



Strasbourg, 19 September 2005

ATCM(2005)013 (English only)

**Analysis of the Law on Radio and Television
of the Republic of Slovenia**

(RTV Slovenia)

by

Sigve Gramstad and Eve Salomon

**Analysis of the Law on Radio and Television
of the Republic of Slovenia**

(RTV Slovenia)

by

Sigve Gramstad *
and
Eve Salomon **

* Director, Media Authority, Norway

** Legal and regulatory consultant, United Kingdom

Executive Summary

The Government of the Republic of Slovenia is proposing a new law setting out the obligations and governance of Slovenia's public service broadcaster, Radio Television Slovenia ("RTV Slovenia"). This Law has been examined by two experts for the Council of Europe, Mr Sigve Gramstad of Norway and Ms Eve Salomon of the UK. The Law has been considered with regard to compliance with the European Convention on Transfrontier Television (CETS 132) and the European Convention on Human Rights (CETS 005), both of which the Republic of Slovenia is a signatory. In addition, the Law has been analysed with regard to international good practice, and in particular the Council of Europe Recommendation R (96) 10 on the Guarantee of Independence of Public Service Broadcasting.

The experts recommend that, in order to comply with Council of Europe standards, the Law needs to be reviewed and amended with particular attention given to the appointments to the Programming Council and the Supervisory Board, and to the funding arrangements for RTV Slovenia.

Content Requirements

Article 4 sets out a large number of standards with which RTV Slovenia must comply. Although these are worthy aims, the Act does not provide for any means of assessing RTV Slovenia's compliance.

Article 16(1) provides that the Programming Council, following a proposal from the Director General, should adopt broadcasting standards and a programme profile in line with this Act. It is proposed that this is expanded, to make it clear that the programme profile will set out clearly how RTV Slovenia will meet the standards set out in Article 4. This should include *measurable* criteria upon which RTV Slovenia's performance can be judged. This will assist the process when the Programming Council discusses the implementation of the programme profile with the Director General.

Costs

Article 3 requires RTV Slovenia to broadcast two national television channels, three national radio channels, and five regional/minority channels each on television and radio, and a television service dedicated to the National Assembly. In addition, it is to fund various programmes aimed at overseas audiences, teletext, internet and mobile phone services. As well as this, RTV Slovenia is also directed (in Article 7) to introduce digital, internet and satellite broadcasting. All of this is to be funded from a population of roughly 2million people, with a gross domestic product that is 77% of the EU average.¹

These statistics raise significant concerns that RTV Slovenia either will not be able to meet its legal obligations, or that RTV Slovenia is a significant burden on the public purse and the purses of licence fee payers. Although it is admirable that the Republic of Slovenia intends to

¹ Public Relations and Media Office of the Republic of Slovenia
<http://www.uvi.si/eng/slovenia/publications/slovenia-news/1475/1482/>

provide a wide range of publicly funded broadcast services to its people, care must be taken to ensure that quantity is not being provided at the expense of quality. It is arguably more important to be able to offer a fewer number of high quality services, than a large number of poor ones.

Quotas

Article 9 requires RTV Slovenia to produce Slovenian audiovisual works, and works made by independent producers. It is recommended that quotas be set for these requirements, in line with those quotas set out in the EU Directive, Television Without Frontiers.

Governance

The Council of Europe Recommendation (96) 10 underlines that member states should include in their domestic law provisions guaranteeing the independence of public service broadcasting organisations, and that the legal framework governing these organisations should clearly stipulate their editorial independence and institutional autonomy. The Act on RTV Slovenia establishes three governing bodies of the RTV Slovenia: The Programming Council, The Director General and The Supervisory Board. The Programming Council decides the broadcasting standards, the programme profile and plans and appoints and dismisses the Director General. The Director General is the combined supreme editor-in-chief and top manager. The Supervisory Board ensures that everything is done according to rules and regulations. However, the division of powers amongst the three bodies should be clarified, and the law should be adjusted in order to ensure the independence of RTV Slovenia, especially from undue political influence.

Regarding the division of powers, although the Programming Council appoints and dismisses the Director General and adopts programming standards and plans, it should not be in a position to instruct the Director General in concrete cases; to do so could be an infringement of editorial independence. The Programming Council should neither be in a position to give its consent to the Statutes, nor to the appointment/dismissal of directors in RTV Slovenia. The Director General should have complete responsibility for editorial activities and the management of RTV Slovenia. The Supervisory Board should cultivate its function to ensure that the economic and other activities of RTV Slovenia are in accordance with the Statutes and other legal requirements.

Regarding the independence of RTV Slovenia, the proposed Law is insufficient to guarantee independence from political influence and interference. Both the Programming Council and the Supervisory Board are in reality appointed by Parliament/Government; and it is the Programming Council which appoints the Director General. In a situation where a political party has a majority in Parliament and forms the government, the potential for strong political influence is evident. There are no safeguards for the independence of RTV Slovenia in such a situation. It is recommended that Parliament should appoint fewer members to the Programming Council and none to the Supervisory Board and that neither Council nor Board should start functioning until all members are appointed/elected. It is also recommended that the mandate period should be reconsidered; in the Law a mandate period of four years applies to all. A longer period should be envisaged for the Director General. Furthermore, the Law should also specify whether re-appointment is possible. In addition, the system should ensure a level of continuity in the Programming Council and the Supervisory Board, for example by appointing half of the members of each body for an initial two-year term.

It is strongly advised that these portions of the Act are reconsidered, in full consultation with interested parties and experts, to devise a means of appointment and procedures for the Programming Council and the Supervisory Board which safeguards RTV Slovenia's independence and freedom from any potential political interference.

Funding

RTV Slovenia is funded partly from commercial revenue (although this is restricted), licence fees and the national budget. The process for setting and agreeing the budget, and assessing the extent to which expenses will be met from the various funding sources, is not clear.

A vital component to maintaining the independence of the public service broadcaster is to ensure its financial viability and to safeguard it from political interference through the funding process. Ideally, the funding mechanism should be agreed every few years (on the basis of projected budgets and corporate plans) to provide a degree of autonomy and enable forward planning. This Act does not contain sufficient detail on this very important point, and thus leaves RTV Slovenia open to political pressure.² *It is strongly recommended* that the funding mechanism be determined according to a 5+ year rolling plan. This will provide financial security for RTV Slovenia. It will also assist the budgeting process for setting the level of the licence fee and for determining the contributions from the State budget.

Collection of the Licence Fee

The on-going ability of the public service broadcaster to perform its remit and to maintain its independence depends on the on-going certainty of its funding. The actual funding process plays a big part in this, as discussed above, but so too does the manner in which licence fees are collected and paid. The Council of Europe recommends, "ill-conceived collection and payment methods or irregular or delayed payment may endanger the continuity of public service broadcasting activities. In the specific case of the licence fee, close attention should be paid to the possible repercussions of exemption from payment for certain categories on the resources of the public service broadcasters and hence on the fulfilment of their missions."³

In the case of Slovenia, careful consideration should be given to simplifying the collection and payment methods, perhaps by including collection with electricity bills, or arranging for annual, rather than monthly payments. The exemption system for poor reception is likely to be cumbersome and costly to apply. It should be reviewed with a view to removing the exemption altogether, on the assumption that anyone who has a television or radio (even in an area of poor reception) will be using it.

² See the Council of Europe Recommendation No R(96)10 of the Committee of Ministers on the Guarantee of the Independence of Public Service Broadcasting (11 September 1996) : "The rules governing the funding of public service broadcasting organisations should be based on the principle that member states undertake to maintain and, where necessary, establish an appropriate, secure and transparent funding framework which guarantees public service broadcasting organisations the means necessary to accomplish their missions." The Explanatory Memorandum continues: "the level of licence fee or public subsidy should be projected over a sufficient period of time so as to allow public service broadcasters to engage in long term planning".

³ Recommendation No R(96)10 *ibid*, Explanatory Memorandum para 58, Guideline No.18

Collection of Information and Personal Data

The European Convention on Human Rights provides for the right to privacy⁴. The collection of unnecessary personal data can be construed as an invasion of privacy. In any event, collecting information that is not strictly needed for the purpose under consideration is burdensome, both on the collectors, and on individuals from whom the information is requested. In the case of this Law, it is not at all clear why RTV Slovenia would require tax references or employment details from licence fee payers. Seeking this information may be unnecessarily bureaucratic and intrusive.

Liability for breaches

Article 39 sets out the levels of fines that can be applied to RTV Slovenia for breaches of various provisions of the Act. However, it does not state *who* applies the penalty, or the criteria that will be used to determine the level of the fine. These points should be included in the Act for clarity and transparency purposes.

This Article, as well as the following two, indicate that where a breach has occurred by a corporate body (be it RTV Slovenia or a legal person or sole trader) both the corporate body and “the liable person” shall be subject to a fine. It is strongly recommended that individuals should not be held to account in cases where there is corporate responsibility. It is the responsibility of management to ensure that laws are followed. Often ‘fault’ for a breach cannot be held to be the responsibility of a single individual, but results from a breakdown in management supervision. If an individual employee has not performed according to his or her terms of employment, then that should be a matter dealt with under the employment contract, and not a matter for State intervention and regulation.

