

MONITORING EU GUIDELINES IN MACEDONIA

PERSISTENT “TRADITION” OF POLITICAL INFLUENCE

by VESNA NIKODINOSKA

This report briefly assesses independence and transparency of the media regulator and public service media in Macedonia 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

Subject to this assessment is the Agency for Audio and Audiovisual Media Services in Macedonia, established with the new Law on Audio and Audiovisual Media Services, adopted in December 2013 and entered into force in January 2014. As a novelty, the law introduces a director as a managerial body entrusted with broader competences compared to the president of the Broadcasting Council under the previous Law on Broadcasting Activity (2005). The governing body of the Agency is the Council, whose composition is reduced to 7 members compared to the 15 members under the previous law (The 2011 amendment to the Broadcasting Law from 2005, increased the number of the BC from 9 to 15). The members of the Council of the Agency were appointed by the Parliament in July 2014, while the director of the regulator was appointed upon public competition in October 2014. The new director was previously the president of the Broadcasting Council. Five out of seven members of the Agency Council were also members of the governing body of the former regulator – the Broadcasting Council. It is symptomatic that the same members are appointed again with a 7 year term of office, despite both the previous Law (2005, Article 28) and the new Law (2013, Article 15) stipulating that members can't be re-elected/reappointed. Although legal experts' interpretation of the legislation allow these situations, media experts in the country criticize this solution and consider it as an opportunity for political parties to influence the reappointment of politically appropriate candidates. It is worth mentioning the



2015
MONITORING REPORTS

MEDIA
INTEGRITY
MATTERS

Council of Europe's Recommendation which notes that the term of office of regulatory body members in some countries is not renewable or is renewable only once, in order to „...avoid their owing any allegiance to the powers that appointed them.“

INDEPENDENCE AND TRANSPARENCY IN LEGISLATION AND IN PRACTICE

According to the new Law (2013), the Agency should be independent from and unbiased towards any state body or other legal person (Article 5 (2)) in order to ensure the goals of the law: “transparent, independent, effective and accountable regulatory body in the area of audio and audiovisual media services” (Article 2). In order to secure Council's independence, the law also contains provisions on the conflict of interest and merit system rules for the election of the Council' members (Article 16).

The model of election of the members of Agency' Council is almost the same as in the previous Broadcasting Law (2005). The model was designed to ensure transparent and democratic appointment procedures and independence of the regulator. However, both in 2006 and in 2014, the political parties found ways to influence the authorized bodies to nominate the most “appropriate” candidates. Professional competence of the candidates, their qualifications and experience in the field, although explicitly required in both laws, had been disregarded in the nomination procedures. Affiliations between some of the Agency' Council members and the ruling political party exist, as it was the case in the previous compositions.

The provisions of the new Law on Audio and Audiovisual Media Services (2013) regarding the transparency of the regulator are much more detailed compared to the previous Law on Broadcasting Activity (2005). From the formal point of view, the regulator is obliged to be accountable and transparent to the public (Articles 8, 9 and 10). The Agency is obliged to submit an Annual Operation Report, a Financial Report (for previous year) and an Annual Programme (including Annual Plan for Programme Monitoring) and a Financial Plan (for the next year) to the Parliament (Article 8), which are responsibilities that the regulator has been regularly fulfilling. The Agency holds quarterly public consultations where the stakeholders can express their concerns and opinions regarding the situation on the market and the work of the Agency (Article 9). The Agency organised four public consultations in 2014 and one in March 2015. In 2014, all important by-laws were subjected to public consultations. Most of the documents relating to the work of the Agency have been published on its website.

