

MONITORING EU GUIDELINES
IN BOSNIA AND HERZEGOVINA

CONTINUING POLITICAL PRESSURES AND OBSTRUCTIONS

by SANELA HODŽIĆ

This report briefly assesses independence and transparency of the media regulator and public service media in Bosnia and Herzegovina in 2014 and early 2015 taking into account the indicators in the Guidelines for EU support to media freedom and media integrity in enlargement countries, 2014–2020.

THIS REPORT WAS PRODUCED IN MAY 2015 by the SEE Media Observatory as a contribution to the 2015 assessment of two results – independent and professional regulators, and public service media – elaborated in the Guidelines for EU support to media freedom and media integrity in enlargement countries, 2014–2020. The content of the assessment follows the indicators included in the EU Guidelines.

INDEPENDENCE AND PROFESSIONAL CONDUCT OF THE REGULATOR

INDEPENDENCE AND TRANSPARENCY OF COMMUNICATIONS REGULATORY AGENCY

Communications Regulatory Agency (CRA) is formally guaranteed the freedom from political control under the Law on Communications of Bosnia and Herzegovina (2003, amended 2006, 2010 and 2012). Law on Communications (Article 39) also sets requirements that should prevent conflict of interest: similarly as the director general, members of the CRA Council cannot be officials in legislative and executive power of Bosnia and Herzegovina (BiH), or members of any bodies within political parties, while any interest of a member of CRA Council in telecommunications' operator or a broadcaster should be declared, and he/she should exclude himself/herself in "cases representing a conflict of interest". However, it is not specified what constitutes such conflict of interests (apart from wording of the law on conflict of interest in institutions of BiH).

Law on Communications stipulates the merit system in the appointment of members of CRA Council (minimum of five years of work experience in the related fields, experience in both telecommunication and broadcasting, etc.). Article 36 of the Law on Communications stipulates the independence of CRA in decision-making. However, political influence and pressures have persevered over the years, and the risks of such pressures have been increased with



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changes in the procedures of appointments in CRA since 2012 (more below), continuing in 2014 without any adequate remedies.

Transparency of CRA is regulated under the requirements for transparent procedures concerning appointment of CRA officials, adopting new regulations, reaching decisions upon complaints on media content, etc. CRA submits annual reports to the Council of Ministers of BiH, as stipulated in Law on Communications, Article 44. CRA publishes annual reports on its website, as well as decisions regarding the complaints about broadcasted content. The regulator is also obliged to respond to requests for information under the Freedom of Information Act of BiH. CRA seems responsive to requests for information, and generally follows minimum transparency requests, facing no major criticism in this regard. The exception was the case of amendments to Code on Commercial Communications from 2013 (later abandoned) when the procedure of changing the code was seen as unjustifiably hasty and unresponsive to the needs of the entire community and the public.

CRA played an important role in setting a regulatory framework for broadcasting in BiH, particularly in fight against hate and discriminatory speech and in overall pacification of media content in years after the war. It continues to play an important role in regulating broadcasting sector, and despite the ongoing political pressures, the procedures of licensing of broadcasters, for example, is still considered to be apolitical. However, limited capacities do not allow CRA to perform a regular monitoring of implementation of content requirements by broadcasters; it rarely substantially engages in policy initiatives outside its constricted powers.

Top management appointments in CRA are highly politicised. Supposedly due to the lack of political agreement, the Director General has not been officially appointed for several years (instead, Kemal Huseinović acted as director for several years until he resigned in December 2014; Jasenko Lasta is acting as director since the beginning of 2015). At the same time, the merits of the candidates for the CRA Council seem to be neglected; members appointed at the end of 2013 are considered to have close political affiliations. More direct political interference is made possible with amendments to the Law on Communications adopted in 2012, which introduced an ad hoc body within the Parliamentary Assembly of BiH that is proposing the list of 14 candidates for the CRA Council (which was previously the role of the CRA Council itself). The list is sent first to the Council of Ministers, before being submitted to the parliamentary procedure. In that way not only the Parliament is given more power, but the role of the Council of Ministers remains unclear, raising additional concerns about political control over the appointment. It remains to be seen if newly formed government will reach agreement on the appointment of director general in 2015.

