

## The EU Audiovisual Media Services Directive and its transposition into national law – a comparative study of the 27 Member States

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### Member State: Bulgaria

#### Act on Amendment of the Radio and Television Act

#### Important Notice

This text is an unofficial translation conducted at the University of Luxembourg in the framework of a research project on the transposition of the “**Audiovisual Media Services Directive**” in the Member States of the European Union.

The original legal acts which Member States notified to the European Commission as national execution measures were retrieved from official national databases. In order to focus on the core of the research project, several national legal acts have been shortened to include only those provisions of relevance for the study. Subsequently, the modified acts were translated by a translation agency external to the university.

The translations only serve the purpose of being an information source; there is no guarantee whatsoever that the translations correctly correspond to the original versions of the laws. Therefore, evidently, the texts have no legal value. The original, as well as the translated version of the legal acts, are available at: [www.medialaw.lu](http://www.medialaw.lu), where additional information on the comparative study may be found.

## **Member State: Bulgaria**

### **Act on Amendment of the Radio and Television Act**

**Official Journal: Държавен вестник , number: 12**

Order:

To be promulgated in the State Gazette the “Act on Amendment of the Radio and Television Act”, adopted by the XLlth General Assembly on 28 January 2010

Issued in Sofia on February 8, 2010

Act:

on amendment of the Radio and Television Act (promulgated in the State Gazette, issue 138/ 1998.; Decision no. 10 of the Constitutional Court of 1999 – issue 60/1999; am. issue 81/1999, issue 79/2000, issues 96 and 112/2001, issues 77 and 120/2002, issues 99 and 114/ 2003, issues 99 and 115 of 2004, issues 88, 93 and 105 of 2005, issues 21, 34, 70, 105 and 108/2006, issues 10, 41, 53 and 113 of 2007, issue 110/ 2008 and issues 14, 37, 42 and 99/2009)

#### **Section 1**

Art. 1 shall be amended as follows:

“Art. 1. This Act shall regulate media services provided by media service providers under the jurisdiction of the Republic of Bulgaria.”

#### **Section 2**

Art. 2 shall be amended as follows:

“Art. 2. (1) Within the meaning of this act media services shall consist of audiovisual media services and radio-services.

(2) Audiovisual media services/ radio services shall consist of:

1. Services as specified under art. 56 and 57 of the Treaty on Functioning of the European Union (OB, C 115/47 dated 9 May 2008), within the scope of editorial responsibility for media services, whose main objective is to provide audiovisual/ radio broadcastings aimed to

inform, entertain or educate the public at large via electronic communication networks within the meaning of the Electronic Communications Act.;

2. Audiovisual commercial communications/ a commercial communication as part of a radio service under p. 1.

(3) An audiovisual broadcasting is a series of moving images accompanied, or not accompanied by sound, representing a self-contained part of

a broadcasting scheme or a catalogue established by a provider of audiovisual media services whose format is comparable to the format and content of a television broadcasting.

(4) A radio transmission is a self-contained part of the broadcast program or catalogue of a radio program, established by a provider of radio services.

(5) The provisions of this act are not applicable to:

1. media services that are not aimed for informing the public; i.e., not intended for a substantial proportion of the auditorium;

2. activities which in principle are non-profit and which are not competitive to television as regards their broadcasting program;

3. the personal correspondence of a restricted number of addressees via electronic communication networks;

4. all services whose main objective is not the provision of broadcastings, i.e., when the audiovisual content has been included in the service accidentally and is not the main objective of the service;

5. games of chance where money are put at stake, including lottery, bidding and other forms of gambling, as well as online games and search engines, but not broadcastings exclusively focused on gambling or games of chance;

6. electronic versions of newspapers and magazines;

7. Independent text services.”

### **Section 3**

Art. 3 shall be amended as follows:

“Art. 3. (1) Media services are linear and non-linear:

(2) Linear media services are provided by media service providers for parallel watching/listening of broadcastings based on the broadcasting scheme.

(3) Non-linear (on-demand media services) are the media services provided by a media services provider for watching/ listening to broadcasts

at a moment specified by the user upon his personal request based on the provider's media services catalogue.

(4) Simultaneous watching/ listening also includes pretended simultaneous watching/listening as a result of differences between transmission and reception of the broadcasting due to technical reasons, typical of the broadcasting process. “

## **Section 4**

Art. 4 shall be amended as follows:

“Art. 4. (1) A media services provider is a physical person – a sole trader or a legal person who has editorial responsibility for the selection and content of the media service and defines the way in which it is organised. Editorial responsibility consists of exercising effective control over the selection of broadcastings and their arrangement, both chronologically – for the provision of linear services and as part of a catalogue - for customised media services.

(2) A radio- or television operator is a provider of linear radio/ television media services (programmes) based on the broadcasting program.

(3) Persons that simply distribute programs, for which third parties carry editorial responsibility, are not providers of media services.”

## **Section 5**

Art. 5 shall be amended as follows:

“Art. 5. (1) This law shall guarantee the independence of media services providers and their activities from political and economic intervention.

(2) Media services cannot be censored in any way.

(3) The freedom of reception shall be guaranteed and the re-transmission of media services by other member-countries of the European Union shall not be restricted on any grounds within the scope of media services.

(4) Para. 3 may temporarily not be applicable in respect of broadcastings from other EU member-countries, which violate Art. 17, paras 2 and 3 with respect to children.

(5) Para. 3 may temporarily not be applicable in respect of media services requested by another EU member-country, if the restrictions are required for one of the following reasons: maintaining public order, in particular, prevention, investigation, revelation and prosecution of crimes, including protection of children and fight against the instigation of hatred on basis of race, gender, religion, or nationality or hurting the human dignity of people;

2. protection of public health;

3. guaranteeing public security, including national security and defense;

4. protection of consumers, including investors.

(6) In the cases under para. 5 the restrictions should be:

1. enforced upon request with respect to a particular media service which has an adverse effect on the objectives outlined under para. 5 or may seriously damage those objectives;

2. proportionate to the objectives.”

## **Section 6**

Art. 6 shall be amended as follows:

“Art. 6. (1) The providers of media services are public and private.

(2) Public providers of media services:

1. distribute political, economic, cultural, scientific, educational and other types of socially significant information;
2. provide access to national and international cultural artifacts and publicise scientific and technical achievements by distributing Bulgarian and foreign educational and cultural programs and broadcastings for all age groups;
3. support through their broadcasting programs national interests, universal cultural values, national science, the education and culture of all Bulgarian citizens irrespective of their ethnic background;
4. encourage the writing of books by Bulgarian authors;
5. support Bulgarian performers.

(3) The Bulgarian National Radio (BNR) and the Bulgarian National Television (BNT) are national providers of radio services, respectively, audiovisual media services that:

1. provide media services for all citizens of the Republic of Bulgaria;
  2. support the development and publicizing of the Bulgarian language and culture as well as the culture and language of citizens in accordance with their ethnic background;
  3. provide by means of their media services access to the national and European cultural heritage;
  4. include broadcastings aimed to inform, educate and entertain;
  5. apply the new information technologies;
  6. reflect the range of ideas and beliefs among the public through pluralism of viewpoints in all news and current affairs broadcastings with political and economic subject matter;
  7. support understanding and tolerance in human relations;
  8. inform citizens of the state's official position on important issues of public life;
- (4) Media services providers who are not licensed/ registered as public are private.”

## **Section 7**

Art. 7 shall be amended as follows:

“Art. 7. (1) Providers of audiovisual media services provide users with easy, direct and permanent access to the following up-to-date information:

1. the name of the provider of media services, headquarters and management address, e-mail address and website, telephone for contacts;
2. information about the Council for Electronic Media, headquarters and management address, e-mail address and website, telephone for contacts.

