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**Directorate General of Human Rights and Legal Affairs
Legal and Human Rights Capacity Building Division**

Strasbourg, 20 August 2009

**ANALYSIS AND COMMENTS
ON
THE MONTENEGRIN DRAFT LAW
ON ELECTRONIC MEDIA**

prepared

by

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and

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This document reflects only the author's opinions and not necessarily those of the Council of Europe. It may not under any circumstances serve as a basis for any official interpretation that may be used, in the light of the legal instruments mentioned, in proceedings against the governments of the member states, the statutory organs of the Council of Europe or any other body set up under the European Convention on Human Rights.

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The present review of the Montenegrin draft law on Electronic Media has been prepared for the Directorate General of Human Rights and Legal Affairs of the Council of Europe at the request of the authorities of the Republic of Montenegro.

It consists of three parts:

1. **An introduction** which outlines the relevant Council of Europe and other documents which should be taken into consideration when establishing the legal framework for the regulation of television and radio broadcasting, including the creation and operation of a public service broadcaster and of a broadcasting regulatory authority;
2. **General assessment**, containing general recommendations as regards the provisions in the Law on Electronic Media and
3. **Detailed comments** on each of the Articles of the Law on Electronic Media.

All comments and remarks are based on the English translation of the Law on Electronic Media dated 19 May 2009 (appended at the end of this document).

INTRODUCTION

Relevant Council of Europe documents and other precedents

a) **European Convention on Human Rights**

In particular, Article 10 which states that:

1. “Everyone has the right to freedom of expression”. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

Regard must also be had to Article 6 which provides:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

As a member of the Council of Europe, Montenegro is a Party to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). This international treaty entered into force for Montenegro on 6 June 2006. Therefore, Montenegro has an obligation to actively promote the freedom of expression and the freedom of everyone (not just certain political, social or economic interest groups) under its jurisdiction to receive and impart information.

b) **European Convention on Transfrontier Television, as amended by the Protocol (ETS No.171)**

The European Convention on Transfrontier Television is an international treaty which was negotiated in the framework of the Council of Europe to facilitate, among the Parties, the

transfrontier transmission and the retransmission of television programme services (Article 1). The Convention was amended in 1998. The Parties are those member states of the Council of Europe which have chosen to be bound by the treaty and also States which are Parties to the European Cultural Convention and the European Community, if they choose to be bound by the European Convention on Transfrontier Television. As a member of the Council of Europe, Montenegro is a Party to the European Convention on Transfrontier Television. This international treaty entered into force for Montenegro on 1 June 2008.

c) European Charter for Regional or Minority Languages 1992

Montenegro ratified the Charter in 2006, which includes an undertaking by the parties (Article 11) to make adequate provisions so that broadcasters offer programmes in the regional and minority languages, to encourage and/or facilitate the broadcasting of radio programmes in the regional and minority languages, and to ensure that the interests of users of such languages are represented or taken into account within bodies set up to guarantee media freedom and pluralism.

d) Recommendation (94)13 of the Committee of Ministers to member states on measures to promote media transparency¹

Para. 149 of the Explanatory Memorandum to the European Convention on Transfrontier Television refers to a 1994 Recommendation by the Committee of Ministers of the Council of Europe to the Member States on measures to promote media transparency.

The pre-amble of the Recommendation *recalls*

“that media concentrations at the national and international levels can have not only positive but also harmful effects on media pluralism and diversity which may justify action by governments”.

The Explanatory Memorandum to the Recommendation stipulates that “[m]edia transparency is a major condition for safeguarding and strengthening pluralism” and, therefore,

¹ Recommendation No. R (94) 13, Adopted by the Committee of Ministers on 22 November 1994, at the 521st meeting of the Ministers' Deputies.

measures to promote media transparency are a pre-condition for the implementation of rules and policies aiming at safeguarding and strengthening pluralism in the media sector.

According to the Explanatory Memorandum, measures to promote media transparency can be justified for the following reasons:

“The current development of media concentration is likely to create difficulties for media transparency. The growing internationalisation of the capital and activities of firms in the media sector, the development of multimedia groups and the appearance in the media sector of new actors from other branches of economic activity, and the gradual integration of the media into much bigger entities covering the whole of the media production and distribution process from beginning to end, have a dual impact on media transparency. In the first instance, the ownership structures of the media and the indirect control/dependency relationship maintained through the capital of these media are becoming more complex. Furthermore, they open the way to situations of media dependency in relation to bodies which, while they are neither owners nor even shareholders in these media, are capable of exercising a significant and long-lasting influence over their activities, and possibly over the content of the information which they broadcast or disseminate, given that they supply them with financial resources, equipment or non-material resources (programmes) which are important, sometimes vital, to their activities.”

e) Recommendation(96)10: Guidelines on the guarantee of the independence of public service broadcasting

According to the Recommendation, the legal framework governing public service broadcasting organisations should clearly stipulate their independence. The general provisions in Part I of the appendix to that recommendation highlight a number of issues requiring appropriate regulations in order to guarantee that independence. Specific reference is made to the need to regulate the responsibility and supervision of public service broadcasting organisations and of their statutory organs, and to the requirement that there be no form of undue interference in the form of censorship and a priori control of their activities.

f) Recommendation (99)1 of the Committee of Ministers to member states on measures to promote media pluralism² recommends that Member States adopt legislation designed to prevent media concentration that might endanger media pluralism on the

²Recommendation No. R (99) 1, adopted by the Committee of Ministers on 19 January 1999 at the 656th meeting of the Ministers' Deputies.

national, regional or local level. According to the Recommendation, Member States should define thresholds to limit the influence of any individual media corporation or a group within one or more media sectors. These thresholds may be based on the maximal audience share or the revenue of a company or capital share. Those corporations that reach such thresholds (and broadcasting companies in particular) should, according to the Recommendation, not be granted additional broadcasting licenses on that market.

- g) **Committee of Ministers Recommendation Rec(2000)23 on the independence and functions of regulatory authorities for the broadcasting sector** recommends that the Member states, inter alia, “include provisions in their legislation and measures in their policies entrusting the regulatory authorities for the broadcasting sector with powers which enable them to fulfil their missions, as prescribed by national law, in an effective, independent and transparent manner, in accordance with the guidelines set out in the appendix to this recommendation”.³
- h) **Committee of Ministers Recommendation Rec(2002)2 on Access to Official Documents** states that Member States should guarantee the right of everyone to have access, on request, to official documents held by public authorities. This principle should apply without discrimination on any ground, including that of national origin.
- i) **Committee of Ministers Recommendation Rec(2003)9 on measures to promote the democratic and social contribution of digital broadcasting** sets out a set of principles for Member States to apply to the development of digital broadcasting.⁴
- j) **Recommendation (2006)3E of the Committee of Ministers to member states on the UNESCO Convention on the protection and promotion of the diversity of cultural expressions.**⁵

In 2005, the Member States of UNESO adopted the UNESCO Convention on the protection and promotion of the diversity of cultural expressions in the form of a Convention, in

³ Recommendation Rec (2000) 23, adopted by the Committee of Ministers on 20 December 2000 at the 735th meeting of the Ministers' Deputies.

⁴ Adopted by the Committee of Ministers on 28 May 2003 at the 840th meeting of the Ministers' Deputies.

⁵ Rec(2006)3E / 01 February 2006, adopted by the Committee of Ministers on 1 February 2006 at the 954th meeting of the Ministers' Deputies.

which they reaffirmed “the sovereign rights of States to maintain, adopt and implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expressions on their territory”.

Each State which is Party to the Convention is granted the right to adopt, *inter alia*, the following (types of) measures aimed at protecting and promoting the diversity of cultural expressions within its territory:

- regulatory measures aimed at protecting and promoting diversity of cultural expressions;
- measures that, in an appropriate manner, provide opportunities for domestic cultural activities, goods and services among all those available within the national territory for the creation, production, dissemination, distribution and enjoyment of such domestic cultural activities, goods and services, including provisions relating to the language used for such activities, goods and services;
- measures aimed at providing domestic independent cultural industries and activities in the informal sector effective access to the means of production, dissemination and distribution of cultural activities, goods and services;
- measures aimed at enhancing diversity of the media, including through public service broadcasting.

Recommendation 2006/3E recommends that, at the earliest opportunity, Council of Europe Member States ratify, accept, approve or accede to the UNESCO Convention on the protection and promotion of the diversity of cultural expressions.

Montenegro did not sign the UN Convention on the protection and promotion of the diversity of cultural expressions. The Committee of Ministers of the Council of Europe, however, adhered explicitly to this Convention and called upon all Member States to become a Party to it, while indicating that,

“the Council of Europe will have due regard to the provisions of the UNESCO Convention and will contribute to their implementation.”

k) Recommendation (2007)2E of the Committee of Ministers to member states on media pluralism and diversity of media content⁶

In this Recommendation, the Committee of Ministers of the Council of Europe suggested to the Member States that they take certain measures to ensure that the authorities in charge of the implementation of regulations concerning media pluralism can take informed decisions, and that the public can make its own analysis of the information, ideas and opinions expressed by the media. In order to protect and actively promote the pluralistic expressions of ideas and opinions as well as cultural diversity, member states should adapt the existing regulatory frameworks, particularly with regard to media ownership, and adopt any regulatory and financial measures called for in order to guarantee media transparency and structural pluralism as well as diversity of the content distributed,

All member states in this field should take into account the necessary editorial independence of newsrooms, the stakes, risks and opportunities inherent to the development of new means of communication, as well as the specific situation of each of the audiovisual and written media that these measures affect, whether it be print and on-line press services, or radio and television services, whichever platforms are used for the transmission.

Governments of Member States should:

- consider including in national law or practice the measures set out in the recommendation;
- evaluate at national level, on a regular basis, the effectiveness of existing measures to promote media pluralism and content diversity, and examine the possible need to revise them in the light of economic, technological and social developments on the media;
- exchange information about the structure of media, domestic law and studies regarding concentration and media diversity.

⁶ CM/Rec(2007)2E / 31 January 2007 . Adopted by the Committee of Ministers on 31 January 2007 at the 985th meeting of the Ministers' Deputies.

l) Recommendation (2007)3E of the Committee of Ministers to member states on the remit of public service media in the information society⁷

Governments of Member States, should:

“guarantee public service media, via a secure and appropriate financing and organisational framework, the conditions required to carry out the function entrusted to them by member states in the new digital environment, in a transparent and accountable manner”.

m) Declaration (2006E) of the Committee of Ministers on the guarantee of the independence of public service broadcasting in the member states⁸

The Declaration calls on Member States to

“provide the legal, political, financial, technical and other means necessary to ensure genuine editorial independence and institutional autonomy of public service broadcasting organisations, so as to remove any risk of political or economic interference”,

And invites public service broadcasters

“to be conscious of their particular remit in a democratic society as an essential element of pluralist communication and of social cohesion, which should offer a wide range of programmes and services to all sectors of the public, to be attentive to the conditions required in order to fulfill that remit in a fully independent manner and, to this end, to elaborate and adopt or, if appropriate, review, and to respect codes of professional ethics or internal guidelines”.

n) Declaration (2007E) of the Committee of Ministers on protecting the role of the media in democracy in the context of media concentration

The Declaration alerts the Member States to the potential risk of abuse of the power of the media in a situation of strong media concentration and its potential consequences for political pluralism and for democratic processes. The Declaration stipulates that media freedoms and pluralism are vital for democracy, given their essential role in guaranteeing free expression of

⁷ CM/Rec(2007)3E / 31 January 2007 . Adopted by the Committee of Ministers on 31 January 2007 at the 985th meeting of the Ministers' Deputies.

⁸ Decl-27.09.2006E / 27 September 2006. Adopted by the Committee of Ministers on 27 September 2006 at the 974th meeting of the Ministers' Deputies.

opinions and ideas and in contributing to peoples' effective participation in democratic processes. In the context of democratic processes, there is a need for diverse views to be expressed and presented to the public and for genuine and lively political debate on matters of general interest, helping people to be better or more fully informed in the context of their democratic participation, as well as the crucial role of the media in achieving these aims and in the functioning of a democratic and participatory public life.

In this context the Declaration:

- Underlines the desirability for effective and manifest separation between the exercise of control of media and decision making as regards media content and the exercise of political authority or influence;
- Draws attention to the necessity of having regulatory measures in place with a view to guaranteeing full transparency of media ownership and adopting regulatory measures, if appropriate and having regard to the characteristics of each media market, with a view to preventing such a level of media concentration as could pose a risk to democracy or the role of the media in democratic processes;
- Highlights the usefulness of regulatory and/or co-regulatory mechanisms for monitoring media markets and media concentration which, *inter alia*, permit the competent authorities to keep abreast of developments and to assess risks, and which could permit them to identify suitable preventive or remedial action;
- Stresses that adequately equipped and financed public service media, in particular public service broadcasting, enjoying genuine editorial independence and institutional autonomy, can contribute to counterbalancing the risk of misuse of the power of the media in a situation of strong media concentration; and
- Stresses that policies designed to encourage the development of not-for-profit media can be another way to promote a diversity of autonomous channels for the dissemination of information and expression of opinion, especially for and by social groups on which mainstream media rarely concentrate.

o) Declaration (2008E) of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector⁹

The Declaration calls on Member States to:

- implement, if they have not yet done so, Recommendation Rec(2000)23 on the independence and functions of regulatory authorities for the broadcasting sector;
- provide the legal, political, financial, technical and other means necessary to ensure the independent functioning of broadcasting regulatory authorities, so as to remove risks of political or economic interference.

The Declaration invites broadcasting regulatory authorities to:

- be conscious of their particular role in a democratic society and their importance in creating a diverse and pluralist broadcasting landscape;
- ensure the independent and transparent allocation of broadcasting licences and monitoring of broadcasters in the public interest;
- contribute to the entrenchment of a ‘culture of independence’ and, in this context, develop and respect guidelines that guarantee their own independence and that of their members;
- make a commitment to transparency, effectiveness and accountability.

In addition, the declaration invites civil society and the media to contribute actively to the ‘culture of independence’, which is vital for the adequate regulation of broadcasting in the new technological environment, by monitoring closely the independence of these authorities, bringing to the attention of the public good examples of independent broadcasting regulation, as well as infringements on regulators’ independence.

⁹ Decl-26.03.2008E/ 26 March 2008, adopted by the Committee of Ministers on 26 March 2008 at the 1022nd meeting of the Ministers' Deputies.

Calls from the Ministers responsible for media policies in the Member States

Every once and a while, the Ministers of the Member States who are responsible for media policies, meet in the framework of a European Ministerial Conference on Mass Media Policy. The bi-annual Conference is hosted each time by another Member State. At the Conference, the Ministers adopt a number of texts in which they lay down their ideas for new priorities and they also express their opinions on the work of the Council of Europe and on how they would like to see it develop.

The 2005 European Ministerial Conference took place in Kyiv. At that Ministerial Conference, an Action Plan was adopted¹⁰ which, *inter alia*, called upon the Council of Europe to:

“9. Continue to monitor the development of media concentrations in Europe, in particular at the transnational level, as a political priority of the Organisation, with a view, where appropriate, to suggesting any legal or other initiatives which it may consider necessary in order to preserve media pluralism.”

“11. Examine also whether the provisions contained in Recommendation No. R (94) 13 on measures to promote media transparency, including transparency of ownership, should be revised in the light of these developments.”

In March 2008, UNESCO published a framework for assessing media development.¹¹ According to this publication, the authorities responsible for implementing laws must be vested with sufficient powers to accomplish their role, be independent and operate free from political pressure. In particular, they must have the power to divest media operations where plurality is threatened or unacceptable levels of concentration are reached, and to impose sanctions where required. There should be evidence of these powers being appropriately exercised.

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¹⁰ Action Plan, adopted at the 7th European Ministerial Conference on Mass Media Policy, held in Kyiv (Ukraine), 10-11 March 2005, MCM(2005)005, [http://www.coe.int/t/e/human_rights/media/4_documentary_resources/MCM\(2005\)005_en.asp#TopOfPage](http://www.coe.int/t/e/human_rights/media/4_documentary_resources/MCM(2005)005_en.asp#TopOfPage).

¹¹ UNESCO, Media Development Indicators: A Framework for Assessing Media Development, Intergovernmental Council of the IPDC, Twenty-sixth session, Paris, 26-28 March 2008.

Recommendations by the Committee of Ministers to the member states result from benchmarking exercises and the guidelines or proposed measures in these instruments therefore represent best practices. Recommendations are adopted by consensus. Consequently, the guidelines or measures recommended qualify as European standards.

The Declaration of the Committee of Ministers is a political declaration and, as such, not legally binding. Nevertheless, it contains important principles and, since it was adopted by consensus in the Committee of Ministers, all Member States committed themselves to it.

The Action Plan of Kyiv, adopted by the Ministers of the Member States who are responsible for media policies stressed the important role of public service broadcasting in the digital environment as an element of social cohesion, a reflection of cultural diversity and an essential factor for pluralistic communication accessible to all and reaffirmed their commitment to respect and implement the Council of Europe standards concerning the maintenance and development of a strong and independent public broadcasting service.

From the various calls, declarations, recommendations and guidelines it seems that a consensus has arisen that Article 10 ECHR instructs Member States to actively promote the freedom of expression and the freedom to receive and impart information of everyone, not only of powerful interest groups in society; that it is therefore important to pursue policies which promote pluralism and diversity in the media sector; and that, in order to do so effectively, it is necessary to guarantee independence of regulatory authorities and public service broadcasting.

2. GENERAL COMMENTS AND MAIN RECOMMENDATIONS

The comments in this chapter are based on an English translation of the draft Law on Electronic Media (dated 19 May 2009). We're aware of the fact that other laws deal with telecommunications and public broadcasting.

An Independent Regulator

While the process as stipulated in the draft seeks to somewhat depoliticise the appointment arrangements, we do consider that a few additional changes would make the procedure run more smoothly.

RECOMMENDATIONS:

- The tender committee proposing the candidates should be as independent as possible. Preferably it should not be composed of politicians or public servants; the procedures of the committee should be transparent.
- An invitation should be included in the tender document for applications from all sections of Montenegrin society, particularly women and ethnic minorities, and from all geographic areas of Montenegro.

Members of the Council of the Agency for Electronic Media

In order to ensure as far as possible that the members of the regulatory authority are free from political influence, no nominations with a political basis should be allowed. It is also important that there is no suggestion that a member of the Council is acting on the bidding of the broadcasting industry, and therefore all potential financial interests in the industry should be eliminated.

The draft Law also includes some provisions which could undermine the independence of the regulatory authority and ought to be amended.

RECOMMENDATIONS:

- The Law should secure that political nominations and nominations by parties which are directly involved are avoided.
- The Law needs ensure that not just members, but also related parties may not have any financial interests in broadcasting (link between article 16, 1 sub 4 and sub 6).

Licensing Process

One of the major ways in which audiovisual media services can be influenced is in the award of licences. In fact, this is why it is important to ensure that a regulator is set up in such a way so as to be able to act as independently as possible from political interference. As well as appointing men and women of integrity to apply the licensing process, the process and the *licensing criteria* should be set out clearly in the law. The licensing instrument should only be used as an exception; where appropriate a system of general licensing should be put into place. This not only provides the regulator with clear and transparent guidance, but also with licence applicants. A clear framework to follow, makes it simple for the regulator to make licensing decisions and to formulate reasons for the award. A well-reasoned decision is less likely to face legal appeal, and makes it easier for a court to consider an appeal should there be one.

A license system is appropriate in the case of the allocation of scarce resources (frequencies) or in a situation where special rights are granted (i.e. concerning public broadcasting). A general licensing schema, possibly in combination with a registration system, might suffice in order to regulate services such as non-linear media services. Licensing of networks that aren't depending on scarce resources, such as cable networks, should not be introduced or terminated (compare with the EU Authorisation Directive).

The draft Law could benefit greatly from the inclusion of more detailed licensing criteria, and not leave so much to the regulator's discretion. The criteria should be set out in the Law, and not in bylaws, although bylaws can expand on the actual administration of the licensing procedure. Furthermore, the Law is unclear on the possibility of licence renewal.