The independence of CRA is formally assured through independent sources of financing, such as technical fees for licences for broadcasting and telecommunications, as well as donations. The budget proposal approved by the

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Council of CRA is submitted for approval to the Council of Ministers of BiH, which does not have the power to change the proposed budget by more than 20 percent (Law on Financing BiH Institutions, 2004, amended 2009; Article 9). Annual reports on CRA are regularly published on its website, and provide relevant track record of its performance. However, the 2014 annual report has not been published by mid-May 2015. Additional assessments on the functioning of CRA are provided by audit reports (2013 audit report available here). The reports have been largely positive, confirming the financial reports of CRA as adequate. However, there is lack of substantial external assessments of the transparency, independence and professionalism of CRA.

CONSULTATIONS IN DEVELOPING MEDIA POLICIES

The state bodies responsible for media policy have been indolent, therefore the media legislation did not advance in past several years. The exception is the regulation under the authorities of the Communication Regulatory Agency, which has been amended in accordance with the EU directives. Any potential influence of research and analyses on media policies is indistinct, and such research is hardly ever commissioned by policy makers, supposedly primarily due to the lack of interest and capacities. Some policy initiatives in previous years are perceived to have been guided by particular business and political interests (as in changes in appointment of members of the CRA Council, initiatives for changes of the Freedom of Information Act 2013, decisions on limit of advertising for public broadcasters in 2013, etc.), but no such cases were registered in 2014.

Authorities have also never engaged in disclosing economic pressures on media and establishing legal checks against such pressures. There are virtually no analyses by relevant institutions, and no state body has accepted any responsibility for monitoring of such pressures. The audit reports of public institutions partially provide basic data for such analyses. Some indications and estimations about economic pressures can be found in the media and in the reports produced by NGOs. However, the Strategy for Fight Against Corruption 2015–2019, adopted in May 2015, recognises the importance of media, including the transparency of media ownership and independent sources of media financing (pp. 37–38). The Strategy is a new document and it is not clear yet if it will lead to any changes of policies and practices by the relevant authorities.

Although there are no specific consultations concerning the changes of legislative and regulatory framework pertaining to media sector, public hearings (an obligatory step in adoption of laws and regulations) are formally open to members of the media sector. However, these procedures can be corrupted, as indicated in the abovementioned attempt to amend the Code on Commercial Communications in 2013. Contesting business and political interests within media sector were demonstrated, and some actors believed the CRA decision (later ousted) showed growing influence of commercial broadcasters on policy changes. However, both in that case and in the case of detrimental changes to

Freedom of Information Act proposed in 2013, the problematic solutions were retracted/stopped after the reactions from the media sector and wider community. Other than these rare examples, media and civil sector have had modest influence on development of media policies. Media sector also remains fragmented along entity and ethnic lines, as well as competing political and business interests, which obstruct common engagement.

Although CRA is consulted when it comes to developing legislation pertaining to media sector, including broadcasting (for example in the current case of draft proposal of Law on Electronic Communications), its power to actually influence decisions is marginal. When it comes to developing internal rules and regulations, CRA is free to act out of its own accord.

TRANSPARENCY OF MEDIA OWNERSHIP AND MEDIA FINANCING

The data on media ownership are available in different registries, but they are not made easily available. CRA holds information on ownership and documents on court registration of the broadcasters (reported in the licensing procedure, under the Rules 55/2011 and 58/2011). Broadcasters should also report to CRA if their ownership structure changes for more than 5 percent (Rule 55/2011, Article 22 (3); Rule 58/2011, Article 23 (3)). However, the ownership information is not published online (only the names of directors and editors-in-chief are available online).

The Register of the CRA licence users, which will be obliged to insert and update their ownership data in the online databases, although foreseen in the Rule 71/2013, has not been established yet.