The transparency of the Agency could be assessed through the minutes and the decisions adopted at its sessions, most of which were detailed and duly justified in 2014. However, the Agency has failed to publish decisions adopted in 2013 which granted disputable national Radio and TV Broadcasting licences as well as regional TV broadcasting licences (Radio Slobodna Makedonija,

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TV Alfa and local TV stations that transformed in regional broadcasters), all of which are perceived as close to the ruling party. An additional shortcoming of the new law is its lack of a clear statement that the work of the Agency is public, compared to the previous Law (2005, Article 33). This principle was later incorporated in the Rulebook for ensuring transparency in the Agency' operations. The Agency commissioned audience research and conducted analyses to detect trends in the audio and audiovisual media services markets, as obliged by the law (Article 9). Media experts warn that the Agency does not use these findings and the data for further development and regulation of the audiovisual sector. A further remark concerns the lack of transparency in some financial operations of the Agency (sessions were closed for the public when discussing on time-deposit savings of the Agency in 2014). In 2014, the citizens submitted a total of 201 complaints and the Agency replied to all of them. The main remark is that (at the time when we are writing this report) the Agency' website does not contain information as to the issues that could be subject to complaints, the complaints are not published on the website, whereas the e-system for its submission does not exist.

The Agency conducted monitoring of the media coverage of the Parliamentary and Presidential elections in 2014 and also commissioned audience research. The regulator conducted the first research on media literacy and has adopted a related draft-programme.

While the work of the regulator can be assessed as efficient given the formal and the quantitative criteria, the practical implementation of the legislation, the protection of the public interest and the media pluralism fail to live up to these standards. Despite forbidding incitement of discrimination, intolerance or hatred on racial, religious, sexual or national grounds (Article 48), the Law on Audio and Audiovisual Media Services (2013) fails to include sanctions for the media outlets that would violate this provision, as it was the case in the previous Broadcasting Law (2005). Media experts suggest that administrative sanctions should be envisaged in the law, aiming at inhibiting incitement.

The regulator does not deal with the issue of political pluralism in the media. Instead it predominantly focuses on other (non-political) topics (such as compliance of broadcasters with the advertising rules, rules on minors' protection or compliance of cable operators with the Copyright Law). For example, in early 2015 the public service broadcaster MRT decided not to report on the phone-tapping scandal presented by the opposition party SDSM, although it revealed corruption, Government' interference in the judicial system, the media, public administration, elections etc. A Council member suggested a request to be sent to MRT for objective and professional reporting on the content of the phone tapped materials. The Council did not support the proposal explaining that MRT has a right to decide how to treat the materials.

The regulator has been consulted on regulation changes prior the adoption of the Law on Audio and Audiovisual Media Services (2013). However, the

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professional (expert) staff of the regulator had not been involved in drafting the last legislation. This is a big setback, since the regulator's employed staff obtains sound expertise on the regulation of audiovisual field.

Despite the noted progress in the last decades, the media sector has had a limited impact on the public policies and the overall good governance process in 2014. The Government amended the Law on Audio and Audiovisual Media Services several times during 2014, without organizing public discussion and consultation with the media sector. It also did not take into consideration the media sector appeals on regulating state advertising which remained a burning issue in 2014.

There have been several media CSOs that have been conducting reliable and critical analyses of the public policies, but the Government has continuously ignored them. This was also the case with the development of draft-media law (2012–2013), when the Government held consultations with the stakeholders. Despite many objections to the draft-text and to the transparency of the entire process, the Government simply circumvented the critics by accepting selected or irrelevant amendments to the legal text.

In 2014, there were no examples of explicit political interferences in the work of the regulator, but there were politically motivated measures towards some broadcasters that were critical towards the Government. For example, during the monitoring of media in the election period in 2014, the regulator criticised TV Telma and TV 24 Vesti for reporting on an election poll (conducted by a research agency) which gave advantage to the oppositions' presidential candidate. The TV stations, which count as critical and balanced, actually did not violate the law, but were condemned just because they reported on the particular election poll.

The regulator is autonomously financed from the broadcasting tax (paid by households on a monthly basis) and the licence fee (paid by the broadcasters) (Law on Audio and Audiovisual Media Services, Articles 4 and 135 (1, 3)). Additionally, the regulator has savings (from subsidy funds not spent in the period before 2006) that are put on a time-deposit saving account; that increases its financial viability.