RECOMMENDATIONS:

- The licensing instrument needs to be used with care. Where appropriate a general licensing system should be introduced.
- The criteria upon which the Agency for Electronic Communications awards licences, or renews licences, should be expanded, clarified, and set out clearly in the Law and further clarified in bylaws of the Agency; and
- The Agency should be obliged in law to publish full reasonings for its licence decisions, including why refused applications have been unsuccessful.
- Licences should be eligible for renewal if there have been no major compliance problems during the licence period. They should not automatically have to be retendered, as this undermines business continuity, commercial viability and the reasonable expectations of viewers and listeners. Requiring a new tender process, in the absence of major compliance problems, is a possible means of exerting unacceptable political pressure on licensees during the licence period. A tender can only be taken into consideration if the tender process is fully transparent (e.g. an auction based on financial criteria)

Compliance and sanctions

We note that the draft sets out a specific list of minimum/maximum penalties for certain breaches of the Law. While this assists clarity and regulatory certainty for the parties involved, it does not seem to allow for the full exercise of discretion on the part of the Agency.

When considering the application of financial penalties, the regulator should be able to take into account a range of factors, such as: how long the breach has persisted; any harm to third parties caused; the extent to which the breach was caused intentionally, negligently, or by honest mistake; the nature, size and turnover of the broadcaster; any steps taken by the broadcaster to mitigate the harm caused; and the steps taken by the broadcaster to correct the problem. The regulator should be able to apply these factors to any given breach and adjust the height of the fine accordingly. So, there will be occasions when a smaller fine is warranted, and others where perhaps the fine should be higher. The basis for the fines is now linked to the minimum salary. This might not be the most appropriate standard. We note that, for example, in competition law, fines are linked to the annual turnover.

The draft Law provides for the possibility of suspending the broadcaster's service. Suspension should never be used unless there is clear evidence of sustained and continuous serious breaches

and more time is needed for the broadcaster to take the necessary steps to remedy the breach and comply. Suspension should not be used as a punishment; it should only be used to protect third parties (viewers, listeners, or – where the breach involves an abuse of spectrum rights – interference with other spectrum users). After all, the effect of a suspension is to punish the audience at least as much as the broadcaster – and the regulator should not be in the business of punishing viewers and listeners! The most appropriate ‘punishment’ for breaches is a fine and suspension should only ever be used as a last resort.

Licence revocation is an even more serious penalty and should only ever be considered if there is a long and sustained history of breaches. All other sanctions should be considered first. Where revocation is considered, the broadcaster should be given notice and given an opportunity to correct the problem and put proper compliance measures in place. Only if the regulator believes that the breach cannot or will not be remedied should the licence be revoked.

RECOMMENDATIONS:

- Enable greater flexibility on the application of administrative penalties, so that the amounts of fines can be adjusted to take account of the nature and circumstances of the case;
- Ensure that suspensions are only considered where there is an on-going and continuous failure to comply which will harm third parties and more time is needed for the broadcaster to remedy the breach; and
- Clarify that a licence will only be revoked after notice is given to the broadcaster, who, after the notice, is still not in a position to remedy the breach or ensure proper compliance in the future.

Independence of the Public Broadcasters

To function as an effective public broadcaster, the Public Broadcasting Services need both structural independence and editorial independence from State and political interference.

The draft (article 111, par. 2) doesn’t regulate the appointment, election, decision making etc. of the managing bodies of the public broadcasting services (national and regional). This will be/is being done through separate legislation/regulation. Although a study of this additional legislation/regulation is not part of this analysis, we would like to emphasis the need for clear and

transparent regulation. In order to avoid political interference, the allocation of licenses/establishment of public audiovisual media services should be as independent as possible. Therefore, we question – among other things – the establishment of local public broadcasting services by municipal assemblies.

RECOMMENDATIONS:

- Nominations and appointment of members of the council and the director of public broadcasting services: see remarks on the Agency for Electronic Media.
- The establishment of local public broadcasting services should be the responsibility of the Agency. Municipalities can play an advisory role.

Funding of the Public Broadcasters

Funding can all too easily be used as a means to exert political pressure on a public broadcaster. This is particularly so where all or a substantial part of the funding is derived from the State budget, and the funding settlement is made on an annual basis. This also creates operational problems for the broadcaster, who may be limited in what it can programme, given that the commissioning timetable and acquisition opportunities may well stretch over a one-year cycle.

There are two ways of reducing the potential negative impact of funding on the public broadcaster. The first is to consider a scheme of mixed funding (that is, funding from a variety of sources, such as the State budget, advertising, sponsorship, and licence fee – where every citizen contributes directly to the broadcaster’s funding). Such an arrangement means that the public broadcaster is not completely dependent on a single funding source and can therefore feel more in control of its own destiny.

The second possibility would be to agree to a funding settlement for a period longer than one year. Whilst the BBC’s 7-year funding agreement is held out as a model for all public service broadcasters, a 3-year agreement may be more realistic, as well as beneficial for the public broadcaster’s own financial and operational management.

In addition, it should be noted that independent external bodies could be asked for advice on the proposed budget.

RECOMMENDATIONS:

- Consider introducing a balanced mixed funding model for the Public Broadcasting Services; and
- Opt for a funding agreement with a three year lifespan.

Editorial independence of the Public Broadcasters

The regulatory context on the programme output of the public broadcasters needs to be in line with Council of Europe recommendations and international best practice. Obligations need to be transparent and should not be used to limit or influence the editorial independence of the public broadcasters. The use of notions such as ‘objective’ and ‘equal’ (in a mathematic way) should be avoided. It is important to remember that a public broadcaster will always want to fulfill its tasks, such as reporting news, as fully and as accurately as possible. In times of national crisis, the public will always go to the public broadcaster first for news and information. In terms of trust by the public, viewers and listeners will turn away from the public broadcaster if they believe that the news it provides is biased. This is not good for public confidence, or the development of a strong cultural identity which could otherwise be provided by a popular public broadcaster.

RECOMMENDATIONS:

- The public broadcasters should be obliged to write its own, detailed mission statement which should be reviewed and monitored by its Council.
- Obligations regarding the modus operandi of the public broadcasters need to be in line with generally accepted journalistic standards.
- Broadcasts by political entities should be clearly separated from the programmes of the public broadcasters. The public broadcasters should not be held responsible in any way for such programmes.

Implementation of the Audiovisual Media Services Directive

The implementation of the Audiovisual Media Services Directive (AVMS Directive or AVMSD) is one of the main concerns of the proposal. Recently, the European Commission provided a comprehensive comment on the proposal ('Analysis of the Alignment of the Montenegrin draft Law on Electronic Media with the Audiovisual Media Services Directive', Brussels, DGINFSO/A1/MFE/1c D(2009)129343). We in general support the assessment made by the European Commission and will therefore not discuss in detail the relevant paragraphs. However, we do have some complementary remarks.

- a) The draft takes a technology neutral approach and covers all audiovisual media services. Various countries have chosen a similar approach. Nevertheless, where characteristics of the media differ (i.e. between radio and television) this should be taken sufficiently into account. Definitions and specific provisions should be aligned consistently
- b) The directive does allow for a separate treatment of national services. Rules for national players may be stricter than the legal framework applicable to services offered from other countries (more in particular EU Member States). An important reason to use this discretionary margin is the regulation of public broadcasting. Often certain forms of commercial activity are not allowed at the level of the public broadcasting organisations.
- c) The AVMS Directive only regulates audiovisual media services as defined in the directive. It doesn't regulate other services, nor does it include the regulation of access to telecommunications networks (including the licensing of frequencies).

Omissions from the Law

There are a number of matters which are covered in the Convention on Transfrontier Television and other CoE documents which have not been included in this Law. In particular, there is nothing which covers the provisions in the Convention relating to a right of reply. We also note that the proposal doesn't deal with must carry-obligations.

RECOMMENDATIONS:

- Include a specific right of reply in the Law, with procedures for the application of the right to be included in bylaws of the Agency for Electronic Communications;
- Include provisions to regulate must-carry obligations, where appropriate.

General recommendation

We propose that the relevant bodies in Montenegro should:

1. Implement the provisions of the Directive on AVMS in an appropriate manner.
2. Ensure all mechanisms (general legislative framework, appointment, composition and functioning, financial independence, granting of licences and accountability) needed for the independent operation of the Agency for Electronic Media.
3. Ensure all mechanisms needed for the independent operation of public broadcasting services.
4. Ensure that the provisions in this law are harmonised with those in the Law on Electronic Communications.

Although our task does not include the analysis of the Law on Electronic Communications, we have established that several articles of this law directly interfere with the implementation of the Law on Electronic Media and with the independence of the Agency for Electronic Media. Unless these provisions are harmonised, the provisions in the Law on Electronic Media may prove to be difficult to implement, while the operation of electronic media will be left to the possibly inefficient supervision of the two Agencies, which might be pursuing differing interests.

DETAILED COMMENTS

Article 1. Scope of the Law

For the sake of accuracy, the formulation at the end of the first paragraph of Article 1 reading “and govern other issues relating to *electronic media*” should be changed into “and govern other issues relating to *AVM services*”.

The second paragraph should be removed. To avoid potential ambiguities in the future caused by a legal vacuum, the provisions of this law (at least during the transition period) are also meaningfully applied “to conditions and procedures of granting licenses for broadcasting frequencies”. Article 149 of the Law on Electronic Communications (Zakon o elektronskih komunikacijah, *Službeni list CG*, 19.8.2008, No. 50), adopted in 2008, invalidates a large number of provisions in the Broadcasting Law which regulate the area of broadcasting license granting. Article 148, Para (4), stipulates that provisions in the Law on Broadcasting remain applicable until the moment the Law on Electronic Communications comes into effect, provided that they are not in contravention of the provisions in the Law on Electronic Communications. In view of Article 142 of the same law, which “merged” the powers of the Agency for Electronic Communications and Postal Services with those of the Broadcasting Agency, it is not clear *who* actually supervises the broadcasting field (and according to which law and executive acts). The Law on Electronic Communications defines broadcasting as a “one-way radio-communications service that includes delivery, transfer and reception of audio, image and other signals intended for direct reception in open space, whether broadcast via transmitter on Earth or satellite” (Article 3, Para 32), meaning that it concentrates on the transmission channel, rather than the programming service whose content is edited and intended for the public. Since the analysis of the Law on Electronic Communication is not our task, we would only like to point out that relevant bodies in Montenegro should establish whether the provisions in the Law on Electronic Media are harmonised with those in the Law on Electronic Communications.

Article 2. Principles

We recommend adding a reference to constitutional guarantees and the relevant international instruments.

Article 3. AVM service provider

As is the case with the majority of the articles of the draft Law on Electronic Media relating to the implementation of the AVMS Directive, the legislator should take into account the comments in the Analysis of the Alignment of the Montenegrin Draft Law on Electronic Media with the AVMS Directive prepared by the Directorate General for Information Society and Media (Audiovisual and Media Policies Unit and International Relations Unit) of the European Commission (hereafter EC Comments)¹².

Article 4. Exemptions

See EC Comments

Article 5. Definition of terms

See EC Comments

We would like to draw attention to the numerous vague definitions which cause unnecessary confusion with respect to the very subject of this law (the subject of regulation). The definitions should be clear and unambiguous.

Article 6. Strategy for the Development of the Audiovisual Media Services Sector

The fundamental strategic document for the AVMS field should be prepared and adopted by the Agency for Electronic Media. The Government of Montenegro should only confirm it. All interested parties from the field in question, including the interested public, should participate in the preparation of this document. The Agency for Electronic Media is obliged to organize a public debate and to ensure that the development of the AVMS field is harmonised with the needs of both the main stakeholders and of Montenegrin citizens.

Article 7. The Agency

Paragraph 2 should be phrased in a more generic way by replacing ‘shall represent public interests’ with ‘shall act in the public interest’.

¹² Brussels, DG INFOSO/A1/MFE/lc D(2009)129343, 2.7.2009

Article 8. Status of the Agency

The law stipulates the establishment of a new Agency for Electronic Media which should take over the responsibilities of the current Broadcasting Agency. We would like to draw the legislator's attention to the fact that ensuring the independence of the regulatory body (i.e. financial and professional independence) is one of the fundamental prerequisites for the efficiency of the regulatory system.

Council of Europe Recommendation (2000)23 on the independence and functions of regulatory authorities for the broadcasting sector stresses that “the rules governing regulatory authorities for the broadcasting sector, especially their membership, are a key element of their independence. Therefore, they should be defined so as to protect them against any interference, in particular by political forces or economic interest”.

The validity of this Recommendation was confirmed by the declaration of the Council of Europe adopted in March 2008. Declaration (2008E) of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector¹³ calls on member states to:

- implement, if they have not yet done so, Recommendation Rec(2000)23 on the independence and functions of regulatory authorities for the broadcasting sector;
- provide the legal, political, financial, technical and other means necessary to ensure the independent functioning of broadcasting regulatory authorities, so as to remove risks of political or economic interference.

The Declaration invites broadcasting regulatory authorities to:

- be conscious of their particular role in a democratic society and their importance in creating a diverse and pluralist broadcasting landscape;
- ensure the independent and transparent allocation of broadcasting licences and monitoring of broadcasters in the public interest;
- contribute to the entrenchment of a ‘culture of independence’ and, in this context, develop and respect guidelines that guarantee their own independence and that of their members;
- make a commitment to transparency, effectiveness and accountability.

¹³ Decl-26.03.2008E/ 26 March 2008. Adopted by the Committee of Ministers on 26 March 2008 at the 1022nd meeting of the Ministers' Deputies.

In addition, the declaration invites civil society and the media to contribute actively to the ‘culture of independence’, which is vital for the adequate regulation of broadcasting in the new technological environment, by monitoring closely the independence of these authorities, bringing to the attention of the public good examples of independent broadcasting regulation, as well as infringements on regulators’ independence.

Article 9. Obligation to coordinate

The cooperation of the two agencies should be defined in more detail. The Law on Electronic Media should define the issues that require the cooperation of the two Agencies, as well as the conditions of their cooperation. We would like to point out that the Law on Electronic Communications does not “leave ample room” for their efficient cooperation. The scope and conditions of cooperation cannot be left to the “good will” of the management of the two agencies, but should be based on the common goal, i.e. cooperation in order to achieve the efficient implementation of the law.

Article 10. Competences of the Agency

Para 1. Point 1. – The Agency should be the main body responsible for the shaping of the Strategy for the Development of AVMS Services (hereafter the Strategy). The Agency prepares the text of the Strategy on the basis of a public debate and submits it to the government for approval.

Para 1. Point 7. - It is not clear who adopts the reports prepared and published by the Agency. What is the purpose of a provision defined so loosely? We propose that the text should be changed as follows: prepare annual, financial and similar reports on its work, which will be submitted for approval to the Council prior to publication.

Para 1. Item 8. –The Agency shall “perform supervision over the work of each AVMS service provider”. It is not clear from this definition what are the legal consequences of this supervision, that is, who should initiate the relevant procedure if a violation of this law is established (this might be remedied by introducing a restriction such as ‘in accordance with the provisions of this law’)?

The first paragraph should include a new item referring to the cooperation with the Agency for Electronic Communications and Postal Services in the process of preparing the Frequency Allocation Plan, concerning terrestrial broadcasting. In preparing this document, the Agency for Electronic Communication and Postal Services should obtain approval from the Agency for Electronic Media.

We propose the inclusion of a new item stipulating the “initiation and conducting of the first-degree offense procedure for the violation of this law and terms and conditions contained in the issued licences”.

The term “competent” in the second paragraph should be replaced with the term “relevant”. We propose that the text of the second paragraph should be replaced with the one contained in the currently valid Law on Broadcasting (Article 7, the last two paragraphs).

Article 11. Bodies of the Agency

No comments.

Article 12. Competence of the Council

Point 7 – The Council adopts the said documents because, in accordance with Article 8 of this law, it exercises the founders' rights on behalf of the state. We would like to draw attention to the fact that the financial independence of the regulatory body is one of the main prerequisites for its independence.

Point 8 - The Council prepares and creates the Strategy on the basis of a broad public debate.

Point 9 – What is the status of this approval – on whom is it binding?

Furthermore, the Agency could be made responsible for receiving, investigating and adjudicating complaints about any broadcaster (or for guaranteeing effective alternative forms of co-regulation).

Article 13. Insight of the public into the Agency’s performance

In addition, all decisions taken and regulations adopted should be made immediately available to the public. This will serve transparency and accountability.

Article 14. Members of the Council

No comments.

Article 15. Criteria for appointment of the Council member

The term *shall be* should be replaced with *should be*.

It might be advisable specifically to state that during the selection process applications are encouraged from all sections of society, especially women and ethnic minorities, and from all parts of Montenegro.

Article 16. Conflict of Interest

As Article 7 of this law stipulates, the Agency operates in the public interest. Since the independence of the Council members is a prerequisite for ensuring the independent operation of the Agency itself, this article should also stipulate that the representatives of the particular (political or economic) interests of specific (privileged) social groups should not be appointed as Council members.

The list of potential subjects that would constitute a conflict of interests should also include the representatives of various professional associations and organisations which represent the interests of media organisations or organisations providing AVMS. Furthermore, the law needs ensure that not just members, but also related parties as mentioned in paragraph 1, sub 6, are not biased because of any financial interests in broadcasting (link between article 16, 1 sub 4 and sub 6).

Article 17. Appointment and dismissal of Council member

The Council shall be appointed and dismissed by the Parliament of Montenegro (hereinafter referred to as “the Parliament”).

In our opinion, the Council appointment and dismissal procedure needs to meet generally accepted standards on independence and incorporate an adequate system of checks and balances.

Article 18. Authorised nominators

Article 8 of this law transfers the founders’ rights of the state to the Agency Council. Given this provision, it is not clear why the relevant ministry should have the right to appoint one member of the Agency. Since Council members represent the interests of the public and act in the public interest, all members should be appointed by public institutions and organisations.

We propose that the definition of “universities/faculties of political science or law faculties” should be supplemented to include fields/faculties of economy and management.

We propose that point 3 (“associations of commercial broadcasters, nominating one member”) should be deleted and the right to nominate one candidate be given instead to consumer

protection associations. There is no need for the associations of broadcasters to have a privileged position as nominators.

Article 19. Content of proposal for Council member appointment

We would suggest that politicians, as well as public servants, are excluded from participation in the selection process.

Article 20. A non-governmental organisation as authorised nominator

We propose that Para 1.1. and 2 of this article should be changed in accordance with the changes in Article 18.

Article 21. Independence of the Council member

No comments.

Article 22. Term of office of the Council

No comments.

Article 23. Initiating of the procedure for the Council appointment

Article 24. Public invitation

Article 25. Content of public invitation

(Articles 23, 24, 25) We would suggest that politicians, as well as public servants, are excluded from participation in the tender committee. It might be advisable specifically to state in the tender document that applications are encouraged from all sections of Montenegrin society, especially women and ethnic minorities.

Article 26. Deadline for submitting of nomination

No comments.

Article 27. List of candidates for the Council appointment

Article 28. Deciding upon proposed list

In accordance with the proposed changes, the Parliament of Montenegro shall establish whether the list of proposed candidates is in accordance with the law and shall approve the Agency Council candidates.

Article 29. Reopening of procedure

No comments.

Article 30. Compensation for the Council member

No comments.

Article 31. Termination of term of office of the Council member

No comments.

Article 32. Recall of the Council member

No comments.

Article 33. Procedure for recalling Council member

We propose that the procedure for recalling the members of the Agency Council should be harmonised with the comments relating to previous articles. In our opinion, the currently valid provisions of the Law on Broadcasting are more suitable. We do not see the need for the relevant working body of the Parliament of Montenegro to be authorised to recall the members of the Agency Council.

Article 34. Suspension of the Council member

No comments.

Article 35. Appointment of the new Council member

No comments.

Article 36. Cessation of the Council's work

No comments.

Article 37. Recall of the Council

The procedure for the recalling of the Agency Council members should be harmonised with the above comments.

Article 38. Work of the Council

Para 4 – The Council shall pass decisions by a majority vote of the total number of *all* members.