(2) Providers of audiovisual media services shall provide the information under para. 1 on their website.”

## **Section 8**

Art. 8 shall be amended as follows:

“Art. 8. (1) Media services must not inspire hatred based on race, gender, religion or nationality.

(2) Providers of audiovisual media services are urged to guarantee that their services will gradually become accessible to people with poor eyesight or hearing.

(3) Providers of radio services are urged to provide in a suitable manner programs and broadcastings online, accessible to people with poor eyesight or hearing.”

## **Section 9**

Art. 9 shall be amended as follows:

“Art. 9. (1) Providers of media services shall distribute programs and broadcastings only with copyright and related rights settled in advance.

(2) Providers of audiovisual media services shall not distribute cinematographic works in periods other than those agreed with the right-holders.

(3) Providers of media services shall submit each year upon request to the Council for Electronic Media proof of the commercial and ceded copyright for protected works in their broadcasting programs and for ceded related rights for foreign programs provided for distribution.

(4) Within one month of receiving the data the Council for Electronic Media shall process the information under para. 3 and forward it to the respective officials in charge in accordance with the Copyright and Related Rights Act.

(5) When in part of a broadcasting the broadcasting of another radio or television operator has been used this should be mentioned explicitly and in line with the Copyright and Related Rights Act.”

## **Section 10**

The following amendments shall be made to Art. 10:

1. In para. 1:

a) in the text before p.1 the words “radio and television operators” shall be replaced with “the providers of media services”;

b) in p. 7 the expression “in the programs” shall be added”.

2. Paras 2, 3 and 4 shall be repealed.

## **Section 11**

The following amendments shall be made to Art. 11:

1. In para. 1 the words “radio and television broadcastings” shall be replaced with “media services”.

2. In para. 2 the words “radio and television operators” shall be replaced with “media service providers” and the words “radio and television operators” shall be replaced with “media service providers”.

3. Para. 3 shall be amended as follows:

“(3) Open criticism against media service providers by their employees does not constitute disloyalty to employer.”

4. In para. 4 the words “radio and television operators” shall be replaced with “media service providers”.

5. In para. 5 the words “radio and television operators” shall be replaced with “media service providers”.

6. In para. 6:

a) in p. 1 the word “securing” shall be replaced with “protection”;

b) in p. 3 the words “radio and television operators” shall be replaced with “media service providers”;

c) in p. 5 the words “for creation of the programs” shall be deleted.

## **Section 12**

The following amendments shall be made to art. 12:

1. In para. 1 the words “radio and television operators” shall be deleted.

2. In para. 2:

a) in the text before p. 1 the words “to radio and television operators” shall be deleted;

b) in p. 4 the word “re-transmit” shall be replaced with “transmit”.

## **Section 13**

The following amendments shall be made to art. 13:

1. In paras 1, 2 and 3 the words “radio and television operators” shall be replaced with “Media service providers”.

2. Para. 4 shall be repealed.

## **Section 14**

The following amendments shall be made to art. 14:

1. In para. 1 the words “radio and television operators” shall be replaced with “Linear media service providers”.

2. In para. 2 the words “the radio and television operator” shall be replaced with “the media service provider”.

3. In para. 4 the words “radio and television operators” shall be replaced with “media service providers”.

## **Section 15**

The following amendments shall be made to art. 15:

1. In para. 1 the words “the radio and television operators” shall be replaced with “Media service providers”.
2. In para. 2 the word “operator” shall be replaced with “media services provider”.
3. In para. 3 the words “radio and television operators” shall be replaced with “the Media service providers”.

## **Section 16**

The following amendments shall be made to art. 16:

1. In para. 1 и 2 the words “radio and television operators” shall be replaced with “the Media service providers”.
2. In para. 3 the words “radio and television operators” shall be replaced with “the media service providers”.

## **Section 17**

The following amendments shall be made to art. 17:

1. Para. 1 shall be amended as follows:

“(1) The media service providers shall bear responsibility for the content of media services.”

2. The words “radio and television operators” in para. 2 shall be replaced with “media service providers” and the words “juveniles and minors” shall be replaced with “children”.

3. Para. 3 shall be amended as follows:

“(3) The provisions of para. 2 concerning children shall not apply for:

1. coded broadcastings;
2. broadcastings transmitted between 23,00 and 6,00 o'clock specially identified with an audio or audiovisual sign before the start of the program, or identified by means of a visual sign present throughout the broadcasting, which shall not exclude the media service provider's responsibility for observing the principles of art. 10 throughout the duration of the broadcasting.”

4. In para. 4:

a) in the text before p. 1 the words “the radio and television operators” shall be replaced with “the media service providers”;

b) p. 4 shall be repealed.

5. Para. 7 shall be repealed.

## **Section 18**

The following amendments shall be made to art. 18:

1. The following amendments shall be made to paras 1 and 2:

“(1) Persons and state and municipal bodies, offended in linear media services, in which they did not participate personally or via a representative are entitled to a response.

(2) Within a 7-day term of the broadcasting’s transmission the persons or bodies under para. 1 are entitled to require the respective operator in written form to transmit their response. The request must list the disputed assertions as well as the date and time of the broadcasting.”

2. In para. 3 the words “the radio and television operator” shall be replaced with “the operator”.

## **Section 19**

Art. 19 shall be amended as follows:

“Art. 19. (1) On-demand media services that may seriously damage the physical, mental or moral development of children shall only be presented in such a manner as to guarantee that the children would not normally listen to or watch such on-demand media services.

(2) The creation and access to European works in on-demand audiovisual media services is encouraged, when this is feasible and with the proper resources.

(3) The on-demand audiovisual media service providers use technical and program resources for accessible and appealing presentation of

European works in the program catalogue, provided as part of the audiovisual media services.

(4) The Council for Electronic Media shall prepare annual references about European works in on-demand audiovisual media services and shall publish them as part of its annual report. The references shall provide information about the financial contribution of these services in the creation and acquisition of rights in respect of European works, the percentage of European works in the audiovisual media services catalogue and the actual consumption of the European works offered by means of those services.”

## **Section 20**

Arts 19a, 19b and 19c shall be added to chapter 1:

“Art. 19a. (1) At least 50 percent of the overall annual transmission time of TV broadcast, excluding news and sports broadcastings and TV games, advertisements, teletext and TV market shall be devoted to European works where this is possible.

(2) At least 12 percent of the transmission time under para. 1 must be devoted to European works, created by independent producers. The fulfillment of this quota shall not include replays.

(3) The proportion under para. 2 should be achieved gradually by allocating means for a sufficient quantity of new works that should be distributed no later than 5 years after their creation.

(4) The creation and distribution of European works in radio programs is encouraged.

(5) The requirements of paras 1, 2 and 3 shall not apply for programs aimed at a local public and shall be distributed by one operator which is not part of the national network.

(6) The Council for Electronic Media shall prepare annual reports for the European works broadcast in linear audiovisual media services and shall publish them as part of its annual report.

Art. 19b. A radio or a television operator holding an exclusive right over a major event is obliged to provide access to the other radio and television operators for its coverage in accordance with the Bulgaria's obligations under international treaties.

Art. 19c. (1) For the purpose of short news reports each TV operator based in the European Union is entitled to access to access on a fair, sensible and non-discriminatory basis to events of broad public interest, which are broadcast on exclusive grounds by a television operator under the jurisdiction of the Republic of Bulgaria. The access is first required from an operator under the same jurisdiction, if any.

