



**Organization for Security and Co-operation in Europe  
The Representative on Freedom of the Media**

**ANALYSIS OF THE DRAFT LAW AMENDING THE MACEDONIAN LAW ON  
AUDIO AND AUDIOVISUAL MEDIA SERVICES**

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## **1. Summary of main findings**

Several of the draft amendments to the Law on Audio and Audiovisual Media Services are only adjustments to practical details that have no influence on freedom of expression. Other amendments are improvements as they simplify previously overly complex provisions or clarify what was before at times opaque. In some instances, the new provisions add a lot of detail that could instead be in guidelines or other instruments (although the legal drafting style is a matter of choice that does not influence freedom of expression to any significant extent). However, in other places detail has been deleted. In general, the law is clearer after the amendments.

Some changes concern the regulator, the Agency for Audio and Audiovisual Media Services. The previously stipulated funding of the regulatory agency via the broadcasting fee is unusual in a European context, as such fees are normally used for public service broadcasting only. It has been seen to be legitimate that people contribute to the provision of unbiased news, information and other publicly relevant programming, which has been the justification for a compulsory broadcasting fee. The funding of the regulator is normally handled differently and often paid for – at least in part - by operators. Thus, the proposed amendment in this respect (abolishing the broadcasting fee) is positive. The fact that the status of the members of the Council of the regulator as full-time and professionally engaged persons is now made clear is good. Whether such members are staff or external experts is a matter of choice. Both solutions have benefits: full-time persons have more time to devote to the task, can build up a lot of personal and institutional knowledge and presumably feel responsible for the activities to a high degree. On the other hand, external Council members can provide oversight and an independent assessment of the activities. In any event, whatever system is selected, it should be clear in the law, which it now is. The draft law furthermore adjusts the system for appointment of members. The tasks that the Director can perform and those that the Council performs are adjusted, which presumably is a consequence of the Council becoming a full-time employed organ.

As far as the change to the system for financing the public service broadcaster is concerned, this is to a large extent a matter of choice and different solutions can be equally good. The motivation for a broadcasting (subscription) fee, as mentioned above, is challenged in the modern media landscape with the growing importance of social media and media on demand. The traditional way to fund public service broadcasting via a compulsory subscription fee is increasingly questioned. When more and more people never access traditional broadcast media, if it is to maintain its relevance, new ways to fund it need to be considered. At the same time, public service broadcasting should not be state broadcasting. With funding, directly through the state budget, it is important to ensure the independence of the broadcaster. The independence is mentioned in the law

but, it is not quite clear if there are sufficient guarantees. On the other hand, there is nothing indicating that there would *not* be, so on this matter, it is essential to remain vigilant once the law is in force.

Detailed provisions on grants for producing certain programmes have been abolished, which is an improvement, as this appeared to be an unnecessarily intrusive way for the state to get involved in broadcasting content.

The law as amended would be in accordance with European and international standards on audiovisual media. This analysis does not consider compliance with the EU acquis. Like for any legislation, it will be essential to ensure an independent and professional implementation of the law, as it is difficult through legal drafting alone to safeguard against political interference into the independent activities of the regulatory agency as well as the public service broadcaster.

## **2. Recommendations and main points**

- The direct funding of the public service broadcaster from the state budget necessitates a careful evaluation of the guarantees for its independence. It is suggested that an independent assessment of this is made in a transparent manner at a determined time after the entry into force of the law.
- It is important that the Council of the regulatory Agency can act in an oversight capacity, even if its members are employed by the Agency. Internal working procedures should ensure this.
- Decision-making needs to be efficient, which should be taken into account when deciding between collegial decisions and decisions by one person (the Director).
- The system for appointment of members of the council of the regulatory agency and the public broadcasting service programme council has been improved and made more open. As it includes a hearing of all qualified candidates without pre-screening, there is a risk that this proves to be too cumbersome, in which case a pre-screening process should be introduced (which would necessitate a change in the law).
- The increased transparency and possibility for concerned parties to explain themselves in case of sanctions is positive.
- The law in some places contains detail that should be left to editorial decisions, but it is possible to interpret the law as providing general guidance and not interpret it in a manner that restricts editorial freedoms.
- The detail on different types of programmes and possibilities of grants for programmes has been abolished, which is good. Details are better decided by the broadcasters and possibly by the regulator in secondary legislation or guidelines.

