



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

**COMMENTS ON THE SECOND DRAFT OF THE DRAFT
LAW ON MEDIA AND AUDIOVISUAL MEDIA SERVICES OF
THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA**

*Commissioned by the Office of the OSCE Representative on Freedom of the Media from
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This report comments on the amended version of the draft Law (hereinafter “the Law”), made following the comments and recommendations in the initial report commissioned by the OSCE Representative on Freedom of the Media as well as other international analyses of the Law. This short report does not repeat comments and recommendations made in the initial report, but only highlights if amendments made take into account the concerns raised. This also means that the reader should refer to the original report for statements on the standards applied and the basis for the recommendations made. This report is based on a translated and annotated version of the new draft Law, provided to the author by the OSCE.

A general comment is that although several improvements have been made, many concerns remain. The way the amendments have been made is one of detailed and often small amendments, when a complete overhaul of the Law – resulting in a new Law that would be much shorter and differently structured – would have been better. Drafting a law focused on audiovisual media services only and following in most cases the provisions in the Audiovisual Media Services Directive, as relevant for the former Yugoslav Republic of Macedonia, would have been a better strategy. The draft Law still states obvious principles of democratic rule of law societies and micro-manages media in some cases or contains detail that should be better included in secondary legal acts. The Law should be drafted so that what is not prohibited is self-evidently permitted. This includes the right for journalists to express their opinion, which has not been changed as well as the idea of self-regulation (see below).

The Law is - as was mentioned in the initial report -long and complex, containing matters that should instead be in different instruments like secondary legal acts. Although the new draft contains marginally fewer Articles, this general observation is still valid. Some new provisions have been added that are of a nature to be better suited to other forms of legal acts, like the new Article 68 (old 72) and all the detail included in it. In other places there are improvements to the style of drafting, like Article 164 (old 168). The Law still includes too many different matters and even after some improvements, the Law still provides too much detail on issues that should be within the discretion of media outlets. Areas where it was pointed out that the procedures are too complex with no regard for modern possibilities of e-governance remain unchanged (old Article 82, now 79 for example).

Some unnecessary references to other laws have been deleted, which is an improvement. This includes the access to public information provisions that have been deleted as suggested in the initial report. Article 9 (old 10) refers to the law on civil liability for defamation and insult in relation to ethics. Although it is not a comment to this Law, it may be mentioned that it is important that there are not too wide possibilities to demand compensation for defamation and insult, but this should be restricted to such cases where the seriousness of the offence outweighs the possible chilling effect such lawsuits will have on freedom of expression.

In the definitions, the definition of media publisher has been limited to some extent which is positive. The definition of journalist remains, slightly amended, but still apparently superfluous and potentially risky. The definition of electronic publications has been changed which is positive but even the more limited electronic publications now covered do not need to be regulated. In some cases, because of the style of many small amendments rather than radical changes, it is hard to see what the amendments actually entail throughout the law. In the initial report the main objections to the draft Law concerned printed and electronic publications and the requirements made on them for

registration. It was suggested that these provisions should be deleted completely. This has to a large extent been done. Article 52 on publishers of print media has been deleted, which is one of the main improvements of the Law. At the same time, some provisions like on editors (Article 7) for print media remain without it being very clear why such detail is needed in a law. A registration requirement remains (Article 51). If this is just an indication that legal or physical persons conducting business activity must be registered (for tax reasons for example), this requirement is reasonable but there should be no additional registration requirements made. Any restrictions on business activity and even more so, if such restriction can have a limiting influence on freedom of expression, must undergo a strict proportionality test: What is the legitimate reason for such restriction and what restrictions are needed and proportional in order to obtain the desired result?

The reference to freedom of expression in Article 4 is now improved by a much more limited reference to possible limitations, referring to the Constitution and international law. For clarity's sake such a mention is not bad, although in practice the Constitution presumably includes the position of international law in the former Yugoslav Republic of Macedonia so it is technically enough to refer to the Constitution.

The Law still blurs the distinction between self-regulation and formal regulation by mentioning self-regulation in various places, thus making it obligatory and limiting its self-regulatory character. There have been some changes made, which are improvements, but the main question of why the law should appear to obligate self-regulation remains. The inability to completely delete the provisions on self-regulation from the law – which would be the better solution – is probably due to the general nature of the law of mentioning also things that are allowed, something which in a rule of law society is not necessary. It was pointed out in the initial report: everything that is not prohibited *IS* allowed, and it is confusing for the law to state this. This means in the context of self-regulation that it is permitted for media to have such regulation and the Law does not need to mention this unless such system is given some specific task by the law. This is not the case for the new Article 14 (1), which is an example of an unnecessary provision that is not just superfluous but also potentially harmful as it appears not to see the right to have a system of self-regulation as an inherent right but rather as a concession given by the authorities. Article 14 (2) can be in internal rules for the Agency and does not need to be in the Law. In Articles 30 (old 32), 33 (old 35) and 95 (old 98) the deletion of self-regulation is positive.

Some other issues mentioned in the report were the question of revocation of the licence, appeal and the question of monitoring. It still appears that revocation can be done too easily but the provisions on appeal are clearer. As for the provisions on monitoring and the rights given for this purpose they are still excessive and risk having a chilling effect on media. As mentioned, monitoring is legitimate and important, but should not be excessive and should gradually be replaced more and more by complaints-based enforcement. No such amendments have been made in the Law.

The ownership restrictions have not been substantially changed and although with a positive general aim still may be overly complex and restrictive. The obligations on percentage of national music and programmes appeared excessive according to the report and have not been changed.

One of the main concerns related to the provisions on the regulatory agency was that there was insufficient involvement of civil society in the appointment process. This concern remains as there are no substantial amendments to the relevant provisions. The periods in office are somewhat

reduced, which is positive but still an even shorter period with one re-appointment possible and clear provisions on staggering the appointments so that not all members are changed at once would be better.

Regarding the provisions on the public broadcasting service the report mentioned that more civil society involvement in the appointment process of the Council would have been good. No such changes have been made; only very general added paragraphs on diversity for both this Board and that of the Agency.

The report recommended that the broadcasting fee should not be used to finance the regulatory agency, but this should instead be done (partly) by a fee for broadcasters. No such change has been introduced.¹

¹It may be pointed out here that this is the **only** point where there was a substantive difference between the analyses provided by the OSCE and the Council of Europe, where the Council of Europe expert approved of this use of the broadcasting fee. There are different models in Europe and thus experts may have different views. This expert maintains that in a country where the public service broadcaster is in need of funding and the level of the broadcasting fee cannot be much increased because of the socio-economic level of the country, it is not good to use such a fee for anything else than public service broadcasting.