HOW TO ELECT COMPETENT REGULATORY BODIES?

POLICY BRIEF



EUROPEAN ENDOWMENT FOR DEMOCRACY

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CONTENT

MEDIA DEVELOPMENT CENTER

3 INTRODUCTION

4 EXISTING LEGISLATIVE FRAMEWORK

5 WHAT IS THE SITUATION TODAY AND WHAT HAPPENED IN THE MEANTIME

8 EUROPEAN PRACTICES

10 RECOMMENDATIONS

INTRODUCTION

Broadcasting, i.e. the audiovisual media services sector couldn't avoid the fast-paced changes in the media sector caused by the emerging new technologies and the internet as a platform for distribution of contents. According to all estimate, it is likely that in the next ten years or so (in the more optimistic variant) we would see audiovisual media services (with possible exception of cinematography) move completely to IPTV platforms, taking us to the age of „post-linear" and certainly into the age of „post-terrestrial" television. In the case of radio, that process will likely take more time.

The changes shall demand a new approach to regulation, especially in view of the fact that the main reason to regulate broadcasting – allocation of the frequency specter as a limited public good – shall cease to exist. If current trends continue, the regulation will probably move its focus from technical aspects of provision of audiovisual media services to programming and content-related aspects. The task to redesign and adapt the regulation shall fall primarily on regulatory bodies.

In a similar way, the new age shall seek a new role for the public broadcasting service and especially on its steering body that defines, among other things, its development policies.

Therefore, the key role in the management of the changes shall be played by the two steering bodies, the Council of AVMS and the Programming Council of MRT. Still, as we could see in the time that has passed since the adoption of the Law on Changes and Amendments to the Law on Audio and Audiovisual Media Services on December 31, 2018, even the process of appointment of members of the two bodies is marred by many weaknesses. In addition, we saw that it is the political affiliation, not the expertise of the candidates that is crucial in the process of appointment of the members. This document is focused on the issues of selection and appointment of the steering bodies of the regulatory authority, the Agency for Audio and Audiovisual Media Services, and the public broadcasting service, the Programming Council of MRT.

In the process of preparation of this document, MDC has presented its recommendations to the stakeholders and the expert community in a round-table discussion that was held on February 2025. The comments and suggestions of the participants were integrated in the document and are appropriately marked as such contributions.

EXISTING LEGISLATIVE FRAMEWORK

The changes to the LAAMS of December 31, 2018[1], introduced new provisions regulating the selection and appointment of the members of the Council of AVMS and the Programming Council of MRT. Article 3, paragraph 9 of the Law on Changes and Amendments to the LAAMS[2] (refers to Article 14d of the LAAMS) prescribes that the Parliament shall appoint the members of the Council of AVMS with "two-thirds majority of the total number of members of Parliament, while it has to have the votes of the majority of total number of MPs that belong to communities which are not a majority in the Republic of North Macedonia". Article 32, paragraph 3 of the same Law (refors to Article 128 of the LAAMS)[3], on the appointment of the members of the Programming Council of MRT, contains an identical provision.

Another change to the provisions of Article 14 of LAAMS (article 3 of the Law on Changes and Amendments to the LAAMS) was the replacement of paragraph 3 with a new paragraph that has replaced the list of authorized nominators with mandatory letters of endorsement that have to be presented by the candidates. Similarly, Article 117 of the LAAMS was changed (Article 31 of the Law on Changes and Amendments to the LAAMS) and prescribes a list of authorised entities that may provide letters of endorsement to candidates for members of the Programming Council of AVMS.

In addition, the term of service of the members of the Council of AVMS was shortened from seven to five years (Article 4 of the Law on Changes and Amendments to the LAAMS, refers to Article 15 of the LAAMS). For the members of the Programming Council of MRT, no similar change was introduced and the length of their term of service remains five years.

The Council of AVMS and the Programming Council of MRT are continuously viewed as being under strong political influence. The changes to the legislation were motivated by the wish to prevent and avoid such unwanted political influence and to appoint an expert body (in the case of the Council of AVMS) or a body that would represent the diverse interests in Macedonian society (the Programming Council of MRT).

Further, the provisions of Article 42 of the Law on changes and amendments to the LAAMS prescribe clear deadlines for implementation of procedures to appoint the new compositions of the two bodies. According to the legally prescribed deadlines, the whole procedure of selection and appointment of the new members of the two bodies should have been completed in about 80 days, or no later than the second half of March 2019.

