

BULGARIA

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The legal basis of Bulgarian media law is the Radio and Television Act. After its latest amendments, the Act now fully complies with the regulatory framework of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010, as well as with the relevant provisions from the last amendment of the European electronic communications regulatory framework.



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Recent developments in Bulgarian Media Law

The Radio and Television Act contains general provisions, regulatory framework for the Council of Electronic Media (CEM), governing rules for the Bulgarian National Television (BNT) and Bulgarian National Radio (BNR) and rules concerning commercial communications, sponsorship, television advertising and teleshopping, as well as radio and television broadcaster licence and registration regimes.

The latest amendments in the Bulgarian Radio and Television Act shape the modern structure of Bulgarian media law

by bringing the legal definitions of the basic terminology such as audio-visual media services and radio services, radio or television broadcaster, audio-visual and radio programme, in line with the current European regulatory framework. As a part of this new focus the Radio and Television Act now divides media services into linear and non-linear media services. Linear media services are media services provided by a media service provider for simultaneous viewing or listening of programmes on the basis of a programme schedule. Non-linear (on-demand) media services are media

services provided by a media service provider for the viewing or listening of programmes at the moment chosen by the user and at his or her individual request on the basis of a catalogue of programmes selected by the media service provider. Based on the above mentioned division, the current regulation now considers a radio or television broadcaster to be only a provider of radio or television linear media services (programme services) on the basis of a programme schedule.

A further sub-division of media service providers related to these developments is their division to public service providers and commercial providers. Public service providers provide the distribution of political, business, cultural, scientific, educational and other socially relevant information, encourage the creation of works by Bulgarian authors and encourage Bulgarian performing arts. All media service providers, which are not licensed or registered as public service providers, are considered commercial providers. Commercial providers are soletraders, individuals or legal entities who or which have editorial responsibility for the choice of the content of the media service and determine the manner in which the said service is organised. Media service providers are accountable for the content of the media services they provide including for any conflicts with the principles established in the Radio and Television Act and good morals.

Besides legal definitions and basic regulatory framework, the newly amended general provisions of the Radio and Television Act contain updated rules

and principles regarding the better protection of the freedom and pluralism of speech and information and the independence of media service providers. The Radio and Television Act guarantees the freedom of media service providers and their activities from political and economic interference. Media service censorship in any form whatsoever is inadmissible according to Bulgarian legislation. In line with European tendencies and rules the freedom of reception is also ensured, and it is now provided that retransmission of media services from other Member States of the European Union cannot be restricted for reasons which fall within the field of media services.

In order to regulate and protect the above mentioned principles and freedoms Bulgarian legislators created a specialised regulatory body called the Council of Electronic Media (CEM). The Council for Electronic Media is an independent specialised body – a legal entity with a head office in the capital of Bulgaria and an independent budget. The structure, functions and powers of the CEM have been brought in line with the modern European understanding of the role of the national regulator in the field of media services provision. Thus, in the performance of its activities, the Council for Electronic Media is guided by public interest, protecting the freedom and pluralism of speech and information and the independence of media service providers.

The Council of Electronic Media has a special compositional structure reflecting the need to ensure its independence and impartiality. It consists of five mem-

bers, of whom three are elected by the Bulgarian National Assembly and two are appointed by the President of the Republic for a term of six years each. The composition of the Council for Electronic Media rotates every two years from the quota of the Bulgarian National Assembly and every three years from the quota of the President. The Council of Electronic Media exercises supervisory power over the broadcasting activities of media service providers (both commercial and public service) as to compliance with the Radio and Television Act and EU legislation. CEM elects and releases from service the general directors of BNT and BNR. One of the important activities of CEM is to give opinions upon the drafting of statutory instruments and upon conclusion of inter-governmental agreements in the sphere of media services, as well as to give opinions on the draft State budget regarding the subsidy for the BNR and the BNT. CEM also gives opinions regarding any changes in the amount of fees charged for use of radio and television services and exercises supervision over the broadcasting activities of media service providers.