(2) The provision of para. 1 shall be applied, respectively, also for radio operators under the jurisdiction of the Republic of Bulgaria.

(3) Radio and television operators have the right to choose freely short transmission fragments from the broadcastings of the operator which owns the right; whereas with audiovisual media services the name or the logo of the operator with exclusive rights should be indicated and with radio services - the source must be indicated in an appropriate manner.

(4) Short fragments are only used in topical current affairs and news productions within a period not longer than 24 hours as of the end of the event and can be used in on-demand media services only if the same broadcasting is also available in a recording by the same media services provider.

(5) The right of coverage also includes the right of direct access to the scene of the event, except where it is practically impossible and the right to a recording which can only be used for the creation of material with duration of no more than 90 seconds.

(6) The right of coverage is free. Compensation can be provided for by exception, when it does not exceed direct additional charges for providing the access.

(7) No repeated use of the coverage is allowed except for marking thematic events and for surveys and the reports can be preserved in the archives of the media services provider. When a short coverage has been created by means of obtaining access to the event, the original material of the coverage's authors must be destroyed after it has been used and the operator with exclusive rights should be informed about that."

## **Section 21**

The following amendments shall be made to art. 20:

1. Para. 1 shall be amended as follows:

"(1) The Council for Electronic Media is an independent specialised body regulating media services in the cases and in accordance with the procedure envisaged in this act."

2. In para. 2 the words "radio and television operators" shall be replaced with "the media service providers".

## **Section 22**

The following amendments shall be made to art. 27, para. 1:

1. In p. 4 the words “radio and television operators” shall be replaced with “media service providers”.
2. P. 5 shall be amended as follows:  
“5. to be consultants or members of management, control or supervision bodies of non-profit organizations that are media service providers;”.
3. In p. 6 the words “radio and television operator” shall be replaced with “media services provider”.

## **Section 23**

In Art. 28a, para. 2 p. 1 and 2 shall be amended as follows:

- “1. provide media services within the meaning of this act;
2. be appointed to the supervisory or management bodies of media service providers, enterprises providing electronic communication services or legal persons with registered activity “advertising” or providing advertising services.”

## **Section 24**

In Art. 31, para. 2 p. 4 shall be amended as follows:

- “4. maintains the connections of the Council for Electronic Media with the state authorities and the media service providers, as well as with international organisations in the sphere of media services,”.

## **Section 25**

The following amendments shall be made to Art. 32:

1. Para. 1:
  - a) in p.1 the words “the radio and television operators” shall be replaced with “the media service providers”;
  - b) in p. 4 the words “radio and television” shall be replaced with “the media services”;
  - c) in p. 7 the words “the radio and television operators” shall be replaced with “the media service providers” and the word “programs” shall be replaced with “media services”;
  - d) in p. 10 the words “radio and television activity” shall be replaced with “the media services”;
  - e) p 12 shall be amended as follows:  
“12. can issue instructions to media service providers for observing the requirements of art. 33;”;
  - f) p. 16 shall be amended as follows:

“16. keeps a public register of:

- a) radio and television programs, transmitted via cable electronic communication networks, satellite and electronic communication networks for ground digital radio transmission;
- b) radio and television programs, transmitted via existing or new electronic communication networks for ground analogue radio transmission;
- c) on-demand media services;
- d) enterprises distributing Bulgarian and international programs”;
- e) in p. 18 the words “radio and television activity” shall be replaced with “the media services”.

2. Para. 4 shall be amended as follows:

“(4) The Council for Electronic Media and media service providers shall annually conclude agreements for the protection of children from content aimed at harming their physical, mental, and moral development, which the council sends within a 7-day term of its signing to the State Agency for Child Protection.”

3. A para. 5 is added, stating as follows:

“(5) The Council for Electronic Media shall present to the European Commission and independent regulatory bodies of EU member-countries in the sphere of media services information required in connection with the application of Directive 89/552/EEC of the Council of 3 October 1989 with regard to the coordination of some provisions in the law, regulation and administrative action of the member-countries concerning television activity.”

## **Section 26**

Art. 33 shall be amended as follows:

“Art. 33. The Council for Electronic Media shall exercise control over the activity of the media service providers only with respect to:

1. observing the principles of art. 10 and the proportion under art. 19a, paras 1 and 2;
2. observing the requirements of art. 6, paras 2 and 3 and art. 17, para. 2;
3. coverage of the election of state bodies and local governance bodies;
4. observing requirements concerning commercial messages;
5. observing the norms regulating charity, sponsorship and product positioning;
6. observing media services secrets envisaged in the law;
7. observing the requirements concerning broadcastings targeting children;
8. information about the decisions of legal and other state bodies in the cases envisaged by the law;
9. protection of the rights of consumers;
10. the technical quality of the broadcastings and programs;
11. observing the limitations envisaged in the law, licenses and effective international treaties to which the Republic of Bulgaria is a party;

12. observing the conditions of issued licenses and registrations.”

### **Section 27**

In art. 34, para. 2 a second sentence is added: “The project is also going to be published on the website of the Council for Electronic Media no later than 24 hours before the meeting.”

### **Section 28**

The following amendments shall be made to art. 35:

1. The original text will form para. 1 where the second sentence shall be amended as follows: “The decisions shall be taken personally and in the presence of the incumbents by open vote.”

2. New paras 2 and 3 are included:

“(2) The meetings of the Council for Electronic Media are open. The meeting may hold a closed session on certain points of the agenda whenever information protected by the law needs to be discussed in order to take a decision.

(3) The Council for Electronic Media shall publicly announce the decisions taken with respect to the fulfillment of its capacities, including the manner in which the law is applied, as well as the grounds for changing its practices. Within a three-day term the full reports from the sessions shall be published on the website of the Council for Electronic Media. The decisions of the Council for Electronic Media are motivated.”

### **Section 29**

In Art. 36 p. 4 shall be amended as follows:

“4. cooperation with the state authorities, the media service providers and non-profit organizations whose activity is in the sphere of media services or protection of copyright and related rights;”.

### **Section 30**

Art 39 shall be amended as follows:

“Art. 39. (1) The Council for Electronic Media shall submit for discussion to Parliament a report on its activity no later than 31 October for the first six-month period and 31 March for the second six-month period of the preceding year and shall publish it on its internet website.

(2) The Council for Electronic Media issues a monthly newsletter where all decisions and the latest articles on the problems of audiovisual culture are published, as well as results from the monitoring of media service providers and public opinion surveys requested by the Council for Electronic Media, acts issued in order to establish administrative violations, criminal ordinances and court decisions issued as a result of challenging the acts. The newsletter is published on the internet website of the Council for Electronic Media.”

### **Section 31**

Art. 43 is repealed.

### **Section 32**

The following amendments are made to Art. 45:

1. In para. 1 the words “radio and television” shall be replaced with “media”.
2. In para. 3 the words “electronic communication network” shall be replaced with “electronic communication networks”.

### **Section 33**

In art. 46 para. 2 shall be amended as follows:

“(2) The Bulgarian National Radio and Bulgarian National Television may sign contracts with other media service providers for transmission, re-transmission, or exchange of broadcastings and programs.”

### **Section 34**

The following amendments shall be made to Art. 47:

1. In para. 1 the word “external” shall be replaced with “independent”.
2. In para. 3 the word “external” shall be replaced with “independent”.
3. In para. 4 the word “external” shall be replaced with “independent”.

### **Section 35**

Art. 47a shall be repealed.

### **Section 36**

In Art. 52, para. 4 the words “as a public television operator” shall be deleted.