Para 5 - The sessions of the Council shall be open to the public, unless the Council decides otherwise by majority of vote of the total number of *all* members. The law should indicate under which circumstances the Council may decide not to have a public session.

Article 39. Director of the Agency

The draft law does not make a clear distinction between the powers of the Council (as a consulting and supervisory body of the Agency acting in the public interest) and those of the Director of the Agency. The director is an executive body who takes care of the Agency's daily operation in accordance with the laws in force. **This should be fully reflected in the tasks given to the Council and to the Director**

We would like to point out that, in order to ensure the legal protection of complainants, the complaint procedure should be defined in detail in this Law.

All decisions taken and regulations adopted by the regulatory authorities should be: duly reasoned, in accordance with national law; open to review by the competent jurisdictions according to national and made available to the public. (CoE Recommendation (2000)23, point 27).

Article 40. The Agency Statute

No comments.

Article 41. Funding of the Agency

The Council of Europe Recommendation (2000)23 stipulates that:

- Arrangements for the funding of regulatory authorities, an important element in their independence, should be specified in law in accordance with a clearly defined plan, with reference to the estimated cost of the regulatory authorities' activities, so as to allow them to carry out their functions fully and independently;
- Public authorities should not use their financial decision-making power to interfere with the independence of regulatory authorities. Furthermore, recourse to the services or expertise of the national administration or third parties should not affect their independence;
- Funding arrangements should take advantage, where appropriate, of mechanisms which do not depend on ad-hoc decision-making of public or private bodies.

In our opinion, the draft law does not ensure sufficient financial means for the operation of the Agency for Electronic Media. The primary source of funds is defined under point 1 of the first paragraph of this Article. Although our task does not comprise the analysis of the Law on Electronic Communications, we have established a discrepancy between Article 41 of this law and Article 84 of the Law on Electronic Communications. As a matter of fact, Article 84, para (3), and (4) of the Law on Electronic Communications prescribes that:

Para (3) The holder of the radio frequencies Authorisation shall also pay a regulatory annual fee for the use of radio frequencies to the Agency, which shall be used solely to cover the expenses of monitoring and managing the radio frequency spectrum;

Para (4) The Ministry shall stipulate the method and procedure of calculating this fee presented by tariff points and the Agency, based upon an estimation of the total annual regulatory expenses, shall initiate monetary value of a tariff point to be used in calculating the fee, which shall be entered in the financial plan for the next calendar year. The amount of the fee shall be defined by the Government through the adoption of the Agency's Financial Plan.

Para 1, point 1 is obviously in conflict with the provisions of the Law on Electronic Communications. Moreover, the relevant ministry stipulates the method of acquiring financial means, while the Government of Montenegro stipulates the height of the fee. Such a funding method would make the Agency for Electronic Media fully dependent on the State and its institutions, although Article 41, para (2) of this law prescribes that the level of the fee shall be determined by the Agency Council and by the Council of the regulatory body for electronic communication. The text of this Article is not clear as to how these means will be divided between the Agency on Electronic Media and the Agency for Electronic Communications and Postal Services (half each?).

The second source of funding (para1, point 2) could also prove problematic. Article 41 (para 1, point 1) says that the Agency shall acquire the funds from a part of the subscription paid to distributors of AVM programme contents. The text is not clear as to what proportion of the funds so acquired will be used for the funding of the Agency and how the other part of funds will be spent.

One of the competences of the Agency according to Article 10, para 3 of the Draft Law is to determine the amount of compensation for renting and using the licence fee for AVM service providers. The Council of the Agency (Article 12, para 11) passes an act regulating the height of the fee and the manner of determining and paying the fees for approvals for AVM services. It is not clear from the formulations in Article 41 to which part of the funds this will be applicable – para 2 or 3?

Our conclusion is that such a funding method of the future Agency for Electronic Media does not correspond to the recommendations of the Council of Europe intended to ensure the independence of the regulatory body.

We propose that when finalising the text of this article, the legislator should take into account the comments of the Broadcasting Agency of Montenegro (Comments of the Broadcasting Agency on the Draft Electronic Media Law, 1.7.2009, pp. 5-7).

Article 42. Financial Plan of the Agency

We propose that the relevant ministry should make an estimate of the funds the new Agency for Electronic Media could collect in accordance with the proposed funding method defined in Article 41, and of the “realistic costs necessary for the successful implementation of the Agency’s operations” (Article 42, para 1).

Chapter III

Licenses for provision of AVM services

Article 43. License

No comments.

Article 44. Application for issuing of license for AVM service providing

The provisions contained in this chapter disregard the need to regulate the competences of the Agency on Electronic Media in the procedure for awarding the rights to use broadcasting licenses (preparing and carrying out a tender procedure for awarding these rights).

In para (2), it is not clear what the procedure is (and who has the competence, right and obligations to carry out this procedure) for obtaining the right to broadcast radio and/or TV programmes via the digital broadcasting system on VHF and UHF frequencies granted to the operator of a multiplex terrestrial digital broadcasting system. This procedure is not defined in the Law on Electronic Communication either. Please clarify this procedure in both Laws.

It would not be in line with relevant EU directives (most in particular with the Authorisation Directive) to license networks as mentioned in paragraph 3. A general licensing system – with rights and obligations defined in general regulatory instruments - should be the preferred mechanism (see comments on articles 57-61).

Article 45. Content of the application

No comments.

Article 46. Deadline for issuing of license

(Para 1) The term 'high quality' documentation introduces an element of uncertainty in Article 46. Please delete this expression from the draft Article.

Article 47. Procedure rules

No comments.

Article 48. Content of the license

No comments.

Article 49. License holder

Para (3): This para forbids any political organisation (i.e. registered as a political organisation) to be a licence holder for the provision of AVM services. The term “coalition” used in this paragraph is not clear. Furthermore, an interdiction of effective control or shareholding might be added.

Article 50. Status of the AVM service provider

No comments.

Article 51. National public broadcasting service

No comments.

Article 52. Local public broadcasting service

No comments.

Article 53. Commercial broadcaster

It is not clear why the draft Law is introducing three categories of commercial broadcasters

Article 54. Approval for program networking

Para (2) The procedure needs further clarification. There is no such obligation in the Law on Electronic Communications.

Article 55. Connection of the AVM service providers

No comments.

Article 56. Providing of AVM service of electronic media program that acquires license for the first time

Para (4) What are the legal consequences of such an “initiative”?

Article 57. Providing of AVM service without usage of broadcasting frequencies

Article 58. Prohibition of issuing license to one broadcaster for AVM service through the other broadcasting frequency or via other multiplex of digital terrestrial broadcasting system covering wider or entire part of the same service zone

Article 59. Temporary broadcasting license

Article 60. Period of license validity

Article 61. Cessation of the license validity prior to expiry date

General comments on Articles 57 – 61

One of the major ways in which audiovisual media services can be influenced is in the award of licences. In fact, this is why it is important to ensure that a regulator is set up in such a way so as to be able to act as independently as possible from political interference. As well as appointing men and women of integrity to apply the licensing process, the process and the *licensing criteria* should be set out clearly in the law. The licensing instrument should only be used as an exception; where appropriate a system of general licensing should be put into place. This not only provides the regulator with clear and transparent guidance, but also with licence applicants. A clear framework to follow makes it simple for the regulator to make licencing decisions and to formulate reasons for the award. A well-reasoned decision is less likely to face legal appeal, and makes it easier for a court to consider an appeal should there be one.

A license system is appropriate in the case of the allocation of scarce resources (frequencies) or in a situation where special rights are granted (i.e. concerning public broadcasting). A general licensing schema, possibly in combination with a registration system, might suffice in order to regulate services such as non-linear media services. Licensing of networks that aren't depending on scarce resources, such as cable networks, should not be introduced or terminated (compare with the EU Authorisation Directive).

The draft Law could benefit greatly from the inclusion of more detailed licensing criteria, and not leave so much to the regulator's discretion. The criteria should be set out in the Law, and not in bylaws, although bylaws can expand on the actual administration of the licensing procedure. Furthermore, the Law is unclear on the possibility of licence renewal.

General comments on Articles 62 – 67 (Sanctions)

According to these Articles, the Agency for Electronic Media is entrusted with imposing the most severe penalty, such as the revocation of licences for the provision of AVMS. In other words, the Agency is deprived of the competence to impose a complete set of other sanctions, including warnings, fines, suspension and (as a last resort) revocation of licences. As we commented in above articles, the draft Law does not clearly specify the range of competencies entrusted to the Agency of Electronic Media. It is also not clear why the draft Law does not elaborate on all the measures in one chapter (i.e. Chapter XI)?

Revocation of licenses should only happen if there have been serious violations. The Agency must always act proportionately, and must not revoke a licence for minor offences.

Article 68. Rights and obligations of the electronic media

See EC comments

Article 69. Obligatory identification

No comments.

Article 70. Change in radio or TV program structure

Para (2) It is not clear how the Agency will be able to calculate the proportion that constitutes a 10% share of the programming structure.

Para (3) What will happen if the programming concept of the media outlet is radically changed without the authorisation of the Agency? What will be the consequences of such a decision?

We recommend removing this paragraph, as it will be very difficult to apply and might restrict the editorial independence of the broadcaster.

Article 71. European audiovisual works

Delete para 3. This paragraph is not in line with Article 1 (n) of the AVMSD.

See EC comments.

Article 72. Share of European audiovisual works

See EC comments.

Article 73. Audiovisual works of independent producers

No comments

Article 74. Share of audiovisual works of independent producers

See EC comments

Article 75

No comments.

Article 76. In-house production

No comments.

Article 77. Right to short information

Delete para (4).

See EC comments

Article 78. Broadcasting of event of special public importance

No comments.

Article 79. List of events of special public importance

No comments.

Article 80. Exclusive broadcasting right for event of special public importance

No comments.

Chapter V

License for distribution of AVM services upon request

General comments on Articles 81 – 86

See the general comments on Articles 57 – 61. We are not in favour of having a licensing regime for the distribution of on demand services.

Furthermore, the Agency for Electronic Media is not properly involved in the procedure of awarding the right to use broadcasting licensing for the distribution of AVMS upon request (i.e. AVM on-demand services). There are inconsistencies on this issue between the draft Law and the Law on Electronic Communications.

Chapter VI

Rights and obligations of distributors

General comments on Articles 87 – 94

This chapter should introduce some additional provisions regulating the obligations of multiplex operators related to the electronic media (i.e. broadcasters) that have obtained the right to access capacities of a certain type of multiplex (national, regional, local) and must carry rules for the distribution of public broadcast media programmes.

According to the draft law, the Agency can impose an obligation to the distributors to include domestic TV programmes into their offer. There is no need for the decision by the distributors to be an obligation. The Agency should intervene in this decision only on the basis of protecting the citizen's rights for the reception of certain programmes or for promoting media pluralism (i.e. preventing illegal concentration).

Article 94 (para 4) contains a provision obligating all programme service distributors to provide the Agency with data on their subscribers. This obligation should be removed.

Chapter VII

Fund for protection of media pluralism

Article 95. Fund

No comments.

Article 96. The Fund's means

Para (1) We recommend replacing “electronic media” by the more precise term “broadcasters”.

Para (4) Delete.

Article 97. Criteria for the Fund's means allocation

No comments.

Article 98. Sources for Fund financing

Para (3) - This reference remains vague and open-ended about the kind of fees or their height. It is important to clarify the nature and the decision procedure for the adoption of for the additional fees (see EC comments!)

Article 99. Distribution of the means

We propose that the Fund resources should be distributed once a year. The distribution of resources should be based on a regular annual research study of the state of media plurality and diversity in Montenegro. The resources provided by the Fund should be used to finance content (and consequently the media creating this content) found by such a research study to be lacking in the local and regional media market.

Member states should support scientific research and study in the field of media concentration and pluralism and promote public debate on these matters. Particular attention could be paid to the effect of media concentration on the diversity of media content, on the balance between entertainment programmes, and information and programmes fostering the public debate, on the one hand, and on the contribution of the media to intercultural dialogue on the other (Council of Europe Recommendation (2007)2).

General comments on chapter VII

The Council of Europe Recommendation (2007)² stipulates that media pluralism and diversity of media content are essential for the functioning of a democratic society. Pluralistic and diverse media foster public debate, political pluralism and awareness of diverse opinions, notably by providing different groups in society – including cultural, linguistic, ethnic, religious or other minorities – with an opportunity to receive and impart information, to express themselves and to exchange ideas.

The recommended measures include:

1. Measures promoting the structural pluralism of the media;
2. Measures promoting content diversity;
3. Media transparency, and
4. Scientific research.

Pluralism of information and diversity of media content will not be automatically guaranteed by the multiplication of the means of communication offered to the public. Therefore, Member States should define and implement an active policy in this field, including monitoring procedures, and adopt any necessary measures in order to ensure that a sufficient variety of information, opinions and programmes is disseminated by the media and is available to the public.

Promotion of a wider democratic participation and internal diversity

Member states should, while respecting the principle of editorial independence, encourage the media to supply the public with a diversity of media content capable of promoting a critical debate and a wider democratic participation of persons belonging to all communities and generations (see Article 97 of the Draft Law)

Member states should, in particular, encourage the media to contribute to intercultural and inter-religious dialogue, so as to promote mutual respect and tolerance and to prevent potential conflicts through discussions (see Article 97 of the Draft Law)

Allocation of broadcasting licences and must carry/must offer rules

Member states should consider introducing measures to promote and to monitor the production and provision of diverse content by media organisations. In respect of the broadcasting sector,

such measures could be to require in broadcasting licences that a certain volume of original programmes, in particular as regards news and current affairs, is produced or commissioned by broadcasters.

Member states should consider the introduction of rules aimed at preserving a pluralistic local media landscape, ensuring in particular that syndication, understood as the centralised provision of programmes and related services, does not endanger pluralism.

Member states should envisage, where necessary, adopting must carry rules for other distribution means and delivery platforms than cable networks. Moreover, in the light of the digitisation process - especially the increased capacity of networks and proliferation of different networks - member states should periodically review their must carry rules in order to ensure that they continue to meet well-defined general interest objectives. Member states should explore the relevance of a must offer obligation in parallel to the must carry rules so as to encourage public service media and principal commercial media companies to make their channels available to network operators that wish to carry them. Any resulting measures should take into account copyright obligations.

Support measures

Support measures for the creation, production and distribution of audiovisual, written and all types of media content which make a valuable contribution to media diversity should be considered. Such measures could also serve to protect and promote the diversity of the sources of information, such as independent news agencies and investigative journalism. Support measures for media entities printing or broadcasting in a minority language should also be considered.

Without neglecting competition considerations, all of the above support measures should be granted on the basis of objective and non-partisan criteria, within the framework of transparent procedures and subject to independent control. The conditions for granting support should be reconsidered periodically to avoid accidental encouragement of any media concentration process or the undue enrichment of enterprises benefiting from support.

Raising awareness of the role of media

Member states should support the training of media professionals, including on-going training, and encourage such training to address the role that media professionals can play in favour of diversity. Society at large should be made aware of this role.

Diversity could be included as an objective in the charters of media organisations and in codes of ethics adopted by media professionals.

The introduction of the Fund for the promotion of media pluralism is an important mechanism for ensuring and promoting the plurality and diversity of media content. Since it is a form of assistance through which the State supports the kind of media content that it considers to be in the public interest of the citizens of Montenegro, the assistance should be allocated “on the basis of objective and non-partisan criteria, within the framework of transparent procedures and subject to independent control”.

In our opinion, the greatest deficiency of the proposed legal solutions is the method of funding (Article 98), the method of distributing the collected funds (Article 99) and the proposed list of the potential users of Fund resources.

The proposed funding method does not ensure clearly defined and efficient sources of funding. We propose that the entire sum intended for the support of media pluralism should be provided by the state budget. The amount of this support should be determined each year by the Government of Montenegro on the basis of the proposal submitted by the Agency for Electronic Media. The funds should be paid to the separate account of the Agency and managed by its Director who will take into account the proposal of the Council. The Agency should not be included in the funds acquisition procedure. It should only provide professional assistance, define criteria, make decisions regarding the distribution of funds, conduct research on the state of media pluralism and publish adopted decisions.

It is not clear why commercial national broadcasters should not be allowed to apply for the funds through the open competition advertised by the Fund. The resources of the Fund are intended for the support of specific kinds of content that are in the public interest, rather than for the support of specific publishers/broadcaster depending on their status or the area covered by their media outlet.

The fundamental principle of Fund’s operation, or of the support of media pluralism and diversity, should be to ensuring the provision of content that is not present on the market or whose presence is lacking in scope. The provisions referring to the establishment of the Fund for Media Pluralism should be considered along with those prohibiting excessive media concentration. The plurality of ownership (external pluralism) and the plurality of content (internal pluralism) are important mechanisms for creating a plural media environment that will provide access to diverse media content.

The distribution of funds should be based on objective and transparent criteria. The Council of the Agency should define, based on the findings of the annual survey, detailed criteria for distributing these funds.

We also propose that the legislator should consider the possibility of allocating the Fund resources to scholarly research projects intended for the promotion of media pluralism and good practices relating to media accountability, and to the employment of journalists.

Chapter VIII

Public broadcasting services

Article 100

No comments.

Article 101. National and local public broadcasting services

See the general remarks on the independence of the public broadcasters. Licenses for local public broadcasting services should not be granted by the municipalities, but this should be the task of the Agency. Municipalities might have an advisory role.

We assume that chapter VIII details all the obligations as described in article 101, par. 2 and that no other obligations can be introduced based on this paragraph.

Article 102. General interest

These requirements should be in line with generally excepted journalistic standards. We advise to rephrase sub 2 by removing ‘objectively and timely’. Furthermore, ‘provide equal presentation of’ could be replaced by ‘reports independently on’.

Article 103. Election campaigns

No comments.

Article 104. Religious propaganda

No comments.

Article 105. Regulations on presentation of political parties, coalitions, and candidates

This article could be deleted. Article 102 and the role of the Council as defined in article 112 offer sufficient guarantees.

Article 106. Ordering party

Broadcasts by political entities should be clearly separated from the programmes of the public broadcasters. The public broadcasters should not be held responsible in any way for such programmes.

Article 107. Refusal to broadcast political propaganda content

See comments article 106.

Article 108. Manner and conditions of presentation of political parties, candidates and their programmes

See comments article 106.

Article 109. Announcing the results of public opinion polls on candidates and political parties

We suggest to consider removing this provision. It limits the transparency of the democratic election process and negatively influences the creation of a (information) level playing field

Article 110. Revenues of public broadcasting services

Para (1) The Law should define in detail the proportion of funds provided from the state budget that will be used for the implementation of the programming referred in Para (2) of this Article.

Para (3) The Law should define in detail the proportion of the funds provided from the state budget.

Para (4) The term “electronic media” should be replaced with the term “public broadcasting service.”

Para (6) the term “electronic media” should be replaced with the term “public broadcasting service.”

Article 111. Managing bodies of the public broadcasting services

Para (2) the part of the text reading “or in the charter of the public broadcasting service” should be removed.

Article 112. The Council

The law does not define clearly (see also Chapter XIII) when the appointment of the managing bodies in the public broadcasting services will begin.

Article 113. Number of the Council’s members

No comments.

General comments on Chapter VIII

Declaration (2006E) of the Committee of Ministers on the guarantee of the independence of public service broadcasting in the member states calls on member states to:

Provide the legal, political, financial, technical and other means necessary to ensure genuine editorial independence and institutional autonomy of public service broadcasting organisations, so as to remove any risk of political or economic interference.

The Declaration highlights the specific remit of public service broadcasting and reaffirms its vital role as an essential element of pluralist communication and of social cohesion which, through the provision of comprehensive programme services accessible to everyone, comprising information, education, culture and entertainment, seeks to promote the values of modern democratic societies and, in particular, respect for human rights, cultural diversity and political pluralism.

The editorial independence and institutional autonomy of public service broadcasting, including through an appropriate, secure and transparent funding framework, should be guaranteed by means of a coherent policy and an adequate legal framework, and ensured by the effective implementation of the adopted policy and framework.