As noted above, the modern legal environment in Bulgaria allows the existence of public service providers and commercial providers. Currently there are two licensed public service providers in Bulgaria - the Bulgarian National Television and the Bulgarian National Radio. They are legal entities with head offices in Sofia. The radio and television programme services of BNR and BNT are distributed by means of electronic communications services and/or facilities for analogue terrestrial broadcasting, which are owned by the BNR and the BNT,

or on the basis of a contract with an undertaking providing electronic communications services. The State takes the necessary measures to guarantee the distribution of the programme services of the BNR and the BNT within the entire territory of Bulgaria upon implementation of the policy in the sphere of electronic communications. The BNT and the BNR provide, at no charge, their national and regional programme services to undertakings providing electronic communications over cable electronic communications networks for distribution of radio and television programme services, as well as for satellite and digital terrestrial broadcasting. Despite the public structure and funding of the BNT and the BNR they have the right to create their own programme services and programmes, to commission the creation of such programme services and programmes to independent producers, as well as to take part in co-productions. News and current affairs programmes on political and business subjects distributed in the programme services of the BNR and the BNT may be produced solely by the Bulgarian National Radio and the Bulgarian National Television. However, audio-visual works can be created by independent producers through a contest and the conclusion of a contract with the BNR and the BNT. The BNR and the BNT are required to develop their programming policy in accordance with the requirements to national public service radio and television broadcasters. When requested, the BNR and the BNT are obliged to provide, immediately and at no charge, transmission time to representatives of state bodies for announcements in the public interest in the event of a disaster or an immedi-

ate threat to the life, safety or health of the public or of individual persons. The President of the Republic, the Chairperson of the National Assembly, the Prime Minister, the Prosecutor General and the presidents of the Constitutional Court, the Supreme Administrative Court and the Supreme Court of Cassation have the right to address the nation over BNR and BNT.

The modern principle for media plurality is ensured by allowing any undertaking which fulfills the law's explicitly listed criteria to become a commercial media service provider. Commercial providers realise their profit mainly by displaying commercial communications, which is subject to up-to-date regulation in line with the European tendencies and the protection of public interest. Commercial communications are divided into two types: audio-visual commercial communications and commercial communications in radio services. Audio-visual commercial communications are defined as images with or without sound, designed to promote, directly or indirectly, the goods, services or reputation of an individual or legal entity pursuing an economic activity, or to advance a cause or idea, or to bring about some other effect desired by the advertiser, which accompany or are included in a particular programme in return for payment or for similar consideration or for self-promotional purposes. Commercial communications in radio services are sound communications designed to promote the same aspects as in the audio-visual commercial communications. Among the most popular and commonly known forms of commercial communications in Bulgaria, as well as in the entire world,

are advertising, sponsorship, the so called teleshopping or radio shopping, as well as product placement. The Radio and Television Act contains rules and regulations which strictly govern all forms of commercial communications. These rules and regulations ensure and guarantee the competition between different media service providers and between undertakings active of the radio and television commercial market, thus shaping a modern and dynamic media and advertising market with equal opportunities for numerous market players. The regulation also aims at ensuring the interest of the public by limitation of the time allowed for certain types of commercial communications, requiring clear indication of the parts of the programmes containing such communications, prohibiting or regulating the advertising of certain goods or services, etc.

One of the most important spheres regulated by the Radio and Television Act - the licensing and registration of radio and television broadcasters, has also been updated and brought in accordance with the relevant European framework requirements. Thus, radio and television broadcasting activities for the creation of programme services intended for distribution over electronic communications networks, where a scarce resource - radio spectrum is used, are pursued by virtue of individual licences granted by the Council for Electronic Media under the terms and according to the procedure established by the Radio and Television Act. Eligible to apply for radio and television broadcasting activities licence are natural persons who are sole traders and legal entities

registered under Bulgarian legislation, or another state within the European Union or the European Economic Area.