### **Section 37**

In Art. 62, p. 2 the word “external” shall be replaced with “independent”.

### **Section 38**

The title of chapter four shall be changed as follows: “Commercial messages”.

### **Section 39**

Art. 72 shall be amended as follows:

“Art. 72. Commercial messages are audiovisual commercial messages and commercial messages as part of radio services.”

## **Section 40**

Art. 73 shall be amended as follows:

“Art. 73. (1) Audiovisual commercial messages are images, with or without sound. Designed to advertise, directly or indirectly, the goods, services or reputation of a physical or legal person carrying out economic activity, or assist in publicizing a cause or an idea, or create another effect as desired by the advertiser, accompanying or included in a particular broadcasting against payment, or other similar consideration, or with the aim of self-promotion.

(2) Commercial messages as part of radio services are sound messages designed to advertise directly or indirectly, the goods, services or reputation of a physical or legal person carrying out economic activity, or assist in the publicizing of a cause or an idea, or create another effect as desired by the advertiser, accompanying or included in a particular broadcasting against payment, or other similar consideration, or with the aim of self-promotion.

## **Section 41**

Art. 74 shall be amended as follows:

“Art. 74. (1) Advertisement is a form of commercial message, accompanying or included in an audiovisual or a radio broadcasting against payment, or other similar consideration, or with the aim of self-promotion of a public or private enterprise or a natural person in connection with commercial, economic activity, a craft or profession with the objective to publicise the provision of goods and services, including immoveable property, or rights and obligations, or to assist in the publicizing of a cause or an idea, or create another effect as desired by the advertiser, accompanying or included in a particular broadcasting against payment.

(2) Sponsorship is a form of commercial message, consisting of contribution by a natural or legal person, not occupied with the provision of media services or the creation of audio/audiovisual works, to the financing of media services or broadcastings with the objective to publicise its name, trademark, reputation, activity, or its products.

(3) A television or a radio market is a form of commercial message, consisting in each direct proposal to the public with the objective to provide goods or services, including immoveable property, rights and obligations in an audiovisual broadcasting or a radio broadcasting against payment.

(4) Product positioning is a form of commercial message, consisting in the inclusion or mentioning of a product, service or a trademark in the broadcasting against payment or other type of consideration.”

## **Section 42**

The heading “Section II Advertising” shall be deleted.

### **Section 43**

Art. 75 shall be amended as follows:

“Art. 75. (1) Commercial messages should be easily recognizable as such. Hidden commercial messages are prohibited.

(2) A hidden commercial message is the presentation by means of words, sound or images of goods, services, trade names, trademarks or the activities of a goods manufacturer or service provider in broadcastings when with such a presentation the media service provider aims to publicise an item and when it could mislead the public regarding its nature, especially when this has been made against payment or similar compensation.

(3) Producers of goods and service providers cannot manipulate editorial content.

(4) Commercial messages cannot make use of any techniques having an effect over the subconsciousness. The techniques for affecting the subconsciousness are indirect methods which are not identified as commercial messages and cannot be recognised by the public as such, but can shape a subconscious psychological reaction and attitude among the public towards the presented goods and services.

(5) Commercial messages must not:

1. infringe upon human dignity;
2. include or stimulate any acts of discrimination whatsoever, based on sex, race, or ethnical background, nationality, religion or beliefs, disability, age or sexual orientation;
3. encourage behavior which threatens health or security;
4. encourage behavior which can seriously affect environmental protection.

(6) All kinds of commercial messages about cigarettes and tobacco products are prohibited.

(7) Commercial messages about alcoholic drinks cannot be targeted at children and must not encourage the excessive use of such beverages.

(8) Commercial messages about medical products provided under prescription are prohibited, as well as medical products designed for treatment prescribed by a doctor, with the exception of cases under art. 248 of the Law on medical products in human medicine.

(9) Commercial messages must not:

1. create any danger to children’s physical or moral detriment;
2. influence children directly to purchase or rent a product or service, making use of their inexperience or trustfulness;
3. encourage children to persuade their parents or other people to purchase the advertised goods or services;
4. abuse the special trust children have in their parents, teachers or other people;
5. show children in dangerous situations without a reason.”

### **Section 44**

Art. 76 shall be amended as follows:

“Art. 76. (1) Media service providers shall prepare as part of their Code of Ethics rules concerning commercial messages, accompanying or constituting a part of children’s broadcastings for foods or beverages, containing ingredients and substances with a nutritional or physiological effect, in particular those containing fats, fatty acids, salt/sodium and sugar, whose excessive use in the nutritional regime is not recommendable.

(2) Media service providers are obliged to observe the Ethical Code of Bulgarian media, developed by the Foundation “National Council on

Ethical Journalism” and the national ethical rules for advertising and commercial communication, elaborated by the organization “National Association on Self-regulation”.”

## **Section 45**

Art. 77 shall be amended as follows:

“Art. 77. The distribution of commercial messages including pornography or instigating violence and disrespect for human dignity as well as behavior which constitutes disturbance of public order and established public norms is prohibited. Commercial messages with erotic content targeting children, or with the participation of children are prohibited.”

## **Section 46**

Art. 78 shall be amended as follows:

“Art. 78. Media service providers shall arrange for the inclusion of commercial messages into media services by means of written agreements.”

## **Section 47**

Art. 79 shall be amended as follows:

“Art. 79. Media service providers shall assist the Council for Electronic Media in the strict observation of the law whereas upon a motivated request they should provide the required data and documents for regulatory purposes.”

## **Section 48**

Art. 80 shall be amended as follows:

“Art. 80. (1) The Bulgarian coat-of-arms and the national flag and hymn cannot be used in commercial messages, as well as the voices and photos of practicing journalists – news presenters.

(2) The persons under para. 1 can take part in publicizing a cause or an idea.”

## **Section 49**

Art. 81 shall be amended as follows:

“Art. 81. Commercial messages about goods and services whose production or trading are subject to a license regime in accordance with art. 9,

para. 1, p 2 of the Law on Limitation of Administrative Regulation and Administrative Control over Economic Activity, or for whose advertisement

a permit is required, can be included in media services only after the presentation of the respective license or permit.”

## **Section 50**

A new section is added: Section II Sponsorship”.

## **Section 51**

Art. 82 shall be amended as follows:

“Art. 82. (1) Sponsored media services or broadcastings shall meet the following requirements:

1. their content; for broadcasting programs – their program scheme can under no conditions be influenced in a way as to affect their responsibility and editorial independence of the medial service provider;

2. they cannot directly encourage the purchase or renting of goods or services, especially by mentioning these goods and services in the broadcastings;

3. the audience should be explicitly informed about the existence of a sponsorship agreement;

4. they should be clearly recognizable as such by virtue of the name, logo and/or other sign of the sponsor, such as mentioning his products or services or their characteristic mark in a suitable manner at the start, during, or at the end of the broadcastings.

(2) The media services or broadcastings cannot be sponsored by persons whose main activity is the production of or trade in cigarettes or other tobacco products.

(3) In sponsoring media services or broadcastings by producers or traders in medical products, or by medical establishments, the name or trademark of the sponsor can be advertised, while advertising of specific medical products which are only available by doctor’s prescription, or medical treatment that is assigned only by doctor’s prescription, is prohibited.

(4) News and current affairs broadcastings cannot be sponsored.

(5) Political parties and organizations, as well as religious organizations cannot sponsor broadcasts.

(6) It is prohibited to show the logo of a sponsor in a children’s or religious broadcastings.”

## **Section 52**

A new heading is added “Section III Product positioning”.