In this context, it should be recalled that Recommendation (2003)9 on measures to promote the democratic and social contribution of digital broadcasting states that “public service

broadcasting should preserve its special social remit, including a basic general service that offers news, educational, cultural and entertainment programmes aimed at different categories of the public”.

The question of the resources available to public service broadcasting organisations is at the crux of the issue of their independence and their ability to fulfil their remit. This explains the pledges made at the 4th European Ministerial Conference on Mass Media Policy “to guarantee public service broadcasters secure and appropriate means necessary for the fulfilment of their missions” and “to maintain and, where necessary, establish an appropriate and secure funding framework which guarantees public service broadcasting organisations the means necessary to accomplish their missions”, as well as the attention paid to the matter in Recommendation No. R (96) 10.

Part V of the appendix to Recommendation No. R (96) 10 makes reference, *inter alia*, to the requirement that the question of funding should not be used to exert, directly or indirectly, any influence over the editorial independence and institutional autonomy of public service broadcasting organisations; that public service broadcasting organisations should be consulted on the subject of funding; payments should be made in a way which guarantees the continuity of the activities of the public service broadcasting organisation and which allows it to engage in long-term planning; and to the fact that financial supervision of public service broadcasting organisations should not prejudice their independence in programming matters.

In the texts adopted at the 7th European Ministerial Conference on Mass Media Policy, reference is made to “the particularly important role of public service broadcasting in the digital environment, as an element of social cohesion, a reflection of cultural diversity and an essential factor for pluralistic communication accessible to all” and to “the importance of ensuring free and universal access to the services of public service broadcasters across various platforms and the need to develop further the public service broadcasting remit in the light of digitisation and convergence”. In line with the action plan adopted at the 7th European Ministerial Conference on Mass Media Policy, work is being carried out under the authority of the CDMC by its subordinate group of specialists, the MC-S-PSB, to “examine how the public service remit should, as appropriate, be developed and adapted by member states to suit the new digital environment, and study the legal, financial, technical and other conditions needed to enable public service broadcasters to discharge it in the best possible manner, so as to formulate any legal or other proposals which it may consider advisable for this purpose”.

Whichever funding approach is adopted (direct contributions from the state, licence fees, income-generating activities or a combination of these sources), it should be implemented with due respect for the market, so that the funding of public service broadcasters does not affect

competition in the audiovisual market to an extent which would be contrary to the common interest.

The Amsterdam Protocol on the system of public broadcasting in European Union member states, annexed to the Treaty establishing the European Community, states that the system of public broadcasting in those states is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism. Furthermore, it stipulates that “the provisions of the Treaty establishing the European Community shall be without prejudice to the competence of member states to provide for the funding of public service broadcasting in so far as such funding is granted to broadcasting organisations for the fulfilment of the public service remit as conferred, defined and organised by each member state, and in so far as such funding does not affect trading conditions and competition in the Community to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account”.

In this context, reference can also be made to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which reaffirms the sovereign right of states to formulate and implement their cultural policies and to adopt measures to protect and promote the diversity of cultural expressions, notably through regulatory measures, financial assistance, the establishment of and support to public institutions and enhancing diversity of the media, including through public service broadcasting.

In order to avoid any threats to the editorial independence and institutional autonomy of the public service broadcasting organisations, especially in cases where public funding comes from the state budget, appropriate safeguards should be put in place.

We propose that two new articles should be added:

Public broadcasting services providing public services specified in Article 100, Para 2 of this Law have priority access to frequencies and other technologically limited resources which are of vital importance for the implementation of public services. Their access to frequencies or technologically limited resources is not subject to a public invitation for applications, but can be based on a resolution issued by the Agency.

Chapter IX

Preventing illegal media concentration

Article 114. Media concentration existence

Para (2) What does the term “electronic media” refer to?

Para (2) point 4 should be a separate article which will define connected persons.

The 2006 Slovene Mass Media Act defines connected persons in the following way:

(1) Under the present Act connected persons are persons that are connected in terms of management or capital or are otherwise connected such that because of the connections they jointly formulate business policy or operate in a coordinated manner with the intent of attaining joint objectives, or such that one person has the opportunity to direct any other person or significantly influence the person in making decisions on financing and operations or in deciding on the programme concept of a mass medium.

(2) Persons connected in the following manner shall be deemed connected persons as specified in the previous paragraph:

- those related by blood as close family members (parents, children, siblings, adoptive parents and adopted children)
- married persons or persons in a non-marital union
- those related through marriage/non-marital union as close family members of a spouse or non-married partner
- such that one person or, together, persons deemed to be connected according to the other points in this article hold(s) a commercial stake, shares or other rights on the basis of which the person(s) participate(s) in the management of another person with at least twenty percent of the voting rights
- such that in the two persons the same person or, together, persons deemed to be connected according to the other points in this Article hold(s) a commercial stake, shares or other rights on the basis of which the person(s) participate(s) in the management of each of the other two persons with at least twenty percent of the voting rights
- such that they form a concern according to the Companies Act
- those connected as members of the board of directors or supervisory board with a company in which they perform this function and persons considered to be connected with members of the board of directors or supervisory board under the other points of this Article

Para (3) What does the term “electronic media” refer to??

Article 115. Illegal media concentration

The use of the term “electronic media” in this article is not suitable.

The Law should contain an additional paragraph to the effect that all legal documents, or companies governing bodies decisions which are adopted in a manner that conflicts with the provisions of this Law, are void.

Article 116. Special cases of illegal media concentration

No comments.

Article 117. Licensing and illegal media concentration

Delete para (2).

See comments on Article 115.

Article 118. Change in ownership structure of the broadcaster

The title of this Article is “change in the ownership structure of the broadcaster”.

However, in Para (1), (2),(4) and (5) the term “electronic media” is used?

Para (3) It is not clear how the Agency will establish this? The conditions under which the licence may be denied should be clearly defined.

Para (4) Unlawful media concentration is prohibited. However, this Article authorises the broadcaster to violate the law and abuse its dominant position on the market for three months.

Para (5) The formulation of this paragraph suggests that (justifiable) reasons for prohibited concentration could exist. Which are these reasons?

Para (6) In principle we agree with this provision. At any rate, this is an issue that should be regulated by Article 119, which contains provisions on the transparency of media ownership.

With regard to this provision, it is important to realise that Montenegro has certain obligations under the European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, which protects individuals against abuses which may accompany the collection and processing of personal data and, seeks to regulate the transfrontier flow of personal data.

On the other hand, Montenegro might wish to consider becoming a Party to the European Convention on the Obtaining Abroad of Information and Evidence in Administrative Matters. The reason for this is that, under this Convention, Montenegro may request the assistance of the authorities designated by the other State Parties if it needs certain factual information and documents on ownership and control over foreign media companies, as well as evidence to be used in judicial proceedings.

Article 119. Data on founder and related persons with direct or indirect share in ownership of electronic media founder

We would like to request that the use of the term “electronic media” be consistent throughout the text.

This Article should be reformulated in such a way that it ensures the complete transparency of media ownership, which will enable the Agency to take the appropriate actions.

General comments on chapter IX

Media freedoms and pluralism are vital for democracy, given their essential role in guaranteeing the free expression of opinions and ideas and in contributing to peoples’ effective participation in democratic processes. In the context of democratic processes, there is a need for diverse views to be expressed and presented to the public and for genuine and lively political debate on matters of general interest, helping people to be better or more fully informed in the context of their democratic participation, as well as the crucial role of the media in achieving these aims and in functioning of a democratic and participatory public life.¹⁴

Undue concentration of ownership may be prevented in various ways. Governments may adopt rules aimed at limiting the influence which a single person, a family, company or group may have in one or more media sectors, as well as ensuring a sufficient number of media outlets.

Such rules may include thresholds based on objective criteria, such as audience share, circulation, turnover/revenue, distribution of share capital or voting rights. Such rules may take into account both horizontal integration (mergers within the same branch of activity) and vertical integration

¹⁴ *Declaration of the Committee of Ministers on protecting the role of the media in democracy in the context of media concentration*, adopted by the Committee of Ministers on 31 January 2007 at the 985th meeting of the Ministers’ Deputies.

<https://wcd.coe.int/ViewDoc.jsp?id=1089615&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>

(control by a single person, company or group of key elements of the production and distribution processes, and related activities such as advertising).

The exact form such regulation should take depends on the size of development of the national, regional or local media market to which they apply.

In March 2008, UNESCO published a framework for assessing media development. According to this publication, the authorities responsible for implementing laws must be vested with sufficient powers to accomplish their role, be independent and operate free from political pressure. In particular, they must have the power to divest media operations where plurality is threatened or unacceptable levels of concentration are reached, and to impose sanctions where required. There should be evidence of these powers being appropriately exercised.

Recommendation N° R (99) 1 of the Committee of Ministers to member states on measures to promote media pluralism¹⁵ recommends that member states adopt legislation designed to prevent media concentration that might endanger media pluralism on the national, regional or local level. According to the Recommendation, member states should define thresholds to limit the influence of any individual media corporation or group within one or more media sectors. These thresholds may be based on the maximal audience share or the revenue of a company or capital share. Those corporations that reach such thresholds (and broadcasting companies in particular) should, according to the Recommendation, not be granted additional broadcasting licenses on that market.

The regulation of media concentrations presupposes that the competent services or authorities have information which enables them to know the reality of media ownership structures and, in addition, to identify third parties who might exercise an influence on their independence. In addition, media transparency is necessary to enable members of the public to form an opinion on the value which they should give to the information, ideas and opinions disseminated by the Media.

The Explanatory Report to the Recommendation stipulates that “media transparency is a major condition for safeguarding and strengthening pluralism” and therefore, measures to promote media transparency are a pre-condition for the implementation of rules and policies aiming at safeguarding and strengthening pluralism in the media sector.

¹⁵ Recommendation No. R(99)1 of the Committee of Ministers to Member States on Measures to promote Media Pluralism 19. 1. 1999 (<http://cm.coe.int/ta/rec/1999/99r1.htm>)

According to the Explanatory Report, measures to promote media transparency can be justified for the following reasons:

“The current development of media concentration is likely to create difficulties for media transparency. The growing internationalisation of the capital and activities of firms in the media sector, the development of multimedia groups and the appearance in the media sector of new actors from other branches of economic activity, and the gradual integration of the media into much bigger entities covering the whole of the media production and distribution process from beginning to end, have a dual impact on media transparency. In the first instance, the ownership structures of the media and the indirect control/dependency relationship maintained through the capital of these media are becoming more complex. Furthermore, they open the way to situations of media dependency in relation to bodies which, while they are neither owners nor even shareholders in these media, are capable of exercising a significant and long-lasting influence over their activities, and possibly over the content of the information which they broadcast or disseminate, given that they supply them with financial resources, equipment or non-material resources (programmes) which are important, sometimes vital, to their activities.”

“This phenomenon, which is already noticeable in numerous European countries, is likely to gain momentum in the years to come with the development of new communications technologies which could encourage the trend towards integration (for example, digital technology) and the appearance in the media sector of new types of operators who command considerable financial resources (for example, telecommunications firms and the producers of electronic or data-processing equipment). Moreover, this phenomenon is likely to assume an increasingly pan-European dimension as the media sector opens up to the market economy in the central and eastern European countries.”

The appendix to Recommendation No. R(99)1 of the Committee of Ministers to member states on measures to promote media pluralism¹⁶ commences with the words:

“Member states should consider the introduction of legislation designed to prevent or counteract concentrations that might endanger media pluralism at the national, regional or local levels. Member states should examine the possibility of defining thresholds – in their law or authorization, licensing or similar procedures – to limit the influence which a single commercial company or group may have in one or more media sectors. Such thresholds may for example take

¹⁶ [http://www.coe.int/t/e/human_rights/media/4_documentary_resources/CM/Rec\(1999\)001](http://www.coe.int/t/e/human_rights/media/4_documentary_resources/CM/Rec(1999)001)

the form of a maximum audience share or be based on the revenue/turnover of commercial media companies. Capital share limits in commercial media enterprises may also be considered. If thresholds are introduced, member states should take into consideration the size of the media market and the level of resources available in it. Companies which have reached the permissible thresholds in a relevant market should not be awarded additional broadcasting licenses for that market.”

Chapter X

Commercial Audiovisual Communication

Article 120. Forms of commercial audiovisual communication

No comments.

Article 121. Principles

Para (1) Please add the following principle: “respect for human dignity”. After the word discrimination, please insert the following: “based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation”. Article 3e(1) of the AVMSD (see EC comments!).

Para (2) Please add "the law regulating unfair commercial practices and misleading and comparative advertising" after the word media. (see EC comments!)

See also Article 126 comments.

Article 122. Prohibitions

Para (2) Please insert “and any other audiovisual commercial communication” after the underlined text for the sake of completion. Article 3e(1) (b) of the AVMSD. (see EC comments!)

Article 123. Radio and television advertising

Please insert the following: “audiovisual commercial communications shall be readily recognisable as such”. Article 3 e1 (a) of the AVMSD. (see EC comments!)

Article 124. Prohibition of refusal to broadcast advertisements if refusal may cause or maintains monopoly position

No comments.

Article 125. Advertising prohibition

Please add the following text in indent (2): “all forms of audiovisual media commercial communications for cigarettes and other tobacco products are prohibited”. Article 3 e (1) of the AVMSD. (see EC comments!)

Article 126. Illegal advertising

The audiovisual commercial communications are also regulated under other community rules, in particular Directive 2005/29/EC on Unfair Commercial Practices and Directive 2006/114/EC on misleading and comparative advertising. The present draft Law should therefore be consistent with the relevant provisions of these directives (in particular as regards misleading advertising), which will have to be transposed by Montenegro in the future. (see EC comments!)

Article 127. Prohibition of advertisement broadcasting

No comments.

Article 128. Advertisement message

No comments.

Article 129. Scene of death, injury, violence, and destruction of buildings and nature

No comments.

Article 130. Children and juveniles

Para (1) Please add the following text: “audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors”. Article 3 e 1 (e) of the AVMSD.

Para (2) Please insert the following words after “children”: “to exhort them to buy or hire a product or service a product or service or directly encourage them to persuade their parents or

others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons”. Article 3 e (1) (g) of the AVMSD. (see EC comments!)

Article 131. Advertising of alcohol beverages

No comments.

Article 132. Duration of advertising in programs of public broadcasters

No comments.

Article 133. Duration of advertising in programs of commercial broadcasters

No comments.

Article 134. Daily duration of advertising

No comments.

Article 135. Contents not including advertisements

No comments.

Article 136. Exemption

No comments.

Article 137. Prohibition of sponsorship for program content

No comments.

Article 138. Program content identification

No comments.

Chapter XI (Articles 139-140)

Supervision

General comments on chapter XI

According to Article 3 (6) of the AVMSD, member states shall ensure by appropriate means that the media services providers under their jurisdiction effectively comply with the provisions of the directive. Article 10 establishes the competence of the new Agency for Electronic media, chapter XI is devoted to supervision and chapter XII deals with penalty provisions for the infringement of the law. However, neither of these provisions indicates that the Agency for Electronic Media is the competent body to apply the fines – contrary to the current situation. If the Agency is deprived of the possibility of imposing fines for infringements of the Law, it will not count on sufficient deterrent measures to prevent and sanction the lack of compliance with the Law and the directive. It is important, therefore, to indicate that the Agency will be responsible for imposing fines for infringements of the Law in view of complying with Article 3 of the AVMSD. Moreover, according to Article 139, supervision shall be performed by the Agency independently, or by a person who has been engaged for this purpose and is competent for such activities. Since enforcement and compliance with the rules of the AVMSD is an essential element of the implementation, the identity and the conditions for engaging those competent persons should be clarified. (see EC comments!)

Chapter XII

Penalty provisions

Article 141. Infringement of the Law

Para (1) point 18 – if an unlawful concentration is established, the Agency may impose the most severe penalty – revocation of the license.

The text of the law should clearly state that penal provisions refer to all providers of AVMS.

This chapter should clearly define the powers of the Agency with respect to the implementation of this law, as well as the complaint procedure.

Chapter XIII

Transitional and final provisions

Article 142

Para (2) – Which part of the Agency for Broadcasting has already merged with the Agency for Electronic Communications and Postal Services as stipulated by Article 142 (para 5) of the Law on Electronic Communications?

Article 142, para (5) Agency for Electronic Communications and Postal Services shall take over part of fixed assets, pertaining software of Broadcasting Agency and employees engaged in conducting activities arising from the competences of the Agency, within 90 days from the date of enforcement of this Law. (*Law on electronic communications*)

Para (3) This sentence should be reformulated, since it introduces additional ambiguities as regards the powers relating to the implementation of this law. Below are several Articles of the Law on Electronic Communications that contradict the provisions in the draft law.

Law on electronic communication

Article 39. Compliance with Media Legislation

Operators of networks performing broadcast and distribution of radio and television programs shall undertake reasonable measures for prevention of broadcasting illegal programs and other contents and shall apply other measures stipulated by laws and regulations governing the field of media and program contents.

Article 65. Authorization for Use of Radio Frequencies

(1) Natural persons and legal entities may use radio frequencies only on the basis of a decision on authorization for the use of radio frequencies (hereinafter: Authorization) issued by the Agency.

(2) Without prejudice to paragraph 1 of this Article, according to the Plan of Allocation and international acts adopted by Montenegro, the Ministry shall determine frequencies used without authorization and regulate the conditions under which they may be used.

Article 66. Issuing Authorizations

(1) The Agency shall issue an Authorization for the use of frequencies according to the procedure stipulated in this Law.

(2) Authorization for the use of radio frequencies shall be issued on the basis of a tender procedure in accordance with the procedure stipulated in this Law, only for the frequencies intended for broadcasting, or when, in accordance with Article 68 of this Law, it is established that the efficient use of assigned radio frequencies may be obtained only by means of limiting the number of Authorizations.

Article 69. Implementation of Public Tenders

(1) The Agency shall conduct the procedure of public tender in accordance with Article 68 of this Law, by a specially appointed commission, which may only include persons not employed in the Agency, and having no conflict of interests.

(2) In case of tender for broadcasting radio frequencies, the Commission and criteria shall be defined in cooperation with, and with consent of, the regulatory body in charge of program content.

Article 141. Existing Licenses

(1) Valid licenses issued by the Agency for Telecommunications and Postal Services and the Broadcasting Agency shall be made compliant with provisions of this Law within nine months from the day of enactment of this Law.

Article 143. Publishing of the public invitation for authorized nominators

No comments.

Article 144. Deadline for submission of nominations for the Council members' appointments

We propose that the deadline should be extended to 45 days. The extension of the deadline will give to authorized proposers more time to make necessary preparations.

Article 145. Deadline for appointment of the Agency Council members

In accordance with previous comments, the Parliament of Montenegro confirms the proposed candidates. Article 157, to which this article refers, does not exist in the draft version of the law.

Article 146. Term of office of the members of the Broadcasting Agency Council

No comments.

Article 147. The Council Constituting

No comments.

Article 148. Appointment of the Agency Director

No comments.

Article 149. Termination of term of office of the Agency Director

No comments.

Article 150. Adoption of the Statute

No comments.

Article 151. Bylaws

No comments.

Article 152. Cease of validity of previous Law

No comments.

Article 153. Entering into force

No comments.

ANNEX

MINISTRY OF CULTURE, SPORTS AND MEDIA

DRAFT

LAW ON ELECTRONIC MEDIA

Podgorica, 19 May 2009

LAW ON ELECTRONIC MEDIA

CHAPTER I

GENERAL PROVISIONS

Scope of the Law

Article 1

(1) This Law shall govern rights, obligations, and responsibilities of legal and physical entities performing the activity of production and providing of audiovisual media services in Montenegro (hereinafter referred to as „AVM service“); regulate competences, status, and financing of Agency for Electronic Media; stipulate conditions and procedures of license granting for providing and distribution of the audiovisual media services; regulate prevention of illegal media concentration; prescribe establishment of fund for protection of media pluralism; and govern other issues relating to electronic media, in accordance with international conventions and standards.

(2) The provisions of this Law shall not be applied to conditions and procedure of granting licenses for broadcasting frequencies, and shall not be applied to conditions and procedure of rights acquisition of electronic media on installing, use, and maintenance of fixed and mobile broadcasting equipment.