The licenses issued by CEM are personal. In line with the modern principles for plurality and flexibility, the transferring of a licence is also allowed after explicit permission from the Council for Electronic Media and if the receiving party satisfies the requirements for initial licensing. The licensing procedure is brought in accordance with the requirements of Directive 2010/13/EU and starts with the submission of a written application to CEM, enclosing certain information and documents listed in the law. The Council of Electronic Media verifies the authenticity of the documents and information covered in the application. A licence for pursuit of radio and television broadcasting activities through use of existing and/or new electronic communications networks for analogue terrestrial broadcasting is granted after holding a contest. The contest holding procedure shall be initiated at the request of an interested person or on the initiative of the Council for Electronic Media. The said person may specify the desired point of emission and territorial range in the request addressed to the Council for Electronic Media. For the purpose of provision of such licenses the Council for Electronic Media co-ordinates certain parameters also with the national regulatory body in the sphere of electronic communications – the Communications Regulation Commission (CRC). CEM approaches CRC with an enquiry in writing regarding the requisite technical parameters for analogue or digital terrestrial broadcasting of radio and television programme services to a

population center, a functional region or the entire territory of the Republic of Bulgaria, including unallocated radio frequencies, permissible power of emission, possible points of emission, as well as any other technical information as may be necessary. The Communications Regulation Commission then presents to the Council for Electronic Media its decision on the enquiry, conforming to the requirements for efficient utilisation of the radio spectrum. If unallocated radio spectrum is available the CRC attaches a draft authorisation for use of the necessary individually assigned resource – radio spectrum. In addition, for the above described licensing procedure CEM also issues licenses for non-liner (on-demand) media services, as well as for radio and television service providers creating programmes for distribution to a public outside the territory of Bulgaria.

For reasons of protection of the public interest and lawful exercising of media service activities any undertaking can be deprived of its granted licenses if it commits a gross violation of the principles of the radio and television activities - systematic violations of the rules regarding the carrying out of such activities, including copyright and related rights violations, violation of requirements for provision of broadcasting time for European works and independent European works, etc., or declares incorrect data in declarations accompanying its application for receiving a licence. The Radio and Television Act also provides for sanctions aiming to guarantee the observing of its provisions and the lawful provision of radio and television media services in the country.

Finally, it may be concluded that latest developments in Bulgarian media law shape a modern legal environment which is up to date and in coherence with the latest European framework requirements in the sphere. The legal regime developments in the country are aimed at constant improvement, better regulation and better practical results for both the providers of all types of media services and the public.

BIOGRAPHIES

Assoc. Prof. Dr. George Dimitrov is a founding partner of Dimitrov, Petrov & Co. Law Firm and head of its ICT Law & IPR Practice Group. He is a Doctor of Laws of the Katholieke Universiteit Leuven, Belgium (Ph.D. 2008) and holder of the prestigious Victor Folsom Fellowship. Dr Dimitrov is a lecturer in ICT Law at Sofia University, Faculty of Mathematics and Informatics, the Technical University, the University of Library Studies and Information Technologies, and Veliko Tarnovo University. Being a Chairman of the Center for Law of the Information and Communication Technologies in Bulgaria (CLICT), Dr Dimitrov has been the leading expert and head of numerous working groups that have drafted the contemporary Bulgarian ICT legislation. Dr Dimitrov was also appointed a national correspondent for Bulgaria in many projects assigned by the European Commission on reporting the implementation of various EU directives. Dr Dimitrov is a member of various committees and professional legal organisations of local and international importance such as: the Technology and E-commerce Law Committee at the International Bar

Association (IBA), the International Technology Law Association (ITechLaw), the European Electronic Messaging Association (EEMA), the Council of the Sofia Bar Association and many others.

Veneta Donova graduated from Sofia University, Faculty of Law in 2009. Her practice now focuses on e-commerce and internet law, media law, telecommunications law, personal data protection law, contract law. In recent years, Ms Donova has been actively involved in preparing documents for public discussions of numerous legislative acts, including several laws for Amendment and Supplementation of the Electronic Communications Act, secondary legislation on the implementation of the Electronic Communications Act, a law for Amendment and Supplementation of the Copyright and Related Rights Act, E-Government Strategy for the Republic of Bulgaria 2010-2015, etc. Ms Donova also actively participates in the preparation of reports and legal opinions on the implementation of the EU ICT legal framework, privacy, media law, data protection, e-communications, e-commerce, e-signatures, etc.