## **Section 53**

Art. 83 shall be amended as follows:

“Art. 83. (1) Product positioning in the news, religious broadcasts and audiovisual media services and services by public providers is prohibited.

(2) Product positioning in children’s productions, including productions under para. 3 is prohibited.

(3) Product positioning is allowed in cinematographic works, films and TV series, created for audiovisual media services, in sports and entertainment broadcasts, sports and entertainment programs, as well as other broadcastings which are not expressly mentioned in para. 1.

Product positioning in the broadcasting schemes of public providers is allowed in cinematographic works, films and TV series, created for audiovisual media services.

(4) Cases where the inclusion of a product or a service in a particular broadcasting has not been made against payment, but has been done in order to provide the broadcasting with stage property, presents, etc., and the respective products and services are not of considerable value, is not treated as product positioning.

(5) Considerable value within the meaning of para. 4 is the value that exceeds 5 times the average value of commercial messages, broadcast in the respective production, in accordance with the announced price list of the respective media service provider.

(6) Providers are allowed to announce in an appropriate manner the provision of goods and services under para. 4 in the titles of the production.”

## **Section 54**

Art. 84 shall be amended as follows:

“Art. 84. (1) Productions with product positioning must respond to the following requirements:

1. their content and as to broadcastings - their arrangement within the broadcasting scheme cannot be influenced in any way as to infringe the responsibility and editorial independence of the media services supplier;

2. they cannot openly encourage the purchase or renting of goods and services, especially by explicitly advertising the mentioned goods and services expressly;

3. they cannot bring forward the respective product without a reason;

4. the audience must be explicitly informed about product positioning.

(2) Productions including product positioning must feature the respective identification at the beginning and end of the production as well as after advertisement breaks in order to avoid the audience getting confused. This requirement shall not apply to productions that have not been created or ordered by the media service provider itself or a related person.

(3) The productions must not include positioning of:

1. cigarettes or tobacco products or positioning of similar products and enterprises whose main activity is the production or trading in cigarettes or other tobacco products;

2. specific medications available only by doctor’s prescription, or treatment assigned only by doctor’s prescription.”

## **Section 55**

A new section called “Section IV Advertising and market in TV programs” is added.

## **Section 56**

Art.85 shall be amended as follows:

“Art. 85. (1) Advertising and teleshopping must be easily recognizable and must stand out from editorial content.

(2) Advertising and the TV shopping must be easily distinguishable from the other sections of the broadcasting by visual and/or sound and/or special means without thereby limiting the use of new advertising techniques.

(3) Single advertising spots and TV market spots, apart from cases of broadcasting sports events, are an exception.”

## **Section 57**

Art. 86 shall be amended as follows:

“Art. 86. (1) When advertising and TV market spots are inserted into the broadcastings they must not affect the comprehensiveness of the broadcastings in view of natural breaks, their nature and duration and the rights of the right-bearers.

(2) Films created for the television (with the exception of separate episodes, series and documentaries), cinematographic works and news broadcastings can be interrupted by advertisements and/or TV shopping spots once in each period with program duration of at least 30 minutes.

(3) Children’s productions can be interrupted by advertising spots or teleshopping spots once in a period with program duration of at least 30 minutes, provided that the production’s duration is more than 30 minutes.

(4) The broadcasting of advertisements or teleshopping spots is not allowed during national celebrations and religious ceremonies.

(5) No paid reports are allowed in news spots.”

## **Section 58**

Art. 87 shall be amended as follows:

“Art. 87. TV shopping of medical products for whose application a permit is required under the Law on medical products in human medicine is prohibited as well as TV shopping of medical activities.”

## **Section 59**

Art. 88 shall be amended as follows:

“Art. 88. The advertising and TV shopping of alcoholic beverages must not:

1. be targeted especially at children, or, in particular, represent children consuming such beverages;
2. create an association between the use of alcohol and higher achievements or the driving of motor vehicles;
3. make the impression that the use of alcohol contributes to social or sexual success;
4. contain assertions that alcohol has therapeutic properties or a stimulating or soothing effect, or that it can solve personal conflicts;
5. encourage the excessive use of alcoholic beverages or represent abstention or moderate consumption from a negative angle;
6. stress that the high alcoholic content is a positive quality of beverages.”

### **Section 60**

Art. 89 shall be amended as follows:

“Art. 89. (1) The portion of advertising spots and TV shopping spots in a given one-hour period cannot exceed 12 minutes.

(2) Para. 1 does not apply for messages of the operator in connection with his own schedules, productions and additional products, related

to those broadcastings, promotion of European films, as well as appeals for charity and public welfare causes.”

### **Section 61**

Art. 90 shall be amended as follows:

“Art. 90. (1) The total duration of advertising spots in each separate broadcasting cannot exceed:

1. for the Bulgarian National Television – 15 minutes in a twenty-four hours and 4 minutes in one hour;

2. for the Bulgarian National Radio – 6 minutes an hour.

(2) The Bulgarian National Television is entitled to use up to a third of the overall advertising time in a twenty-four hour period in the time zone 19,00 - 22,00 hrs

(3) In the broadcasting schedules of the Bulgarian National Radio and the Bulgarian National Television, designed for regional coverage, the overall duration of advertising spots cannot exceed 6 minutes per hour.

(4) The limitations under para. 1, p 1 and 2 shall not apply for advertisements included in broadcastings while covering cultural, arts and sports events of national and international significance. In this case the general provisions concerning the duration of advertising spots shall apply.”

### **Section 62**

Art. 91 shall be amended as follows:

“Art. 91. TV shopping spots must be clearly recognizable through visual and sound effects and their duration cannot exceed 15 minutes.”

### **Section 63**

Art. 92 shall be amended as follows:

“Art. 92. (1) The provisions of Sections I, II and III shall apply, respectively, for television programs dedicated exclusively to advertising and

teleshopping as well as for TV broadcastings aimed at self-promotion whereas the provisions shall be interpreted and applied in accordance with the nature and characteristic features of these broadcastings.

(2) The provisions of Art. 86, para. 1 with respect to observation of copyright and related rights of paras 4 and 5, arts. 87 and 88 shall also apply, respectively, to radio advertisements and radio shopping.”

### **Section 64**

In Art. 99 para. 2 shall be amended as follows:

“(2) The Managing Board shall necessarily include a representative of the Ministry of Finance, the Ministry of Information Technologies and Communications, of public radio and television media service providers and commercial radio and television media service providers.”

### **Section 65**

The following amendments shall be made to Art. 102:

1. P. 7 is included in para. 3:

“7. charge for the issue of a certificate and entry into the register under art. 125k.

2. Paras 4 and 5 shall be amended as follows:

“(4) The size of the initial license, respectively, registration charge shall be specified in accordance with administrative expenses incurred in connection with the preparation and issue of the license, respectively, registration.

(5) The annual charge shall be determined in accordance with the related administrative expenses, incurred by the Council for Electronic

Media in connection with the supervision of the fulfillment of the conditions for providing services subject to this Act based on the following criteria:

1. number of registered residents who can be serviced by the licensed, registered service or the service under Art. 125g;

2. the territorial range of the service;

3. the type of the service.”

## **Section 66**

The following amendments shall be made to Art. 105:

1. In para. 4 p. 7 is deleted.
2. Para. 7 is repealed.

Section 67. Para. 2 in Art. 110 shall be amended as follows:

“(2) The license regulates obligations for observing the provisions of art. 6, paras 2 and 3 and the principles for providing radio and television services under Art. 9, para. 1 and Art. 10, including the period and schedule with a view to observing the proportions envisaged in Art. 19a, paras 1 and 2.”