Principles

Article 2

Governing of relations in electronic media shall be based upon following principles:

- 1) freedom, professionalism, and independence of electronic media;
- 2) prohibition of all forms of censorship and/or illegal interference in the work of electronic media;
- 3) balanced development of public and commercial electronic media;
- 4) free and equal access of citizens to all AVM services;
- 5) development of competition and pluralism in the field of AVM services;
- 6) application of the international standards and principles related to the field of AVM services;
- 7) objectivity, non-discrimination and transparency of the procedure of granting licenses for providing and distributing AVM services;

AVM service provider

Article 3

(1) AVM service provider is legal or physical person performing the activity of producing and/or providing AVM service, and is established in Montenegro, which performs activities in

accordance with this Law and separate legal acts regulating field of media and electronic communication.

(2) AVM service provider shall be considered as established in Montenegro if has head office in Montenegro and the editorial decisions of AVM services are made in Montenegro.

(3) AVM service provider shall be also considered as established in Montenegro if: one has head office in Montenegro, i.e. permanent residence, and the editorial decisions of AVM services are made in EU Member State or in a third country, where a significant portion of the workforce involved in the AVM service providing is in Montenegro;

(4) AVM service provider shall be considered as established in Montenegro if one has head office located in Montenegro, and editorial decisions on program schemes are made in EU Member State, where a significant portion of the workforce involved in the providing of AVM service is in Montenegro.

(5) When significant portion of workforce involved in providing of AVM service is in Montenegro and in other EU Member State, it shall be considered that AVM service provider is established in Montenegro, if the head office of the provider is located in Montenegro.

(6) When significant portion of workforce involved in providing of AVM service is not in any of the member states, described in paragraph 2, 3, 4 and 5 herein, it shall be considered that AVM service provider is established in Montenegro, if the provider has initially started broadcasting of the AVM service in Montenegro and maintains stable and effective relations with the economy of Montenegro.

Exemptions

Article 4

AVM service providers that are not encompassed by the terms and conditions from Article 3 of this Law shall be considered to be under jurisdiction of Montenegro if they use:

- 1) A frequency granted by Montenegro;
- 2) Satellite capacity appertaining to Montenegro, although it does not use granted frequency described in point 1 of this Article;
- 3) Satellite up-link situated in the territory of Montenegro, although it uses neither a broadcasting frequency nor a satellite capacity described in points 1 and 2 of this Article.

Definition of terms

Article 5

The terms and expressions used in this Law shall have the following meaning:

- 1) **Strategy for Development of AVM Services Sector** is a document defining vision, i.e. policy in this field, general and specific objectives; this document shall determine guidelines and mechanisms for achieving the objectives; lay down dynamic of realization, structure and type of AVM service providers, and other parameters and issues of importance for its realization;
- 2) **Audiovisual media service** is a service under editor competence of media service provider, whose basic purpose is activity of producing and providing of AVM service of

- program aimed to informing, entertaining or educating of public via electronic communication networks;
- 3) **Program content** is information of all forms and types (news, opinions, notices, messages, statements, and other information), and authorized work /subject to copyright/ published in electronic media in order to inform and meet cultural, educational, and other public needs;
 - 4) **Program** is a sequence of motion pictures, with or without sound, creating an unit within program scheme or catalogue, defined by the AVM service provider, and form and content of which are comparable with form and content of TV or radio program;
 - 5) **Editorial responsibility** is performing of control over selection of program, and its chronological organization, when TV or radio program is broadcasted, or in catalogue manner, when AVM services are requested /on request/;
 - 6) **AVM service provider** is a legal or physical entity, with editorial responsibility for selection of AVM service content and for organization of service providing, which is in possession of license for AVM service providing;
 - 7) **Electronic media** is AVM service provider, registered for radio and TV broadcasting, and who attained license for providing of AVM service, in accordance with this Law;
 - 8) **AVM service on request (non-linear AVM service)** is a service with conditional access, which enables reception of radio and/or TV program on basis of single request by user and catalogue of program selected by the AVM service provider, and which is available exclusively upon signing of contract on use;
 - 9) **Commercial audiovisual communication** is AVM service that introduces a set of pictures, with or without the sound, into the program, with aim of: (a) direct or indirect promoting of goods, services or image of physical or legal entity, who performs any economic activity, in return for payment or for another appropriate compensation, or for (b) self-promotional purposes;
 - 10) **Radio or TV advertising** is commercial audiovisual communication meaning broadcasting of any form of information, in return for appropriate compensation or in self-promotional purposes, from the part of legal or physical entity, in order to present and pay attention on some product, service, including immovable estate, rights, obligations, i.e. to motivate consumers to use, or buy given product or service, in return for financial compensation;
 - 11) **Surreptitious commercial audiovisual communication** refers to the presentation, in words or pictures, of goods or services, the name, the trade-mark or the activities of a producer of goods or a provider of services, in such cases when this presentation is intended for advertising purposes and could mislead the public as to its nature and character;
 - 12) **Sponsorship** refers to the participation of a legal or physical person, that is not involved in the providing of AVM services or in the production of audio-visual works, in direct or indirect financing of AVM services or radio and/or TV programs, with the aim to promote his or her name-firm, trade-mark, reputation, activities or products;
 - 13) **Teleshopping** is commercial audiovisual communication representing providing of AVM service of direct offers to the public aimed at purchase, sale or rent of goods and services that cannot be found in free sale.

- 14) **Disposal of products** is commercial audiovisual communication containing of announcement, in course of program, (by mentioning it or through live connecting into the program) of a product, service or trademark, return for payment or for another appropriate compensation;
- 15) **TV promotion** is a type of announcement through inserting certain scenes into the program, which are designated to promote one or more products or services. These scenes shall be inserted by the program presenter and shall be kept separately from the program via acoustic or optical means;
- 16) **European audiovisual works** are radio and TV programs originating from the EU, or from third European countries, or if these works are product of bilateral co-production between European countries;
- 17) **Protected services** is any of following services provided in return for compensation and based on conditional access: TV providing of AVM service, radio broadcasting, transmitting via cable or wireless distribution systems, including satellite and radio programs intended for public reception;
- 18) **Conditional access** is any technical mean or device enabling, in a reasonable manner, limited access to protected radio or TV broadcasting service, in accordance with the subscription rules or priory granted individual authorization.
- 19) **Device for conditional access** is any equipment or software, projected or adjusted for enabling access to protected service in a reasonable manner;
- 20) **Supplementing service** refers to installation, maintenance, or replacement of the device for conditional access; it shall also mean providing of commercial communication services relating to devices for conditional access or to protected services.
- 21) **Unauthorized device** is any equipment or software, projected or adjusted for enabling access to protected service in a reasonable manner without necessary authorization given by service provider;
- 22) **Activities subjected to dispute** shall encompass production, import, distribution, selling, renting, or possessing in commercial purposes of an unauthorized devices; installation, maintaining, or replacement of such devices in commercial purposes; or usage of commercial communication in purpose of promoting the unauthorized devices.
- 23) **Distributor** is a physical or legal person registered for performing of activities in field of telecommunication, who acquired the license for AVM service providing (program distribution) pursuant to this Law;
- 24) **Multiplex** represents a group consisting of radio or TV programs, and/or of other AVM services, which are simultaneously broadcasted via digital modulation within standard television channel, by means of one or more broadcasting frequencies;
- 25) **Program basis** is a document containing program scheme regulating following: (1) type of program content, i.e. dividing of program content in certain groups, (2) envisaged participation of content groups, (3) envisaged maximum participation of advertising and sponsored contents, and (4) envisaged share of in-house production;
- 26) **Program catalogue** is a document containing list of radio and/or TV programs, which is a part of the distributor service, offered to a subscriber in a form of united service program package, via electronic communication networks, where the distributor acquired distribution rights;

- 27) **Public electronic media** means legal entity, established by the state or local self-government unit, performing the activity of production and broadcasting of radio and/or TV program, which is of interest for citizens;
- 28) **Commercial electronic media** means legal entity performing the activity of production and broadcasting of radio and/or TV program, which is of interest for citizens, and financed by the founder in purpose of gaining the profit;
- 29) **Independent production** represents radio and TV program intended exclusively to broadcasting; it is produced by physical or legal person(s) registered for performing such activities in Montenegro, and which are not electronic media;
- 30) **Subscriber (end user)** means any person that is party to a contract made with a distributor of services for the supply of such services, and pays defined fee for services provided, i.e. subscription.

Strategy for Development of Audiovisual Media Services Sector

Article 6

Strategy for Development of AVM Services Sector shall be passed by the Government of Montenegro (hereinafter referred to as “the Government”), following proposal of the ministry competent for media (hereinafter referred to as “the Ministry”).

CHAPTER II

AGENCY FOR ELECTRONIC MEDIA

The Agency

Article 7

- (1) Agency for Electronic Media (hereinafter referred to as “the Agency“) shall be independent regulatory body, which performs public competences, pursuant to this Law;
- (2) The Agency shall represent public interests;

Status of the Agency

Article 8

- (1) The Agency shall be independent legal subject, functionally independent of any state body, and of all legal and physical persons performing activities of production and broadcasting radio and TV programs, or providing other AVM services.
- (2) The Agency shall be established by the State.
- (3) Rights of the founder shall be exercised by the Council of the Agency, on behalf of the state, and pursuant to the provisions of this Law.
- (4) The Agency shall have the status of the legal entity and it shall be registered in the Central Register of the Commercial Court of Montenegro.

Obligation to coordinate

Article 9

The Agency and regulatory body competent for field of electronic communication shall be obliged to cooperate and coordinate their work, in accordance with this Law and with provisions of separate Law regulating field of electronic communication; they shall cooperate and coordinate work referring to radio frequencies intended for AVM service providing.

Competences of the Agency

Article 10

(1) The Agency, in the scope of its activities, shall:

- 1) ensure expert grounds for the preparation of Strategy for Development of AVM Services Sector;
- 2) cooperate with body competent for protection of competition in course of performing the analysis of electronic communication service market, in part referring to AVM services;
- 3) determine amount of compensation for renting and using license for AVM service providing;
- 4) keep registries of AVM service providers;
- 5) make decision on complaints and objections filed by the physical and legal person(s) regarding the work of AVM service providers;
- 6) undertake measures towards AVM service providers, pursuant to this Law;
- 7) prepare and publish annual, financial and similar reports on work;
- 8) perform supervision over work of AVM service provider;
- 9) perform other tasks and duties, in accordance with the Law and Statute;

(2) The Agency shall cooperate with relevant regulatory organizations of other countries, in order to exchange experiences, improve its work, and to ensure harmonization with international experiences and standards; this cooperation shall be realized in cooperation with competent state bodies.

Bodies of the Agency

Article 11

Bodies of the Agency shall be:

- 1) the Council of the Agency, and
- 2) Director of the Agency;

Competence of the Council

Article 12

The Council of the Agency (hereinafter referred to as “the Council”) shall:

- 1) pass the Statute of the Agency;
- 2) elect a president among the members of the Council, in a manner and through procedure prescribed by the Rules on Procedure of the Council;
- 3) appoint and dismiss Director of the Agency after the public recruitment procedure is completed;
- 4) pass general act on internal organization and systematization of the job positions;
- 5) adopt working plans and reports on work;
- 6) engage independent authorized auditor to perform audit over periodical and annual statements of revenues and expenses;
- 7) prepare and determine proposal Financial Plan for following year and proposal Financial Statement of The Agency for previous year;
- 8) ensure expert grounds for the preparation of Strategy for Development of AVM Services Sector;
- 9) issue approvals for providing of AVM services;
- 10) give its consent for, temporary or permanent, renouncing, renting, transferring or alienating, in any way, of the approval for providing of AVM services;

- 11) pass an act regulating amount of fee, manner of determining and paying of the fees for approvals for AVM service providing;
- 12) pass an act on minimum program standards for AVM service providers;
- 13) pass acts on enforcement of conditions relevant for defining minimum program quotes for European audiovisual works, and for works of independent producers, in accordance with the European standards;
- 14) pass acts determining conditions and quotes for providing of AVM services of advertising, teleshopping, sponsored programs and other commercial audiovisual communication, in accordance with the European standards;
- 15) give its consent on decisions of Director of the Agency referring to payments in amount exceeding amount defined by the Statute of the Agency;
- 16) adopt Rules of Procedure;
- 17) pass an act on conditions, criteria and manner for dividing financial means of the Fund for Protection of Media Pluralism;
- 18) pass an act on procedure for pronouncing of measures to AVM service provider, pursuant to the provisions of this Law;
- 19) decide upon filed complaints on decisions passed by Director of the Agency;
- 20) pass an act defining the decision-making procedure upon received complaints and objections;
- 21) pass and adopt other acts necessary for implementation of this Law;
- 22) perform other functions in accordance with the Law and Statute of the Agency;

Insight of the public into the Agency's performance

Article 13

The Council shall, until the end of June of current year the latest, make public, via web site of the Agency, following documents:

- 1) Report on Work of The Agency for previous year, with special emphasize on realization of obligations determined by the Law;
- 2) Report on Financial Performance of the Agency for previous year, with supplementing Report of the authorized auditor on financial operations of the Agency;

Members of the Council

Article 14

The Council of the Agency shall comprise five members.

Criteria for appointment of the Council member

Article 15

Member of the Council shall be esteemed expert in the field relevant for performing of activities of the Agency (media, law, economy, audiovisual media services, electronic communication, etc.), with permanent residence in Montenegro and who is a holder of a university level degree, at least.

Conflict of Interest

Article 16

(1) Member of the Council shall not be:

- 1) member of the national Parliament and of the local assemblies;

- 2) person elected, nominated, or appointed by the President of Montenegro, the Parliament of Montenegro, or the Government of Montenegro;
- 3) officials of the political parties (president of the party, member of the presidency of the party, their deputies, members of executive and general committees of the party, and other party's officials);
- 4) persons which, as stake holders, shareholders, members of managing bodies, employees, persons under contract, etc. have an interest in legal entities involved in activities of production, broadcasting and/or distribution of radio and/or TV program, or of other AVM services, and related activities (advertising, electronic communication, etc), in a way that the membership of such person in the Agency Council may result in the conflict of interests
- 5) person sentenced by legally-binding court decision for committing criminal act against official duty, criminal act of corruption, fraud or theft, regardless to pronounced sentence, or a person sentenced by legally-binding court decision for any criminal act on sentence of imprisonment exceeding six months, during the period of legal consequences of the sentence;
- 6) Persons who are spouses of the persons stated in the Articles 1- 4 herein, or who are related to them in straight line regardless of the degree of kinship, or in indirect family relationship up to the second degree, or persons in affinity relation.

(2) If the Council Member is subject to a conflict of interests related to decision-making on a certain issue from the Council's field of competence, they are obliged to inform other members in order to be exempted from discussion and decision-making on that issue.

(3) If a Council Member has participated in work regardless of the existing conflict of interest, the other members are obliged to revise the adopted decisions and may declare them not valid.

(4) A Council Member shall not be a founder or in any way included in the submission of an application for obtaining a license for providing of AVM service during the period of 12 months after the termination of their term as the Council Member.

Appointment and dismissal of the Council member

Article 17

The Council shall be appointed and dismissed by the Parliament of Montenegro (hereinafter referred to as "the Parliament").

Authorized nominators

Article 18

(1) Candidate for the Council member shall be nominated by:

- 1) the Ministry, nominating one member;
- 2) universities / faculties of political science or law faculties, nominating one member;
- 3) associations of commercial broadcasters, nominating one member;
- 4) non-governmental organizations and citizens' associations for protection of human rights and freedoms, nominating one member;
- 5) Non-governmental organizations in field of media, nominating one member;

(2) A person proposed for the member of the Agency Council is not necessary and obligatory to be from the part of authorized nominator.

(3) Nominators may, referred to in paragraph 1, point 2, 3, 4, and 5 herein, jointly or separately propose one candidate each for the Council member.

(4) Candidates for the Council members shall be proposed by the authorized management bodies of the legal persons described in the paragraph 1 of this Article, in accordance with their statutes.

(5) If nominator referred to in paragraph 1, point 2, 3, 4, and 5 herein, submits more than one separate proposal, then only proposal supported by the majority of the authorized nominators shall be discussed and examined.

Content of proposal for the Council member appointment

Article 19

(1) Proposal for appointment of the Council member shall contain following information: name and surname, address, short biography of the proposed candidate; proposal shall be signed, verified, and sealed by the authorized nominator, i.e. authorized nominators.

(2) Proposal of the candidate for the Council member shall be submitted on the form determined by the Parliament body competent for appointment (hereinafter referred to as "Working Body").

(3) Following documents shall be enclosed to the proposal described in the paragraph 1 of this Article:

- 1) Certificate on permanent residence in Montenegro of the nominated candidate;
- 2) Certificate on completed education of the nominated candidate;
- 3) Statement of the proposed candidate on acceptance of nomination, and on non-existence of obstacles for his/her nomination described in Article 16 of this Law;

(4) Non-governmental organization, in position of the nominator, shall submit, together with certificates/evidences referred to in paragraph 3 herein, following documents:

- 1) Certificate on registration in register of non-governmental organizations in competent body of state administration;
- 2) Founding act and statute, in text stored in the competent body of the state administration;
- 3) Reports on work and financial reports for previous three years.

(5) Proposal for appointment of the Council member, which is not prepared in accordance with the paragraph 1, 2, 3, and 4 herein, shall not be discussed and examined.

Non-governmental organization as authorized nominator

Article 20

(1) Non-governmental organization may be nominator of the candidate for the Council member, if:

- 1) It is registered in competent body of the state administration at least three years prior to publishing of public call for submitting of proposal for the Council nomination;
- 2) In founding act and statute, as basic goals and functions, stated issues from the field envisaged by the Article 18, paragraph 1, point 4 and 5, of this Law, and has been continuously working upon these issues for previous three years;

(2) One non-governmental organization may participate in proposing procedure for the Council member only in framework of one category nominator, described in the Article 18, paragraph 1 of this Law.

Independence of the Council member

Article 21

(1) Council Member shall not represent the authorized nominator, but perform their duty independently, autonomously, according to their own knowledge and conscience, in compliance with this Law, the Agency Statute, and other general legal acts.

(2) Nobody has the right to influence the work of the Council Member in any way, nor are they obliged to take into account anybody's instructions regarding their work, except the decisions of the competent court.

Term of office of the Council

Article 22

(1) Term of office of the Council shall start on the day of appointment, and it shall be appointed for the period of five years.

(2) A person may not be elected member of the Council more than two times in a row.

(3) The Council shall be considered as appointed when at least three members of the Council are appointed.

Initiating of the procedure for the Council appointment

Article 23

The Working Body, referred to in Article 19, paragraph 2 of this Law, shall initiate the procedure of appointment of the Council by issuing a public invitation for the authorized nominators, not later than 6 (six) months before the expiry of term of office of current Council.

Public invitation

Article 24

Public invitation shall be sent to the authorized nominators by publishing it in "The Official Journal of Montenegro," at the web site of the parliament, and at least in one daily printed media published in Montenegro.

Content of public invitation

Article 25

Public invitation shall obligatory contain following:

- 1) Authorized nominators described in Article 18, paragraph 1 herein, and number of nominations they may submit;
- 2) Criteria that candidate for the Council member has to fulfil;
- 3) Criteria that non-governmental organizations, as authorized nominators, have to fulfil;
- 4) Documentation that have to be submitted attached to the nomination;
- 5) Name and address of the body where nominations are submitted;
- 6) Manner of submitting, and deadline for submitting of nominations;

Deadline for submitting of nomination

Article 26

(1) The deadline for submission of proposals for the Council appointment runs from the date of publication of the call in the daily print media.

(2) The deadline for submission of proposals for the Council members shall be 45 days from the date of publishing of public invitation.