1 See on URL
2 Ibid.
3 Ibid.

WHAT IS THE SITUATION TODAY AND WHAT HAPPENED IN THE MEANTIME

The first public call for applications for candidates of the two bodies was announced on January 31, 2019, within the legal deadline. The applications of the candidates were collected within the legally prescribed deadline. However, due to "lack of consensus", as explained by the Commission on Matters of Elections and Appointments, the public hearing of the candidates (prescribed by the Law, Article 14, paragraph 5 of the LAAMS) was never held. Ultimately, that call was declared failed two years later, and the same fate befell the second public competition announced in May 2021.

Finally, almost six years after the entry into force of the changes to the LAAMS, on October 2, 2024, the third public competition for appointment of members of the Council of AVMS (this time in a separate procedure from the Programming Council of MRT) was announced. At the time of writing of this document, the procedure was still ongoing and we are waiting for the Parliament's confirmation vote on the candidates short-listed by the Commission on Elections and Appointments in a plenary session. The manner in which the procedure was conducted provoked a lot of criticism. That was especially the case with the public hearing which, instead of allowing the MPs and the present representatives of the civil society, professional associations of journalists and media and other stakeholders to ask question of the candidates about their ideas and vision for regulation of audiovisual media services, provided each candidate an opportunity to present themselves and their candidacy. At least one candidate publicly stepped out of the competition in protest for such a manner of organisation of the public hearing. In addition to the members of the Commission and the candidate, only representatives of those entities that provided letters of endorsement to the candidates were invited and, instead of asking questions, they were expected to list the reasons why they gave their endorsement to a particular candidate.

In general, the position of the supporters of the legal changes was that the need to secure a qualified, two-thirds majority for the confirmation vote would lead the parties to block the openly partisan candidates, resulting in a situation when independent experts would pass. The few opponents of the ultimately adopted changes to the Law (MDC was one of them) pointed out that the solutions, while idealistic, were difficult to implement in practice.

The opinion that the two-thirds majority requirement for appointment of the members of the two bodies dominated among the participants in the round-table discussion. However, they all agreed that the current version of the Law misses additional instruments to prevent that the Council of AVMS and the Programming Council of MRT would be populated by "representatives" of the political parties or their loyal members.

The high set threshold, while desirable, proves to be unpractical and, as we saw, allows the political parties which are not satisfied with the "distribution" of spots in the Council of AVMS (and the Programming Council of MRT), to block the appointment process indefinitely. That was what happened, indeed, so we now find ourselves in a situation in which the current composition has been "acting" Council for almost six years. In fact, if all went as prescribed in the LAAMS (the changes thereof of December 2018), we would have been discussing now the procedure for appointment of the second

composition of the two bodies, knowing that the failed attempts and the blockades of the process lasted longer than the prescribed five-year term in office.

We hold the position that, in a situation of extreme polarization of political life and related difficulty to secure that type of qualified majority in a proportional electoral system, political parties shall use the opportunity to trade with their support and bargain to secure positions for their loyal cadre in the two bodies. That was illustrated by the fact that, due to refusal of their demands to have "their own" members in the two bodies (we have anecdotal evidence), the then opposition never really started the selection and appointment procedure. On the other hand, now that the procedure is under way, thanks to the fact that the current government is close enough to the two-thirds majority in the Parliament, all reports agree that the current opposition secured a deal to have its representative in the Council of AVMS in return for its votes necessary to reach the qualified majority.

Another question is, why would we appoint a body that regulates an industry, in this case the industry of audiovisual media services, with a qualified majority (the "Badintaire majority" should stay as a requirement), if other similar bodies in the country are appointed with absolute majority vote in the Parliament. Such is the case with the appointment of members of the Energy Regulatory Commission, or the Commission of the Agency for Electronic Communications.

MDC remains on the position that the solution which prescribes that the members of the two bodies should be appointed with a two-thirds majority vote, in order to secure passage for expert and competent candidates, remains an ideal out of reach. Being aware of the need to limit the possibilities of political parties to treat the Council of AVMS not as an expert body (or in the case of the Programming Council of MRT as a body that represents diverse social interests and groups), but as a body that represents their interests in the area of audiovisual media services (and the public broadcasting service), we should pay due attention to other elements of the Law. Those would have to secure greater rate of passage and priority for experts instead of politically appointed candidates in the selection process. That position was supported by all participants in the round-table discussion.

Therefore, in a situation when it is unrealistic to expect, for as long as the members of the two bodies are appointed by the Parliament, that political calculation would stay out of the process of selection and appointment, we need to introduce instruments that would limit and ideally exclude such political calculations and influence to the greatest extent possible.