Media outlets are also required to register as business entities in the court records (Framework Law on Registration of Business Entities in Bosnia and Herzegovina, 2004, and relevant entity laws on registration). While the data on ownership within those registries are available to public upon request, the availability is hindered by the fact that data are fragmented along 15 court registries (ten in Federation BIH and five district courts in Republika Srpska). Also, the access is not free of charge. While there is an online register of businesses in the Federation of BIH with information on initial capital and founders of businesses (including media), such data from Republika Srpska are not available in an online register. Although registries are being regularly updated, data do not seem to always mutually concur. Data on some print and online media outlets are not included in the online registry in Federation BIH. Furthermore, no mechanisms of control of possible hidden ownership are in place. Data on owners might be indistinct due to related ownership over several business entities. Therefore the gathering of information on media ownership may become costly and complicated. Transparency of ownership of online media is further obstructed with some online media not being even registered as business subjects

THERE IS AN ALARMING LACK OF TRANSPARENCY AND MONITORING OF GOVERNMENT FUNDING OF MEDIA IN BOSNIA AND HERZEGOVINA. CRA NEITHER PUBLISHES NOR IS OBLIGED BY LAW TO PUBLISH INFORMATION OR PROMOTE FINANCIAL TRANSPARENCY OF BROADCASTERS.

and acting as completely unregulated platforms for pursuing particular political and/or business interests.

With the exception of the 2013 analysis of the sources of revenues of TV broadcasters, CRA neither publishes nor is obliged by law to publish information or promote financial transparency of broadcasters. Information on financial operations of public service broadcasters are generally available (mostly through financial reports published at their websites, and within audit reports). Among private media, only larger companies are required to expose their financial operations to external audit, while none are obliged to make their financial information available to public.

Having that in mind, there is an alarming lack of transparency and monitoring of government funding of media. The funds fuelling from the government institutions and public companies into the media market are believed to be large, especially given that public companies are major advertisers, and that local governments directly finance a large portion of local broadcasters. Additionally, in the previous years, the Government of Republika Srpska has provided substantial amounts of money to several media outlets in Republika Srpska. Although the audit reports for 2010 and 2011 pointed to lack of transparency (i.e. failure to publish open call, set clear criteria, and to control the spending) the Government of RS did not agree with the findings. It continued with the same irregularities, demonstrating very limited effect of such audits and their recommendations. The budgetary constraints hindered such funding in 2013, but Transparency International's report indicates that in 2014, as a year of general elections, some public funds were misused for public events of SNSD, leading party in the Government of Republika Srpska.

There is an overall lack of mechanisms to ensure that government funding in the media in BiH is legitimate, transparent and in the service of public interest. No specific decision-making body on media subsidies exists, and such funding can easily be misused for particular political and business benefits. Civil society organisations believe that the 2014 Law on Public Procurement (which should be applied to contracts with media as well; see Annex 2) does not adequately address the issues of transparency, annexes to contracts or conflict of interest, but generally rather increases already high level of corrupt practices in procurement procedures. The public institutions and companies are subject to auditing, which should provide assessment of their financial operations and allocation of funds. However, the public audit offices have limited capacities, so the public companies are not regularly monitored (only occasionally). While three public broadcasters are obliged to commission annual auditing, the local public media, for example, with fewer employees and lower budgets are not exposed to such control. Moreover, as mentioned earlier, the mechanisms of implementation of audit recommendations are weak.

Although the data on public funding should be available upon request submitted to specific institutions, the actual availability is questionable since the data

are shattered and the Freedom of Information Act is still not consistently respected. There is a lack of proactive publishing of information, and lack of user-friendly formats of published material. For illustration, the Official Gazettes (on state and entity-level) involve information on subsidies for media, but they are not easily searchable databases, and are available only to subscribers (for a fee).

The advertisements by big state-owned companies have never been an object of substantial and systematic monitoring, although they continue to raise concerns in 2014. The data are in theory available upon request, but public companies are generally the least responsive to requests for information. Some information on advertising is available in annual reports (available here and here) and audit reports of state-owned companies. However, they are not easily and consistently available (for example on the website of BH Telecom only reports from 2013 and 2014 are available), not regularly conducted by state audit offices (rather conducted depending on their capacities and priorities), and not always detailed in terms of revision of advertising practices.

Finally, privatisation process is stalled for decades. Print media had been privatised, but there were considerable doubts about the abuse of power and irregularities involving both the buyers and members of privatisation teams (mainly in privatisation of the newspapers *Oslobodenje* and *Večernje novine*). On the other hand, the broadcasting sector has not been privatised and a large number of broadcasters (12 out of 43 TV stations and 61 out of 140 radio stations, data from March 2015) are still directly financed from the budgets of cantonal and municipal authorities, which adds up to large sums. Apart from the assessment from 2012 (indicating the amount of 7.8 million EUR) there are no available data on the amount of such funding for 2014, nor there are any initiatives concerning privatisation.