Appeals

The European Convention on Human Rights provides for a right of appeal.⁵ Where penalties can be applied against RTV Slovenia or licence fee payers, the Law does not state whether there is an appeals mechanism, or who exercises the right of appeal. Such a right must exist, and ought to be referred to in the Law.

⁴ See Article 8: “Everyone has the right to respect for his private and family life, his home and his correspondence.”

⁵ Article 6.1: “In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

EXPERTS' COMMENTS ON THE LAW (*Comments are in bold italics below*)**Act on Radio Television Slovenia (RTV Slovenia)****I. The status of RTV Slovenia****Article 1**

Radio Television Slovenia (hereinafter: RTV Slovenia) is a public institution of special cultural and national importance. It performs a public service related to radio and television activities as defined by this Act with the aim of ensuring the realisation of the democratic, social and cultural needs of the citizens of the Republic of Slovenia, of Slovenes abroad, of the members of the Slovene minorities in Italy, Austria and Hungary, and of the Italian and Hungarian communities in the Republic of Slovenia. It also carries out other activities pursuant to this Act, to the Statute of RTV Slovenia and the law governing the media.

This is fine.

Article 2

The founder of the public institution Radio Television Slovenia is the Republic of Slovenia. The founder's duty is to ensure the institutional autonomy and editorial independence of RTV Slovenia and provide appropriate financing for the performance of a public service.

(1)

(2) The name of the public institution is Radio Television Slovenia, abbreviated to RTV Slovenia.

(3) The seat of RTV Slovenia is in Ljubljana.

This is fine.

II. Activities performed by RTV Slovenia**Public services in the field of radio and television activities****Article 3**

(1) In this Act, public services encompass the creation, production, archiving and broadcasting of:

- two national television channels;
- three national radio channels;
- the radio and television channels at the regional centres in Koper and Maribor;
- one radio and one television channel each for the autochthonous Italian and Hungarian national communities (hereinafter: national community channels) and radio and television broadcasts for the Roma ethnic community (hereinafter broadcasts for the Roma);
- radio and television broadcasts for the Slovene national minorities in neighbouring countries and for Slovene immigrants abroad;
- radio and television broadcasts for foreign audiences;
- teletext, an internet portal and a portal for mobile telephones.

This is a very long list of activities, with a large number of television and radio stations of operate. The funding requirements will be very high.

(2) According to this Act, in addition to the channels and broadcasts described in the previous paragraph, public services also include the provision of a special television channel devoted to the live broadcasting of the sessions of the National Assembly of the Republic of Slovenia and its working bodies, and of recordings of sessions when it is impossible to broadcast them live. The aim of this channel is also to provide complete information to the general public regarding all other parliamentary activities, including the sessions of the National Council of the Republic of Slovenia, the parliament's international activities, consultations organised by the National Assembly of the Republic of Slovenia and its working bodies and by the National Council of the Republic of Slovenia, together with other activities related to the realisation of the constitutional duties of the Slovene Parliament.

This is fine.

Article 4

(1) By means of the channels and broadcasts listed in the first paragraph of the previous Article, RTV Slovenia in particular shall:

- ensure authentic and impartial news programmes, offering full information on political activities at home and in neighbouring countries, important events in other European states, in particular European Union members, and significant world events in such a way that the information enables an objective public awareness in the Republic of Slovenia, among Slovenes abroad, the members of the Slovene national minorities in Italy, Austria and Hungary, the autochthonous Italian and Hungarian national communities in the Republic of Slovenia and the Roma community living in Slovenia;
- provide high quality educational programmes, conveying the full spectrum of topical content, from religious and social to the natural sciences, technology and information technology;
- ensure the production of one-off dramas, series and serials;
- produce programmes reflecting the life and problems of various sections of the population, based on the principle of equal provision of information about events in all parts of Slovenia and in neighbouring countries, and ensure the production of documentary programmes of national importance which document times past and present;
- ensure RTV's own high-quality production of programmes aimed at children, minors and the elderly;
- ensure high-quality entertainment programmes for all age groups;
- provide high-quality information about all important cultural, political, historical, sports, social and economic events;
- ensure the realisation of the constitutional rights of the Hungarian and Italian national communities in relation to radio and television public information supply and encourage links between national communities and their nation of origin and the inclusion of cultural and other achievements by the Italian and Hungarian nation in programmes aimed at national communities;
- support the appearance and development of cross-border radio and television projects in line with international agreements and in cooperation with public radio and television stations in neighbouring countries;
- create programme content aimed at blind and partially sighted people and deaf and partially hearing people using techniques adapted for this section of the public;

Rather than create specifically targeted content, it would be better to provide subtitling, signing and audio description of general programming.

- devote particular attention to the disabled and content relating to them;

This could refer specifically to the desirability of encouraging positive portrayal of people with disabilities, and promoting employment within RTV Slovenia of disabled people.

- present and promote Slovene culture, encourage cultural creativity and the freedom of artistic creativity, and ensure the creation, performance and broadcasting of artistic works;
- present and promote science;
- pay particular attention to issues related to children, the family and other groups with special needs that are, due to their specific circumstances, more vulnerable to what is happening in society;
- devote particular attention to the role and activities of the registered religious communities;

It would be clearer to require programmes on religious themes to form part of the programme schedule.

- devote particular attention to the development of general, linguistic and political culture;

If the intention is to encourage a certain amount of minority language programming, this should be explicitly stated, and if necessary, minimum quotas set down.

- broaden the understanding of all the key issues related to the functioning of a democratic society;

This, as well as the following point, are public policy objectives, which are not measurable. Ideally, all these objectives ought to be measurable so that the Supervisory Board, and the public, can assess RTV Slovenia's performance against pre-determined targets.

- broaden the understanding of Slovene history, culture and identity in the context of European history and international integration;
- encourage sporting activities;
- provide information on health, environment protection and consumer protection;
- provide information about important issues relating to people's security, protection against natural and other disasters and to state defence, including issues regarding the functioning of international institutions that Slovenia is a member of, provide news flashes relating to risks to people, property, cultural heritage and the environment while taking into account the interests of individual groups of viewers and listeners in the Republic of Slovenia, allowing them access to programmes wherever possible;

Programme access issues do not fall into information provision about emergencies or news flashes. Emergency information should be provided by authoritative voices; community access programming is a different sort of programming altogether.

- promote a culture of public dialogue and provide a broad platform for the public discussion of social problems;

- provide information to the Slovene national communities in neighbouring countries, to Slovenes abroad and to the general foreign public about events and achievements in cultural and other areas within the Republic of Slovenia, and ensure the appearance of Slovene radio and television productions abroad;

It is not possible for RTV Slovenia to promise delivery of Slovene productions abroad, as this will require foreign broadcasters' agreement, and puts RTV Slovenia in an unfair negotiating position. This should not be an obligation; the objective should be set out as an intention for RTV Slovenia.

- support the provision of programmes aimed at the deaf and the blind, using techniques adapted especially for them;

Ideally, RTV Slovenia should have targets set over time for the provision of subtitling, signing and audio description.

- support the spreading of awareness of other cultures present in Slovenia and their representatives;
- ensure the production and broadcasting of Slovene audiovisual works and the work of independent producers;

Targets should be set, which as a minimum should reflect the targets for European and independent works in the Directive Television Without Frontiers.

- provide traffic news.

There are no proposals as to how all these content requirements are to be assessed. They are to be taken into account in the programme plan, but it is not clear how compliance with the Act will be measured. It is also not clear who will assess compliance, nor the consequences of non-compliance.

(2) With respect to the structure of the broadcasts listed in the first paragraph of the previous Article, RTV Slovenia must ensure that a large proportion of these have cultural, artistic, information, documentary and educational content.

“Large proportion” should be defined to enable certainty.

Article 5

RTV journalists, editors and other persons directly involved in the creation and production of RTV programmes must in relation to their work, in particular:

- respect the principle of accuracy, impartiality and completeness of information;
- respect human integrity and dignity;
- respect the principle of political balance and a pluralistic view of the world;
- during the formulation of programmes, respect the principles of constitutionality and legality, including the prohibition of the promotion of cultural, religious, sexual, racial, national or any other form of intolerance;
- ensure impartial and complete information so that citizens have the opportunity to freely form their own opinion;
- respect the principle of political independence and journalistic autonomy ;

- enforce the professional ethics of reporting, consistently differentiating in journalistic contributions between information and commentary;
- protect children and minors from content that could harm their mental and physical development, and respect general human values.

An additional standard should be (in accordance with the European Convention on Human Rights):

- ***respect privacy and the right to family life, especially in news and news gathering***

Article 6

(1) RTV Slovenia ensures the archiving of the programmes it produces within the framework of the public service it performs.

(2) RTV Slovenia must preserve its archived materials in such a way that the audiovisual recordings on film and other media, which could be destroyed by the process of ageing or in relation to which the process of ageing would considerably reduce the quality of the recording, are suitably protected or transferred to technologically more durable media for storing words, sound and pictures or words and sound.