As for grants, the state should not as a matter of policy generally get involved in broadcasting content.

- The language requirement (for Macedonian language as well as non-majority community languages) is no longer in the law (apart from for the Public Broadcasting Service) but only left to the regulator to make rules about, which means that there is no guarantee for minority language broadcasting. This is unfortunate in a society with large minority ethnic groups.
- There is no limitation on duration of advertising for the public broadcasting service, as opposed to commercial broadcasters.

### **3. Analysis**

#### **3.1. Introduction**

The draft law introduces a number of smaller as well as more substantive amendments to the Law on Audio and Audiovisual Media Services (Official Journal of the Republic of Macedonia, No. 184/2013, 13/2014, 44/2014, 101/2014 and 132/2014). Among the smaller issues are adjustments to educational requirements and term limits as well as some other changes regarding the regulatory agency. The main change is that the subscription fee for public service broadcasting is abolished and funding will be done via the state budget. The funding of the regulatory agency was also previously partly done through a broadcasting fee, which is now abolished.

In several instances, the numbering of paragraphs changes as a consequence of amendments. In almost all places this is properly mentioned, but there is some inconsistency in the draft (unless this is a translation omission). Although this is just a detail, the new numbering should be clear and consistent throughout.

Large parts of the law have not been amended. Consequently, the Article-by-Article analysis below only touches upon provisions that have been amended in a substantive manner. While performing the analysis, the existing law was read in its entirety to see how the new amended provisions relate to the existing law. No comments are made on provisions that do not change.

This report contains – after this introduction – an overview of the international standards that form the basis for the analysis. After that, an Article-by-Article review is made, using the headings in the Law as sub-headings for the analysis. Recommendations and main points are made above.

The analysis is based on a translation of the draft law provided by the Ministry of Information Society and Administration as well as a translation of a consolidated version of the existing Law on Audio and Audiovisual Services. The accompanying and explanatory letter that is attached to the Macedonian language version of the draft law was not provided in translation and is not part of this analysis.

### 3.2. International standards

The analysis of the draft law is based on the mandate of the OSCE in relation to freedom of expression which is protected by international instruments, most notably Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights, to which OSCE Participating States have declared their commitment.<sup>1</sup>

Article 19 of the Universal Declaration states: *“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”*<sup>2</sup> This right is further specified and made legally binding in Article 19 of the International Covenant on Civil and Political Rights.

Freedom of expression is stipulated by Article 10 of the European Convention on Human Rights and Fundamental Freedoms (ECHR):

*“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.”*<sup>3</sup>

The former Yugoslav Republic of Macedonia is a party to the instruments mentioned and bound by these provisions, something reinforced by its role as a participating State of the OSCE.

In the 1999 OSCE Charter for European Security, the role of free and independent media as an essential component of any democratic, free and open society is stressed.<sup>4</sup> The mandate of the OSCE Representative on Freedom of the Media is, based on OSCE principles and commitments, to observe relevant media developments in all participating States and on this basis advocate and

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<sup>1</sup> Helsinki Final Act (1975), Part VII; reiterated e.g. in the Concluding Document of the Copenhagen Meeting of the CSCE on the Human Dimension (1990) and later statements.

<sup>2</sup> Resolution 217A (III) of the General Assembly of the United Nations, adopted on 10 December 1948. A/64, page 39-42. See the full official text in English at: <http://www.un.org/Overview/rights.html>.