Several important points emerged from the round-table discussion. The first is that the process of selection of the compositions of the two bodies has to ensure real and actual participation of stakeholders and expert community. The whole process should follow the example of the procedure for selection of members of State Commission on Prevention of Corruption, with creation of a special body to select and evaluate the candidates which, in addition to representatives of the Parliament, shall include representatives of civil society.

Second, the Parliament should ensure a true public hearing process, again, following the example of the procedure for selection of

members of State Commission on Prevention of Corruption, where in addition to presenting their programmes, the candidates shall respond to questions of MPs, the expert community and the civil sector.

Third, there is a consensus that the legal provisions on criteria that candidates need to meet in order to qualify should be more precisely defined and more specific. A good example, as noted further in this document, are the corresponding provisions in the Law on the Electronic Media of Serbia. It prescribes that the candidate should have expertise and past experience from working in media and related creative industries (film and drama production), but also in advertising.

Finally, although we believed at the time that the replacement of "authorized nominators" with "supporters/endorsers" that would not nominate, but give letters of endorsement to the candidates was a positive change, the impression is that the endorsers have taken the position that they are the new "nominators" and, as such, they are entitled to "their" representatives in the two bodies. Since that approach has proved to be less than adequate, it seems that we need to go back to the system of authorized nominators. Of course, that system will have to be overhauled by making the list of authorized nominators comprised primarily of professional associations of journalists and editors, other media professionals, but also the associations of media publishers. The list should also include the associations of various creative industries, music, film, drama, and other areas that are closely associated with the industry of audiovisual media services. On the other hand, we don't see the reason why the bar association, the trade unions (apart of the industry specific trade unions), the Parliamentary committees or the Association of Units of Local Self-Government should be on the list of authorized nominators.

Several participants in the round-table discussion pointed out that, in a situation when the two bodies are appointed by the Parliament, possibly the best instrument to prevent political influence and "wishes" of the government (whoever holds the power at any given time) to control the regulatory authority and the public broadcasting service is to not appoint all members of the Council of AVMS and the Programming Council of MRT at the same time. That is, a "staggered" term should be introduced, with some members, especially of the Council of AVMS, appointed with several years of delay, for example, ever second or third year. It would mean that some of the members appointed in the ongoing procedure shall have a shortened term of service. Still, the expectations are that it would prevent a political party or coalition from having full control over the regulatory body.

EUROPEAN PRACTICES

Unfortunately, there is no uniform approach in Europe that would help us establish a system that would ensure quality and competent steering body of the regulatory authority (the same goes for the public broadcasting service). Practices and procedures differ from one country to another[4]. For example, in most states the audiovisual regulator is an independent body, but in some countries it is part of the convergent regulatory body for electronic communications (UK, Slovenia, Bosnia and Herzegovina). There is a great probability, especially in view of expected move of all audiovisual contents to IPTV platform, most likely in some video-on-demand form, or as subscription streaming services, that most regulatory authorities will become convergent bodies.

Second, in most European countries the boards (or other form of steering bodies) are small, expert bodies. One exception is Germany, where regulatory authorities (the audiovisual regulation is organized on federal state level) are mostly "representative bodies" in which members are nominated by diverse socially relevant groups (for instance, environmentalists, women, youth, political parties, religious communities, etc.) although several federal states have small, expert bodies appointed by the respective parliaments.

MDC actively promotes that approach (especially for the Programming Council of MRT, but possibly also the Council of AVMS), instead of small, expert bodies, the two steering bodies to be larger, representative bodies with members delegated by pre-defined socially relevant groups. The Parliament could vote to formally confirm the nominations of the relevant social groups, selected on basis of a procedure that they will define and prescribe on their own. The competent body of the Parliament would play technical and administrative role to organize the corresponding public call, collect the nominations and prepare the proposal for the confirmation vote.

Speaking of Germany, the country doesn't have a true national regulatory body. For some issues in the area of audiovisual media services on national level, the regulatory bodies of the federal states collaborate in a number of commissions, such as the Commission on Media Concentration KEK, the Commission on Licensing and Supervision ZAK, and others. Those commissions have a joint executive office that takes care of their daily operations.

Another exception in Europe is the Norwegian regulatory body that doesn't have a board, council or similar collective steering or decision-making body.