## **Section 68**

The following amendments shall be made to Art 116:

1. In para. 1 the words “in accordance with the strategy under Art. 8 para. 3” shall be deleted.
2. In para. 4 the words “in accordance with the strategy under Art. 8 para. 3” shall be deleted.

Section 69. In Art. 116a, para. 1 the words “and in accordance with the strategy under Art. 8 para. 3”.

## **Section 70**

The following amendments shall be made to Art. 116e:

1. In para. 1 the words “electronic communication network” shall be replaced with “electronic communication networks”.
2. In para. 3 in the text before p 1 “radio and/or” shall be added after the word “licensed”.

## **Section 71**

The following amendments shall be made to Art. 116f:

1. In para. 1 the words “electronic communication network” shall be replaced with “electronic communication networks”.
2. In para. 3 the words “Art. 125b” shall be replaced with “Art. 125k”.

## **Section 72**

The following amendments shall be made to Art. 116h:

1. In para. 1 after the word “the licensed”, “radio and/or” shall be added, and the words “electronic communication network” shall be replaced with “the electronic communication networks”.
2. In para. 3 the words “radio and/or” shall be added after the word “the licensed”.
3. In para. 4 the word “the network” shall be replaced with “the networks”.

### **Section 73**

In Art. 122 p. 2 shall be amended as follows:

“2. systematic violations of the provisions of Art. 6, paras 2 and 3, Art. 9, para. 1, Art. 10, Art. 19a, paras 1, 2 and 4 and Art. 19b;”.

### **Section 74**

The following amendments shall be made to Art. 125a, para. 1:

1. P. 1 shall be amended as follows:

“1. observing the principles of Art. 10;”.

2. In p. 3 the word “external” shall be replaced with “independent”.

3. In p. 4 the words “juveniles and minors” shall be replaced with “children”.

### **Section 75**

Art. 125b shall be repealed.

### **Section 76**

Art. 125c shall be amended as follows:

“Art. 125c. An enterprise which distributes Bulgarian and international programs is required to submit to the Council for Electronic Media every six months an updated list of the broadcast productions and the documents related to:

1. acquiring the rights for distribution of the broadcasting schedules;

2. acquiring the rights for distribution of the works, soundtracks and recordings of audiovisual works, included in the distributed broadcasting schedules.”

### **Section 77**

Art. 125d is repealed.

### **Section 78**

In Art. 125f, para. 2, p. 3 the words “Art. 125b, para. 3” shall be replaced with “Art. 125k, para. 2”.

### **Section 79**

Sections V and VI with Arts. 125 g to Art. 125 l shall be included in Chapter Six:

“Section V

On-demand media services

Art. g. (1) Persons intend to provide on-demand media services, shall notify the Council for Electronic Media.

(2) The persons under para. 1 shall submit to the Council for Electronic Media standard notification, containing:

1. identification data of the persons providing on-demand media services – name (company name), headquarters and management address and the respective ID code;
2. on-demand media services provided;
3. a short description and key parameters of the provided on-demand media services;
4. territorial scope;
5. telephone, fax, e-mail address, address for correspondence and contact person;
6. expected start date for provision of the media services.

(3) The notification under para. 2 shall be submitted in Bulgarian.

(4) In case the notification is incomplete within a 7-day term of its receipt the Council for Electronic Media shall request the person in writing to complete the missing information.

(5) The Council for Electronic Media shall enter the person in the register under Art. 125k within a 14-day period as of the date of receipt of the notification or the date when the missing information has been entered.

Art. 125h. Upon termination of the provision of on-demand media services the person shall notify the Council for Electronic Media.

Art. 125i. (1) The person providing on-demand media services may request in writing the Council for Electronic Media to issue a proof of entry into the register, for which it shall owe a one-off administrative charge.

(2) The Council for Electronic Media shall issue the proof under para. 1 within a 7-day term of receiving the request.

## **Section VI**

### **Register**

Art. 125k. (1) The Council for Electronic Media shall maintain a public register.

(2) In the register under para. 1 5 separate sections shall be maintained:

1. the first section will include Bulgarian radio and television broadcastings which can be broadcast on the territory of the Republic of Bulgaria via a cable or satellite network;
2. the second section will include foreign broadcastings which can be broadcast on the territory of the Republic of Bulgaria via a cable or satellite network:
  - a) created in a European Union member-country, or in another country – party to the European Economic Space Agreement;
  - b) created by foreign persons other than the persons under “a”;
3. a third section, including licensed radio and television broadcastings, transmitted via:

a) existing or new electronic communication networks for ground analogue radio transmission;

b) electronic communication networks for ground digital radio transmission;

4. section four, including on-demand media services;

5. section five, including enterprises distributing Bulgarian and foreign channels.

(3) Channels not targeted exclusively towards the Bulgarian audience, transmitted via electronic communication networks for ground radio

transmission, located on the territory of the Republic of Bulgaria, are subject to registration and shall be included in the first section of the entered of the public register under para. 1, p. 1.

(4) The following information shall be included in the register under para. 2, p. 1, 2 and 3:

1. information under art. 125a, para. 5;

2. information about the legal and natural persons having control over the management of the operator;

3. information about the management bodies, including their composition, of media service providers;

4. circumstances related to commercial collateral, subject to entry in the register.

(5) The following information shall be entered in the register under para. 2, p. 4:

1. identification information – name (company name), headquarters and management address of the legal person or of the natural person – sole trader, providing on-demand media services after submitting a notification;

2. the provided on-demand media services;

3. main parameters of the provided on-demand media services;

4. territorial coverage, where applicable;

5. telephone, fax, email address, address for correspondence and contact person;

6. date when the provision of media services will start.

(6) The register under para. 2, p. 5 shall include:

1. information about the legal and natural persons having control over the management of the enterprise;

2. information about the management bodies of the enterprise, including their composition;

3. telephone, fax, email address, address for correspondence and contact person;

4. a list of the transmitted channels, including, respectively, a digital and analogue package, if the enterprise supports two separate packages;

5. the term for which the enterprise has been granted the right to broadcast the respective program ;

6. territorial scope for which the enterprise has been granted the right to broadcast the respective program .

Art. 125l. (1) The register under Art. 125k is public and is published on the website of the Council for Electronic Media.

(2) In the event of change in the circumstances entered in the register under para. 1 the registered operator is obliged to notify this to the Council for Electronic Media within 30 days.

(3) A person involved in on-demand media services shall notify the Council for Electronic Media about each change in the information on the notification under art. 125g, para. 2 within a 14-day term of such change.

(4) The information under art. 125k, para. 6, p. 1 and 2 shall be gathered ex officio by the Council for Electronic Media based on information from the Commercial Register and public registers kept by the Communications Regulation Commission in accordance with the Electronic Communications Act. The information under art. 125k, para. 6, p. 3, 4, 5 and 6 shall be provided by the enterprises together with the information under art. 125c.

(5) In the event of a change in the data provided under para. 4 the enterprises shall inform the Council for Electronic Media within a 14-day period.”

## **Section 80**

Art. 126 shall be amended as follows:

“Art. 126. (1) For violating the provisions of art. 7, art. 8, para. 1, art. 9, paras 1, 2 and 5, art. 11 – 14, art. 16 – 18, art. 19, para. 1, art. 19a,

paras 1 and 2, art. 19c, paras 4 and 7, art. 75, para. 1 and paras 3 – 9, art. 77 – 79, art. 80, para. 1, art. 81, 82, art. 83, paras 1 and 2, art. 84, paras 2 and 3, art. 85, art. 86 – 88, art. 89, para. 1, art. 90 and 91 media service providers shall be punished with a fine of 3000 to 20 000 BGN.