<sup>3</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, Rome 4.XI.1950. [www.echr.coe.int/NR/...DC13.../Convention\\_ENG.pdf](http://www.echr.coe.int/NR/...DC13.../Convention_ENG.pdf)

<sup>4</sup> See point 26 of the Charter for European Security, adopted at the Istanbul Summit of the OSCE, 1999. [http://www.osce.org/documents/mcs/1999/11/17497\\_en.pdf](http://www.osce.org/documents/mcs/1999/11/17497_en.pdf)

promote full compliance with OSCE principles and commitments regarding free expression and free media.<sup>5</sup>

Each country has the right to determine the details of its media landscape and the content of its media legislation, provided the legislation respects principles included in international commitments on freedom of expression. Relevant legislation must be implemented in a manner that ensures that freedom of expression – which includes the right to access information – can be exercised in practice. International jurisprudence and best practices may be drawn upon in order to achieve this. The European Court of Human Rights (“ECtHR”) has through its case law underlined that any restrictions to human rights, including freedom of expression, should be proportionate, necessary in a democratic society and set out in law. The main challenges identified by ECtHR and other bodies dealing with freedom of expression related matters tend to be related to proportionality and necessity. Freedom of expression is not an absolute right, but its limitations must be very carefully made given the importance of the right – not just as a basic right, but also as a prerequisite for exercising many other human rights and fundamental freedoms.

For the draft law analysed here, international standards related to public broadcasting and to some extent to regulatory agencies for media are relevant. The Council of Europe has issued a number of recommendations<sup>6</sup> and although these are not legally binding, they do provide important guidance on how freedom of expression shall be guaranteed in reality. This includes the importance of an impartial public broadcaster and an independent regulatory agency – both with the necessary conditions for their work provided by the state.

### **3.3. Article by article analysis**

#### *I. General Principles*

There are no proposed amendments in this section of the law.

#### *II. Competent Authority*

##### Article 1 draft Law on Amendments

Article 4 paragraph 7: With the abolition of the broadcasting fee (see more below), the regulator can no longer be funded by this fee, so the reference to it in the law is deleted. It is not in line

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<sup>5</sup> Mandate of the OSCE Representative on Freedom of the Media 1997, Point 2. <http://www.osce.org/pc/40131>

<sup>6</sup> Recommendation Rec(2007)3 of the Committee of Ministers of the Council of Europe to member states on the remit of public service media in the information society; Recommendation Rec(2003)9 of the Committee of Ministers to member states on measures to promote the democratic and social contribution of digital broadcasting; Council of Europe Recommendation Rec(2000)23 to member states on the independence and functions of regulatory authorities for the broadcasting sector; Resolution 1636 (2008) of the Parliamentary Assembly of the Council of Europe and Declaration of the Committee of Ministers (26 March 2008) on the independence and functions of regulatory authorities for the broadcasting sector.

with European practice that regulators are financed by the compulsory broadcasting fee. At a time when such a fee is increasingly questioned in most countries, it is good to abolish this way of funding the regulatory agency. The law permits financing through fees stipulated in the law, so it remains possible to use the licence fee for broadcasters, which is common practice in Europe and elsewhere. It is important that the regulator is properly financed so it can perform its tasks in an independent manner.

#### Article 2 draft Law on Amendments

Article 12: Some changes are made to the Article setting out the tasks and structure of the Council of the regulatory agency, the Agency for Audio and Audiovisual Media Services. One paragraph stipulating liability and accountability of Council members is deleted, which is an improvement as the paragraph in question was not clear. The paragraph made reference to responsibility for adopting decisions contrary to the interest of the Agency (but within the competence of the Council). There would be other means of the law to extract accountability if needed, without the risk – which was the case – of a rather vague stipulation about interest of the Agency, without any indication on how and by whom this interest would be interpreted. The deletion of the paragraph is good.

In the same Article, it is now stated explicitly that Council members are to be professionally engaged in the Agency on a full-time basis. Whether this should be the case is a question of opinion. There are benefits of part-time Council members who have other professions and only act as a board, and there are benefits of having them full-time. In any event, it is good that the law is clear on this. Even if Council members are employees of the Agency, they must have a role that permits oversight of the Agency work – something that internal working procedures can ensure.

