



**ANEM**

**Asocijacija nezavisnih elektronskih medija**  
**Association of Independent Electronic Media**  
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REPUBLIC OF SERBIA

MINISTRY OF CULTURE AND INFORMATION

Mr Ivan Tasovac, Minister

Mr Saša Mirković, State Secretary

Vlajkovićeve 3

Belgrade

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Belgrade, 10/11/2014

**Subject: Rulebook on co-financing of projects for the realisation of public interest in the public information sector**

Dear Sirs,

We are addressing you regarding the obligation of the Ministry prescribed by the Article 28 of the Law on Public Information and Media („Official Gazette of the Republic of Serbia, No. 83/2014) to regulate in detail co-financing of projects for the realisation of public interest in the public information sector.

The Association of Independent Electronic Media (ANEM) believes that the provisions of the recently adopted Law on Public Information and Media that insist on the control and transparency of state aid

and the respect of competition rules constitute the most significant achievement of the said law and its most important part.

Unfortunately, the environment for the work of the media in Serbia is not favorable. This is evident primarily in the regular financial reports of media outlets in the country as there are very few reports of those media outlets that are financially sound and do not incur losses.

In such conditions, the state support becomes, more than usual, one of the key conditions for the survival of a large number of media. This implies the necessity to make such support transparent and politically neutral.

The interests protected by the support to the media are indisputable. Modern democratic society is unimaginable without the media that are accessible, widely available, that reflect the pluralist nature of the society, that open space for the debate on the issues of public interest and offer to the citizens information necessary for reaching informed decisions. However, these interests must not be abused in a manner that would use the state support to the media for particular interests instead of public interest, while at the same time disrupting the competition in the media market.

It is precisely in this context that ANEM believes that regulating the system of co-financing of projects for the realisation of public interest in the public information sector is of exceptional importance and ANEM is prepared to offer any kind of support for the fulfillment of this goal.

The work of the Ministry on the text of the future rulebook on co-financing of projects for the realisation of public interest in the public information sector should confirm and defend the serious step forward made by the Law on Public Information and Media. In that sense, ANEM suggests that the particular attention be paid to the following:

**First, the same rules and the same criteria for co-financing of projects for the realisation of public interest in the public information sector must be applicable to all, without exceptions.**

The Strategy for the Development of the Public Information System in the Republic of Serbia until 2016 („Official Gazette of RS“, No. 75/2011) foresees that the co-financing of public interest in the media sector will be entirely in accordance with the acts regulating the control of state aid, including by means of a

unified methodology, regardless of whether the provider of aid in a specific case is the Republic, the autonomous province or a unit of local self-government.

With regard to the above stated, it is exceptionally important that the rulebook on co-financing of projects for the realisation of public interest in the public information sector does not leave room to anyone at any level of authority to diverge from the unified methodology, rules and criteria. The same methodology, rules and criteria must apply to all, without exceptions.

**Second, the minimum amount of funds to be allocated from the budget for the project-based co-financing of public interest in the public information sector is determined by the Law on Public Information and Media in the extent that will ensure the realisation of public interest in this sector.**

ANEM disagrees with the claims that the Law on Public Information and Media does not prescribe the minimum of budgetary funding to be allocated to the project-based financing of public interest in the public information sector. The Strategy for the Development of the Public Information System already envisaged that the total amount for co-financing of public interest in the media sector would be determined and allocated in the extent that would ensure realisation of public interest in the media sector. Article 17 of the Law on Public Information and Media prescribes that „The Republic of Serbia, Autonomous Province and local self-government unit shall provide from their budgets part of the funding for realising public interest in the public information sector“. The word „part“ in the above quoted article does not refer to public interest, but to the budget. Part of the budget of the Republic of Serbia, part of the budget of the Autonomous Province, part of the budget of each local self-government unit is allocated for co-financing of projects in the public information sector for the realisation of public interest. However, the public interest must be realised fully in this manner, and not in part.

Transparent allocation of funds and expenditures for the purpose of fulfillment of the public interest defined by the Law on Public Information and Media will lead in some cases to the reduction of funding compared to the amounts allocated previously, while the funding will have to be increased in places where it has been insufficient so far.

It is necessary that the Ministry clarifies this without any doubt in the text of the future rulebook on co-financing of projects for the realisation of public interest in the public information sector. Hence, for the purpose of realising public interest in the public information sector, the Republic of Serbia, the

Autonomous Province and units of local self-government provide from their budgets funding for co-financing of projects for realising public interest in the public information sector.

Undeniably, this will be only a part of the budget and not the entire budget of the Republic of Serbia, the Autonomous Province and local self-government units. It is also undeniable that individual projects are co-financed, and that none of the projects will receive the total amount of necessary funding, but 80% of it at most. However, it must also be undeniable that public interest must be realised fully in this manner, and not only in part. The amount of funding to be allocated for this purpose from each individual budget should be sufficient to ensure the realisation of public interest.