(3) Archived recordings are available to the public for non-commercial purposes against the payment of proportional costs of copying or conveyance.

(4) For commercial purposes, archived recordings are accessible to the public in accordance with the act governing copyright against the payment of proportional costs of copying or conveyance and a fee determined by a tariff set by the Supervisory Board of RTV Slovenia.

This is fine.

Article 7

In relation to the method of the distributing, broadcasting and archiving of the programmes RTV Slovenia creates within the framework of its public service (hereinafter: RTV Slovenia programmes), RTV must, in line with its technological and developmental capabilities, introduce new technologies such as the Internet, digital radio broadcasting and satellite so that it facilitates the availability of its programmes to as wide a circle of citizens at home and abroad as possible, and to the Slovene national minorities in neighbouring countries as well as Slovenes around the world.

This provision carries substantial funding implications. It should not be set as a priority over the production of high-quality programmes. The process and timetable for introducing new technologies and broadcast platforms should be decided as part of the process of deciding long-term funding.

Article 8

(1) National broadcasts must, via the terrestrial network, cover a territory on which resides at least 90 percent of the total population of the Republic of Slovenia and national community broadcasts 90 percent of the territory on which live members of the Italian and Hungarian national communities.

(2) With respect to the area of coverage described in the previous paragraph, national radio broadcasts must cover all the motorways and other important roads at a sufficiently high technological level for the reception of a high-quality mobile signal.

(3) News broadcasts intended for foreign audiences must cover all the large population centres in the Republic of Slovenia, tourist centres and large transport intersections.

This is fine.

Article 9

(1) Every year, RTV Slovenia in accordance with the programme and production plan described in Article 16 of this Act, will publish a public call for the purchase of Slovene audiovisual works made by independent producers, which RTV will broadcast in accordance with the law governing the media.

Minimum quotas for independent productions should be set (at least 10% as per the Directive, Television Without Frontiers).

It is necessary to define what is meant by “independent producer”, and who qualifies.

(2) The procedure, conditions and criteria related to the public call described in the previous paragraph shall be adopted by the Programming Council of RTV Slovenia in accordance with the provisions of regulations governing the realisation of the public interest in relation to culture and with the law governing the media.

(3) Another RTV organisation or producer can be commissioned to produce broadcasts or a part thereof for a national community channel, but only with the agreement of the programming committee of the national community channel in question.

Article 10

(1) Political propaganda is not allowed in RTV Slovenia broadcasts.

(2) Notwithstanding the provision from the previous paragraph, political propaganda shall be allowed during election campaigns in accordance with the law governing election campaigns.

(3) According to this Act, political propaganda means party political broadcasts and other forms of political propaganda, the aim of which is to influence the decision of voters at elections.

(4) RTV Slovenia may only transmit party political broadcasts with a statement regarding by whom they were commissioned. The person or organisation commissioning the broadcast shall be responsible for its content. But subject to compliance with content standard rules.

Article 11

(1) Religious propaganda is not allowed in RTV broadcasts.

(2) According to this Act, religious propaganda means paid advertisements by religious groups.

This is fine.

Article 12

(1) During election campaigns, RTV Slovenia must offer, free of charge, programme slots for presentations of candidates, political parties and their programmes. With respect to decisions related to the slots offered and the content of the programmes broadcast during these slots, RTV Slovenia must adhere to the principles described in Article 4 of this Act.

(2) The slots intended for the presentation of the candidates and the political parties that are represented in the National Assembly and the European Parliament must be of equal duration for all. The conditions relating to the presentation of candidates and political parties within pre-election programmes must also be the same.

(3) Political parties and independent candidates not represented in the National Assembly or the European Parliament must be granted in total a third of the time RTV Slovenia has allocated to all the political parties and candidates taking part in the elections. RTV Slovenia must offer these parties and candidates special pre-election presentation slots that are dedicated especially to them and are separate from the programmes referred to in the previous paragraph, so that each party and each independent candidate has an equal opportunity for presentation in relation to all the others in this category.

(4) RTV Slovenia must ensure equal time and conditions for the presentation of candidates standing for the post of President of the Republic (hereinafter: the President).

(5) RTV Slovenia must within 15 days of the announcement of the date of the presidential elections or the elections for the National Assembly or the European Parliament or of local elections, publish in its programme schedules, in the daily press, or in another publicly accessible manner, the method for, the form and scope of, and the conditions for the presentation of the candidates, the political parties and their programmes referred to in the first paragraph of this Article.

This is fine.

Article 13

(1) In addition, RTV Slovenia shall as a public service carry out the following activities:

- broadcast its own television, radio and multimedia programmes via transmitters, links and other infrastructural facilities (hereinafter: television and radio infrastructure);
- broadcast radio and television channels which have the status of a local, regional, student or non-profit radio or television channel in accordance with the law governing the media (hereinafter: channels of special importance to the Republic of Slovenia), using their own equipment from RTV Slovenia transmission points;
- ensure visual and audio reception of the RTV Slovenia channels and other channels of special importance to the Republic of Slovenia, particularly in specific regions of neighbouring countries where there is a Slovene national community, in accordance with international agreements;
- maintain and develop the television and radio infrastructure and its technological compliance with European Union regulations;
- digital transmission of programmes.

(2) RTV Slovenia shall have priority in the allocation of available frequencies and access to the other technologically limited resources it needs for the performance of a public service and can obtain them without a public call for applications, by means of a decision issued by the Agency for Postal Services and Electronic Communication. The Agency issues the decision, applying mutatis mutandis the provisions of the Electronic Communications Act,

following a prior opinion by the Radio Transmission Council. The opinion must include the reasons for a priority allocation being urgently required for carrying out a public service.

This is fine.

The principle of financial transparency in the performance of a public service

Article 14

(1) In addition to performing a public service, RTV Slovenia can, in accordance with the law, carry out limited commercial activities, although these activities must be organised separately from those related to the public service.

(2) The resources obtained from the payment of licence fees, resources from the national budget and other public resources and income earned from performing the public service can only be used for the performance of the public service as specified by this Act.

(3) The income earned from commercial activities can be used for the co-financing of the public service or for the maintenance and widening of commercial activities, but only in areas defined by this Act.

(4) The income and expenditure related to the performance of the public service and that related to commercial activities shall be kept in two separate accounts.

The proper application of this Article is vital in order to comply with EU rules on State aid.

Commercial activities

Article 15

(1) The commercial activities carried out by RTV Slovenia are the following:

- the sale of advertising time and of programmes;
- technical and telecommunication services that are not a part of the public service;
- the renting out of broadcasting infrastructure and other immovable property;
- publishing and concert activities;
- the sale of broadcasting services, including interactive television services;
- the commercial use of archived materials.

There should be a requirement for commercial activities to be conducted on fair terms, so that the costs of public services are not loaded onto commercial bodies. The Supervisory Board should have responsibility for monitoring to ensure RTV Slovenia trades fairly.

(2) The sale of advertising time in the form of television sales or direct sales within RTV Slovenia broadcasts is not allowed, except in available slots on the special channel referred to in the second paragraph of Article 3 of this Act, which can appear at night time or on Saturdays, Sundays and public holidays and during the parliamentary recess under the condition that they are not in contradiction with the performance of the public service described in the second paragraph of Article 3 of this Act.

The restriction on advertising within the bulk of RTV Slovenia broadcasts places an enormous reliance on licence fee and public funds, and therefore requires greater care to be taken of how funding is to be arranged and agreed.

III. Leadership and management, supervision

Programming Council of RTV Slovenia

Article 16

(1) The Programming Council of RTV Slovenia shall:

- following a proposal by the Director General, adopt broadcasting standards and a programme profile in line with this Act and the Act governing the media, as well as international acts;
 - following a proposal by the Director General, adopt a programme production plan which is in line with the financial capabilities of RTV Slovenia;
 - following a proposal by the Director General, adopt a programme plan;
- regularly discuss the implementation of the adopted programme profiles and the production plan and instruct the Director General with regard to overcoming any shortcomings in these areas;
- discuss the realisation of the adopted programme profile;
 - discuss comments and suggestions provided by the viewers and listeners of RTV Slovenia broadcasts and take a stand in relation to them; when determining the programme policy and in justifiable instances instruct the Director General in relation to the changes that must be introduced in the programmes;
 - following a proposal by the Director General, give its consent to the Statute of RTV Slovenia;
 - following a proposal by the Director General, give its opinion in relation to the proposed financial plan;
 - appoint and dismiss the Director General of RTV Slovenia and give a prior consent to the appointment and dismissal of the director of radio programmes (hereinafter: Director of Radio Programmes) and the director of television programmes (hereinafter: Director of Television Programmes);
 - decide on other programme-related matters when required by the Statute;
 - adopt its rules of procedures, organise its work and appoint its committees in accordance with the rules of procedure;
 - decide on other matters when required by the law or the Statute.

Paragraph 1 Indent 6

It should be made clear that the instructions to the Director General in relation to changes that should be introduced in the programmes shall not relate to specific programmes, but to overall programming policy.