THE "TRADITION" OF POLITICAL INFLUENCE

The independence of the regulator has been a weak chain in the Macedonian media system since the establishment of the country. The period after 2011 could be described as complete political domination of the ruling party VMRO-DPMNE over the entire media sphere, due to marginalization of the opposition in the Parliament that made the process of adoption of legislation easier. An evident example of political influences over the regulator is an increase of the number of the Broadcasting Council' members from 9 to 15 in 2011, aimed at gaining political majority. Although the main intention of the 2005 Broadcasting Law was to overcome weaknesses of the previous legislation

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(Broadcasting Law, 1997) and to incorporate mechanisms to prevent the influence of the government, political parties and media owners on the media and the regulatory body, the political parties always found ways to influence the decisions of the regulator.

In the past, most of the regulator's obligations under the Broadcasting Law (2005) relating to transparency, were mainly formally implemented. The listed documents were published on its website, but the minutes and decisions made during the sessions were not always duly reasoned and detailed. In regards to allocation of licenses, the most indicative was the way in which the Council awarded licences in 2008. During the procedure, several breaches of the law, tendering documents and the rules set out in the Code of Conduct of the regulator, were noted.

While the employed staff (permanent services) of the regulator could be evaluated as professional and holders of needed expertise, many individuals elected for members of the regulator's Council in the past were not experts in the required fields (but in machine engineering, chemistry, etc.) or had not completed higher education. The track record of political influences, non-transparent operations and poor competences of the members of the regulator reflects the current state of affairs of the regulator.

MEDIA OWNERSHIP AND ILLEGAL CONCENTRATION

Transparency of ownership is regulated as an obligation for the broadcast and print media in the new Law on Media (2013, Article 13). Broadcasters are obliged to publish (within the prime time, at least three times per year) data on: ownership structure; sources of finances in the previous year; total income and expenditure in the previous year; average viewing and listening figures in the previous year (Law on Media, 2013, Article 13). In addition, broadcasters are obliged to submit the same data to the Agency for Audio and Audiovisual Media Services, by 31 March each year. If the broadcaster does not fulfil these obligations, the Agency will issue written warning and will oblige the broadcaster to provide the data within 45 days. In case the broadcaster does not provide the data within the additional deadline, the Agency may withdraw its broadcasting license. The new Law on Media (2013) also determines an obligation for the print media to publish the same data at least in one daily newspaper, once a year and to provide the Agency with the supporting documents (extract from the printed data in the daily newspaper) within 15 days since their publication (Article 13). The law also stipulates fines for media outlets (both broadcasters and print media) which fail to submit ownership data. Envisaged fines range between 4,000 to 5,000 EUR (Law on Media, Article 28).

In 2014 the Agency published ownership data within its reports and analyses on its website. The forms that broadcasters fulfil could be found on the Agency website, but the Agency does not publish them in integral form, because they contain confidential data. In 2014 all broadcasters but one fulfilled obligation for

publishing required data on their media (four of them were given an extended term in which they fulfilled their obligation, while only one local TV station did not submit information, since its license was withdrawn for other reasons).

The Law on Audio and Audiovisual Media Services (2013) limits ownership acquisition between broadcasters (Article 37). A majority share-holder in a broadcaster with a national-level license may participate in ownership of following broadcasters: one on the national level (up to 50 percent of the capital), one on the regional and two on the local level (if the two areas do not share a common border). Furthermore, a majority share-holder in a broadcaster with a regional-level license may participate in ownership of one regional-level and two local-level broadcasters (if the two regions do not share a common border). Finally, a majority share-holder in a broadcaster with a local-level license may participate in ownership of another two local-level broadcasters (provided that the two areas do not share a common border). Legislation forbids integration of the capital of a broadcaster and a company conducting related activities, such as publisher of print media that prints a daily newspaper or a news agency; advertising and propaganda company; market and public opinion research company; film production company; distribution of audiovisual products and operator of electronic communication networks that enables (re)broadcast of radio/TV programmes. All these limitations apply to the persons affiliated to the owners as well. The Law (2013) prescribes fines from 10,000–20,000 EUR for violation of legal provisions (Article 147).

In 2014, results from the Agency’s monitoring did not reveal cases of illegal media concentration. The regulator monitored the illegal media concentration and reacted in most of the cases. In the past there were also cases when the illegal media concentration could not have been identified on paper while in reality it was common knowledge that several media had the same owner. The general anti-monopoly body (Commission for Protection of Competition) is also in charge of undertaking anti-concentration measures against media companies. The Commission and the previous regulator, the Broadcasting Council, had cooperated in cases of illegal media concentration in the past. In 2014, there were no cases that could initiate the cooperation between the Agency and the Commission.

