonly such large representative bodies.

In our case, that principle of wide representation of all or as many socially relevant groups as possible, necessitates the application of many diverse

criteria, all the while paying attention to the ethnic, cultural diversity of Macedonian society and gender equality issues.

One possible list, where main criteria would be to secure the presence and protection for as many diverse interests as possibly, would include: Representatives of political institutions, without voting rights (the Parliament, parties not represented in the Parliament and local self-governments); representatives of religious communities; representatives of organizations that protect and advocate for the interests of children and youth; education institutions and associations; cultural institutions, including associations of alternative culture; institutions that care for and protect the interests of persons with special needs and disabilities; interests of capital and labour (chambers of commerce, employers' associations, trade unions); civic associations, especially those working in areas of human rights and environmental protection; representatives of the diaspora.

Article 34

Article 118 shall be changed to state:

“Article 118

Nomination of members of the Programming Council of MRT

(1) In the definition of the short-list of candidates for members of the Programming Council, the Commission on Elections and Appointments of the Parliament of the Republic of Macedonia shall pay due attention to the need to ensure fair and equitable representation of citizens of all communities that live in the Republic of Macedonia.

(2) Members of the Programming Council of MRT shall be elected for a five-year term in office, with the right to be re-elected for one more subsequent term in office.

(3) The Parliament of the Republic of Macedonia confirms the appointments of members of the Programming Council of MRT with a two-thirds majority vote.

(4) If a member of the Programming Council of MRT resigns or if his/her mandate ends before the expiration of the term for which he/she was appointed, the Parliament of the Republic of Macedonia shall appoint a new Member in the same procedure prescribed in Article 117 of this Law.

(5) The Parliament of the Republic of Macedonia shall appoint the new members of the Programming Council of MRT no later than 15 days before the expiration of term of the sitting Programming Council of MRT.

(6) The Programming Council of MRT may work and hold sessions if at least nine members were appointed."

Article 35

Paragraph (4) of Article 130 shall be changed to state:

"(4) The Director and the Deputy Director of MRT, in addition to the conditions of Paragraph (3) of this Article, should hold a university degree, working experience of at least eight years in the area of communicology, journalism, electronic communications, information and computing sciences, culture, economy or law, as well as past experience of managing organisations."

Article 36

Chapter VII. Broadcasting license and articles 135, 136, 137, 138, 139 and 140 shall be deleted.

COMMENT: The issue of the broadcasting license has already been elaborated in the comments on Article 27 of the Draft-Law, which covers Article 105 of the LAAVMS.

Article 37

Article 143 shall be amended to state:

"Article 143

Obligations of an operator that retransmits programming services

(1)An Operator may retransmit programming services of domestic broadcasters only for the service zone for which they were issued permit for broadcasting of ratio od television programmes, and on basis of regulated copyrights and associated rights, in accordance with the Law on Copyrights and Associated Rights.

(2)An Operater may retransmit programming services of foreign broadcasters in accordance with Article 44 of this Law and on bases of regulated copyrights and associated rights, in accordance with the Law on Copyrights and Associated Rights.

(3)Programming services that are retransmitted over public electronic communications that are subtitled in a language different of the language of original production, they shall be subtitled in Macedonian language, with exception of tele-shopping and advertisements.

(4)An Operator that retransmits programming services shall ensure that the programme package shall mandatory, and free-of-charge, offer the programming services of the public service broadcaters finaned from the Budget of the Republic of Macedonia. The obligation shall not apply to operators that retransmit programming services over a digital terrestrial multiplex.

(5)An Operator that retransmits programming services shall ensure that the package of programmes that offers the programming services of the public broadcasting service shall obligatory contain the programming services of domestic broadcasters that air general format television programming services on national level over the digital terrestrial multiplex.

(6)An operator that retransmits programming services shall be obligated to list in the subscriber agreements concluded with its subscribers the programming package, i.e. the list of programming services it retransmits at that given time, for which the Agency issued its certificate of registration.

(7)An Operator that retransmits programming services shall be obligated to keep separate accounting for activities related to retransmission of programming services.”

COMMENT: The issue of retransmission of programming services aired by broadcasters that hold permit for terrestrial broadcasting in the DVB-T segment, the so-called "must carry" obligation, should be considered with utmost attention and care. In that regard, paragraph (1) of the proposed new article 143 should be more specific to make the distinction between providers of audio and audiovisual media services with permits to broadcast programmes over the limited public resource (DVB-T multiplex) and broadcasters with permit to broadcast programmes over public electronic communication networks (in the context already noted above in the comments on Article 13 of this Law).