Paragraph 1 Indent 7

The expression “give its consent” is unclear. Does it mean that if the Programming Council within the 30 days mentioned in paragraph 2 refuses to give its consent, the Supervisory Board will not be in a position to adopt the Statutes? The consent must either be restricted to questions concerning the area where the Programming Council has competence (programming policy etc), or it must be reduced to a requirement that the Programming Council shall have the possibility to voice its opinion concerning the Statutes, and that the Supervisory Board shall take the Programming Council’s comments into account before adopting the Statutes.

Paragraph 1 Indent 9

Indent 9 contains a definition of how the law will refer to the directors of radio and television programmes. The definitions are not complied with consequently in the law, see for instance Article 17 paragraph 4 indent 4 and Article 21 paragraphs 3 and 4.

(2) When the Programming Council of RTV Slovenia fails to adopt a decision relating to the consent to the Statute referred to in indent 6 of the first paragraph of this Article within thirty days of having received the proposed Statute, the Supervisory Board can pass a decision without the consent of the Programming Council.

The reference to indent 6 should probably be indent 7.

(3) When the Programming Council of RTV Slovenia fails to give an opinion on the proposed financial plan referred to in indent 7 of the first paragraph of this Article to the Supervisory Board of RTV Slovenia within thirty days of having received the proposed financial plan, the Supervisory Board can adopt a decision without the Programming Council's opinion.

The reference to indent 7 should probably be indent 8

(4) When the Programming Council of RTV Slovenia fails to adopt a decision relating to the consent to the appointment or dismissal of the Directors of Radio or Television Programmes referred to in indent 8 of the first paragraph of this Article within fifteen days of having received the proposal, the Director General can make the final decision without the consent of the Programming Council.

The reference to indent 8 should probably be indent 9.

(5) The Programming Council of RTV Slovenia passes a decision about its rules of procedure with a two-third majority of the votes of all its members, while decisions related to indents 1, 2, 6 and 8 of the first paragraph of this Article are passed by the majority of the votes of all its members. In relation to all the other matters within its competence, it passes decisions with a majority of votes of all the members present.

The reference to indents 6 and 8 should probably be 7 and 9. Decisions related to the specific indents requires a majority of all members, while decisions related to the other competences requires a majority of members present. It would be preferable to set a quorum (that is, the minimum number or minimum percentage of members present required for the Programming Council to make decisions) for all decisions. There is an additional difficulty related to Article 17 paragraph 5 indent 7, which states that half of the 16 members of the Programming Council appointed by the National Assembly of the Republic will not be appointed until the Programming Council has worked for two years. It is unclear how the term "all members" in regard of decisions related to the specific indents shall be interpreted in the two first years of the Programming Council's existence.

Article 17

(1) Persons who with their knowledge, reputation and achievements in the field of culture, education or any other area of social life can make a contribution to the successful functioning of and the increase of the prestige of public radio and television, both in Slovenia and abroad, can be elected or appointed to the Programming Council of RTV Slovenia.

Paragraph 1

The qualifications required for someone to be eligible as a member of the Programming Council might lead to an unintended narrowing of candidates, for instance only allowing those who have declared themselves as friends of RTV to become members. The inclusion of personal qualifications such as personal integrity and independence would underline the intention to have a dynamic Programming Council which can be a driving force in the development of RTV Slovenia.

(2) The members of the Programming Council must carry out their work independently and impartially and are obliged to realise only the interests of RTV Slovenia as a public radio and television service. When performing their function, they are bound to adhere to the Constitution of the Republic of Slovenia and the provisions of this Act and ensure that the principles defined in Article 4 of this Act and in the part of the Statute referring to programmes and the creation thereof are fulfilled.

(3) Persons can not be elected or appointed to the Programming Council if they have, at the time of appointment or within a period of five years prior to the appointment, held one of the following positions:

- member of a body within a political party;
- member of the European Parliament or an employee or an official within a body of the European Union;
- the President, the Prime Minister, a Member of Parliament or the National Council, a mayor, a judge of the constitutional court, a minister, a state secretary or another official in state bodies;
- a Director General, a secretary-general, a head of a body within the government or a government office, a director of a directorate and the bodies therein, a head of an administrative unit, or a director or secretary of a municipal administration.

(4) In addition, the following persons can not be elected or appointed to the Programming Council of RTV Slovenia:

- members of the management or supervisory bodies or the employees of competitive media, as well as persons who have shares in them; persons employed by RTV Slovenia, with the exception of the three representatives of the RTV Slovenia employees elected from among all the employees;
- members of the Radio Transmission Council and employees of the Agency for Postal Services and Electronic Communications, as well as members or employees of other bodies which within the administrative procedure take decisions on the allocation of frequencies or other media rights and the rights of employees in the media, and persons who take part in the adoption of such decisions;
- members of the management bodies or supervisory bodies of legal persons that have business relations with RTV Slovenia;
- close members of the families of the leading employees of RTV Slovenia, such as the Director General, the Director of Radio or of Television Programmes and any other employee of RTV Slovenia defined as a manager by the Statute of RTV Slovenia.

(4) Close family member as described in indent 4 of the previous paragraph of this Article means a spouse or a partner with which the employee cohabits outside marriage or lives in a same-sex registered partnership, the employee's children or adopted children, grandchildren and parents or adoptive parents, and any other persons living in the same household.

(5) The Programming Council of RTV Slovenia consists of 29 members, of which:

- one member shall be appointed by the Hungarian national community;
- one member shall be appointed by the Italian national community;
- one member shall be appointed by the Slovene Academy of Arts and Sciences;
- two members shall be appointed by the President of the Republic, following a proposal from the registered religious communities;
- three members shall be elected from among the employees of RTV Slovenia at direct elections so that news activities, cultural artistic activities and technical activities are represented;
- five members shall be appointed by the National Assembly of the Republic of Slovenia following a proposal by political parties, whereby the parliamentary representation of the parties must be considered to the greatest possible extent;
- sixteen members shall be appointed by the National Assembly of the Republic of Slovenia on the basis of suggestions by the viewers and listeners of RTV broadcasts, universities and societies, associations of societies or their organisations, in particular from the field of the arts, culture, science and journalism and other organisations of the civil society, excluding political parties and their organisational forms. The suitability of the candidates and their fulfilment of the conditions will be proved with proofs determined in the public call for applications.

Half the members referred to in indent 7 of this paragraph shall be appointed simultaneously with the appointment or election of the members referred to in indents 1 to 6 of this paragraph and the other half of the members two years later.

When appointing members of the Programming Council referred to in indent 7 of this paragraph, the National Assembly shall consider as one of the criteria the regional representation of the various parts of Slovenia. The National Assembly shall adopt the decision on the appointment of the members referred to in indent 7 of this paragraph by a majority vote of all the deputies.

Paragraph 5

The Programming Council is a large group. It consists of 21 members appointed by the Parliament (five members after a proposal by political parties and 16 members based on suggestions from a number of organisations and members of RTV Slovenia's audience). The President of the Republic appoints two members after a proposal from the religious communities, three members are appointed by specific institutions and RTV Slovenia's employees elect three members.

Parliament is thus given a key role in the appointment of members to the Programming Council, especially since the group that can propose members in essence means the large part of the population in Slovenia. If many individuals and organisations use their right to propose members, the choice for the Parliament will be sufficiently wide for the Parliament to choose whomever they want. The present regulation thus may give the Parliament an unimpeded strong position in relation to RTV Slovenia, especially if the majority in Parliament exploits its position. That majority can in effect determine the Programming Council's majority.

There are various solutions to this potential problem. One is to reduce the members appointed by Parliament to the five “political” members and another group (smaller than 16) of members chosen on the basis of their personal and professional competence with reference to Paragraph 1 (see above). The remaining members could be chosen by Parliament after proposals from specified civil society institutions and organisations. There would also be the possibility to enlarge the group of members appointed by the President, or to give other institutions or organisation a right to appoint members to the Programming Council themselves.

Paragraph 5 also states that half of the 16 members will not be appointed until after two years after the rest of the members of the Programming Council have been chosen. This means that for the two first years of its functioning the Programming Council has 21 members instead of 29. As mentioned above, that may lead to uncertainty regarding voting. It also means that in the two first important years the Programming Council cannot draw from the competence of almost a third of its potential members. Changes in the selection procedure, as suggested above, could provide that all members are appointed at the same time. In order to secure some continuity for the Programming Council, while at the same time establishing a “complete” Programming Council in the two first years of its functioning, a possibility is to give some members a mandate period of two years instead of four.

Article 18

(1) Members of the Programming Council shall be deemed to have been appointed or elected on the day the resolution on the appointment or the decision about the election is signed, or on the day of being appointed by the National Assembly of the Republic of Slovenia.

The article regulates when elections or appointments enter into force. That also seems to be the time when the elected or appointed members start to function in the Programming Council. However, unless the time when elections are signed and appointments are made coincide with the time when the mandate period for the outgoing member expires, there will either be too few or too many members of the Programming Council. An alternative could be to set a date for the change of mandate period.