AUDIENCE MEASUREMENT FACING DIFFICULTIES

Since 2011, the audience measurement has been marked by different controversies. Some sources expressed doubts in reliability of the results. The Association of Broadcasters and Advertising Companies “UMI” lost its role of commissioner of the audience measurements, and now new company Audience Measurement – AM (instead of previous provider Mareco Index Bosnia) is contracted individually by TV broadcasters. In 2014 and at the beginning of 2015, some sources suggested that common ownership over AM, a laboratory that licenses the equipment for measurement, and allegedly a TV outlet, possibly corrupts the measurements. AM responded to such accusations that it is merely a campaign against them guided by interests of few media and advertising agencies. One thing is certain: increasing controversies raise doubts about reliability and credibility of TV measurements in BiH. Quality and the extent of the audience research in other media sectors are limited (diary method in radio sector, no monitoring of print circulation, use of Google analytics or Alexia and only partly of Gemius Audience measurements in online media sector).

OPEN RISK OF CONCENTRATION OF OWNERSHIP AND OF PROBLEMATIC COMPETITION

There have been no specific rules on concentration of ownership or on cross-ownership in media since 2006, when the 2004 Rule on Media Concentration and Ownership of Electronic and Print Media expired. The Council of Competition of BiH is however authorised to consider specific cases of possible prohibited competition and misuse of market position upon a complaint (under Competition Act, 2005), including “state and local public institutions, when they directly or indirectly participate or affect the market” (Article 2, paragraph 1.b). So far there has not been any strategic consideration, action or statement of this body, for example, concerning the competition between the public and commercial media. There are also no major decisions in the cases of individual complaints on possible abuse of dominant market position. For example, in case of the recent complaint filed by OBN television against three public service broadcasters, the Council of Competition did not reach consensus between its members, and no abuse of dominant market position was confirmed. Although CRA has expressed the need for anti-concentration rules that would pertain to entire media sector, including press agencies and print and online media, such initiative did not receive needed attention by relevant institutions. In these circumstances the concentration remains an open risk, although few registered cases of multiple ownership still does not qualify as an alarming concentration. Some actors however express concerns over possible misuse of dominant position of local public broadcasters when compared to private broadcasters. Concerns have also been raised with regard to possible corruptive practices arising from the alleged common ownership of a TV outlet, audience data provider and a laboratory that licenses equipment for audience measurement.

PUBLIC SERVICE MEDIA

PUBLIC SERVICE REMIT: IN PART DEFINED BUT UNMONITORED AND INSTITUTIONALLY UNDERDEVELOPED

Public service system reflects the complex constitutional arrangements, with three public service broadcasters: state BHRT, and two entity-level public broadcasters – RTVFBiH for the Federation of BiH and RTRS for the Republika Srpska. Public service remit is to a certain extent defined in the laws pertaining to public service media, involving demand for accurate and quality reporting, different types of programs (Law on Public RTV System of BiH, 2005, amended in 2009 and 2010), demand for respect of general ethical standards, equal representation of content reflecting heritage of all three peoples and ‘Others’, and affirmation of cultural and other needs of national minorities (laws on each PSB). All public broadcasters are obliged to dedicate 10 percent of overall

SUPERVISORY BODIES OF PUBLIC SERVICE BROADCASTERS IN BOSNIA AND HERZEGOVINA ARE PERCEIVED TO BE POLITICALLY SUITABLE, ALLOWING OR EVEN CONTRIBUTING TO POLITICAL INTERFERENCE IN FUNCTIONING OF PSBS. PSB REPORTING TO THE PARLIAMENT IS OFTEN DELAYED, AND ACCESSIBILITY OF THE REPORTS FOR THE PUBLIC IS NOT CONSISTENT.

weekly informative and educational programming (which should amount to 40 percent of the overall program) to the issues related to refugees, displaced persons, members of national minorities and vulnerable groups (Rule 57/11 on Public Radio and Television Broadcasters, Article 3). However, there were no initiatives to further specify public service remit and to consult the broader public on the issue. While there is no monitoring of performance of PSB in this regard, some assessments indicate, for example, that there is a serious lack of cross-ethnic reporting on political issues, lack of educative programs, and inadequate representation of minority groups in the PSB programming.