#### Article 3 draft Law on Amendments

Article 14: The system for appointment of Council members has been changed. There are no longer authorised nominators but an open competition, while the candidates still do need letters of support from listed (types of) organisations. The system looks very open and will enable different people to apply, which is positive. However, a good system should combine openness with efficiency. Concerning the appointment of members of the regulator, it is stated that there will be a public hearing with those candidates that meet the criteria stipulated in the law. It appears that there is no preselection of the candidates before the hearing. This may mean that many candidates will have to be invited to a hearing. Although this is good from the viewpoint of transparency and giving everyone a chance, it may mean that the process is inefficient. The criteria that the candidates must meet to reach the stage of the hearing are not very limiting, so there is a risk of too many candidates. Hopefully only serious candidates will present themselves but as there are many options to get the required support letters, it is also possible that persons who in the end would not have a reasonable chance would be included in the process. How real this danger is can best be evaluated by those who are very familiar with the Macedonian context.



The fact that the number of organisations that can be involved in the process has been expanded and made more open is good.

The possible danger of a cumbersome process with hearings of unserious candidates and similar can be avoided if some form of pre-screening is included. This can be done in a transparent manner, with the relevant criteria set out and for example given points. Only candidates with sufficient points would have a hearing. Such a change would require an amendment to the proposed text of the law. Whether this is necessary may not be known until after the process has been used. If there are not too many candidates, there is nothing preventing that the now proposed system is kept the way it is. This discussion on the process applies also to the new system for selecting members to the Programme Council of the public broadcasting service MRT as mentioned below, as the new systems are similar.

#### Article 4 draft Law on Amendments

Article 15: The term of office of Council members has been changed from one period of seven years to two possible periods of five years each. This is better, as it allows the Council to retain the expertise for a slightly longer period but at the same time permits a change, if the member proves to not be the most suitable (or is unwilling to continue).

#### Article 5 draft Law on Amendments

Article 16: The requirement of work experience has been raised from five to eight years. The paragraph stipulating that employees of other legal persons may be appointed as Council members has been deleted, which fits with them now being full-time employees. (The re-numbering of paragraphs following this deletion should be mentioned in the draft law on amendments.)

#### Article 6 draft Law on Amendments

Article 18: Some new tasks have been added to the enumeration of the tasks of the Council. The change is not substantive, as there was before a general provision under which the Council could probably have undertaken such measures. It is better to be clear so the explicit addition of tasks is an improvement.

#### Article 7 draft Law on Amendments

Article 19: The translation of Article 7 of the draft law does not state which Article it amends. It can be seen from the Macedonian original that it is Article 19. The professional experience requirement is set as eight years instead of five years both for Agency Director and Deputy Director. In addition, a new paragraph is added, stating that candidates for Director cannot have been in positions of authority in political parties or have performed functions in the legislative and executive power for a period of 10 years, calculated backwards from the year in which s/he submitted the candidacy. The requirement may be good for purposes of independence but it may make it hard to find candidates, especially as the wording “performed functions” is very wide. It is questionable if such an extensive ban is reasonable.

The Article on measures undertaken in case of violations is amended and improved. The new Article is clearer. The appeals provisions are good, but in this case, it is not clear if there is an actual change or the appeal followed before from Article 24. In any event, the provisions are now clear.

It is to be recalled that the (un-amended) Article 2 stipulates that one of the purposes of the law is to establish “transparent, independent, efficient and accountable Public Broadcasting Service”. This provision stays after the amended form of funding and underlines the importance of independence.

#### Article 8 draft Law on Amendments

Article 20: Some provisions are deleted in the enumeration of the competences of the Director, related to taking measures against broadcaster who violate rules and instead the Council as a body has been given these functions (see above). It is not clear what the difference will mean in practice, as the Director can still propose decisions within the Council competences and undertake measures under the law. Looking also at the amendments to Article 23, it appears that it is now the Council rather than the Director that is primarily responsible for sanctions. Either solution is possible and acceptable – there are examples of both in different countries. The Article also contains the amendment to the term of office, from one time seven years to up to two times five years. Shorter and renewable periods are better, so this change is an improvement. It allows to keep the competence of a suitable person for longer in the Agency as well as to easily remove a less suitable person sooner.