(2) The mandate of the members of the Programming Council is four years, starting from the day the Programming Council is formed in accordance with this Act.

The mandate period is defined as four years. The same limitation applies to the Director General and the top management of RTV Slovenia, the members of the special programming committees and the members of the Supervisory Board. It is unclear whether it is possible to be reappointed for a new period or not. This should be clarified.

Regarding the Programming Council, a limit of one period is reasonable, especially if a substantial percentage of the members will be changed every two years. If there is an intention to have such a limit, it would be advisable to express that in the law. If members of the Programming Council are to be eligible for re-appointment, the conditions for re-appointment (or re-election) should also be stated in the law.

(3) The mandate for those members of the Programming Council who no longer fulfil the conditions for being appointed or elected as specified by this Act shall cease.

(4) A member of the Programming Council whose mandate has ceased in line with the previous paragraph or who resigns shall be replaced by means of the procedure envisaged for the appointment or election of the members of the Programming Council.

(5) The Programming Council of RTV Slovenia is deemed to be constituted when the Director General establishes on the basis of written notices that at least two-thirds of the total number of its members have been appointed or elected.

Paragraph 5 is needed if Article 17 paragraph 5 indent 7 is upheld. If that is changed, paragraph 5 may need to be revised.

Article 19

(1) The work of the Programming Council of RTV Slovenia is led by its chairperson or his or her deputy, in accordance with the Programming Council's rules of procedure.

(2) The chairperson and his or her deputy are elected by the Programming Council of RTV Slovenia from among the members by the majority vote of all the members.

(3) If the chairperson or his or her deputy is not elected following the procedure described in the previous paragraph, the member who has received the highest number of votes shall be appointed as acting chairperson or acting deputy and will perform the duties of the chairperson or the deputy for a period of six months. If two or more members of the Council receive the same number of votes in a repeated voting, the acting chairperson or deputy shall be decided by means of a draw.

(4) The voting of the Programming Council of RTV Slovenia shall be public in relation to all matters.

This is fine. The rules of procedure should include the setting of a quorum for all categories of decision.

Article 20

(1) Members of the Programming Council of RTV Slovenia and the Supervisory Board of RTV Slovenia must not have any business relations with RTV Slovenia.

(2) During the mandate of the members of the Programming Council of RTV Slovenia and the members of the Supervisory Board, RTV Slovenia may employ and conclude cooperation agreements with close family members, but the Programming Council and the Supervisory Board must be informed of such a contract or employment in advance.

Not only should the Programming Council be informed in advance of any potential employment or contract with a close family member, but such employments or contracts should be subject to the Programming Council's express approval. When considering approval, the Programming Council should decide whether the proposed arrangement would be a conflict of interest.

(3) A close family member, as referred to in the previous article, means a spouse or a partner with which the member of the Programming Council or the Supervisory Board cohabits outside marriage or lives in a same-sex registered partnership, children or adopted children, grandchildren and parents or adoptive parents, and any other persons living in the same household as the member of the Programming Council or the Supervisory Board.

(4) No person can be a member of the Programming Council and the Supervisory Board at the same time.

Director General of RTV Slovenia

Article 21

(1) The Director General of RTV Slovenia shall be appointed by the Programming Council on the basis of a public call for applications. The mandate of the Director General is four years.

Paragraph 1 sets the mandate period of the Director General (“DG”) at four years. It is a relatively short period for an editor-in-chief. If there is a possibility for re-appointment, a DG who wants a new period may act to please the Programming Council, in order to be re-appointed. That situation will affect the division of competences between the three top units of RTV Slovenia. It would be preferable to fix the mandate period for instance to six years with the possibility of one additional period. This would mean that a totally new Programming Council from the one that appointed the DG will decide on a re-appointment or not. An alternative would be one period of eight years with no possibility of re-appointment.

(2) The Director of Radio Programmes and the Director of Television Programmes shall be appointed by the Director General on the basis of a public call for applications, following a prior consent by the Programming Council of RTV Slovenia. The Directors of Radio and Television Programmes organise and manage the work involved in radio and television broadcasts and lead the professional work of the radio and television networks, except for programme management in relation to the national community channels, which is the responsibility of the assistant to the Director General appointed by the Director General in agreement with the programming committees. The mandate of the Director of Radio Programmes and the Director of Television Programmes is four years.

The mandate of the top management of RTV Slovenia is also four years (paragraphs 2 and 3). It would be reasonable for there to be a possibility of re-appointment, at least for one more period, for that group.

(3) Editors-in-chief are appointed and dismissed by the Director General on the basis of a proposal by the Director of Radio or Television Programmes, who publish public calls for applications for these positions. The mandate of editors-in-chief is four years. Other editors are appointed and dismissed by the relevant editor-in-chief.

(4) When the Director of Radio or Television Programmes proposes to the Director General that a candidate who did not receive a positive opinion of the majority of the employees in a particular editorial office should be appointed the editor-in-chief, the majority of employees in that editorial office shall have the right to propose to the Director General a candidate who has obtained their positive opinion, informing the Programming Council of RTV Slovenia of this. In this case, the Director General chooses a candidate after having obtained a consent from the Programming Council of RTV Slovenia, which has to discuss and decide within a period of fifteen days after having received the notification whether it will give a consent to one, both or neither of the proposed candidates.

Paragraph 4

The rule proposed in this paragraph, whereby the Programming Council in effect chooses who should be appointed editor-in-chief under certain conditions, is not advisable, since it

blurs the division of competences between the DG and the Programming Council. The DG is legally responsible for the work of RTV Slovenia, and therefore it should be her/his responsibility to decide who should be editors-in-chief. If an appointment is done contrary to labour legislation or agreements, then the case should be solved within the framework set up for such cases in the relevant employment legislation.

(5) The Director General also appoints and dismisses other management, in accordance with the Statute.

Article 22

The Director General of RTV Slovenia:

- leads the programme work of the RTV Slovenia;
- organises and leads the work and the operations of RTV Slovenia;
- presents and represents RTV Slovenia;
- is responsible for the legality of the work of RTV Slovenia;
- coordinates the work of the Director of Radio Programmes, the Director of Television Programmes and other management in accordance with the Statute and decides on any disputes arising among them;
- carries out other tasks specified by the law and the Statute;
- leads a dialogue with the representatives of the relevant trade unions within the public institution, concludes a special collective agreement for RTV Slovenia and is one of the signatories on the employers' side of the Collective Agreement for Professional Journalists.

Article 23

(1) The Programming Council of RTV Slovenia shall appoint a programming committee for the Italian and the Hungarian national community channels, each of which has nine members, with the exception of those members the two self-governing national communities appoint themselves or those that are elected from among the employees of the editorial offices of the national community channels.

(2) Two thirds of the members of the two committees referred to in the previous paragraph shall be appointed by the Italian and Hungarian self-governing national communities in Slovenia for a term of four years.

(3) One member of the programming committee referred to in the first paragraph of this Article shall be elected from among the employees of the editorial offices of the radio and television channels for the Italian and Hungarian national communities.

The Programming Council shall appoint programming committees of the national community channels. The committees each have nine members. The self-governing national communities appoint two thirds of each committee, with a mandate period of four years, while there is not any fixed mandate period for the one member who represents the employees or the two members appointed by the Programming Council. It is difficult to understand the reasoning behind this division. There should be a possibility for the Programming Council to change "their" representation in the programming committees. Regarding representatives of the employees, there may be regulation amongst the various labour unions on what conditions representations shall take place.

With reference to what is said above regarding mandate periods, consideration should be given to changing or reconsidering the appointment of half of the members every two years.

(4) A programming committee for a national community channel shall give its consent to the appointment of the editor-in-chief of the national community channel and to the scope and programme profile of the channel, the programme standards and the programme outline of the channel, which all have to be coordinated with the material capabilities of RTV Slovenia and with the regulations governing the work thereof.

In respect of the national community channels, it is reasonable for the programme committees to be involved in the appointment of the editor-in-chief of the channel. However, a lighter regulation could be to let the committee give its advice, instead of its consent, when a new editor-in-chief is to be appointed.

The appointment of chairperson and vice-chairperson is not regulated in the law, but presumable it will be dealt with in the Statutes.

(5) A programming committee for a national community channel shall:

- discuss the realisation of the programme profile and the part of the programme production plan and the annual report of RTV Slovenia which refers to the national community channels;
- discuss the comments and suggestions of the viewers and listeners of the national community channel in question and take a stand in relation to them;
- propose to the Programming Council of RTV Slovenia that it should deal with issues relating to the national community channel;
- carry out other tasks relating to the national community channel, as determined by the Statute.

(6) A person who is a member of a committee for a national community channel can not be a member of the Supervisory Board of RTV Slovenia.

The text indicates that a member of a committee for a national community channel can at the same time be a member of the Programming Council. Is this the intention?

Article 23a

(1) The Programming Council shall appoint a programming committee for issues related to programmes for the disabled. The committee shall have nine members.