List of candidates for the Council appointment

Article 27

- (1) The Working Body shall publicly announce, not later than within eight days from the date of expiry of the submission deadline, in the same manner in which the public invitation was published, the list of all applicants with completed and timely submitted proposals for the Council members;
- (2) The Working Body shall adopt, not later than within 15 days from the date of expiry of the submission deadline, proposal of list for the Council appointment, per authorized nominator;
- (3) The Working Body shall also attach, to the proposed list for the Council appointment, proposals of the authorized nominators fulfilling the conditions and requirements prescribed by the Law.
- (4) If nominator of certain categories submits more than one separate nomination, shall contain the nomination for which the law stipulates that it will be considered.
- (5) Proposed list for the Council appointment, with attached reasoning and report on completed procedure for the Council appointment, shall be delivered to the Parliament for discussion and decision-making.

Deciding upon proposed list

Article 28

- (1) The Parliament shall decide upon proposed list for the Council appointment not later than within 60 days from the date of delivering material described in Article 27, paragraph 5 of this Law.
- (2) The Parliament shall decide upon entire proposed list of candidates for the Council appointment.

Reopening of procedure

Article 29

- (1) If the proposed list is not complete, procedure shall be reopened for the Council member appointment from the category of nominator whose proposal is not adopted.
- (2) In case of paragraph 1 of this Article, the Working Body shall publish again public invitation for the authorized nominators whose proposals are not adopted, not later than within 15 days from the date of adoption of proposed list and in manner prescribed by this Article.
- (3) Term of office of the Council member appointed upon reopened public invitation shall last until expiry of the term of office of the Council, pursuant to Article 22, paragraph 1 of this Law.

Compensation for the Council member

Article 30

The Council Members shall be entitled to a monthly compensation for their work in amount of the one received by other employees in the Agency in the month prior to payment of compensation. The Council Members shall be entitled to reimbursement of the costs arising from performing of duties as the Council member, in accordance with the Statute of the Agency.

Termination of term of office of the Council member

Article 31

The Council Member's term of office shall be terminated, only by respecting the procedure envisaged by this Law, in following cases:

- 1) with the expiry of the period of their appointment;
- 2) if they are recalled because of reasons prescribed by this Law;
- 3) if they submit written resignation to the Parliament, about which they shall inform the Council and the authorized nominator within 8 days;
- 4) in case of death;

Recall of the Council member

Article 32

The Parliament shall recall the Council member and replace him with the other member if:

- 1) it is established that, on the occasion of submission of the proposal for appointment, he/she submitted inaccurate personal data or omitted to reveal the data or circumstances that are of relevance for the possible appointment;
- 2) he/she fails to attend sessions and meetings of the Council for the period longer than six months;
- 3) it is established that, during the term of the Council, any of the circumstances referred to in the Article 16 of this Law occurred;
- 4) because of illness, on the basis of results of a competent medical institution, he/she is not able to perform duty of the Council Member for the period longer than 6 (six) months;

Procedure for recalling of the Council member

Article 33

- (1) Procedure for recalling of the Council member shall be initiated by the Council or by the Working Body;
- (2) The Parliament shall pass decision on recalling of the Council member only upon completion of the procedure during which all relevant circumstances were determined and during which the Council Member has been allowed to explain all the circumstances.

Suspension of the Council member

Article 34

The Council may suspend, by the two third majority vote of the total number of its members, the Council Member against whom the request for recalling was submitted, until the final decision of the Parliament.

Appointment of the new Council member

Article 35

- (1) In case when the term is terminated before the expiry of the period of appointment of the Council Member, the Working Body is obliged to publish public invitation for the authorized nominators of the Council members for new proposals, not later than within 15 days from the date of termination of term.
- (2) Provisions of this Law governing the appointment of the Council member shall be applied to the procedure of appointment of the Council member referred to in paragraph 1 of this Article.
- (3) Newly-appointed Council member shall be appointed for the period until the expiry of the former member's term of office.

(4) The Council Member who was recalled before expiry of term of office, pursuant to the Article 32, paragraph 2, points 1 and 2, shall not be appointed for the Council member again.

Cessation of the Council's work

Article 36

If, due to the termination of certain members' terms, the number of the members is less than 3 (three), the Council shall not work and reach valid decisions.

Recall of the Council

Article 37

- (1) The Parliament of Montenegro shall recall the Council if:
- 1) it is established that the Council does not meet and hold sessions for the period longer than 6 (six) months;
 - 2) the Council fails to realize the obligation prescribed by Article 12, paragraph 1, point 2 of this Law;
 - 3) the Council fails to publish, at the web site of the agency, financial report of the Agency for the previous year and report of the auditor;
- (2) Procedure for recall of the Council shall be initiated by the Working Body described in Article 19, paragraph 2 of this Law.

Work of the Council

Article 38

- (1) The Council shall work in sessions.
- (2) The sessions of the Council shall be held when necessary, at least once a month;
- (3) The session of the Council shall be organized upon request of at least three Council members or upon the request of the Agency Director.
- (4) The Council shall pass decisions by majority vote of the total number of present members, unless it is otherwise stipulated by this Law or by the Agency Statute.
- (5) The sessions of the Council shall be open for public, unless the Council decides otherwise by majority of vote of the total number of present members.
- (6) Director of the Agency has the right to participate in the session of the Council, without the decision-making right.
- (7) Participation of third person in work of the Council shall be more closely regulated by the Rules of Procedure of the Council.

Director of the Agency

Article 39

- (1) The appointed Director of the Agency shall be a person who meets the following conditions: has citizenship of Montenegro and permanent residence in Montenegro, is a holder of minimum University Degree, and has at least five years of work experience.
- (2) The Agency Director shall:
 - 1) represent and act on behalf of the Agency;
 - 2) organize and manage work of the Expert Service of the Agency;
 - 3) be responsible for his/her work to the Council;
 - 4) be responsible for the legal performance of functions by the Agency

- 5) propose general act on internal organization and systematization of the Agency;
 - 6) propose business plan of the Agency;
 - 7) submit Report on Work, and periodical and annual statements of revenues and expenses of the Agency;
 - 8) submit Financial Statement of the Agency for previous year;
 - 9) propose general act on minimum process of work during strike of employees;
 - 10) propose decisions on buying and selling of means and property of Agency, decision on putting of the Agency's property under mortgage, and decision on taking bank loans and the granting of financial guarantees, in accordance with the provisions of the Law;
 - 11) perform other duties prescribed by the Law and Agency Statute
- (3) The term of office for the Agency Director shall be 4 (four) years.
- (4) A person may be appointed the Agency Director maximum two times in a row.
- (5) A person who is not qualified to be the Council Member shall not be appointed Director.

The Agency Statute

Article 40

- (1) The Agency Statute shall include the provisions related to:
- 1) the seat of the Agency;
 - 2) internal organisation of the Agency;
 - 3) manner of operation, decision making and competences of managing bodies of the Agency and persons with special authorizations;
 - 4) procedure of adopting decisions regarding petitions and complaints of physical and legal persons on the AVM service provider;
 - 5) manner of publicizing operating reports, financial plans, statements of income and expenditures and other documents the Agency is obliged to present to the public in compliance with this Law
- (2) The Agency Statute shall contain provisions on other issues prescribed by this Law.

Funding of the Agency

Article 41

- (1) The Agency shall acquire the funds from:
- 1) fees paid for using of broadcasting frequencies prescribed by the Law governing field of electronic communication;
 - 2) a part of the subscription paid to distributors of AVM program contents;
 - 3) Once-occurring fees paid for registration of the AVM service provider;
 - 4) other sources in compliance with law;
- (2) The amount of the fee referred to in paragraph 1, point 1 of this Article, shall be determined by the Agency Council and by the Council of regulatory body for electronic communication.
- (3) The amount of the fee referred to in paragraph 1, point 2 of this Article shall be determined by the Agency Council.
- (4) The amount of the fee referred to in paragraph 1, point 1 and 2 of this Article shall be determined on basis of annual program and financial plan of the Agency.

Financial Plan of the Agency

Article 42

(1) Overall expenses of the Agency's operations encompassed by the financial plan, including reserves for the unforeseen costs, shall reflect the realistic costs of the Agency necessary for the successful implementation of the Agency's operations.

(2) All income and expenditure accounts of the Agency shall be subject to annual audit by the independent authorized auditor.

(3) The Agency is obliged to publish, not later than within six months from the end of the fiscal year, the annual report on work, and the report of the authorized auditor on the annual account, as well as to make them available in a convenient manner to every interested party.

CHAPTER III

LICENSE FOR AVM SERVICE PROVIDING

License

Article 43

A legal or physical person who is holder of the license for providing of AVM service (hereinafter referred to as "License") shall acquire the right to provide AVM service, by means of electronic communication networks, intended for indefinite number of users.

Application for issuing of license for AVM service providing

Article 44

Application for issuing of license may be submitted by:

- 1) legal or physical person who acquired the right, by public tender, to use broadcasting frequencies and license for them as well;
- 2) legal or physical person who acquired the right on broadcasting of radio and/or TV program via digital broadcasting system on VHF and UHF frequencies, granted to the operator of multiplex terrestrial digital broadcasting system;
- 3) legal or physical person who intends to use electronic communication networks for broadcasting of radio or TV program, without usage of the broadcasting frequencies.

Content of the application

Article 45

Application for issuing of the license shall be submitted on special form; form and contents of application are prescribed by the Agency.

Deadline for issuing of license

Article 46

(1) The Council shall issue license to the applicant, who submitted complete and high-quality documentation, not later than within 15 days from the date of submitting of application.

(2) The Council shall prescribe detailed criteria for issuing of license.

Procedure rules

Article 47

Provisions of the Law on General Administrative Procedure shall be applied to the procedure upon application for issuing of license, unless this Law prescribes otherwise.

Content of the license

Article 48

- (1) License shall define structure of the program, technical conditions for production of radio and/or TV program, and general conditions for usage of license and fees.
- (2) License shall obligatory data on:
 - 1) holder of the license;
 - 2) title of radio or TV program;
 - 3) type of electronic communication networks for distribution of radio and/or TV programs;
 - 4) allocated broadcasting frequencies on basis of completed procedure of public competition, when analogue broadcasting systems are used for providing of AVM service of radio and/or TV program;
 - 5) access of the AVM service offered to the transmission capacities of separate radio or TV programs within multiplex, when digital broadcasting systems are used for providing of AVM service of radio and/or TV programs;
 - 6) identifying symbol of radio or TV program;
 - 7) the license validity period;
 - 8) amount of fees and conditions of payment;
- (3) The license shall not be, permanently or temporarily, consigned, rented or otherwise transferred or alienated, without previous consent of the Council.

License holder

Article 49

- (1) License holder may be domestic or foreign, natural or legal person, registered for the production and providing of AVM service of radio and/or TV program, with seat i.e. permanent residence on the territory of Montenegro.
- (2) Foreign natural or legal person shall not be allowed to participate in the fixed assets of legal entities, which have status of the public broadcasting service.
- (3) Holder of the license for AVM service providing shall not be political party, organization or coalition, and legal entity established by the political party, organization and coalition.

Status of the AVM service provider

Article 50

- (1) Physical or legal person registered for the production and distribution of the radio and/or TV program shall acquire the status of an AVM service provider, by obtaining the license, in compliance with the provisions of this Law.
- (2) The AVM service provider may be involved in the production and broadcasting of radio and/or television programme in the capacity of:
 - 1) national public broadcasting service;
 - 2) local public broadcasting service;
 - 3) commercial broadcaster;

National public broadcasting service

Article 51

National public broadcasting service shall provide a quality reception of radio and/or television programs for at least 85% of the population in Montenegro.

Local public broadcasting service

Article 52

Local public broadcasting service shall provide a quality reception of radio and/or television programs for at least 85% of the population in the local administration unit on the territory of which such program is broadcasted.

Commercial broadcaster

Article 53

Commercial broadcaster of AVM services shall provide a quality reception of radio or television programmes for following:

- 1) at least 75% of the population in more than 10 local administration units (national coverage or network);
- 2) at least 80% of the population at the territory encompassing 4 to 10 local administration units (regional coverage or network);
- 3) at least 85% of the population at the territory encompassing at least 4 local administration units (local coverage or network);

Approval for program networking

Article 54

(1) Program networking shall be allowed in purpose of simultaneous broadcasting of radio or TV program of two or more AVM service providers, in duration not exceeding three hours per day, continuously or collectively.

(2) The Council shall issue approval for networking, referred to in paragraph 1 of this Article, with previously given consent by regulatory body for electronic communication.

(3) Providing of AVM service of the same program shall be prohibited if it violates provisions on media concentration envisaged by this Law, or anti-monopoly provisions envisaged by special legal acts.

Connecting of the AVM service providers

Article 55

(1) AVM service providers may connect into regional or national networks, with regional and wider coverage, if:

- 1) connected AVM service providers appoint one person responsible for joint program, who will guarantee providing of AVM service of program content in compliance with this Law; AVM service providers deliver act on appointment to the Council, not later than within 15 days prior to broadcasting of the joint program;
- 2) every AVM service provider connected into one system broadcasts at least one hour of the program of in-house production, in period between 07-22 h per day, on the territory for which the approval was granted;
- 3) joint in-house production of AVM service providers is in Montenegrin language, except for the program content described in paragraph 1, point 2 of this Article, and that it represents at least 10% of program content broadcasted per day via network;
- 4) connected electronic media introduce joint program basis and sign the contract on manner of realization of program basis, and deliver both documents to the Council in purpose of acquiring previous approval;

(2) National program network shall be radio or TV program available for at least 85% of the population in Montenegro.

- (3) Regional program network shall be radio or TV program available for at least 70% of the approved service zone of AVM service providers connected by networking.
- (4) Regional or national network, in terms of program requirements and limitations prescribed by this Law, shall be considered as single radio or TV program.

Providing of AVM service of electronic media program that acquires license for the first time

Article 56

- (1) Electronic media that acquires license for the first time shall be obliged to start with broadcasting of program, via all assigned broadcasting frequencies, not later than within 180 days from the date of publishing the list of persons assigned broadcasting licenses in “Official Journal of Montenegro.”
- (2) Electronic media that widen its service zone, on basis of public competition, shall be obliged to start with broadcasting of program via assigned broadcasting frequencies not later than within 90 days from the date of license issuing.
- (3) Inobservance of the provisions of paragraph 1 and 2 of this Law shall result with initiative for opening of the procedure for depriving of assigned broadcasting frequencies, in compliance with this Law.
- (4) The Agency shall submit initiative, referred to in paragraph 3 of this Article, to the regulatory body competent for electronic communication.

Providing of AVM service without usage of broadcasting frequencies

Article 57

- (1) Electronic media, which acquired license for providing of AVM service of radio or TV program via electronic communication network, without usage of broadcasting frequencies, shall be obliged to deliver to the Agency contract signed with operator of electronic communication network, not later than within period of 90 days from the date of license acquiring.
- (2) Every next contract signed with the operator of electronic communication network shall be delivered to the Agency, not later than within period of 15 days from the date of signing the contract.

Prohibition of issuing license to one broadcaster for providing of AVM service through the other broadcasting frequency or via other multiplex of digital terrestrial broadcasting system covering wider or entire part of the same service zone

Article 58

When an AVM service provider covers an approved service zone via one broadcasting frequency, or in framework of multiplex of digital territory broadcasting service, the AVM service provider shall not be issued license for providing of AVM service via other broadcasting frequency, or by means of multiplex of digital territory broadcasting system, which would cover wider or entire part of the same service zone.

Temporary broadcasting license

Article 59

- (1) The Council may grant a temporary license for the providing of AVM services for a limited period if certain events are to take place.
- (2) Temporary license for AVM services providing shall be granted upon the request of the legal person intending to broadcast radio or TV program related exclusively to the event of special

interest for citizens, and the license shall be valid only during the event for which it has been granted.

(3) The fee amount and more detailed requirements for granting a temporary license for the providing of AVM service shall be prescribed by the Council.

Period of license validity

Article 60

(1) The license for providing of AVM service shall be granted for the period of 15 years.

(2) Exceptionally from the paragraph of this Article, and in order to ensure prompt transmission from analogue to digital terrestrial broadcasting systems, license may also be granted for a shorter period not exceeding six years.

(3) The validity of the license may be extended on the request of the license holder, who is obliged to submit the request to the Agency not later than 6 months before the expiry of the valid license.

Cessation of the license validity prior to expiry date

Article 61

(1) The license for providing AVM services may cease to be valid before the expiry of the license validity in the following cases:

- 1) if the electronic media informs the Agency in writing that he does not intend to broadcast programme any longer;
- 2) if electronic media, without reasonable justification, fails to comply to the Council's order to remove all shortages that refers to illegal media concentration;
- 3) if the measure of temporary revoking of the license is imposed to broadcaster for two times;
- 4) if it is determined that the electronic media presented incorrect data when applying to the public tender or omitted to reveal the data of importance in the decision making process upon the application;
- 5) if electronic media fails to start with broadcasting in prescribed period;
- 6) if electronic media does not deliver to the Agency contract with operator of at least one electronic communication network not later than within the period of 90 days from the date of license issuing;
- 7) if regulatory body for electronic communication revokes license of the broadcaster granted for using of broadcasting frequencies;
- 8) if electronic media, without reasonable justification, stops providing of AVM service, during one calendar year, in period of 10 consecutive days, or in period of 15 days with intermissions;
- 9) after the expiry of defined deadline when the electronic media was warned to remove all shortages or to stop activities that do not comply with provisions of the license granted and of the Law
- 10) if the electronic media was imposed fine due to violation of copy and related rights;

(2) In case of the liquidation procedure of electronic media, license shall cease to be valid on the day when legal entity becomes invalid.

(3) If any of the reasons referred to in paragraph 1 of this Article take place, the license shall cease to be valid upon the license withdrawal decision taken by the Agency.

Warning and temporary license revoking

Article 62

The Agency may impose a warning to electronic media and it may temporarily revoke its license.

Warning

Article 63

(1) The Agency Director shall issue a warning to the AVM service provider that has violated any of the obligations determined by this Law, Agency's regulations or by the licence granted, with the assumption that a warning shall be enough for the electronic media to remove the consequences of its illegal behaviour (fee payment, obligatory delivery and updating of data on AVM service provider).

(2) On the occasion of imposing the warning, the Agency Director shall specify which obligation the electronic media has violated, and determine measures that the electronic media should undertake in order to eliminate the violation.

Temporary license revoking

Article 64

The Agency Director shall temporarily revoke the licence, for the period of 30 days, if:

- 1) electronic media continues to violate provisions on program content prescribed by this Law even after imposing of the warning sanction;
- 2) Warning measure, referred to in paragraph 1 of article 62 herein, was imposed.

License revoking

Article 65

The electronic media that has been previously issued the sanction of temporary revoking of the license for AVM service providing, for two times, shall be deprived of the license.

Special regulation

Article 66

A special regulation of the Council shall closely prescribe the procedure of making a decision on temporary and permanent license withdrawal, which shall be based on the principles of objectivity and impartiality, and the electronic media shall be allowed to give their position with regard to the facts that occasioned the initiation of the procedure.

Administrative dispute

Article 67

- (1) Decision of the Council shall be final.
- (2) Administrative dispute may be initiated against the final Council's decision.

CHAPTER IV

RIGHTS AND OBLIGATIONS OF THE ELECTRONIC MEDIA

Article 68

(1) The electronic media shall be responsible for the contents of the broadcasted program in compliance with this Law and the Law regulating the field of media.

(2) The electronic media is obliged:

- 1) to inform the public on the events and matters of public importance in the country and abroad in a truthful, complete, impartial and timely manner;

- 2) to contribute to the observance and promotion of fundamental human rights and freedoms, democratic values and institutions, and pluralism of ideas;
- 3) to enhance public dialogue culture and to observe the linguistic standards;
- 4) to protect integrity of minors /minor persons/;
- 5) to announce warning for program content that could impair physical, health, moral, intellectual, emotional and social development of a child;
- 6) to respect the privacy and dignity of citizens;

Obligatory identification

Article 69

- (1) The name, logo, or abbreviated identifying symbol of radio or TV program shall be broadcast in the following manner:
 - 1) For a television programme – during the entire programme broadcasting;
 - 2) For a radio programme – at least once in 20 minutes of programme broadcasting;
- (2) It is forbidden to use the name, logo, or abbreviated identifying symbol not corresponding with the registered name of the radio or TV programme.
- (3) The name, logo, or abbreviated identifying symbol of radio or TV programme shall be marked even in cases when programmes from other broadcasters are taken over, and, when broadcasting programmes of independent production, the name shall be stated in the announcement and/or final notice of the programme.