#### Article 9 draft Law on Amendments

Article 23: The Article sets out the procedure for sanctions, in a clear and gradual manner, which is good. There are some changes like the role of the Council rather than the Director and a different formulation of the various possible steps that can be taken. The new elements proposed include that the Council shall ask the responsible publisher to provide explanations in writing when a procedure is initiated and there may be public meetings arranged to hear the explanation of the responsible publisher (or similar). It is very good to increase the possibility for the concerned parties to explain themselves and provide more transparency to the process.

### *III. Supervision*

#### Article 10 of the draft Law on Amendments

Article 30: The provisions for expert supervision have been amended so that the Council rather than the Director decides on this. It is in line with giving more powers to the Council. This is a matter of choice. The efficiency of work needs to be considered to ensure that the fact that a collegial body takes many decisions does not make daily work too cumbersome. However, as the Council is to be a full-time employed body, it should be possible for them to exercise such tasks.

#### *IV. Protection of pluralism and diversity of audio and audiovisual media services*

There are no proposed amendments to this section of the law.

#### *V. Enabling radio and television broadcasting and audiovisual media service on demand*

##### Article 11 of the draft Law on Amendments

Article 48: The Article called “Special prohibitions” which lists what kind of programmes that can be banned has been amended so that it now includes a more comprehensive list about e.g. what grounds for discrimination that must not be encouraged. The new list looks somewhat too long and detailed, but as the second paragraph refers to the possible bans being in line with the practice of the ECtHR, the interpretation of the Article should not be too wide. The matters mentioned are all worthy of protection, but there is always a risk that restrictions on programme content are used also to limit legitimate debate. Freedom of expression protects also negative speech.

##### Article 12 of the draft Law on Amendments

Articles 62a and 62b: Two new Articles are added. Article 62a deals with political pluralism in news and daily news programmes. Article 62b contains provisions on political pluralism in debate, current-information and contact programmes. Although protection of pluralism is positive, there is still a risk with such provisions in the law. These issues should be in guidelines or be part of the editorial decisions of broadcasters. There is a risk of eroding editorial freedom and responsibility with too detailed laws so the law should only provide the general outline. Especially Article 62b appears to enter into the area which should be left to editorial decisions, but if the application of the Articles ensures that they are seen as general guidance under which editors still freely can decide details, then there is no reason to find the content unsuitable. However, these provisions require vigilance so that editorial freedom is not restricted.

##### Article 13 of the draft Law on Amendments

Article 76: Two new paragraphs have been added, that require broadcasting to be in a specialised format. Prior to granting new licenses there shall be an analysis of the needs in the market to ensure pluralism. The regulatory agency may conduct public research. There is also a requirement of notification to the public and all interested parties regarding the possibility of submitting requests for the grant of a license. It is not clear what a “specialised format” is, but this can be further elaborated in guidelines or similar. To have a proper basis for any decision is praiseworthy as is any transparency requirement. It may be likely that what the new paragraphs provide would have been possible under general tasks of the regulator also before, but it is not wrong to make the law more clear and explicit – as long as this does not mean in gets so detailed and long that it in fact becomes difficult to apply.

#### Article 14 of the draft Law on Amendments

Article 80: There is a change to the formula to determine the licence fee, which leads to a small reduction of it.

