

II MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS

1. *Public Information Law*

1.1. The implementation of the Public Information Law was elaborated on in the section about freedom of expression.

2. *Broadcasting Law*

2.1. The Nis-based Center for the Protection of Consumers "Forum" called on the Serbian President Tomislav Nikolic to fulfill his pre-election promise and revoke the TV subscription fee. The possibility for the public service broadcaster (PSB) to be funded from the state budget was announced several months ago by Nikolic's close associate Jorgovanka Tabakovic, who is the head of the Serbian Progressive Party's economic team. Coinciding with Forum's request, came the statement of Zoran Ivosevic, the former Supreme Court Judge, that the subscription fee was unconstitutional, "Kurir" reported. "The Constitution says that all citizens may freely and without obstruction enjoy their belongings, including money. If someone takes our money without any grounds whatsoever, it is in contravention of Article 58 of the Constitution. If I had a TV set and used it for watching RTS, this would represent grounds for charging the subscription fee, although this is not 100% reliable, since they do not keep records of who has a TV set and who does not. If someone forces the citizens to pay for something they are not watching, it is tantamount to imposing a tax on income they are not generating and it violates their right to own their money", Ivosevic says. In his view, the subscription fee is also in breach of Article 21 of the Constitution, guaranteeing equality before the Law. "How can we be equal, if you have a TV set and I do not, but we both pay the subscription fee?" Ivosevic asks. Meanwhile, the South East Europe Media Organization (SEEMO) reacted by issuing a press release, saying that scrapping the subscription fee for RTS would open the door for political meddling in the work and the program of the PSB. International experience has shown that other sources of financing (e.g. from the state budget and parliament) are unable to guarantee editorial independence, SEEMO said, reminding that the "PSB is not a service of the state or political parties. The subscription fee is the guarantee that the PSB may remain independent", the Secretary-General of the organization Oliver Vujovic concluded in the press release. Echoing his remarks, Predrag Markovic, the member of the Managing Board of RTS said that revoking the subscription fee and switching over to budget financing would make RTS lose its PSB function. RTS Director General

Aleksandar Tijanic said that the PSB needs 60 million euros from the subscription fee annually to operate, as well as an additional 23 million euros from advertising.

This heated debated started amid the backdrop of the possibility of RTS starting with forced collection of dues for unpaid TV subscription fee. According to some reports, the collectability of the fee plummeted to below 40%. We remind that the Broadcasting Law envisages that the activities of PSB institutions concerning the realization of the public interest shall be financed from the subscription fee. The obligation to pay the subscription fee applies to the owners of radio and TV sets. In that sense, the radio-television subscription fee is not a fee charged for a service (in the erroneous interpretation of Judge Ivosevic), but rather a means of financing the public interest provided for by Law. This means of financing is almost a universal one, since 98,9% of households in Serbia owns a TV set, according to data obtained from the Republic Statistics Institute's Survey on the Use of ICTs in 2011. A much more pressing and often neglected problem with the subscription fee and funding of the PSB is the issue of the reasonability of the business and the operations of these institutions and, generally speaking, the conformity of the means of financing thereof with state aid control regulations. We remind that, when the Media Strategy (adopted last September) was drafted, the most serious objections of the European Commission to the content of the Strategy concerned the non-conformity of the text with EC Communication on the Application of State Aid Rules to Public Service Broadcasting) from 2009. The Communication says that public service broadcasters are not comparable to public services in any other sector. There is no other service that is accessible to the majority of the population, while at the same time providing that much information and content and influencing both individuals and the public opinion. Broadcasting is, for a sizeable portion of the population, the most important source of information, which contributes the public debate and helps the citizens participate in the public life. In such a context, the independence of broadcasting is of paramount importance for the realization of freedom of expression. On top of that, regardless of how the PSB is financed (from the budget or from the subscription fee, with financial aid from the state or by writing-off its debts), each such measure constitutes state aid. If the latter undermines or threatens to undermine competition on the market, it is typically banned by state aid control regulations. The aforementioned EC Communication on the Application of State Aid Rules to Public Service Broadcasting defines the conditions under which state aid to PSBs may be allowed in the first place. One of such conditions is to have a precisely defined framework for what constitutes a public service broadcaster, so as to enable to clearly ascertain, for each particular activity of the institution discharging the role of a PSB, if it is part of the said framework or not. Furthermore, on top of being precisely defined and entrusted by an official binding act, the role of the public service