(2) Members of the programming committee referred to in the previous paragraph shall be put forward by the associations of the disabled, whereby only persons whose disability has been established by a final decision of a competent body can be proposed. The Programming Council can appoint two or more candidates from the same representative association of the disabled only when the number of candidates proposed by associations is smaller than the total number of members to be elected.

(3) The programming committee for issues related to programmes for the disabled shall:

- discuss the proposal for and the realisation of the programme profile where it refers to content aimed at the disabled
- discuss the comments and proposals submitted by viewers or listeners in relation to programme content aimed at the disabled
- discuss the widening of programme content aimed at the deaf and the blind in techniques adapted to them
- carry out other tasks related to the programme content aimed at the disabled when the Statute so determines.

(4) The programming committee for issues related to the programmes for the disabled can offer initiatives and suggestions to RTV Slovenia bodies, which are obliged to discuss them and take a stand in relation to them.

Article 23b

(1) Within the RTV Slovenia public institution there shall be an Employee Council of the RTV Slovenia Public Institution, in relation to which the provisions of the law governing the participation of workers in management shall be used, except when this Act or the Statute of RTV Slovenia differently regulates specific issues.

(2) A representative from the Employee Council shall be invited to all the sessions of the Programming Council and the Supervisory Board, shall receive all the materials for the sessions of these bodies and shall have a right to present the opinion of the Employee Council relating to these materials.

It is unclear what position this observer will have in relation to the members elected by the employees.

Supervisory Board of RTV Slovenia

Article 24

(1) RTV Slovenia has a Supervisory Board, consisting of eleven members. The National Assembly appoints five of the members, whereby it must consider the parliamentary representation of the political parties, four members are appointed by the government, while the RTV employees elect two members through direct elections.

In a situation where the majority in the National Assembly and the Government represent the same political party, it is likely that the majority of the Supervisory Board will represent the same political party. This is contrary to good practice and is likely to lead to political influence being applied to RTV Slovenia. To avoid this, an alternative means of nomination and appointment to the Supervisory Board should be adopted. No members should be appointed as political representatives. They should all be appointed on their merits, in accordance with the competences that they offer. These should be spelled out in the Law. There are a number of ways in which members of the Supervisory Board can be chosen: by nomination from civil society organisations, open advertisement, etc. It is important for the legislators to reconsider this proposal, and to consult interested parties on the selection method which would best deliver an impartial, independent Supervisory Board for RTV Slovenia.

(2) Persons listed in the third paragraph of Article 17 of this Act can not be appointed or elected as member of the Supervisory Board of RTV Slovenia, with the exception of two members elected directly by the employees of RTV Slovenia. However, a person performing management duties at RTV Slovenia can not be elected.

(3) The members of the Supervisory Board of RTV Slovenia must have completed at least higher education and have five years of work experience.

(4) The members of the Supervisory Board of RTV Slovenia shall elect from among themselves the chairperson and the deputy to the chairperson.

(5) The mandate of the members of the Supervisory Board of RTV is four years.

The consideration regarding the mandate period for members of the Programming Council also apply to the Supervisory Board.

(6) In the process of constituting the Supervisory Board of RTV Slovenia, the provisions of this Act relating to the constitution of the Programming Council of RTV Slovenia shall apply mutatis mutandis.

(7) To replace a member of the Supervisory Board whose mandate has ceased prematurely due to the non-fulfilment of the conditions for appointment or who has resigned, the provisions of this Act relating to the replacement of the members of the Programming Council shall apply mutatis mutandis.

Article 25

(1) The Supervisory Board of RTV Slovenia shall:

- adopt the Statute of RTV Slovenia on the basis of a prior consent by the Programming Council of RTV Slovenia;
 - adopt the financial plan and the annual report of RTV Slovenia and decide about the use of any surplus of income over expenditure;
 - determine the price of services that are not a part of the public service;
 - determine the way in which television sets and radios are registered and registration temporarily or permanently cancelled;
 - determine in detail the payment method for having a radio or television set, as well as the criteria for writing off, partially writing off or postponing payment and paying in instalments in line with this Act;
- decide on the tariffs and other conditions for the broadcasting of programmes produced by other parties;
- supervise the operations of RTV Slovenia;
 - supervise the keeping of the books, the legality of business operations, and checking periodic statements of accounts;
 - have a right to examine all documentation, including that which relates to the functioning of transmitters and connections;
 - adopt its rules of procedure and organise its work and appoint its committees in accordance with the rules of procedure;
 - decide on other issues determined by the law and the Statute.

Paragraph 1 Indent 1

The expression “give its consent” is unclear. Does it mean that if the Programming Council within the 30 days mentioned in paragraph 2 refuses to give its consent, the Supervisory Board will not be in a position to adopt the Statutes? The consent must either be restricted to questions concerning the area where the Programming Council has competence (programming policy etc), or it must be reduced to a requirement that the Programming Council shall have the possibility to voice its opinion concerning the Statutes, and that the Supervisory Board shall take Programming Council’s comments into account before adopting the Statutes.

(2) When the Supervisory Board of RTV Slovenia deals with issues relating to the telecommunication services, in particular when deciding on the tariffs and other conditions in connection with the broadcasting of programmes produced by other parties, representatives of

the Agency for Postal Services and Electronic Communications, as specified by the Statute of RTV Slovenia, must be invited to its sessions.

(3) The Supervisory Board of RTV Slovenia informs about its conclusions in writing the Programming Council of RTV Slovenia, the programming committees of the channels for the Italian and the Hungarian national communities, the National Assembly of the Republic of Slovenia and the minister responsible for the media. When it finds irregularities, it orders the Director General to correct them. The Supervisory Board has a right and duty to propose to the competent bodies that measures within their competence should be taken.

Paragraph 3

There could be a requirement that the conclusions of the Supervisory Board should be made public (and that the bodies mentioned should be informed specifically (in writing)). That would favour transparency. The verb “orders” could be exchanged with “instructs”.

(4) The Supervisory Board of RTV Slovenia shall pass decisions on the basis of the majority vote of all its members, while decisions regarding the Statute of RTV Slovenia and the Board's rules of procedure shall be passed with a two-third majority of the votes of all the members.

Transparency of operations and the Statute of RTV Slovenia

Article 26

(1) The operations of RTV Slovenia are public. The annual report is published in the manner determined by the Statute. The annual report must contain the classification of the costs involved in the production of programmes within individual programme categories and contents. The annual report is published on the website of RTV Slovenia. The resolutions and standpoints of the Supervisory Board of RTV Slovenia shall also be openly published, as well as the standpoints of the programming committees for the national community channels relating to issues regarding the national community channels.

(2) The sessions of the Programming Council of RTV Slovenia shall be open, except when business secrets are discussed or when there are other reasons for which the Statute determines that a closed-door session is required.

(3) Members of the Programming Council of RTV Slovenia and the Supervisory Board of RTV Slovenia are entitled to an attendance fee and the reimbursement of their material costs in line with the Statute.

This is fine.

Article 27

(1) The Statute of RTV Slovenia determines the following in particular:

- the organisation of this public institution and its division into organisational units;
- the bodies of the public institution and their competences according to the law;
- conditions for the appointment and dismissal of the Director General;
- conditions for the appointment and dismissal of the Director of Radio Programmes and the Director of Television Programmes;
- conditions for the appointment and dismissal of editors-in-chief and other editors and their areas of work;

- conditions for the appointment and dismissal of the management of RTV Slovenia, who are not covered by the previous indents of this paragraph, and their areas of work and competence;

- acts that are published in the *Official Gazette* of the Republic of Slovenia;

- other issues important for carrying out the activities and performing the operations of RTV Slovenia.

(2) The Statute of RTV Slovenia shall enter into force the day following its publication in the *Official Gazette* of the Republic of Slovenia.

IV. Financing

Article 28

(1) RTV Slovenia shall obtain the resources needed to carry out its activities from:

- the payment of RTV licence fees (hereinafter: licence fees);

- sales activities;

- the national budget;

- sponsorship and other sources in accordance with the law and the Statute.

Which 'law' is being referred to here? If it is not this law, the relevant legal instrument should be identified.

(2) The following shall be financed from the national budget:

- the share of national community broadcasts which is not financed from licence fees;

- the share of RTV Slovenia's broadcasts not financed from licence fees aimed at the Slovene national minorities in neighbouring countries, for Slovenes abroad and for the foreign public;

- parts of individual projects of cultural, scientific and general educational importance and specific projects relating to the digitalisation of technical equipment and of the archives as proposed by the competent ministries that are not financed from licence fees.

It is not clear how these 'shares' are determined and measured. The budgeting and finance processes for RTV Slovenia need to be set out in much greater detail and clarity, to preserve the independence of the public service broadcaster.

(3) The activities of RTV Slovenia that are defined by this Act as a public service are financed by the licence, except the parts where these activities in accordance with the provisions in the previous paragraph of this Article are financed from the national budget.

Again, it is not clear how these shares are determined or measured.

Article 29

(1) Those who have a radio or television set or other appliance that enables the reception of radio or television channels (hereinafter: set) on the territory of the Republic of Slovenia, where the technical conditions for the reception of at least one RTV Slovenia channel are provided, must pay a licence fee to RTV Slovenia for radio and television services.