(2) For violating the provisions of art. 9, para. 3 media service providers shall be punished with a fine of 3000 to 7000 BGN.

(3) In the event of a repeated violation under paras 1 or 2 the fine shall be doubled.”

## **Section 81**

Art. 126a shall be amended as follows:

“Art. 126a. (1) If the terms of the issued license have not been observed, and this does not constitute a violation under Art. 126, a 1000 – 7000 BGN fine shall be imposed. In the event of a second violation the fine shall be doubled.

(2) If the terms of the registration are violated the registered operator shall be imposed a fine of 4000 to 15 000 BGN.

(3) If the provisions of art. 125a, para. 1 are violated, as a result of which the circumstances under art. 125a, para. 4, p. 1 and/or 2 occur, the registered operator shall be imposed a fine of 4000 to 15 000 BGN.

(4) For violating the provisions of Art. 125a, para. 6 or Art. 125l, para. 2 the registered operator shall sustain of fine of 3000 to 7000 BGN.

(5) For violating the provisions of Art. 125c the following penalties are imposed:

1. for not providing information within the specified term or for providing incorrect or incomplete information – a 3000 to 7000 BGN penalty;

2. for distributing programs without settled copyright and related rights – a penalty of 7000 to 30 000 BGN.

(6) For repeated violation of para. 5 the sanction shall be doubled.

(7) In the event of systematic violation of the law by a registered operator its registration shall be deleted.

(8) In the event of systematic violation of the law by the on-demand media service provider its entry in the public register under Art 125k shall be deleted.”

## **Section 82**

Art. 126b shall be amended as follows:

“Art. 126b. For non-fulfillment of a provision of art. 117, para. 2, p. 2 and para. 3, a 1000 to 4000 BGN penalty shall be imposed . In the event of repeated violation the penalty shall be doubled.”

## **Section 83**

Art.126c shall be amended as follows:

“Art. 126c. (1) A person which without a license distributes radio and television programs that should only be broadcast with a license issued in accordance with the provisions of this Act, shall be imposed a fine of 7000 to 30 000 BGN.

(2) A person which without a registration distributes radio and television programs shall be imposed a fine of 3000 to 15 000 BGN.

(3) A person which without notification provides on-demand media services shall be imposed a fine of 2000 to 5000 BGN. In the event of repeated violation the fine shall be doubled.

(4) In the event of violating obligations for the provision of information in accordance with Art. 125l, paras 2, 3, 4 and 5 a fine shall be imposed of 2000 to 5000 BGN. In the event of repeated violation the fine shall be doubled.”

## **Section 84**

A new Art. 126d is included:

“Art. 126d. A media services supplier which fails to fulfill within the specified term a decision of the Committee on Ethics with the Foundation “

National Committee on Journalism Ethics” and/ or of the Association “National Committee on Self-regulation”, a fine of 2000 to 5000 BGN shall be imposed.”

## **Section 85**

Para. 4 of Art. 127 shall be repealed.

## Section 86

The following amendments shall be made to the Supplementary Provisions:

1. The title shall be amended as follows: "Supplementary Provisions".

2. In Section 1:

a) in p. 1 the "of programs" shall be added after "distribution";

b) in p. 2 the "audiovisual" shall be deleted;

c) p. 4 is repealed;

d) p. 7 shall be amended as follows:

"7. "European works" are:

a) works originating in member-countries of the European Union, created mainly by authors and workers residing in one or more of these countries on condition that they meet at least one of the following three conditions:

aa) they have been created by one or more producers, residing in one or more of these countries, or

bb) the creation of the works is monitored and controlled by one or more producers, based in one or more of the mentioned countries;

cc) the co-producers from these countries have contributed substantially to covering the costs of the joint production and it is not controlled by

one or more producers based outside these countries;

b) works originating in third European countries, that are parties to the European Convention on Cross-border Television of the Council of Europe, drawn up in Strasbourg on 5 May 1989 (ratified by law – State Gazette issue 117 of 1997) (State Gazette, issue 32 of 1999), created mainly by authors and workers residing in one or more of these countries, on condition that they meet at least one of the following three conditions:

aa) they have been created by one or more producers, residing in one or more of these countries;

bb) the creation of the works is monitored and controlled by one or more producers, based in one or more of the mentioned countries;

cc) the co-producers from these countries have contributed substantially to covering the costs of the joint production and it is not controlled by one or more producers based outside these countries, on condition that the works originating in European Union member-countries are not subject to discriminatory measures in the respective third countries;

c) in works that have been co-produced under agreements within the audiovisual sector, signed by the European Union and third countries, responding to the conditions, specified in each of the agreements, on condition that the works originating in member-countries are not the subject of discriminatory measures in those countries. Works that are not European works within the meaning of letters "a", "b" or "c", but have been created under bilateral co-production agreements, signed between member-states of the European Union and third countries shall be regarded as European works, on condition that the co-producers from the European Union shall assume the larger portion of the overall costs of the production

and that the production is not controlled by one or more producers based outside the territory of EU member-countries.”;

e) p. 12 and 13 shall be repealed;

f) p. 20 shall be repealed;

g) sentence 2 in p. 22 shall be deleted;

h) p. 23 shall be amended as follows:

“23. “Media service providers under the jurisdiction of the Republic of Bulgaria” are:

a) providers based in the Republic of Bulgaria whenever:

aa) the headquarters of the media service provider is in the Republic of Bulgaria and editorial decisions concerning audiovisual media services are taken in the Republic of Bulgaria;

bb) the headquarters of the media service provider is in the Republic of Bulgaria, but editorial decisions concerning audiovisual media services are taken in another member-country of the European, whenever a significant percentage of the workforce involved in the activity of providing audiovisual media services operates in the Republic of Bulgaria;

cc) a significant percentage of the workforce involved in the activity of providing audiovisual media services operates in various EU member-countries, but the headquarters are in the Republic of Bulgaria;

dd) a significant percentage of the workforce involved in the activity of providing audiovisual media services operates outside all of EU member-countries, provided that it initially started its activity under Bulgarian jurisdiction, on condition that it maintains a stable and effective connection with the economy of the Republic of Bulgaria;

ee) the headquarters of the media service provider are in the Republic of Bulgaria, but the decisions concerning the audiovisual media services are taken in a third country, or, contrariwise, it is regarded as based in the Republic of Bulgaria, where a substantial proportion of the workforce involved in the activity of providing audiovisual media services operates in the Republic of Bulgaria;

b) providers to whom the provisions of letter “a” are not applicable where:

aa) a link to a satellite (uplink) is used from the territory of the Republic of Bulgaria, or

bb) even though the provider uses no link to a satellite from the territory of the Republic of Bulgaria, it uses satellite capacities belonging to the Republic of Bulgaria.

If the question which EU member-country’s jurisdiction applies cannot be resolved in accordance with letters “a” and “b”, the competent state shall be the state where the media service provider is based, within the meaning of Art. 49 – 54 of the Treaty on Functioning of the European Union.”;

i) in p. 24:

aa) in the text before p. 1 the word “External” shall be replaced with “Independent”;

bb) p. 3 is deleted;

k) in p. 25 the word “operator” shall be replaced with “the media service provider”;

l) p. 27 is deleted;

m) p. 32 shall be amended as follows:

“32. “Child” is a person within the meaning of Art. 2 of the Law on Child Protection.”;

n) p. 35 shall be amended as follows:

“35. “Control over the management of the media service provider” is in place where one person:

a) owns, including through a related person, more than fifty percent plus one of the votes in the General Assembly, or

b) can appoint directly or indirectly more than half of the members of the management body of media service provider, or

c) can exercise in some other way decisive influence over the decision-making in connection with the provision of media services.”