broadcaster must be performed transparently and under sufficient supervision, particularly when it comes to quality. Transparency requirements related to state aid also impose the necessity to separate the accounting for the operations of PSB institution within its PSB role and other activities of that institution outside of that framework. Furthermore, state aid must not exceed the real price of the service, meaning the PSB institutions are not overpaid, bearing in mind the commercial revenues they generate. Financial mechanisms are also needed to effectively control it. Finally, it is necessary to prevent the activities of these institutions that may undermine competition, such as dumping prices for advertising space and the like. In that sense, the issue of the subscription fee for radio and television is not in the absence of legal grounds or undermining the equality of citizens before the Law; the problem lies in the fact that the mandate of the PSB is not precisely defined; moreover, the operation of PSB institutions in Serbia is not transparent or effectively supervised; there is no protection from subsidizing commercial activities of these institutions with the funds intended for the functioning of the public service; we do not know the price of the PSB services and hence we do not know if they are being overpaid. Finally, there are no control mechanisms to prevent PSB from abusing their specific position on the market. A simple transition to budget financing (instead of the subscription fee) would not solve any of those problems. On the other hand, in the absence of a clearly defined mandate, supervision and transparent financing, the guarantees of editorial independence of PSB institutions will remain a dead letter on paper.

3. Law on State Aid Control

The Beta and FoNet news agencies called the State Aid Control Commission (SACC) to investigate each instance of state aid received by the public company "Tanjug News Agency" in the last two years. Beta and FoNet believe that state aid to Tanjug is undermining free market competition, which is in contravention of national laws and international documents. Two private agencies have requested the Commission to ascertain if the aid to Tanjug was lawfully allotted, whether it was permitted and if it was not, to introduce measures in order to reclaim the granted aid. Beta's and FoNet's request also cited the information obtained from the Ministry of Culture that Tanjug had been allotted 216.715.500 dinars of aid from the budget in 2010.

The Law on State Aid Control was adopted in 2009, with the aim of ensuring free competition on the market, as well as the transparency in allocating state aid. It defines state aid as each actual or potential public expenditure or lessened realization of public revenue placing a state aid beneficiary in a more favorable position on the market than his competitors, thus undermining

or threatening to undermine competition. The Law says that each instance of state aid undermining or threatening to undermine competition shall be illicit. Exceptionally, state aid shall be permitted if it is of a social nature and allocated to individual consumers, without discrimination on the basis of the origin of the goods/product constituting the aid, as well as if such aid is allocated in order to remove the harmful consequences caused by natural disasters or other contingencies. Another exception may be state aid allocated in order to improve the economic development of a particular area of Serbia with extremely low standard of living or high unemployment; remedy a serious disruption in the economy or realize a particular project of major significance for the Republic; improve the development of certain economic activities or economic areas in Serbia, provided that it does not seriously undermine or threaten to seriously undermine market competition; as well as in order to improve and preserve cultural heritage. The Law foresees that state aid control shall be conducted by a Commission, whose members are appointed by the Government. A request to the Commission to initiate a procedure of subsequent control, under the Law, may be submitted by any person with a legal interest. In that sense, the Beta and FoNet news agencies are eligible for submitting a request for subsequent control of state aid allocated to their market competitor – the state news agency Tanjug. If the Commission establishes a particular instance of state aid to be marred with irregularities, it will pass a conclusion with proposed measures and a deadline for remedying such irregularities. If the conclusion is not complied with, the Commission is authorized to pass a decision ordering the allotted funds constituting state aid to be repaid. The problems with the financing of Tanjug are almost identical to those in the case of RTS, as indicated in the previous segment of this Report concerning the enforcement of the Broadcasting Law, especially in relation to the TV subscription fee. The framework of public interest activities entrusted to the state news agency is vaguely defined. There is no transparent supervision of Tanjug's business operations or protection from subsidized commercial activities with the money intended for the performance of activities of public interest. The price of public interest activities performed by Tanjug is unknown; hence, we do not know if the state is overpaying Tanjug. The procedure of subsequent control of state aid allocated to Tanjug – if the Commission finds that there are grounds for having such a procedure – would be the first such procedure in the Serbian media sector.