(2) In areas that are, due to the rational use of frequencies and financial resources or for any other justifiable reason no longer covered by terrestrial networks and where reception can be provided only via satellite, cable network or with the aid of another technology, the owners of sets are liable to pay the licence fee, under the proviso that these technologies ensure at least the same quality of reception as the terrestrial network and under the condition that RTV Slovenia by exempting them from payment of the licence fee, or by reducing the fee or in any

other appropriate manner contributes at least half of the additional costs of acquiring the equipment for receiving channels via satellite, cable or any other technology in accordance with this Act.

What is the mechanism for determining the quality of reception, and who decides whether the quality is poor enough to warrant an exemption? There is a danger that this provision – if widely used by citizens - will attract a serious level of cost, if engineers have to assess the quality of reception in many premises. It may be worthwhile reviewing the actual numbers of premises to which this provision applies. If it is only a few, then consideration should be given to removing the proviso altogether and applying the licence fee to all owners of radio and television sets, regardless of the quality of reception.

(3) The level of the licence fee shall be determined by the law. The government shall change the level by 10% at the most when there are justifiable economic reasons for doing so, but this must be done by 1st September of the current year for the year following.

(4) It shall be deemed that every legal or natural person who is registered as a user of or who pays for electricity from the public power network is in possession of a set, except when a person submits a written declaration that he or she does not possess a set, that on that person's premises nobody else's radio or television set is used and that the person has been informed of the legal consequences of giving a false statement.

(5) Those who acquire a set and are at the time of acquiring a set not liable to pay a licence fee must register the set with RTV Slovenia within 30 days of having acquired it. Those liable must report a change of personal address or the address of the head office of the legal person to RTV Slovenia within 15 days of the change occurring.

15 days is a very short period for notifying of a change of address.

(6) Before RTV Slovenia demands the payment of a licence fee pursuant to this Act from a consumer of electricity who until then has not been liable to pay the licence fee, it has to enable that person to submit a statement in line with paragraph 4 of this Article.

Article 30

(1) Monthly licence fees are paid to RTV Slovenia as follows:

1. for personal use:

a) liable natural persons pay for all television and radio sets and other appliances which facilitate the reception of radio and television channels used by them personally or together with the members of their family SIT 2,637.

b) If a liable person has one or more radio sets, but has no other appliances which would facilitate the reception of television channels, he or she pays SIT 779.

c) The amounts referred to in the previous two points also apply to legal persons, state bodies, bodies in self-governing local communities and to sole traders, but in this case the fee is payable for every individual set if it is intended exclusively for the personal use of the employees of the legal person or the personal use of the sole trader.

2. For public use:

a) Legal persons and sole traders who have sets on their business premises, such as catering establishments, hotels, tourist resorts, shops, restaurants and similar, which are intended for public use shall pay SIT 7,463 a month per one business unit in which there are sets, and 30% less for each unit when there are more than one business units.

b) If a business unit referred to in the previous paragraph has only radio sets and no appliances that would facilitate the reception of television channels, the monthly licence fee shall be SIT 2,796.

c) Hotels and other tourist businesses shall pay a monthly amount of SIT 11,197 for the first 10 television sets or appliances that enable the reception of television channels in hotel rooms, and SIT 555 for each additional set. If a hotel does not have 60% occupancy in a particular month or if it operates seasonally, it is entitled to a 50% discount for these months.

It is not clear what the payment mechanism is. Is it the responsibility of the licence fee payer to arrange monthly payments himself, or are they billed, or can the sums be collected directly? There is a concern that the costs of administrating the collection of licence fees will be very large, and take up a large proportion of potential income. It may be better to adopt a simple collection mechanism, perhaps annual payment, or perhaps by arranging for the electricity company to collect the licence fee with electricity payments.

(2) The following groups of those liable shall be exempt from the payment of the licence fee:

- the materially deprived;
- disabled persons with a 100% physical disability;
- disabled persons with less than a 100% physical disability when they are entitled to an attendance allowance;
- persons with a permanent loss of hearing;
- childcare institutions, schools, hospitals, old people's homes, organisations and workshops for the disabled, that is institutions in possession of sets which are intended for the educational process or the entertainment of people attending or residing in these institutions;
- embassies and consulates, on the basis of reciprocity.

(3) The following shall be deemed materially deprived as referred to in the first indent of the previous paragraph:

- the recipients of welfare allowance in line with the regulations governing social care,
- the recipients of a financial supplement in line with the regulations governing social care.

(4) Persons described in the previous paragraph can prove they are entitled to exemption from payment of the licence fee only by means of a final decision by the body which established the entitlement to the welfare allowance or supplement.

(5) The liable persons referred to in indent 2 and 4 of the second paragraph of this Article can prove that they are entitled to exemption from payment of the licence fee only on the basis of a decision by the Pension and Disability Insurance Institute or another body that ascertains the level of disability.

This entire process seems quite bureaucratic. The costs of monitoring compliance and enforcement will be very large, and are likely to take up a disproportionate amount of licence fee income.

Article 31

The provisions of the law on public finances apply to RTV Slovenia in the same way as to the Health Insurance Institute and the Pension and Disability Insurance Institute of the Republic of Slovenia.

This is fine.

Registers of the persons liable to pay licence fees

Article 32

This chapter determines the information databases (hereinafter: registers) that RTV Slovenia keeps in relation to the charging and collecting of licence fees.

This is fine.

Article 33

(1) The provisions of the law regulating personal data protection shall be used in relation to the collection, processing, maintaining, conveying and use of the personal data in the registers unless this Act stipulates otherwise.

(2) The managers of personal data databases must convey personal data free of charge.

This is fine.

Article 34

(1) The manager of registers required on the basis of this Act is RTV Slovenia.

(2) RTV Slovenia may use personal data during activities relating to the charging and collecting of licence fees.

This is fine.

Article 35

(1) For the purpose of charging licence fees RTV Slovenia may collect personal data specified in indents 1, 2, 3, 4, 5 and 9 of the first paragraph of Article 37 and indents 1, 2, 3, 4 and 8 of the second paragraph of Article 37 of this Act directly from the persons liable to pay license fees, who must provide the data in writing within 15 days of having received the request.

The 15 day response time should be flexible, to take account of persons who may be out of the country or ill. This is particularly unfair as failure to respond within this time period carries a penalty of SIT 10,000.

(2) RTV Slovenia shall collect the names and surnames of natural persons, the names of legal persons and of sole traders and their addresses from the distributors of electricity.

(3) All the data specified in the first paragraph of this Article, with the exception of the designation of the set, can also be obtained by RTV Slovenia from the Tax Administration Office on the basis of a request either in writing or by a method equal to writing, where the relevant legal grounds for or a suitable reference for the request or some other designation is provided.

Article 36

For tasks relating to the charging of license fees RTV shall maintain the following:

- a register of those liable who have television sets or other appliances that facilitate the reception of channels of a quality at least equal to that via terrestrial networks;

- a register of those liable who have radio sets or any other appliances that allow the reception of radio channels of a quality at least equal to that via terrestrial networks;
- a register of those exempt from payment.

Again, how is reception quality measured, and who does it?

Article 37

(1) The registers described in the previous Article that refer to natural persons shall contain the following data:

- name and surname;
- the address of permanent or temporary residence (street, place, house number, etc.);
- tax reference; *Only information which is essential to the collection of licence fees should be collected. Anything more is an invasion of privacy. This seems unnecessary information to collect. Not all licence fee payers are taxpayers.*
- the number of the transaction account;
- employment; *It is not clear why this should be necessary, and should be deleted.*
- the amount of unpaid licence fees;
- the amount of paid licence fees;
- the date of entry into the register;
- the designation of the set.

(2) The register of legal persons and sole traders shall contain the following data:

- the title of the company or the sole trader;
- address;
- the number of the transaction account;
- tax reference;
- the amount of unpaid licence fees;
- the amount of paid licence fees;
- the date of entry into the register;
- the designation of the set.

(3) The data referred to in the first and second paragraph of this Article shall be kept for ten years after a liable person or an exempt person stops being liable to pay the licence fee.

Personal data should be retained only for so long as it is needed. Ten years seems very excessive.

Article 38

(1) The provisions of the law regulating tax procedure shall apply with regard to the charging and payment of licence fees, interest and any other related issues.

(2) The Tax Administration of the Republic of Slovenia shall pass decisions on any appeals with regard to the collection procedure as defined by Article 388 of the Tax Procedure Act.

V. Penal provisions

Is the Tax Administration a tribunal? Under Article 6 of the European Convention on Human Rights, appeals such as this should be heard by an independent and impartial tribunal established by law.

Article 39

(1) A fine of SIT 1,000,000 to 5,000,000 shall be levied against RTV Slovenia for the following violations:

- broadcasting a political propaganda item without stating who commissioned it as referred to in Article 10 of this Act,
- broadcasting a religious propaganda item as referred to in Article 11 of this Act,
- not announcing at least 15 days prior to the start of an election campaign the manner, form and scope of and the conditions for the presentation of candidates, political parties and their programmes (paragraph five of Article 12).

