

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS

1. *Public Information and Media Law and Electronic Media Law*

The media reforms have visible come to halt, one of the reasons being the lack of a vision of the state and disagreements as to the implementation of the most important items of the Strategy for the Development of the Public Information System in the Republic of Serbia, known in the public as the Media Strategy. After more than 6 months of working on the media laws and two months after the completion of the public debate about the Draft Public Information and Media Law, the Draft is yet to be tabled to the Parliament for the adoption. Meanwhile, the Draft Electronic Media Law did not even reach public debate phase. It seems that the government still doesn't have a clear picture of how to achieve some of the key requirements of the Media Strategy. First of all, postponing the adoption of new laws will result in postponing the privatization of the remaining media in public ownership. Secondly, it leads to problems in the implementation of the project-based financing concept for the media in 2014. The third problematic question concerns finding a sustainable model for financing the functions of public service broadcasters. If we are to believe the media coverage on this topic, it seems that it is the main stumbling block of the media reforms. From the statements of the highest government officials, one may conclude that they have given up the concept of financing public service broadcasters through subscription fees, at least for the time being. This is in direct contravention of the Media Strategy, which expressly provides for the subscription fee to be the main form of financing whereas it is only necessary to raise the collection rate. The financing of public service broadcasters from the budget is provided for by the Strategy only as a temporary and subsidiary possibility, until the abovementioned collection rate is raised to an acceptable level. However, in that period too, the former must be done in accordance with state aid control rules, which involve a clear definition of the function and obligations of the public service broadcaster, the proper oversight of the realization of the said function and obligations, transparent financial control, clear rules on the introduction of new services, a ban on overpayment (taking into account commercial revenues too), proportionality and market conduct that does not undermine competition regulation. Such commitments from the Strategy are fully in accordance with the Communication from the Commission on the application of State aid rules to Public Service Broadcasting 2009/C 257/01. Among other things, the Media Strategy lays down the principle of *balancing* of income from the subscription fee and commercial revenues as follows: when the subscription income reaches a level *sufficient for the realization of the basic functions of public service broadcasters*, the right to commercial revenues (primarily from advertising) of the public service broadcasters shall be narrowed down and restricted. The

latter is important from the standpoint of preserving the independence of the public service broadcaster and the equidistance from the biggest advertisers. That principle from the Media Strategy seems inapplicable if the subscription fee is scrapped altogether, while preserving independence of the public service broadcaster relative to the biggest advertisers is definitely an interest that should be overlooked.

The impression is that the media reforms are at a stage where one impetuous decision or deviation towards populism and demagoguery (instead of having a focus on public interest) could completely reverse the character of the coming changes. Such decision would be, for example, committing to budget financing of the public service broadcaster, shunning the aforementioned Communication of the EC. It could undermine the system envisaged by the Media Strategy, as well as the difficult equilibrium between conflicting interests of different stakeholders. On the other hand, there is doubt as to the existence of funds for such purposes in the state budget. Information reported by the media isn't reliable and detailed enough, but nine billion dollars are mentioned (slightly less than 90 million euros), that the public service broadcasters will receive in 12 monthly installments. First of all, it should be stressed that this number is pure speculation, according to publicly accessible data at least. What lacks is an analysis about the funds the public service broadcasters' need (separately the RTS and RTV) for financing their programming functions. Furthermore, there isn't either an analysis of the collectability of the subscription fee, which could potentially justify giving up such a system (which, in many countries, was established as the sole sustainable and stable solution for financing the programming functions of public service broadcaster. It isn't clear either why has the subscription fee been completely cancelled for a three-year period, although some funds had been collected from it after all. Let us repeat that the collectability, according to the current information, stands at around 30%, which is about 30 million euros. The revenues of public service broadcasters from advertising and other commercial activities shouldn't be overlooked either. Only when both types of revenues are added up, one may assess the effectiveness of the system of financing. On the other hand, if we assume that the 9 billion dinars the public service broadcasters need were estimated on the basis of their expenditures in the previous period, the said amount is perhaps unrealistically low, since the public service broadcasters, and RTS in particular, are lately getting away with defaulting on some of their responsibilities, such as the responsibilities towards collective organizations for the protection of copyright and related rights (SOKOJ, OFPBS and Pi); responsibilities stemming from the fees for the use of the radio-frequency spectrum (RATEL); and responsibilities stemming from the fees for broadcasting services (the public company Broadcasting Technology and Links). Furthermore, it is unclear if, when making the aforementioned 9 billion dinar estimate, the necessity to streamline the

operations and reducing the costs of public service broadcasters was considered at all. All this confirms the absence of a proper analysis prior to making the decision to cancel the subscription fee.

On the other hand, the shortcomings of budget financing are best visible on the example of the Spanish public service broadcaster. Since the introduction of new, commercial TV and radio programs in the 90s, RTVE had been constantly looking for a sustainable financing model. It is one of the few public service broadcasters in Europe that has state budget financing as its base financing model. That model proved to be fatal, since it did not withstand the “burden of the economic crisis” that hit the country. Although the Spanish public service broadcaster is much bigger than its Serbian counterparts (it also covers the channels intended for autonomous regions), there are certain common characteristics that make comparisons possible. The reform of public service broadcaster -related legislation in Spain took place due to the pressure from the European Commission, and particularly due to the hitherto possibility to politically influence the public service broadcaster. In the preamble of the new Law on public service broadcaster, three key components were put forward: guaranteed the independence of the public service broadcaster, optimal organization structure and a stable financing model, with the purpose of realizing the functions of the public service broadcaster in the most efficient way. The financing model provided for by that Law is based on three main types of revenues: revenues from public funds (the budget), from commercial activities and from advertising. Advertising was completely banned in 2010 and due to the economic downturn, public service broadcaster slipped to the edge of bankruptcy and never recovered. This example makes budget financing looking a far less reliable model than subscription, in particular due to the possibility of political influence on the editorial policy, as well as due to the vulnerability relative to the general economic developments in the country affecting the state of the budget. To sum up, we can identify several key problems regarding budget financing, namely:

- The best examples from European practice mainly involve budget financing as auxiliary, for very specific purposes with separate accounting for – this is the concept put forward in our Media Strategy;
- Those EU countries that financed their public service broadcaster from the budget were under special supervision by the EC, which imposed them many obligations concerning the organizational separation of various parts of public service broadcaster, laying off a considerable number of employees, as well as precisely separation of revenues generated on different grounds. The difficulties these public service broadcasters

suffered confirmed that budget financing is not that of a stable financing source, as it may appear at first glance;

- Practice has shown subscription-based financing to be the most effective and sustainable financing model for the public service broadcaster and that the government in Serbia might be making a big mistake by failing to at least try to improve the existing model, instead of revoking it,
- Once they scrap the subscription fee as a financing model, the latter is very difficult to restore: some government officials have already announced that it will be revoked next autumn, which already has a destimulating effect on the collection rate and threatens the financial survival of public service broadcasters as early as this summer;
- Budget financing of public service broadcasters increases the probability of political pressure on editorial policy, especially in the absence of control mechanisms, accounting separation of revenues generated on different grounds and the control of the independent regulator, state and external audit.