Standards of professional ethics are specified in Communications Law, in the rules adopted and implemented by CRA and in the particular laws and regulations pertaining to public broadcasters. CRA monitors and enforces their implementation, but there are no internal mechanisms of dealing with viewers' complaints – there are no established internal procedures or positions responsible for dealing with complaints. There are also no substantial surveys of public trust in PSB, with only indicators of public trust being the data about the level of collection of subscription fees, data on viewership/listenership (which are not publicly available), as well as some indicators provided by civic sector (for example annual report by Friedrich Ebert Stiftung based on survey about, inter alia, satisfaction with media in BiH). The collection of subscription fee is decreasing but the overall trust of public in the media increased in 2014. The overall conclusion is that public trust and public interests should be better monitored and addressed in PSB programming.

LACK OF INDEPENDENCE OF PSB: POLITICISED APPOINTMENTS AND JEOPARDISED FINANCING

Editorial independence is stipulated in the Rule 57/2011 on Public Radio and Television Broadcasters, the Law on Public RTV Service of BiH, the Law on RTV FBiH and Law on RTRS. In practice, however, the situation is quite the opposite – political interference in PSB is believed to be very strong. RTRS is believed to be under a complete control by the government of RS, i.e. the ruling party Alliance of Independent Social Democrats party (SNSD) while RTV FBiH has been for a long time perceived as an advocate for Social-Democratic Party (SDP). Third public service broadcaster – RTVBiH – is considered to be more balanced, but also less relevant for political actors.

The appointment of members of supervisory bodies – Boards of Governors – in each of the public service broadcasters is highly politicised. While ethnicity of the members is predetermined (one of each constituent peoples – Bosniaks, Croats, Serbs, and one representative of 'Others'), there is a lack of precise professional criteria for the appointments, although the Law on Public RTV Service of BiH specifies they should be the "most qualified candidates", and the laws on appointment of ministers and other public vacancies stipulate that

criteria should include level of education, expert knowledge/experience etc. The authority over the appointments in RTRS and FTV is left completely in the hands of the Parliament of FBiH and the National Assembly of RS (Law on RTV FBiH and Law on RTRS, respectively). Prior to the legislative changes in 2013, the Communication Regulatory Agency (CRA) had a role in submitting the list of proposed candidates for the RTRS Board, but the National Assembly of RS could easily refuse the proposed list. In the case of BHRT, the CRA still has this role of proposing the members of the Board.

Members in all three broadcasters cannot perform the functions within legislative, executive or judicial power, nor can they hold membership in political parties (according to the Rule 57/2011 on Public Radio and TV Broadcasters). However, in practice the boards are perceived to be politically suitable, allowing or even contributing to political interference in functioning of PSBs. Political pressures and obstructions are visible in the case of the Board of FTV: after the 2012 illegitimate attempt of the Parliament of FBiH to dismiss the Board and appoint new members failed, the previous members remained on their positions although their mandate expired. Since August 2014, when the third of the previous members resigned, the Board is left with one member only. Each public service broadcaster should have a Programming Council; it should have an advisory role and include members from different groups. In practice their actual performance is not monitored, and in the case of FTV the Programming Council does not exist at all in recent years.

The public service broadcasters have the independent sources of revenues, mainly subscription (licence) fee and advertising. All households and legal entities possessing a radio or television receiver are obliged by law to pay the fee, but the actual collection is limited (74 percent of invoiced amount collected in 2012). Even more, if all households are taken into account, the estimated collection goes down to as low as 46.5 percent. The amount of the collected licence fee has been constantly dropping in past several years: in the first four months of 2014 it dropped by 1.6 million KM compared to the same period in 2013. The growing number of IPTV users is excluded from the collection through phone bills. In addition, political disputes hinder collection of subscription/license fee as well. For example, the Croatian political representatives encourage citizens of Croatian nationality not to pay the subscription fee, claiming that the existing PSB system in BiH is not responsive to the needs of Croatian people. They demand a new PSB institution to be established with programming in Croatian language. Finally, political battles have been influencing the latest debates about the collection scheme that formally expired on 26 of April 2015. The solutions for a new mechanism of the subscription fee collection were hindered by political disputes between parties: representatives of SDS claimed at the parliamentary debate in March 2015 that RTRS is a service of one party – SNSD and therefore should not be financed by the people. At the same time, SNSD advocates for direct funding of RTRS from the entity budget, made possible with 2013