Change in radio or TV program structure

Article 70

- (1) Electronic media is obliged to inform the Agency in written about every significant change in structure of radio or TV program that is broadcasted.
- (2) The significant change in program structure, in sense of this Law, shall be every change of at least 10% of the program structure on basis of which the license was granted.
- (3) The Agency may revoke approval for change of program structure if determines that change would cause shortage of certain program content, in the zone covered by radio or TV program, for which the electronic media has license.

European audiovisual works

Article 71

- (1) European audiovisual works in sense of this Law are as follows:
 - 1) the works originating from member-states of the European Union;
 - 2) the works originating from the states signatories of European Convention on Trans-frontier Television and fulfils requirements prescribed by this Law;
 - 3) the works created exclusively as co-production in framework of agreements related to audiovisual sector signed between EU member states and third countries, and which fulfils requirements defined in each of these agreements;
- (2) The works, referred to in paragraph 1, points 1 and 2 of this Article, shall be those mainly produced by authors and employees with permanent residence in the mentioned countries, provided they fulfil one of the following conditions:
 - 1) works created by one or more producers established in one or more aforementioned countries; or
 - 2) their production is supervised and actually controlled by one or more producers established in one or more of those States; or

- 3) the contributions of co-producers of those States to the total production costs is preponderant and the co-production is not controlled by one or more producers established outside those States;

(3) the works referred to in paragraph 1 of this Article shall be those created exclusively in co-production with producers established in one or more EU member states; with the producers established and registered in one or more third European countries, with which the European Union has concluded agreements related to the audio-visual sector, provided that the works are mainly created by authors and workers permanently residing in one or more of these European countries;

(4) works that are not European, within the meaning of paragraph 1 of this Article, but are produced within the framework of bilateral co-production treaties concluded between EU member-states and third countries, shall be deemed to be European works provided that the EU co-producers supply a majority share of the total cost of the production and that the production is not controlled by one or more producers established outside the territory of European Union;

Share of European audiovisual works

Article 72

(1) Electronic media is obliged to ensure majority of share of European audiovisual work during its broadcasting in one year;

(2) Electronic media, who does not ensure share of European audiovisual works referred to in paragraph 1 of this Article, shall increase share of such works on annual basis in accordance with criteria and manner defined by the Council's regulation, whereas the minimum initial volume is 10%.

(3) Broadcasting in one year, referred to in paragraph 1 of this Article, shall not include broadcasting time intended for news, sports events, advertising, teletext, and teleshopping.

(4) Share of European audiovisual works shall include audiovisual works of in-house production.

(5) Provisions of the paragraph 1-4 of this Article shall not refer to broadcasters-holders of the license for broadcasting on regional and local level, not linked into regional or national networks and non-profit broadcasters.

Audiovisual works of independent producers

Article 73

(1) An independent producer of audiovisual works (hereinafter referred to as "the independent producer") shall be a legal or physical person who fulfils the following conditions:

- 1) it is registered for the performance of activities in field of production of audiovisual works and has the seat in Montenegro or in one of the European Union member states;
- 2) it is not included into the organizational structure of the broadcaster;
- 3) electronic media of TV program may have up to 25% of shares in capital of producer or managerial or voter's rights at the most;
- 4) each order of an individual broadcaster of the television programme represents half of his annual production at most;

(2) An independent producer shall be a legal or physical person registered as a producer of audiovisual works with seat in one of the third countries, if European works comprise the major part of its audiovisual production in the last three years and fulfils the conditions prescribed in the paragraph 1, points 2 and 3 of this Article.

(3) The independent producer may not be legal or physical person whose average share of financial means for covering total expenses of production or co-production, in which it participated in the last three years, does not exceed 10%.

Share of audiovisual works of independent producers

Article 74

(1) The television programme broadcaster shall ensure that the share of audiovisual works of independent producers in the annual programme amounts to at least 10% of the time.

(2) Electronic media, who does not achieve the portion of audiovisual works of independent producers as prescribed in paragraph 1 of this Article, shall increase the portion of those works each year proportionally in accordance with the criteria and manner defined in the regulation passed by the Council.

(3) At least half of the works referred to in the paragraph 2 of this Article shall be produced in previous five years.

(4) The news and current affairs programme, sport events, advertising, teletext and teleshopping shall not be included into the annual broadcasting time referred to in paragraph 1 of this Article.

Article 75

Provisions of the Article 76 of this Law shall not refer to AVM service providers who are granted license for broadcasting of AVM services at local and regional level, and are not connected into regional or national networks or to non-profit broadcasters.

In-house production

Article 76

(1) In-house production shall be informative, cultural, art, sports and other works, as well as other program content originally produced by the electronic media, or produced upon previous order of the electronic media for own purposes.

(2) In-house production shall include works broadcasted for the first time, and for the second showing as well.

(3) Advertisements and teleshopping shall not be deemed program content created by means of in-house production.

(4) Criteria for determining program content of in-house production shall be closely defined by the Council.

(5) Second showing of radio or TV work shall be precisely marked and announced.

Right to short information

Article 77

(1) Every electronic media shall have the right, under the equal conditions, to short information about all significant shows and other events of public importance.

(2) Short information, referred to in paragraph 1 of this Article, shall be information broadcasted within informative program in duration not exceeding 90 seconds.

(3) The organizer of an important event may request electronic media to pay only rental fee, if envisaged such, and a compensation for possible real costs arising from the organization of the event.

(4) The right to short information may be limited or excluded if its broadcasting would severely hurt the feelings of participants in the event or endanger public peace and order.

(5) An electronic media, who used the right to short information, shall enable other electronic media, who could not tape the broadcast of the event, a single use of the tape and shall have the right to ask compensation for that, proportional to his share in the actual costs as well as the mentioning of his name or the name of the company in the tape recording.

Broadcasting of event of special public importance

Article 78

(1) Electronic media shall not acquire the exclusive right to broadcast event of special public importance in Montenegro, unless provides quality reception of radio or TV program for at least 75% of total population in Montenegro.

(2) A number of electronic media may acquire exclusive right to broadcast an event of special public importance in Montenegro if ensure, by means of networking, quality reception of radio or TV program for at least 85% of total population in Montenegro.

List of events of special public importance

Article 79

(1) The Council shall, in compliance with the European standards, define and prescribe list of events of special public importance in Montenegro.

(2) The Council is obliged to inform Permanent Committee for Trans-frontier Television on the list of events referred to in paragraph 1 of this Article.

(3) The Council is obliged to deliver notice on defined list and measures to the states-signatories of the European Convention on Trans-frontier Television.

Exclusive broadcasting right for event of special public importance

Article 80

Electronic media exercising exclusive right for broadcasting of event of special public importance is obliged to allow other interested electronic media to tape and broadcast short information/report from such event, which may contain authentic image and sound of such event, in duration not exceeding 90 seconds.

CHAPTER V

LICENSE FOR DISTRIBUTION OF AVM SERVICES UPON REQUEST

Licensing procedure for distribution upon request

Article 81

(1) The Agency shall grant license for distribution of AVM services upon request (hereinafter referred to as „distribution license”), in compliance with this Law.

(2) A person holder of distribution license shall acquire status of distributor and right to distribute radio and television programs, as well as other AVM services, to the end users in certain area.

Application for license granting for distribution upon request

Article 82

Person who intends to use electronic communication network for distribution of radio or television program and other AVM services as well shall submit application for distribution license.

Distribution license

Article 83

(1) Distribution license shall contain data on following:

- 1) the holder of the license;
- 2) the name of AVM service;
- 1) service zone i.e. zone of AVM service providing;
- 2) program catalogue;
- 3) amount and conditions for payment of annual fees;
- 4) license validity period;
- 5) other rights and obligations of the license holder;

(2) License shall not be transferred to other legal person without previous approval given by the Agency.

(3) The Agency shall approve transferring of license only in case of transfer of activity with transfer of equipment and current subscribers on services of distributor.

Contract with electronic communication operators

Article 84

(1) Holder of the distribution license for program and other AVM services, by means of electronic communication network, shall deliver following documents to the Agency, not later than within 90 days from the date of license granting:

- 1) contract signed with operator of at least one electronic communication network; or
- 2) evidence on registration in the Register of Operators kept by regulatory body for electronic communications;

(2) Every next contract signed with the operator of electronic communication network shall be delivered to the Agency, not later than within period of 15 days from the date of signing the contract.

Conditions for granting of license

Article 85

(1) Conditions for granting of distribution license shall be more closely prescribed by the Council.

(2) Provisions of this Law referring to the licensing procedure for AVM service providing shall be accordingly applied to the procedure of granting distribution license unless it is otherwise stipulated.

Revoking of distribution license

Article 86

The Council may revoke distribution license if:

- 1) distributor fails to perform in compliance with the conditions and parameters stipulated by the license;
- 2) the fee is not paid in compliance with the license;
- 3) the competent court determines that distributor **seriously** violated copy or related rights by distributing program, and **imposes criminal sanction or fine on distributor for committed offence in compliance with the law;**
- 4) regulatory body for electronic communication, ex officio, revoked license for usage of radio frequency from the distributor;
- 5) competent state body determines violation of regulations and submits proposal for license revoking;

CHAPTER VI
RIGHTS AND OBLIGATIONS OF DISTRIBUTOR

Rights of distributor

Article 87

- (1) Distributor shall perform activities of distribution of radio and TV program on the territory of Montenegro exclusively by means of registered/licensed electronic communication network.
- (2) Distributor license does not give any right to its holder to perform the distribution of radio and TV programs via the reception system with a common antenna device, which represents a cable and antenna structure built as a standard installation of residential buildings, and used for reception of programs distributed via terrestrial transmitters and other electronic networks that are not part of licensed electronic communications network, unless the license of regulatory body for electronic communication for such distribution is obtained in accordance with the regulations governing the right of access to cable infrastructure, channels and verticals, as well as the joint antenna device

Distributor's obligations

Article 88

- (1) Distributor shall not distribute its programs, except for accurate data on time, data about system and electronic program guide, and one advertising program for own purposes
- (2) Distributor shall not have a share in legal entity that is electronic media.
- (3) Distributor is obliged to establish an internal organization of business within 3 months from the issuance of license for distribution, and to keep separate accounting for activities AVM service providing to the end users from those that refer to other sectors (manufacturing and providing of AVM service of program, infrastructure renting, providing of other services of electronic communication, etc).

Previous written consent of program owner

Article 89

- (1) Prior to activation of a particular radio or television program in the program catalogue, distributor is obliged to acquire written consent of the owner of the program, and shall not begin distribution of the program prior to obtaining of such consent, which is forwarded to the Agency in purpose of recording.
- (2) Distributor is obliged to distribute radio and/or television programs simultaneously, in full form and without change, in accordance with received consent.
- (3) Distributor is allowed to perform distribution of coded satellite program only if concludes a contract for distribution with the owner of such programs, which allows decoding in purpose of further public re-broadcasting.
- (4) If distributor provides services of distribution of radio and TV programs that represent the prevailing way of receiving these programs in a particular service area, the Agency is obliged to determine the distributor's obligation to transfer certain programs or content, at the request of the media service provider

Copy and related rights

Article 90

Distributor shall respect the protected copyright or related rights, in accordance with provisions of the law.

Distributor's obligations relating to program content

Article 91

- (1) When preparing basic package of services, a distributor shall not distribute the program content that is in contrary to the law.
- (2) Distributor is obliged to abide by the list of programs included in program catalogue.
- (3) Distributor is obliged to notify the Agency, in written form, prior to all changes of the program list, and changes of the number and structure of program packages.
- (4) Distributor is obliged to pay special attention that distributed programs are not harmful for children.
- (5) Distributor is obliged to stop distribution of program content violating program standards prescribed by the Council, without further delaying.

User agreement on the manner and conditions of providing of distribution service

Article 92

- (1) Distributor shall sign user agreement with the end user of services on manner and conditions for providing distribution services of radio and TV program, and other AVM services as well.
- (2) User agreements shall obligatory contain provisions regulating following:
 - 1) amount and manner of payment of accession fee,
 - 2) amount and manner of payment of monthly fee,
 - 3) program catalogue included in distribution service,
 - 4) information on procedure for filing complaint relating to distributor's operations;
- (3) Text of the contract with the end user shall be approved by the Council.
- (4) Pricelist of services shall be approved by the Council.

Prohibition of refusal to connect

Article 93

- (1) Distributor shall not deprive the interested user of the connection if the technical possibilities for it exist.
- (2) Distributor shall not limit access to the end users on national, religious, sex, property, or other basis; Distributor shall not perform election of distributed programs in interest of only one national or religious community in Montenegro;
- (3) Service shall be offered to all citizens in zone technically covered by distribution; person who accepts unique and non-discriminatory conditions laid down in offer shall have the right to conclude subscriber's contract.
- (4) Subscriber, in any case, shall not be conditioned with waiving the right on using the same or other service offered by other distributor in purpose of accessing to the program catalogue, offered on basis of license.
- (5) Subscriber shall have the freedom to choose whether to buy device for reception from the distributor or in domestic market, under the condition that it is legally imported in compliance with the legal acts regulating that field.

Registry of AVM service providers and subscribers

Article 94

- (1) The Agency shall keep public registry of licenses granted for AVM service providing.
- (2) Procedure for keeping the registries, referred to in paragraph 1 of this Article, shall be prescribed by the Council.

(3) The agency shall deliver, in accordance with the law governing the field of media, to the state body competent for audiovisual media sector all data necessary for registration in media registry, which refer to every license issued for AVM service providing.

(4) All distributors of program services shall allow Agency to access their databases on subscribers via internet, with full respect of legal acts and provisions on protection of data on individuals.

CHAPTER VII

FUND FOR PROTECTION OF MEDIA PLURALISM

Fund

Article 95

(1) Fund for protection of media pluralism (hereinafter referred to as “the Fund”) shall be established in purpose of instigating production of commercial electronic media and protection of diversity of electronic media in Montenegro.

(2) The Fund shall operate within the Agency.

The Fund’s means

Article 96

(1) The Fund's means shall stimulate the production of programme contents of electronic media at local and regional levels, which are of public interest, and which are particularly important for:

- 1) national minorities in Montenegro,
- 2) prevention of all forms of discrimination,
- 3) encouraging and promotion of social inclusion of disabled persons,
- 4) protection of nature, environment, and health;
- 5) enhancing culture of public dialogue,
- 6) encouraging cultural activities,
- 7) development of education, science and art,
- 8) protection of Montenegrin national and cultural identity,
- 9) encouraging and promotion of exercising and protection of human rights,
- 10) development of awareness on gender equality

(2) The Fund’s means shall be allocated for encouraging of pluralism and diversity of radio and television programs.

Criteria for the Fund’s means allocation

Article 97

(1) Criteria for allocation of Fund’s means are as follows:

- 1) Quality and substantial innovations of offered program;
- 2) Significance of program for realization of goals referred to in Article 98 of this Law;
- 3) Economy and long-term aspect of program,
- 4) General interest for cultural development, and

(2) The Fund’s means shall not be allocated for programs already co-financed on any basis from the Budget of Montenegro or from budget of local self-government units.

Sources for Fund financing

Article 98

(1) Financing of the Fund shall be provided from the following sources:

- 1) part of the subscription fee paid to the distributors of program services;
 - 2) from the Budget of Montenegro;
 - 3) additional fees for usage of broadcasting frequencies paid during realization of public tenders for granting of rights on using of such, where the amount of offered fee is one of criteria for election of broadcaster or distributor;
 - 4) from other sources in accordance with the law;
- (2) Amount of the fees referred to in paragraph 1, point 1, shall be defined by the Council.

Distribution of the means

Article 99

- (1) Distribution of the means from the Fund shall be performed by the Council every six months, on basis of public tender and in accordance with the special regulation.
- (2) The Council shall, in the special regulation referred to in paragraph 1 of this Article, prescribe the manner and procedure for following:
 - 1) realization of public tender for co-financing of program contents from the Fund;
 - 2) monitoring of spending of means and realization of program contents for which the means were allocated;
- (3) List of means' users, program contents for which the means were allocated, and report on realization shall be published at the web site of the Agency.

CHAPTER VIII

PUBLIC BROADCASTING SERVICES

Article 100

Public broadcasting service shall produce and broadcast news programmes, cultural, art, educational, scientific, children, entertainment, sports, and other program contents, that ensure exercise of the rights and interests of citizens and other subjects in the field of informing.

National and local public broadcasting services

Article 101

- (1) Public broadcasting service shall be established by the law for territory of Montenegro (national public broadcasting service), and by the decision of the competent municipal assembly for the territory of local self-government unit (local public broadcasting service).
- (2) Public broadcasting services shall be involved in the production and broadcasting of radio and/or television programmes and shall have special obligations related to the realization of public interest in the field of information in compliance with this Law and the Law regulating field of media..

General interest

Article 102

In order to realize public interest in the field of information, public broadcasting services shall:

- 1) independently and autonomously produce, edit and broadcast programmes that do not serve to the political, economic or other power centres;

- 2) objectively and timely inform the public on political, economic, cultural, educational, scientific, sports and all other important events and issues both in the country and abroad;
- 3) produce and broadcast programs intended for all segments of the society, without any discrimination, especially taking into account specific social groups such as children and youth, minority ethnic communities, the disabled, the socially and medically challenged, etc.;
- 4) promote the culture of public communication and linguistic standards;
- 5) produce and broadcast the programmes expressing the cultural identity of nations, nationalities and ethnic groups;
- 6) produce and broadcast programmes in native languages of national and ethnic groups in the areas inhabited by them
- 7) during the election campaign, on the basis of separate regulations, provide equal presentation of political parties, coalitions and candidates with the accepted candidature and election lists
- 8) mutually co-operate and exchange program contents of interest for the citizens of Montenegro;

Election campaigns

Article 103

(1) Political commercial audiovisual communication shall not be permitted in the programs of public broadcasting services except during the election campaign.

(2) According to the provisions of this Law, the following activities shall be considered to be political commercial audiovisual communication during the election campaign: announcements, videos and other forms of propaganda aimed at influencing the choice of voters when voting at the elections for the President of Montenegro, Members of Parliament and City Councillors.

Religious propaganda

Article 104

Religious propaganda shall not be permitted in the programmes of public broadcasting services.

Regulations on presentation of political parties, coalitions, and candidates

Article 105

(1) The regulations on the presentation of political parties, coalitions, and candidates with accepted election lists and candidatures shall be adopted by the Council of the public broadcasting service.

(2) The regulations referred to in paragraph 1 of this Article shall prescribe the manner of presentation of both political parties and independent candidates who are not represented in the Parliament or the assemblies of the local self-government units.

Ordering party

Article 106

(1) An ordering party of political propaganda shall be clearly indicated in political propaganda contents.

(2) Ordering party of political propaganda shall be accountable for its verity and correctness, and the public broadcasting service shall be accountable for the compliance of such programmes with provisions of this Law and the Law regulating field of media.

Refuse to broadcast political propaganda content

Article 107

A public broadcasting service may refuse to provide AVM service of political propaganda that does not comply with law and the adopted rules of presentation of political parties, coalitions, and candidates with the accepted election lists.

Manner and conditions of presentation of political parties, candidates and their programmes

Article 108

Public broadcasting services shall announce, 15 days after the elections for the President of Montenegro or the Parliament of Montenegro or assemblies of local self-government units are scheduled, in daily press and in other ways accessible to the public, the manner, and conditions of presentation of political parties, candidates and their programmes.

Announcing of the results of public opinion polls on candidates and political parties

Article 109

Seven days before the day of elections, it shall not be permitted to announce the results of public opinion polls on candidates and political parties in the programmes of public broadcasting services.

Revenues of public broadcasting services

Article 110

(1) The broadcasters of public broadcasting services shall acquire their revenues from the part of general revenues of the Budget of Montenegro i.e. part of general revenues of local self-government units, and other sources in compliance with law and founding act.

