

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS

In the period covered by this Report, the Serbian Parliament didn't debate any legislation of special relevance for the media sector. Nonetheless, the Ministry of Trade and Services released in the second part of November its Draft Advertising Law. The fact that a new law in this field was being worked on had hardly surprised anyone. Namely, back in December 2009, the Ministry of Trade and Services set up a working group tasked with drafting the working version of the Advertising Law. This group comprised, among others, the representatives of the media sector. However, what came as a surprise was the fact that this very working group was shunned in the process of making the Draft Law. Namely, the Draft, which has recently been introduced to the general public, was produced internally in the Ministry, without consultation with the working group. This was a reminder of a similar case from 2009, when both the Law on the Amendments to the Broadcasting Law and the Law on the Amendments to the Public Information Law were drafted without the participation of the previously established working group by the Ministry of Culture. One of these two laws – the Law on the Amendments to the Public Information Law – was later found to be unconstitutional. The first analysis of the released Draft Advertising Law made by the Ministry of Trade and Services points to several facts. Firstly, the Law completely ignores the efforts that were invested in the last year in the drafting of a Media Development Strategy of Serbia. What's more, the text released by the Ministry of Trade and Services, by cementing the "as-was situation" and the problematic practices in this field, compromises the possibility of the implementation of the future Strategy before such document has even been adopted. Furthermore, the Draft wrongly implements EU's Audiovisual Media Services Directive. The definitions of terms taken over from the Directive are already unclearly transposed, namely these definitions are incorrect. There is no definition as to what constitutes an audiovisual media service. The difference between linear and nonlinear media services is ignored. The notion of audiovisual commercial communication is not precisely or accurately laid down. Audiovisual commercial communication, as defined in the Directive, includes radio, while not covering video on-demand. Consequently, the Draft contains rules for commercial radio that have been set up in line with the television model, instead of being liberalized. Also, audiovisual commercial communication from the Draft involves recommending a person, his/her activity, goods, services or image in addition to personal messages, while audiovisual commercial communication from the Directive involves recommending goods, services or image of a person engaging in a commercial activity. The difference resulted in "public good advertising",

i.e. advertising with a positive social goal being again treated as advertising of any goods or service, with all negative consequences that we have had so far. Furthermore, the Draft wrongly implements some of the concepts contained in the interpretations of the European Convention on Transfrontier Television provided by the European Commission. In any case, the Ministry of Trade and Services has announced that the public debate about the said Draft would be open until late December and that all interested persons are invited to submit their written suggestions for amending problematic provisions.