**Third, co-financing of projects is a scheme of state aid the implementation of which must necessarily be subject to the subsequent control by the Commission for State Aid Control.**

The fact that the aid is allocated based on the public competition must not grant amnesty from responsibility in the cases where the competition, the allocation of funds or the subsequent use thereof are not implemented in accordance with the provisions of the rulebook on co-financing of projects for the realisation of public interest in the public information sector, the Law on Public Information and Media, and the Law on State Aid Control.

ANEM believes that co-financing of projects for the realisation of public interest in the public information sector represents a scheme of state aid in accordance with the Article 12, Point 2 of the Law on State Aid Control („Official Gazette of RS“, No. 51/2009), i.e. the collection of all the regulation presenting the basis for the allocation of state aid to the beneficiaries that are not determined (known) in advance, i.e. draft or the proposal of regulation that will, once adopted, present the basis for the allocation of state aid to the beneficiaries that are not determined (known) in advance.

Without establishing whether such a scheme of state aid is subject to the obligation of prior registration with the Commission for State Aid Control, the scheme must necessarily be subject to subsequent control by the Commission in accordance with the Article 16 of the Law on State Aid Control. This is the only way to ensure what the Strategy for the Development of the Public Information System envisaged as the strategic goal of the Republic of Serbia in this area – harmonization of co-financing of projects for the realisation of public interest in the public information sector with the acts regulating the control of state aid. This is the only way to ensure the necessary mechanism of the control of project co-financing.

**Fourth, the manager of the authority that published the call for project proposals is not absolutely bound by the recommendation of the expert selection panel, but he/she decides in the competition based on it.**

Any provision in the future rulebook on co-financing of projects for the realisation of public interest in the public information sector that would underscore that the manager of the authority that published the call for project proposals may decide on the distribution of funds in a manner that is not in accordance with the selection panel's recommendation would be superfluous, unnecessary and it would create confusion regarding the process.

Namely, it is already stated in the Article 24 of the Law on Public Information and Media that the expert selection panel merely assess the submitted project proposals. Also, the Article 25 of the Law on Public Information and Media states that the decision on the allocation of funds shall be made by the manager of the authority that published the call for project proposals, on the basis of a justified recommendation provided by the panel. This makes is perfectly clear that:

- the manager of the authority is not absolutely bound by the recommendation;
- the decision must have a rationale, and
- the rationale must be „special“ if the decision of the manager of the authority differs from the panel's recommendation because in that case the manager of the authority must not merely copy the justification of the panel's recommendation, but he/she must provide a rationale as to what recommendation he/she received from the panel and the reasons for deciding differently (in accordance with the Article 25, Point 1 of the Law on Public Information and Media, the decision is made on the basis of a justified recommendation provided by the panel whether the manager of the authority accepts it or not).

It is of exceptional importance that the future rulebook on co-financing of projects for the realisation of public interest in the public information sector does not underscore the right of the manager of the authority not to accept the panel's recommendation (although it is undisputable that the manager has this right) because the stressing of the issue would be discouraging for independent media experts or media professionals when it comes to their accepting participation in expert panels for the assessment of projects submitted to the competition, which could subsequently jeopardize the entire system of project-based financing.

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As the largest association of electronic media in Serbia, ANEM strongly supports media reforms and deeply respects the efforts of the Ministry in the implementation thereof. The importance of regulating the system of co-financing projects for the realisation of public interest in the public information sector and its subsequent implementation is of exceptional importance for the improvement of the environment in which Serbian media operate.

However, we are concerned that regulating the system in itself will not be sufficient if an additional effort is not made. We remind you of the report of the European expert *dr Katrin Nyman-Metcalf* on the media and freedom of expression in Serbia of 20 February 2015 (which report is justifiably favorable for the Ministry), particularly the part stating that it is necessary to prescribe clear instructions and procedures for the procurement of advertising space and the time for broadcasting program by the state (public authorities) in order to „prevent using of these mechanisms for non-transparent financing of media and discrimination among them“. *Dr Nyman-Metcalf* wrote in the report that there is a need to clearly regulate the competencies in order to determine who is competent to monitor the procurement of advertising space and the time for broadcasting program by public authorities, and what tools and mechanisms for efficient monitoring are at a disposal of such a body.

ANEM calls on the Ministry of Culture and Information to influence the Ministry of Trade, Tourism and Telecommunications to use the work on the preparation of the draft of the new Advertising Law to regulate the competencies and procedures that would, as *Katrin Nyman-Metcalf* suggested, prevent the use of mechanisms for the procurement of advertising space and the time for broadcasting program by the public authorities for non-transparent financing of media and discrimination among them. ANEM believes that this is the next step, after regulating co-financing of projects, that would additionally improve the environment for the operation of the Serbian media and contribute to strengthening media freedoms. ANEM is willing to offer its full support to such processes.

Yours Sincerely,

Milorad Tadić, ANEM President