amendments to the Law on RTRS. At the end, the proposed solution was not adopted in the Parliament. As a temporary solution, the management of public service broadcasters instead reached agreement with the telecom operators in April 2015 to continue collection through phone bills, until the end of 2015.

Over the past years, the management of PSB system (mainly FTV and BHRT) raised concerns about the alarming financial situation within these broadcasters (for example, here), but there is no assessment that would give insight into what are the actual needs for their proper functioning to accomplish public service remit. PSB system in BiH is robust and in urgent need for rationalisation of its resources and efficient coordination between the three broadcasters. Concerns that the excessive advertising share of PSB system in the media market and in the budget of some of the PSB (according to CRA, FTV had around 40 percent of its overall income coming from commercial advertising in 2012) can corrupt its public service role remain in 2014 as well.

FINANCIAL ACCOUNTABILITY

Although public service broadcasters are obliged to submit annual reports, the financial monitoring nevertheless faces serious problems. Mainly, reporting to the parliament/national assembly is often delayed, and accessibility of the reports for the public is not consistent (some reports are accessible on the respective web-sites of BHRT, RTV FBiH and RTRS, but reports for 2013 and 2014 are not available at any of them). The role of the annual reports in providing accountability of PSBs is questioned under the circumstances where corrective mechanisms after financial audits are not provided. For instance, audit report for FTV for 2013 was negative and highlighted several irregularities including lack of respect of procurement procedures, unjustifiable discounts in advertising contracts with two advertising agencies, and determining the level of payment for particular employees dissonant with the internal norms. Although the recommendations of previous audits have been similar, they were not implemented and the management did not suffer any consequences. Also, as it was demonstrated by the 2012 attempt to dismiss the members of the Board of Governors of FTV, financial irregularities can be misused as an excuse for imposing particular political interests in control of PSBs. Accountability of PSBs is further diminished by the fact that annual work plans are not consistently published, and for example none has been published for 2014. The last plan published by FTV was for 2011, the last for RTRS is for 2013, while plans of BHRT could not be found on their website.

FAILED DIGITALISATION

Digitalisation in BiH has failed and the country is facing the dire consequences. Namely, since the digitalisation strategy was adopted in 2009, the lack of political will has hindered further developments. The attempts to adopt the action plan failed and the Corporation of PSB System, as a body that should

have been leading the digitalisation process, has never been established (although it is envisaged by the Law on PSB System from 2005). Public service broadcasters partly digitised the production capacities in 2014, and part of the equipment needed for the digital network of public service broadcasters has been purchased, but due to political obstructions from Republika Srpska it was not fully installed. BiH is now waiting for the final deadline for switchover – 17 June 2015 - totally unprepared, with state Council of Ministers not even yet discussed measures proposed by CRA on minimising the consequences. Namely, after the deadline, with the increasing use of digital resources in the countries in the region, they will experience interferences from the analogue signals in BH and will normally request those signals to be shut down.

At this point no one is able to predict the extent of the problems that the broadcasters from BiH will face. Helena Mandić from CRA believes the signals of broadcasters from BiH will be virtually erased. The public service broadcasters will lose part of their coverage, many of the local public and commercial broadcasters will be closed and the broadcasting industry in BiH will be put at risk. State budget will be damaged since CRA will not be able to invoice the fees for broadcasting licences, and finally, TV audience will be affected. In addition to foreign TV programs, only those TV programs in BiH that are not broadcasted through analogue frequencies will be available – to users of cable or other similar services only. Cable distributors are required to include in their offer the PSBs' programs and programs of other broadcasters based on their territory. However, a significant part of the population in BiH still using analogue TV antennas will not be in a position to watch any TV program.

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