There are several approaches that aim to avoid or prevent political influence or influence of other special interests on the regulatory bodies. Mainly it is done through the choice of bodies that nominate or appoint the members of the boards of regulatory authorities. In many countries the appointment is done by parliaments, whether in a full procedure or as formal confirmation vote on the candidates nominated in accordance with some scheme. In some countries, mostly in Scandinavia, the members of the councils/boards of the regulatory bodies are appointed by the government, or competent government ministries. In several countries there are schemes of institutions (of

4. The information on different models applied by different countries were taken from the website of the European Platform of Regulatory Authorities – EPRA

government) that appoint a certain number of members. In France, for instance, the President of the Republic names the President of the Audiovisual Council from the ranks of members appointed by the President of the Senate (three members), President of the National Assembly (three members) and the President of the Cassation Court (also three members). In Bulgaria, three members of the Council of Electronic Media are appointed by the National Sobranie, and two members are appointed by the President of the Republic. We already mentioned the example of Germany, where most regulatory bodies of the federal states are large representative bodies (composed of 20-something to more than 40 members), without the need for parliamentary confirmation of their members. Rather, different relevant social groups, in a procedure and in a manner they regulate themselves, select and appoint their representatives.

The independent of the regulatory bodies, or their boards/councils is secured through prescription of strict criteria on qualifications, education or previous working experience of the candidates. In several countries, that approach is augmented with a definition of so-called "authorized nominators", taking care to cover different segments of society, including state or public institutions, professional or trade associations, CSOs, etc. Naturally, the authorized nominators have no freedom to nominate candidates that don't meet the legally prescribed criteria.

For us, in view of the dominant idea to reduce the influence of party politics and ensure that the council of the regulatory body will be composed of experts, the new solutions adopted in Serbia, in the 2023 Law on the electronic media[5], are of great interest. They include a narrow list of profiles and expertise of the candidates - academia, journalists and editors, experts in management of electronic media, experts in functioning of media markets, artists and authors (musicians, writers, producers, theatrical and audiovisual authors with adequate working experience in programmes of electronic media), as well as university media researchers and researchers from other organisations, as well as CSOs.

Also, while the new law kept the "authorized nominators" approach, the parliamentary commissions of the National Skupština and the Parliament of Vojvodina are now not on that list. They are replaced by the Office of the Ombudsman and commissioners for equality, freedom of information and data protection, as well as the journalist associations, together with the authorized nominators that were already on that list (associations of publishers of electronic media, CSOs working in the area of freedom of expression, protection of children and minors, associations of theatrical, film and performance artists and composers, the national councils of national minorities and religious communities. The different groups of nominators should reach an agreement on names of two candidates they will nominate, and the nine members of the council shall be selected from the ranks of the nominees.

5. See in Article 12 of the Law on the Electronic Media of Serbia, available on URL

RECOMMENDATIONS

The Media Development Centre offers the following proposals and recommendations on the selection and appointment of members of the Council of AVMS and the Programming Council of MRT.

1. The members of the two bodies need to be appointed with an absolute majority of the MPs, instead of qualified, two-thirds majority for their confirmation vote. Of course, due to the importance of audiovisual media services as a part of cultural life and creative industries, the additional condition for "Badintaire Majority" of MPs from non-majority communities should remain as a requirement.

2. We need to establish a clear and mandatory procedure that will involve the representatives of the expert community and the stakeholders in the process of selection of best candidates. We would avoid any possibility to organize the "public hearing" in such a way that only the entities that gave endorsement to individual candidates shall be invited, while they, too, are not allowed to ask questions of the candidates about their plans and vision for the work of the Council of AVMS during their term in office. In essence, we need to replicate the solutions used for appointment of members of the Commission for Prevention of Corruption, with creation of a special commission charged with selection and grading of candidates. In addition to MPs, that commission should also include representatives of the civil society and expert community.

3. Changes are necessary to ensure greater rate of passage for expert candidates, at the expense of party loyalists. For that reason, we believe that the system of authorized nominators should be reinstated, accompanied with more precise requirements regarding the profile and expertise of candidates for members of the two bodies. In that regard, the list of organisations and entities that may provide letters of endorsement in the existing Law provides a good starting point, but the list should be amended and made more specific.

4. The provisions of Article 14, paragraph 1, defining which persons may be appointed members of the Council of AVMS should be further elaborated to provide clear advantage to candidates with working experience in the media industry and related industries (such as advertising and creative industries, especially cinematography, theatrical or performing arts), and those parts of the academia and civil society (universities, research institutions or CSOs) working in the area of media and journalism.

5. To avoid the possibility of one parliamentary majority to appoint the compositions of the two bodies "to its tastes", a staggered term should be introduced, so that not all members of the two councils are appointed at the same time.

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