(2) The Budget of Montenegro or of the local self-government unit shall provide a part of the funds for the realization of citizens' right to be informed without discrimination, guaranteed by the Constitution and the Law, based on the programming important for:

- 1) exercising of the right on public information and informing of all citizens of Montenegro, exercise of rights of members of minority groups in Montenegro and members of other minority national and Montenegrin communities abroad;
- 2) exercise of human rights and political rights of the citizens, and enhancing of legal and social state and civil society;
- 3) development of culture, science, education and art;
- 4) protection of Montenegrin national and cultural identity;
- 5) encouraging of cultural activity;
- 6) information intended for persons with hearing and sight impairments;

(3) With the aim to realize the rights, referred to in the paragraph 2 of this Article, the Budget of Montenegro, or the budget of local self-government unit shall provide a part of the funds for the program contents Albanian and Roma language.

(4) Administration authority competent for media affairs, on behalf of the Government of Montenegro or the competent executive authority in the local self-government unit, and the public electronic media shall stipulate by contract mutual rights and obligations related to the use of funds referred to in paragraph 1 and 2 of this Article.

(5) The Manner and conditions of the fund provision, referred to in paragraphs 1 and 2 of this Article, shall not influence the editorial independence of the public broadcasting service

(6) The contract, referred to in the paragraph 4 of this Article, shall be announced in a manner prescribed by the founding act of the electronic media and submitted to the Agency.

(7) Administration authority competent for media affairs, on behalf of the Government of Montenegro, or the competent executive authority in the local self-government unit, and the Broadcasting Centre shall stipulate by contract mutual rights and obligations related to the costs of transmission and broadcasting of program by public broadcasting services by means of terrestrial systems.

Managing Bodies in the public broadcasting services

Article 111

(1) The following bodies shall be formed in the broadcasters of public broadcasting services:

- 1) the Council;
- 2) Director;

(2) The manner of appointment, election, and decision-making and competence of the bodies referred to in paragraph 1 of this Article as well as the other issues important for the work of the broadcaster of public broadcasting services shall be prescribed in law or in the charter of the public broadcasting service

The Council

Article 112

(1) The Council of the public broadcasting service shall represent the interests of the citizens of Montenegro or the local self-government unit on the territory where the program is being broadcast;

(2) The Council of the public broadcasting service shall be functionally independent from any state authority, as well as from all physical and legal persons involved in the production, transmission and broadcasting of radio and television programmes or other related activities.

(3) A person who does not qualify for the member of the Agency Council in compliance with this law shall not be appointed member of the Council of the public broadcasting service.

(4) The members of the Council of the public broadcasting service shall be elected from among the prominent experts in various areas relevant for the functioning of a public broadcasting service (journalists, sociologists, lawyers, economists, engineers, media analysts, marketing experts, etc.).

Number of the Council's members

Article 113

The Council of the public broadcasting service shall:

- 1) On national level, consist of up to 9 members, provided that the number of the Council Members is odd;
- 2) On local level, consist of up to 5 members.

CHAPTER IX
PREVENTING ILLEGAL MEDIA CONCETRATION

Media concentration existence

Article 114

(1) According to the provisions of this Law, media concentration shall be present whenever the broadcaster:

- 1) has a share in the founding assets of another broadcaster, a company publishing daily newspapers and vice versa, or a company involved in the news agency activities and vice versa;
- 2) simultaneously holds several licenses for the transmission and broadcasting of radio and TV signals
- 3) simultaneously broadcasts both radio and television programmes
- 4) simultaneously broadcasts radio and/or television programme and publishes a daily newspaper distributed in the area where radio and/or television programmes are also being broadcast;
- 5) simultaneously broadcasts radio and/or television programme and is involved in news agency activities

(2) According to the provisions of this law, media concentration shall also be present whenever the founders of electronic media are physical and legal persons, which are at the same time:

- 1) founders of another broadcaster;
- 2) founders of a company publishing a daily newspaper distributed in the area where these radio and/or television programmes are being broadcast;
- 3) founders of a news agency;
- 4) spouses or relatives both in the straight and indirect line up to the second degree of kinship among the individuals mentioned;

(3) Electronic media holder of a number of licenses granted by the Agency is obliged to keep management and accounting structures separately for each license.

Illegal media concentration

Article 115

Illegal media concentration shall be considered to exist whenever:

- 1) electronic media licensed for the transmission and broadcasting of radio and TV signals on the national level of coverage (85% of the population of Montenegro) has more than 25% share in the capital assets of another broadcaster with the same license;
- 2) a broadcaster, except for the national public broadcasting service, broadcasts more than one television and one radio programme in the same area or with the similar program basis;
- 3) electronic media licensed for the transmission and broadcasting of radio and TV signals on the national level of coverage has more than 10% share in the capital assets of a publisher of a daily newspaper with circulation exceeding 3000 copies, and vice versa
- 4) electronic media licensed for the transmission and broadcasting of radio and TV signals on the national level of coverage has more than 10% share in the capital assets of a company involved in the news agency activities, and vice versa

- 5) electronic media licensed for the transmission and broadcasting of radio and TV signals on the national level of coverage is simultaneously a publisher of a daily newspaper with circulation exceeding 3,000 copies
- 6) a radio or television station as electronic media on local or regional level of coverage has more than 30% share in the capital assets of a broadcaster licensed for broadcasting on the regional or local level of coverage in the same area;
- 7) a radio or television station electronic media on local or regional level of coverage is simultaneously a publisher of a local daily newspaper, in the same or the neighbouring areas;

Special cases of illegal media concentration

Article 116

Illegal media concentration shall also be considered to exist when, in the cases referred to in the Article 121 of this Law, physical person who is the founder of the broadcaster or the founder, or the persons who are his relatives in the straight line up to the second degree of kinship or their spouse, participate in the capital assets of another broadcaster, founder of a daily print media or a news agency, with more than the determined amount of the capital assets.

Licensing and illegal media concentration

Article 117

- (1) The Council shall not adopt a decision on issuing the license for the transmission and broadcasting of radio and TV signals to the applicants if it determines that such issuing would result, according to the provisions of this Law, in illegal media concentration.
- (2) The applicant for the license issuing shall submit, in addition to the application, an attested statement that possible issuing of the license for electronic media shall not result in illegal media concentration, according to the provisions of this Law.

Change in ownership structure of the broadcaster

Article 118

- (1) The electronic media shall inform the Agency in writing of any change in the ownership structure.
- (2) If change of the ownership structure of electronic media, which was valid when the license was granted, exceeds 10% of share, it shall be considered partial transfer of ownership, for which the prior approval in written of the Council needs to be acquired.
- (3) The Council shall issue license/approval referred to in paragraph 2 of this Article only if sure that proposed future owner shall continue with fulfilment of assumed obligations and conditions prescribed by the granted license and demonstrates ability to fulfil them until the expiry of license validity.
- (4) If the Council determines that after the issuance of license to the electronic media, illegal media concentration is present, it shall order the broadcaster to conform its status with the provisions of this law relating to illegal media concentration within three months.
- (5) If the electronic media fails to act in accordance with the order referred to in paragraph 4 of this Article within the specified deadline, without justified reason, the Agency shall revoke the broadcaster's license for the transmission and broadcasting of radio and TV signals.
- (6) Domestic legal entity in which some of the founders are foreign legal entities, registered in the countries where internal regulations forbid or unable the origin of the founding capital to be disclosed, shall not be holder of the license.

(7) If a foreign legal entity referred to in paragraph 6 of this Article appears as one of the joint owners of the electronic media after the license has been obtained, the provisions of this law related to termination of validity of the license for the electronic media before its expiry shall be applied

Data on founder and related persons with direct or indirect share in ownership of electronic media founder

Article 119

(1) Electronic media shall, not later than 31 December of current calendar year, deliver to the Agency data on founder(s), its/their seat, name, and seat of all persons with direct or indirect share in ownership of electronic media founder, including the data on level of share, i.e. ownership amount.

(2) Electronic media shall, not later than 31 December of current calendar year, deliver to the Agency data on:

- 1) Its ownership share in other companies providers of AVM services or distributor in accordance with the provisions of this Law;
- 2) Share of its owners exceeding 10% of total ownership in companies providers of AVM services or distributor in accordance with the provisions of this Law;

(3) If electronic media fails to fulfil obligation referred to in paragraph 1 and 2 of this Article, the Agency shall initiate procedure for imposing of sentences prescribed for disregard of conditions defined by the granted license.

CHAPTER X

COMMERCIAL AUDIOVISUAL COMMUNICATION

Forms of commercial audiovisual communication

Article 120

Forms of commercial AVM communication shall be radio and television advertising, teleshopping, sponsorship, and disposal of products.

Principles

Article 121

(1) Commercial audiovisual communication shall be based upon following principles:

- 1) freedom of advertising and sponsorship;
- 2) accuracy, integrity, and exactness;
- 3) identification of advertiser;
- 4) prohibiting misuse of confidence; prohibition of discrimination;
- 5) prohibiting behaviour endangering health or security and protection of environment;
- 6) prohibiting violation of moral;
- 7) protection of children's rights and their mental and moral health;
- 8) respect and protection of competition;

(2) Commercial audiovisual communication shall be realized in accordance with this Law, law-regulating field of media, special regulation of the Council, and other relevant regulations.

Prohibitions

Article 122

- (1) Commercial audiovisual communication shall be accurate, honest, and defined.
- (2) Transmitting of messages by means of techniques with subconscious influencing, which present manipulation or are harmful in social and emotional sense, shall be prohibited in advertising, teleshopping, and sponsorship.
- (3) Usage of data that may cause misleading of identity of advertiser, his/her activities, characteristics, quality, origin and other data related to product or service.
- (4) Advertiser shall not impose any editing influence on the program content.

Radio and television advertising

Article 123

Radio and TV advertising (hereinafter referred to as “advertising”), recommending of products and services during the program not intended for advertising, and other forms of hidden and fraud advertising shall not be permitted.

Prohibition of refusal to broadcast advertisements if refusal may cause or maintains monopoly position

Article 124

Refusal to broadcast AVM service of advertisement shall not be permitted, if refusal may cause or maintain monopoly, or any other dominant position of the market participants or it may result with disloyal competition.

Advertising prohibition

Article 125

Following shall not be advertised in electronic media programs:

- 1) products intended for concealing of alcohol influence when Alco-tests are applied;
- 2) products sharing trademark with tobacco products, whose advertising is prohibited by the law;
- 3) “business escort” agencies;
- 4) pornography;
- 5) Scientifically unsubstantiated content and method of dealing with health and other life problems that undoubtedly can cause damage to the "user" (charlatanry in any form, etc.);
- 6) betting, games of chance and gambling

Illegal advertising

Article 126

The advertisements shall not contain:

- 1) Visual and audio forms, content or elements that are recognized as used for the important news or press releases (e.g., daily, news, etc.);
- 2) identification and recognition of any program in other program content with intent to mislead user of AVM service that watches/listens to that specific program;
- 3) Use of parts of a program (title, logo, music, etc.);

Prohibition of advertisement broadcasting

Article 127

(1) It is forbidden to provide AVM services of advertisement that contains a continuous flashing light or certain types of recurring visual effects, which can cause problems with the viewers with photosensitive epilepsy.

(2) Advertisement shall not:

- 1) discredit and disparages a competitor, its product or service;
- 2) represent competition product or service in form of bad copy or reproduction;

Advertisement message

Article 128

Advertisement message shall not be in form of copy of other advertiser's message, its activities, products, or services, and it shall be illegal to use trademark or any logo used by the competitor;

Scene of death, injury, violence, and destruction of buildings and nature

Article 129

The advertisement shall not contain Scenes of death, injury, violence, and destruction of buildings and nature.

Children and juveniles

Article 130

(1) Advertisements shall not contain material that will use inexperience of children and may cause fear and aggression, and inappropriate moral and social behaviour of children and juveniles.

(2) Advertisement message intended for children and/or juveniles shall not recommend a product or service, which is not intended for those persons.

Advertising of alcohol beverages

Article 131

(1) Advertising of alcoholic beverages, except for beer and wine, including any emphasis of brands or labels of alcoholic beverages or producers of these drinks shall not be permitted.

(2) The advertisement message shall not contain or show imitation or use of alcoholic beverages.

Duration of advertising in programs of public broadcasters

Article 132

(1) Duration of advertising in programs of public broadcasting services shall not exceed 10 % (6 minutes) per hour of broadcasted program.

(2) Time envisaged for teleshopping shall not exceed 5% (3 minutes) per hour of broadcasted program.

(3) Broadcast of advertisements and teleshopping exceeding 9 minutes in any hour of program broadcasting during the day shall not be allowed.

Duration of advertising in programs of commercial broadcasters

Article 133

(1) Duration of advertising in programs of commercial broadcasting services shall not exceed 15 % (9 minutes) per hour of broadcasted program.

(2) Time envisaged for teleshopping shall not exceed 5% (3 minutes) per hour of broadcasted program.

(3) Broadcast of advertisements and teleshopping exceeding 20% (12 minutes) in any hour of program broadcasting during the day shall not be allowed.

Daily duration of advertising

Article 134

(1) Daily duration of advertising and teleshopping shall be determined for period 00:00h - 24:00 hours.

(2) Advertisements and teleshopping shall be broadcasted, by rule, in blocks, and clearly recognizable, and separated from other program contents by optic and acoustic means.

(3) Teleshopping shall be broadcasted for at least 15 minutes in continuity.

Contents not including advertisements

Article 135

Advertisements shall not be included in:

- 1) religious content;
- 2) formal ceremonies (inauguration of the President of Montenegro and similar occasions);
- 3) programs relating to tragic events of large extent;
- 4) Programs lasting 30 minutes or shorter;

Exemption

Article 136

The advertisements shall not be considered to be:

- 1) free announcements of public works and charity campaigns;
- 2) free presentations of works of art;
- 3) free publicizing of information on producers, organizers, sponsors or donors of works of art, cultural and entertainment events and charity campaigns
- 4) information and promotion of own program contents;

SPONSORSHIP

Prohibition of sponsorship for program content

Article 137

(1) The sponsored programming shall not instigate the sale, purchase or renting of products or services of the sponsor or a third party, particularly not through special presentation of such products or services.

(2) The program content shall not be sponsored by physical and legal persons the basic business of which is the production or sale of products or providing services whose advertisement is forbidden by the Law governing field of media.

(3) Political parties, coalitions and other political organizations shall not be sponsors of broadcasting programmes.

(4) The news or the informative program dealing with current affairs shall not be sponsored.

Program content identification

Article 138

(1) Any sponsored program content must be distinctly marked as such by indicating the name or the logo of a sponsor.

(2) If a program is sponsored fully or partially, it must be distinctly marked as such by the sponsor identification given at the beginning, during or at the end of such broadcast.

(3) For sports and cultural or art programs, sponsor identification may be given both at the beginning and the end of natural breaks.

CHAPTER XI SUPERVISION

Supervision over enforcement of the Law

Article 139

The supervision over the enforcement of this Law shall be performed by the Agency independently, or by engaged legal person competent for such activities.

Supervision over obligation fulfilment by AVM service providers

Article 140

(1) The Agency shall separately perform supervision over fulfilment of obligation by AVM service providers in order to ensure that all requirements and conditions defined by the granted license are met.

(2) The AVM service provider shall deliver all data, information, and documents necessary for performing of regulatory function in this field, upon the Agency's request, in order to ensure implementation of competencies prescribed by the Law, in period of at least seven days, which shall be precisely defined by the Agency.

CHAPTER XII PENALTY PROVISIONS

Infringement of the Law

Article 141

(1) A fine chargeable in the amount from ten-fold to three hundred-fold minimum salary in Montenegro shall be imposed on the legal person on the grounds of the infringement of the law if:

- 1) permanently or temporarily consigns, rents or transfers or alienates in any other way, without the Council's consent, the granted licence for AVM service providing (Article 46, paragraph 3);
- 2) provides AVM service without licence or approval of the Council (Articles 48, 52, 58, and 86, paragraph 2);
- 3) performs networking not complying with Article 53 of this Law;
- 4) broadcasts program content not complying with the Law governing field of media (Article 71);
- 5) broadcasts name, logo or abbreviated identity sign of from its own or taken over broadcasting program contrary to the provisions of the Article 72 of this Law;
- 6) fails to notify the ownership structure change (Article 73, paragraph 1);
- 7) fails to provide appropriate share of the European audiovisual works (Articles 75 and 77);
- 8) fails to note in precise and clear manner time of second showing of radio or TV program (Article 79, paragraph 2);

- 9) fails to provide or allow to all interested broadcasters to record and broadcast short reports from the events, for which the broadcaster obtained the exclusive licence for the broadcasting (Article 82);
- 10) provides AVM service contrary to the provisions of the Article 89, paragraph 1 of this Law;
- 11) performs contrary to the provisions of the Article 91 of this Law;
- 12) performs contrary to program standards defined by the license granted (Article 93);
- 13) performs contrary to the provisions of Article 95 of this Law;
- 14) performs contrary to the provisions of Article 106 of this Law;
- 15) fails to indicate an ordering party in political propaganda (Article 108, paragraph 1);
- 16) fails to comply to the Article 110 of this Law;
- 17) performs contrary to the Article 111 of this Law;
- 18) violates the provisions on the illegal media concentration (Articles 120 and 123);
- 19) violates the provisions of the Articles 128-141 of this Law referring to advertising, teleshopping, and sponsorship;
- 20) performs contrary to the provisions of the Articles 143 and 144 of this Law;

(2) A fine chargeable in the amount from half-fold to twenty-fold minimum salary in Montenegro shall be imposed on the responsible party in legal person, and on the physical person, on the grounds of the infringement of the provisions of paragraph 1 of this Article.

CHAPTER XIII

TRANSITIONAL AND FINAL PROVISIONS

Article 142

- (1) The Broadcasting Agency shall continue to operate under the name - the Agency for Electronic Media.
- (2) The Agency shall overtake employed persons, funds, equipment, rights, and obligations of the previous Agency.
- (3) The Agency shall perform functions and have competencies of the regulatory body for program content, prescribed by the Law governing field of electronic communication.

Publishing of the public invitation for authorized nominators

Article 143

The Working Body of the Parliament shall publicize, not later than eight days from the date of coming into effect of this law, public invitation to the authorized nominators of the Council Members, referred to in Article 18, paragraph 1 of this Law, to submit their proposals/nominations.

Deadline for submission of nominations for the Council members' appointments

Article 144

The deadline for the submission of nominations for the Council Members shall be 30 days from the date of issuing public invitation.

Deadline for appointment of the Agency Council members

Article 145

The Parliament shall appoint the Council members not later than within period of 30 days from the date of expiry of deadline referred to in Article 157 of this Law.

Term of office of the members of the Broadcasting Agency Council

Article 146

Term of office of the members of the Broadcasting Agency Council shall be terminated by appointment of the members of the Agency Council.

The Council Constituting

Article 147

(1) The Council shall be constituted not later than within period of 30 days from the date of appointment of its members.

(2) At its constitutional session, the Council shall elect its chairperson and adopt the decision on issuing public tender for the appointment of the Agency Director.

Appointment of the Agency Director

Article 148

The Agency Council shall appoint Agency Director not later than within period of 30 days from the date of expiry of deadline for submission of applications on public competition.

Termination of term of office of the Agency Director

Article 149

Term of office of the Director of the Broadcasting Agency shall be terminated by appointment of the Director of the Agency for Electronic Media.

Adoption of the Statute

Article 150

The Council shall adopt the Agency Statute not later than within period of 30 days from the date of appointment of the Council member, in compliance with this Law.

Bylaws

Article 151

Bylaws necessary for implementation of this Law shall be adopted by the Council not later than within period of six (6) months from the date of its constituting.

Cease of validity of previous Law

Article 152

On the date of entering into force of this Law, the provisions of the Broadcasting Act (“Official Journal of RMNE”, no 51/02,) and other regulations and acts related to the sector of audiovisual media services, not complying with this Law, shall cease to be valid.

Entering into force

Article 153

This Law shall enter into force eight days after the date of its promulgation in the “Official Journal of Montenegro.”