#### Article 15 of the draft Law on Amendments

Article 92: The Article is entitled “Obligations of broadcasters for broadcasting a programme in Macedonian language or in languages of the communities in the Republic of Macedonia” but this is not in line with the content of the amended Article. The Article deals with works by Macedonian authors and does not say anything about language. Previously the Article contained a lot of detail as well as some provisions specifically for a transitory period. The currently proposed Article is clearer and more flexible as far as works of local authors is concerned, as it provides the outline but no detail. The Article states that rules for implementing the obligations shall be prescribed in detail by the Agency. This is good. It is positive that the detail on types of programming and on grants payable for types of programming have been abolished, as such detail should not be in the law. The possible financing by public money of certain programmes should be handled in a more flexible manner, if at all. There may be situations where public interest campaigns are made or similar, but it would appear more suitable that any rules on this would be in legislation related to the topics for such campaigns or in public procurement law and not in the law on audiovisual media.

However, there is now no rule about languages. The title of the Article needs to be changed to reflect this and it may also be questioned if it is appropriate to abolish any legal requirement for minority language broadcasting in a country with sizeable ethnic minorities. Admittedly, the regulator may still decide about such requirements, but as this will not be because of a specific legal requirement, it cannot be guaranteed that they do so.

#### Article 16 to Article 26 of the draft Law on Amendments

Articles 92a to 92k: All these Articles are deleted. This is a consequence of the changes to Article 92, as these Article contained detail on the payment for programming, how this was to be determined and the setting up of organs for that, the decision-making process and so on. None of this is relevant after the change to Article 92. The previously existing system and the extraordinary amount of detail about it in the law was unusual from the comparative perspective of European or international practices. Although there is nothing inherently wrong with different means to ensure public interest broadcasting, not just via a public service broadcaster, grants for certain types of programming can better be handled by occasional calls in the framework of some specific topic or similar than as a standing feature with a complex decision-making apparatus. Such system risks limiting the independence of the media if it becomes dependent on links with public bodies. Thus, the amendments are positive. (The numbering of the Articles 92a etc in the English translation of the existing law are mixed up, but it is presumed they should be consecutive from a to k, as in the Law on Amendments).

#### Article 27 of the draft Law on Amendments

Article 102: This Article on informative activities of state bodies is deleted. That is good, as the Article really only referred to what other legislation, most specifically procurement legislation, probably already provides for (how state bodies are to spend their information budget).

#### Article 28 of the draft Law on Amendments

Article 103: This Article on duration of advertising for the Public Broadcasting Service is deleted. The Article contained special provisions, as Article 100 on duration of advertising generally explicitly excludes the Public Broadcasting Service. The placement of Article 103 was somewhat strange as it came before the section on the Public Broadcasting Service so it regulated something before it had been set out in the law. However, it appears as if there is now no restriction on the amount of advertising the Public Broadcasting Service can have. Even if this can be set out in other acts by its governing bodies, it is strange that commercial broadcasters are limited (under Article 100) but the public one is not. A maximum should be set out in law.

#### *VI. Public Broadcasting Service*

#### Article 29 of the draft Law on Amendments

Article 105: The system of financing of the Public Broadcasting Service MRT is one of the main changes brought about through this law. The broadcasting fee – the compulsory subscription fee – is abolished and the broadcaster is to be mainly financed through the state budget. A set amount of the budget shall be allocated each year and there are provisions on how it is to be spent (including for the regulator). It is legitimate to consider new ways to fund public service broadcasting in an era when many people do not have television receivers or do not tune in to regular television at all. However, with direct state funding the main issue is that of independence. The state must resist any temptation to use the financing to influence the broadcaster and sustainable financing must be ensured. Paragraph 4 specifically underlines the independence of the broadcaster and that the financing system shall not influence this, which is good. It is important to monitor this after the changes to the law enter into force.

#### Article 30 of the draft Law on Amendments

Article 106: As the Article prescribes a five-year strategy for MRT, the heading “Annual report and annual work program of MRT” does not fit. The provisions in the Article are good – they show the need for accountability even for an independent body. As with all provisions, practice will show what the provisions will mean in reality - hopefully that there will not be micro-management through the reports, as there is nothing to indicate that there would be a particular risk of this. The main change to the previous Article is the introduction of the five-year strategy.

#### Article 31 of the draft Law on Amendments

Article 107: The amendment transfers editorial responsibility for the parliamentary channel on MRT to MRT, instead of the parliament, which makes sense.