This may be an error in translation, but Art 12(5) refers to 15 days of the announcement of the date of the election. It is not possible for RTV Slovenia to make an announcement before the election campaign begins.

(2) The liable person at RTV Slovenia shall also pay a fine of SIT 100,000 to 500,000 if he or she commits a violation referred to in the previous paragraph.

It is not reasonable to punish individual persons as well as RTV itself. It is the responsibility of RTV Slovenia, as a corporate body, to exercise proper supervision and management of its staff, and should carry all responsibility for compliance failures. Instead, RTV Slovenia may wish to place personal liability on staff in its contracts of employment, so that staff who commit serious compliance breaches may forfeit their jobs (or be liable for payment of a penalty). But this should be a contractual matter between employer and employee, and not a matter of State regulation.

It is not clear who levies the fine against RTV Slovenia, nor the basis upon which the level of fine is determined. The factors which will be taken into consideration when deciding how much RTV Slovenia is to be fined should be set out in the law (or in secondary legislation). If it is the role of the Broadcasting Council of the Republic of Slovenia to issue the sanction, this too should be stated.

Article 40

(1) An individual who has a set and who has supplied a false statement as referred to in paragraph four of Article 29, shall face a fine of SIT 30,000 to 100,000.

(2) A legal person committing a violation referred to in the previous paragraph shall face a fine of SIT 100,000 to 5,000,000 and the liable person a fine of SIT 100,000 to 500,000.

The same issue of the unfairness of personal liability applies here, as in Article 39.

(3) A sole trader committing a violation referred to in paragraph one of this Article shall face a fine of SIT 100,000 to 500,000, and the liable person a fine of SIT 30,000 to 100,000.

The same issue of the unfairness of personal liability applies here, as in Article 39. Furthermore, it appears to be double jeopardy, as a sole trader would be liable both as a legal person and as the 'liable person'.

Article 41

(1) An individual who acquires a set but fails to register it within the legally prescribed period (paragraph five of Article 29 of this Act) and an individual who acts in contravention of paragraph one of Article 35 of this Act shall face a fine of SIT 10,000 to 50,000.

Article 35(1) contains a requirement to respond to a request for information within 15 days. This period is too short for many practical reasons, and a fine should not be imposed if there is a good reason for non-response.

(2) A legal person committing the violation referred to in the previous paragraph shall face a fine of SIT 100,000 to 1,000,000, and the person liable shall face a fine of SIT 30,000 to 100,000.

The same issue of the unfairness of personal liability applies here, as in Article 39.

(3) A sole trader committing a violation referred to in paragraph one of this Article shall face a fine of SIT 100,000 to 250,000, and the person liable shall face a fine of SIT 30,000 to 100,000.

The same issue of the unfairness of personal liability applies here, as in Article 39. Furthermore, it appears to be double jeopardy, as a sole trader would be liable both as a legal person and as the 'liable person'.

Article 42

The enforcement of these provisions shall be supervised by the media inspectorate and the trade inspectorate.

What appeals mechanism applies? Under Article 6 of the European Convention on Human Rights, there must be available an appeal to an independent and impartial tribunal established in law.

VI. Transitional and Final Provisions**Article 43**

(Article deleted)

Article 44

On the day this Act enters into force the third paragraph of Article 82 of the Public Media Act (UL no: 35/01, 62/03, 73/03, 113/03, 16/04, 123/04) shall cease to apply.

Article 45

On the day this Act enters into force the fourth paragraph of Article 98 of the Public Media Act (Official Gazette, no: 35/01, 62/03, 73/03, 113/03, 16/04, 123/04) shall cease to apply.

Article 46

(1) The Programming Council of RTV Slovenia and the Supervisory Board of RTV Slovenia must be constituted pursuant to this Act within 60 days of this Act entering into force.

(2) The commission responsible for elections and appointments to the National Assembly of the Republic of Slovenia must within fifteen days of this Act entering into force broadcast on the national channels of RTV Slovenia a call to the subjects referred to in indent 7 of paragraph five of Article 17 of this Act, who have the right to propose candidates for the members of the Programming Council of RTV Slovenia, to pass on within 15 days of the broadcast their proposals, together with a justification for and written consent from the proposed candidates.

This is a very short time for someone from civil society to organise a proposal with a written justification and consent from the candidates. The chance of only receiving candidates from institutions and organisations is very high. The time limit should be extended to give “unorganised” members of civil society a realistic chance of proposing candidates.

(3) The first sessions of the Programming Council of RTV Slovenia and the Supervisory Board of RTV Slovenia shall be called by the Director General of RTV Slovenia or a person deputising for the Director General within 15 days of establishing on the basis of information on the appointment or election that two-thirds of the total number of members of the Programming Council of RTV and the Supervisory Board of RTV Slovenia have been appointed or elected. The first sessions of the programming committees of the channels for the Italian and Hungarian national communities shall be called by the Director General or a person deputising for the Director General within 15 days of appointing the programming committees of the RTV channels for the Italian and Hungarian national communities.

The Programming Council and the Supervisory Board should have all their members elected and in place before they start to function.

(4) Until the Programming Council and the Supervisory Board are constituted, the Council of RTV Slovenia and the Supervisory Board of RTV Slovenia shall continue with their work in the composition and with the competences they have until this Act enters into force.

(5) When the members of the Programme Council of RTV Slovenia referred to in indent 7 of the fifth paragraph of Article 17 of this Act are first appointed after this Act enters into force, all 16 members shall be appointed at the same time, whereby 8 members shall be appointed for a period of two years. These 8 members shall be determined by means of a draw on the occasion of their appointment by the National Assembly. The draw shall be carried out and the outcome announced by the President of the National Assembly immediately following the appointment of the members of the Programme Council.

The text in Article 17 paragraph 5 indent 7 should be adjusted to this text. At present, the text in Article 17 is misleading.

Article 47

The Supervisory Board of RTV Slovenia must within 6 months of being constituted adopt a new Statute of RTV Slovenia.

Article 48

The Programming Council of RTV Slovenia must within 90 days of having been constituted define the broadcasting standards for RTV Slovenia and the programme profiles.

Article 49

(1) The Programming Council of RTV Slovenia must within 15 days of having been constituted advertise the position of the Director General of RTV Slovenia.

(2) Until the new Statute of RTV Slovenia is adopted, the following procedure shall be used for appointing the Director General:

1. The Programming Council shall vote in such a way that every member of the Programming Council has the right to vote for one candidate. The voting is public. The candidate who receives the majority vote of all the Programming Council members shall be deemed to have been elected.

2. If no candidate is elected in the first round of voting, there shall be a second round of voting, deciding on the three candidates that received most of the votes in the first round. If no candidate is elected even in the second round, the two candidates with the highest number of votes from the second round are voted on in a third round. If no candidate is elected in the third vote, there is voting on the candidate who has received most of the votes in the third round.

3. If even in the fourth round no candidate receives a sufficient number of votes, the Programming Council may decide to vote again within a period of 14 days about the two candidates who received the highest number of votes. Prior to another round of voting, the Programming Council allows the two candidates from the third round of voting a chance to present their concept of leadership. If even in this round no candidate is elected, the position is advertised once more.

(3) Candidates for the position of the Director General must fulfil the following conditions:

- he or she must be a citizen of the Republic of Slovenia,
- he or she must have a university degree,
- he or she must be familiar with the issues involved in RTV's activities,
- he or she must be qualified to lead a large organisation,
- he or she may not own any shares in or have permanent contractual contacts with the legal persons who have business relations with RTV Slovenia.

(4) The conditions specified in paragraph two of Article 17 of this Act shall also apply mutatis mutandis in relation to candidates for the position of Director General.

(5) The Director General of RTV Slovenia must within 15 days at the latest after he or she has been appointed, advertise the positions of the Director of Television Programmes and the Director of Radio Programmes.

(6) Until the Director General of RTV is appointed, as well as the Directors of Radio and Television Programmes, pursuant to this act the current Director General and the directors of the two sections shall perform their function in the position of acting directors, with the competences they have until this Act enters into force.

Article 50

The editors-in-chief and the heads of other internal organisational units shall continue with their work until their mandates expire, except when the Statute determines otherwise.

Article 51

On the day this Act enters into force, the Radiotelevizija Slovenia Act (Official Gazette RS, no. 18/94, 29/94, 73/94, 88/99, 90/99, 113/00, 79/01) shall cease to apply. However, until the Statute referred to in Article 47 of this Act is adopted the provisions of the above law and the current Statute shall apply to matters related to the internal organisation and operations.

Article 52

On the day this Act enters into force, paragraph four of Article 387 of the Tax Procedure Act (Official Gazette RS, no. 18/96, 78/96, 87/97, 35/98, 82/98, 108/99, 37/01, 97/01, 54/04) shall cease to apply.

Article 53

This Act shall enter into force on the fifteenth day following publication in the *Official Gazette* of the Republic of Slovenia.