3. A new Section 1a is included:

“Section 1a. This Act enacts the provisions of:

1. Directive 89/552/EEC of the Council of 2 October 1989 with regard to coordinating some provisions formulated in effective laws, regulations and administrative action of the member-countries concerning the performance of television activities;

2. Directive 97/36/EC of the European Parliament and the Council of 30 June 1997 on amendment to Directive 89/552/EEC of the Council with respect to coordination of some provisions of the law, regulation and administrative action of the member-countries concerning the performance of television activities;

3. Directive 2007/65/EC of the European Parliament and the Council of 11 December 2007 on amendment to Directive 89/552/EEC of the

Council with respect to coordination of some provisions of the law, regulation and administrative action of the member-states, concerning the performance of television activities (OB, L 332/27 of 18 December 2007).”

## **Section 87**

The following amendments shall be made to the Transitional and Final Provisions of the Act on amendment of the Radio and Television

Act (published in the State Gazette, issue 14/2009; am. Issue 37/2009):

1. In Section 35:

a) para. 1 shall be amended as follows:

“(1) The programs of the Bulgarian National Radio and the Bulgarian National Television as public radio and television operators shall be distributed by electronic communication networks for ground digital radio transmission. The Bulgarian National Television uses networks with national and regional coverage and the Bulgarian National Radio – networks with national and regional coverage as well as networks designed for overseas transmission.”;

b) a new para. 2 is included:

“(2) The programs of the Bulgarian National Radio and the Bulgarian National Television are distributed via a public electronic communication network for ground digital radio

transmission with national coverage, built in accordance with the First stage of the transition, specified in the Plan for introduction of ground digital television transmission (DVB-T) in the Republic of Bulgaria, adopted by the Council of Ministers.”;

c) the previous para. 2 shall become para. 3 and the word “the network” shall be replaced with “the networks”;

d) new paras 4 – 6 are included:

“(4) An enterprise which has obtained a permit to use an individually specified limited resource – a radio frequency spectrum, in order to transmit electronic messages via an electronic communication network for ground digital radio transmission, is obliged to transmit:

1. within the electronic communication network under para. 2 – up to 4 television programs of the Bulgarian National Television and up to 4 radio programs of the Bulgarian National Radio;

2. within an electronic communication network for ground digital radio transmission of radio programs with national coverage, Communications Regulation Commission – up to 4 radio programs of the Bulgarian National Radio;

3. within one of the electronic communication network for ground digital transmission of television programs with regional coverage – one regional program of the Bulgarian National Television, created for the respective region;

4. within an electronic communication network for ground digital transmission of radio programs with regional coverage, specified by the Communications Regulation Commission – one regional program of the Bulgarian National Radio, created for the respective region;

5. within an electronic communication network for ground digital transmission of radio programs with overseas coverage, specified by the Communications Regulation Commission – up to 4 radio programs of the Bulgarian National Radio.

(5) The broadcasting programs under para. 4 must be of a type and format agreed with the Council for Electronic Media in accordance with the provisions of art. 116h.

(6) The broadcasting programs under para. 4 shall be transmitted as uncoded broadcastings.”

2. In Section 36, para. 1 in the text before p.1 after the words “distribution of” the words “radio and/or” shall be added”.

3. In Section 37:

a) In para. 1:

aa) in the text before p. 1 the words “the broadcasting programs of licensed television operators” shall be replaced with “the broadcasting programs of licensed radio or television operators”;

bb) in p 1 the words “radio and television activity” shall be replaced with “radio and/or television activity”;

b) in para. 4 the words “television operators” shall be replaced with “radio and/or television operators”.

4. InSection 37a, para. 1:

- a) the words “transmit their broadcasting programs via” shall be replaced with “transmit their radio and/or television programs via”;
  - b) the words “access to the broadcasting program of” shall be replaced with “access to the broadcasting programs of”.
5. In Section 38, para. 6 the words “electronic communication network” shall be replaced with “electronic communication networks”.
  6. In Section 39 para. 3 is repealed.
  7. In Section 40, para. 1 the words “31 December 2009” shall be replaced with “1 June 2010”

## **Transitional and final provisions**

### **Section 88**

The following amendments shall be made to the Electronic Messages Act (published in the State Gazette, issue 41/ 2007 am. issue 109/ 2007, issues 36, 43 and 69/ 2008; issues 17, 35, 37, 42 / 2009; Decision no. 3 of the Constitutional Court/ 2009 – issue 45/ 2009; am. issues 82, 89 and 93/2009):

1. Art 48a shall be repealed.
2. In Section 3 of the Transitional and Final Provisions:

a) para. 3 shall be amended as follows:

“(3) The Bulgarian Telecommunications Company undertakes to provide high quality ground analogue radio transmission and transmission of the programs of the Bulgarian National Television and the Bulgarian National Radio on contractual basis at a price which cover the costs required for such activity and at the profit that an unrelated party would derive while exercising the same activity.”;

b) new paras 4 and 5 are included:

“(4) Enterprises that have obtained permission to use individually a specific limited resource – a radio frequency spectrum to transmit electronic messages via electronic communication networks for ground digital radio transmission, transmitting the programs of the Bulgarian National Radio and the Bulgarian National Television are obliged to guarantee the distribution of these programs by virtue of agreements and at such prices as to cover the costs incurred in such kind of activity, at a profit that an unrelated party would derive by exercising the same type of activity.

(5) In case no consensus is reached concerning the prices under paras 3 and 4 between the enterprise and the Bulgarian National Radio and the Bulgarian National Television the prices shall be determined by the Communications Regulation Commission .”

### **Section 89**

Within one month of this Act taking effect the Communications Regulation Commission, while observing the procedure envisaged in Chapter five of the Electronic Messages Act, shall start a procedure under Art. 48, para. 1 of the same act for the selection of an

enterprise to which to issue a permit for the use of individually specified limited resource – a radio frequency spectrum for transmitting electronic messages via an electronic communication network for ground digital television radio transmission, designed for transmission of the programs of public operators, in accordance with the envisaged stages and terms in the Plan for Introduction of Ground Digital Television Radio Transmission (DVB-T) in the Republic of Bulgaria, adopted by the Council of Ministers.

### **Section 90**

The Public Radio Transmission Act (State Gazette, issue 37 of 2009) shall be repealed.

### **Section 91**

The provisions of Section 53 with respect to Art. 83, paras 1 – 3 and Section 54, concerning Art. 84, shall only apply for productions created after 19 December 2009.

### **Section 92**

(1) Within one-month term after this Act takes effect the Council for Electronic Media shall bring the register into line with the provisions of Art. 125k, para. 2.

(2) Within the term under para. 1 the on-demand media service providers, carrying out activities at the moment this Act takes effect, are required to provide the data in accordance with the provisions of Art. 125g, para. 2.

(3) Within the term under para. 1 the providers that broadcast Bulgarian and foreign channels are required to provide the data in accordance with Art. 125k, para. 6, p. 3 – 6.

### **Section 93**

The Council for Electronic Media shall ex officio bring into line with the provisions of this Act the issued licenses and registrations made within 6 months of its entry into force.

### **Section 94**

Within a three-month term after the Act takes effect the Council for Electronic Media shall publish on its internet website the complete reports from the sessions of the Council, held before this Act came into force.

This Act was adopted by the 41-st Parliament on January 28, 2010 and was sealed with the official Parliamentary seal.