The adoption of must carry obligations, in general, is motivated by two needs – to ensure that subscribes to services offered by operators of public electronic communication networks have access to certain public interest programming, and to avoid the unwanted influence on the media market, that is, the economic operations of broadcasters. For that reason, most contries that have must carry oblitgations cover only the programming services of the public broadcasting service. That is the case, in fact, in our existing legislation. Far fewer countries extend the must carry obligation to cover the commercial broadcasters with DVB-T licenses. Regarding proposed paragraph (5), the question is why it doesn't cover the broadcasters that hold DVB-T licenses for regional broadcasting, especially in view of the fact that only in that case the obligation prescribed in the proposed paragraph (1) for retransmission of domestic programming in the service area for which the permit was issued makes sense.

As many other issued covered by this Draft, we propose to leave this matter for later stages of legislative reforms (and reforms of media system and market), and only after a proper relevant analysis of the existing situation, capacities of the market and audience's needs.

Article 38

Article 145 shall be deleted.

Article 39

Article 146 shall be deleted.

Article 40

In Paragraph (1), after indent 9), a new indent 10) shall be inserted, to state:

„10) Broadcasts programmes that endanger and undermine national security, incite to violent overthrow of constitutional order in the Republic of Macedonia, calls for military aggression or armed conflict, incites to and spreads discrimination, intolerance or hatred on basis of race, sex, race, colour, gender, membership of marginalized group, ethnic background, language, nationality, social background, religious belief or faith, other beliefs, education, political affiliation, personal or social status, mental or physical impairment, age, family or marital status, property, health condition, or any other grounds prescribed by law or by ratified international treaty or agreement (Article 48, paragraph (1));"

In Paragraph (2), the phrase "from 1,000" shall be deleted.

In Paragraph (3), the phrase "from 1.000" shall be deleted.

COMMENT: There is a long-standing consensus in the media community and in the general public about the need to empower the regulatory authority to declare sanctions (administrative sanctions or fines) for violations related to the legitimate restrictions of freedom of expression listed in Article 48 of the Law on audio and audiovisual media services. Therefore, the proposed change is not only acceptable, we welcome it wholeheartedly.

In general, the issue of policy of sanctions in audio and audiovisual media services should be reviewed carefully, to ensure that potential sanctions are both effective and efficient in penalizing undesirable actions and behavior and to ensure that they would act as prevention for future violations. Lamentably, due to the general situation on the overcrowded, impoverished and unsustainable media market, even the current sanctions, especially the fines (which in a somewhat normal market situation could be considered

unacceptably low) are serious threat for the very survival and existence of most broadcasters, save the most influential national terrestrial TV stations. Therefore, while proposed changes that provide that, when deciding on the actual fines, the regulator shall take into account several aspects, including the financial and economic situation of the media, are acceptable, we do hold the position that they should be subject to comprehensive analysis and review, which should certainly go hand in hand with a proper analysis of the market and possibilities for stricter regulation of access and entry into the audio and audiovisual media services market.

Article 41

The Parliament of the Republic of Macedonia shall announce the public calls for candidates for members of the AVMS Council and the Programming Council of MRT in the Official Gazette of the Republic of Macedonia and at least two print media, within three days from the day of entry into force of this Law.

The candidates for seats in the Council of AVMS and the Programming Council of MRT shall submit their applications within seven days from the day of publication of the public call.

The Commission on Elections and Appointments shall conduct the whole selection procedure within a period of seven days.

The Parliament shall appoint the members of the AVMS Council and the Programming Council of MRT within three days from the day of reception of the short-list of candidates by the Commission on Elections and Appointments.

The election and appointment of the members of the Council and the Director of the Agency, as well as the appointment of the members of the Programming Council, the Director and Deputy Director of MRT, in accordance with this Law, shall terminate the terms in office of the members of incumbent members of the Council and Director of the Agency, as well as the terms in office of the incumbent members of the Programming Council of MRT, the Director and Deputy Director of MRT.

COMMENT: We are not certain if the period of seven days shall suffice for completion of the whole selection procedure, including a proper public discussion/hearing, as prescribed above in this Draft-Law.

Article 42

This Law shall enter into force on the day of its publication in the “Official Gazette of the Republic of Macedonia”.