#### Article 32 of the draft Law on Amendments

Article 109: The references to the broadcasting fee, which no longer exists, have been removed from the Article.

#### Article 33 of the draft Law on Amendments

Article 117: The system of authorised nominators of members of the MRT Programme Council has changed. The system resembles that of members of the Council of the regulatory agency and the comments made in that context, about a possibly too cumbersome process if there is no pre-selection, apply also here (see above). The wider range of possible nominators is positive.

#### Article 34 of the draft Law on Amendments

Article 118: This Article also deals with appointment of members of the MRT programme council. The changes are not major and are a consequence of the changes to the system as mentioned above.

#### Article 35 of the draft Law on Amendments

Article 130: The requirement of professional experience is raised from five years to eight.

### *VII. Broadcasting fee*

#### Article 36 of the draft Law on Amendments

Articles 135-140: This chapter with these Article shall be deleted. This has been discussed elsewhere in the report. What is essential for a high-quality public broadcasting service is that it is financed in a proper, adequate and sustainable manner. This law provides for guarantees of funding at a certain level. How this system works will be seen and should be kept an eye on. There have been problems in some European countries with inadequate and suddenly decreased funding for broadcasters so it is important that stable and foreseeable funding is provided.

### *VIII. Retransmission of Programme Services through Public Electronic Communication Networks*

#### Article 37 of the draft Law on Amendments

Article 143: The Article concerns “operator obligations that retransmit programme services”. The changes are mainly minor. There are guarantees that copyright obligations are met and must-carry principles are set out. Must-carry is a common feature in European practice and ensures availability to the broadest possible audience. The proposed amendments are mainly technical, but a requirement of subtitling of retransmitted programmes in other languages than Macedonian is added.

## *IX. Penalty Provisions*

### Article 38 and 39 of the draft Law on Amendments

Article 145-146: These Articles are deleted as the penalties were prescribed for requirements that are no longer in the law.

### Article 40 of the draft Law on Amendments

Article 147: The Article on fines adds a fine for those who broadcasts programmes “that endanger national security, impel violation of the constitutional order of the Republic of Macedonia, calls for military aggression or an armed conflict, encourages or spreads discrimination, intolerance or hatred based on sex, race, colour on the skin, gender, belonging to a marginalized group, ethnicity, language, citizenship, social origin, religion or religious belief, other types of beliefs, education, political affiliation, personal or social status, mental or physical disability, age, family or marital status, property status, health status, or on any other grounds envisaged by law or with a ratified international agreement.” It is important to stress that in any society with freedom of expression, fines due to unpermitted media content should only be imposed in exceptional cases when the broadcast in question actually crosses the line for what is permitted under freedom of expression in a free society. Programmes like those mentioned are all to be avoided, but it must be kept in mind that freedom of expression permits also nasty and critical speech, so prohibitions (and thus fines linked to them) must be interpreted restrictively. Sanctions must be proportional to the possible harm and not imposed in a manner that stifles freedom of expression.

### Article 41 of the draft Law on Amendments

This provision is a transitional provision and calls for an announcement of the public competition for candidates under the law within three days of the entry into force of the law. It is very short, but as the preparations can be made before the entry into force, as soon as the law is adopted, it should be possible. However, the need for candidates to apply within seven days and a selection to be made also within seven days appears much too short. Also, the need for the Assembly to appoint within three days. It is not understood why the periods should be so short, as there are existing organs that could stay in place for a slightly longer transitional period, to give time for a reasonable process.

### Article 42 of the draft Law on Amendments

The entry into force is eight days after publication. That is also short, which underlines the very short periods in the previous Article.

The Article 152-153 in the current law could be deleted with this new law, as they are not relevant. These Articles prescribe the previous appointment process and appear to be superseded by the Article of this law on amendments mentioned above, so for clarity they should be deleted.

Article 154 prescribes what operators should do when the new law enters into force, so also this provision could be deleted – as now the law will in any event be changed.