FAVOURITISM IN THE FINANCIAL SUPPORT TO THE MEDIA

The latest analyses of the media industry show that in 2013 the Government was the second biggest advertiser in the television sector, with 17,639 advertisements, which make up almost 5 percent of the total advertising value, while in 2012 it was the first. The trend of the Government being in the top five advertisers dates since 2008. After many critics from the media community for a non-transparent process of allocation of state advertising, the Government in 2014 published a list of all “state advertisements” and all media where they were broadcasted/published. Neither the total amount of the expenditures per media

nor the total volume for state advertising was revealed. Although the information on the government website says that the rating and viewership is taken into consideration, there is no regulation that would stipulate strict criteria for fair and transparent allocation of state advertisements. The practice shows that state advertising usually goes to media which support Government' policies.

The Law on Audio and Audiovisual Services (2013) introduces financial support for the commercial TV stations that broadcast on national level and the PSB for production of domestic film and documentary programs. The subsidies cover up to 50 percent of the production costs. The first allocation of the finances was implemented at the end of 2014 in fast and non-transparent manner. There is no transparency in dispatching advertisements by big state-owned companies. This issue has been quite controversial. Volume and share of this advertising per each media is generally not publicised by companies. However, the Agency on Audio and Audiovisual Media Services, in its annual market analyses, publishes the data on advertising expenditure in the broadcasting sector (top 50 advertisers). In the 2014 analysis, the list of top advertisers included only few companies in which the state has a share. This database is the only source that could provide data on the expenditures for advertising of the state-owned companies in the broadcasting media. The data are gathered by an independent research agency.

The Agency for Audio and Audiovisual Media Services has been conducting research and analysis related to the situation of the media market and its development, as obliged by the law (Article 9 (1)). However, these findings have not been used by the regulator (both the former Broadcasting Council and the new Council of the Agency) for further adjustment or implementation of the media policy. For example, although the audience research data show continuous dissatisfaction of the viewers with the programming of the public television, the regulator has not undertaken specific actions (together with the MRT Program Council) to discuss the reasons and possible ways for improving the quality of programming as the basic and distinct value of the public service broadcaster. There are no legal checks against informal economic pressures on media as no official body deals with that issue.

PUBLIC SERVICE MEDIA

The remit of the public service broadcaster, the Macedonian Radio Television (MRT) is defined in the Law on Audio and Audiovisual Media Services (2013), obliging it to provide TV and radio content in Macedonian and Albanian languages (Article 107) and provide high-quality programme satisfying interests of all segments of society (described in great detail in the Article 110).

MRT provides both radio programmes for the audiences in the neighbouring countries and Europe in foreign languages, and informative radio programmes

targeting the Macedonian Diaspora in the neighbouring countries and other continents in Macedonian and in Albanian language. MRT provides at least one radio and one TV programme service through satellite and/or Internet targeting the Macedonian Diaspora in the neighbouring countries and other continents in Macedonian and in Albanian language. MRT also provides Parliament' channel, which is described in the Law on the Parliament. The remit was defined for the first time in the 2005 Broadcasting Law which was drafted in a wide public consultation process. The same provisions are included in the new Law (2013).

INDEPENDENCE OF THE PSB IN LEGISLATION AND IN PRACTICE

The Law on Audio and Audiovisual Media Services (2013) contains clear provisions for ensuring the independence of PSB, which should be impartial in its editorial and business policy (Article 104 (3)). MRT has defined responsibilities regarding the program and program services it broadcasts: It should provide continuous, true, thorough, unbiased, fair and accurate information, promote the culture of public dialogue and enable space for wide public debate regarding public interest issues. MRT should not represent and protect attitudes or interests of one political party, political, religious or other groups, while its programs should be protected by influences of the Government and other centres of political and economic power (Article 110). The Law obliges the journalists, editors and staff directly involved in creation and production of programs of MRT to respect truth, impartiality and comprehensiveness of the information; the political balance and pluralism of opinions; ensure impartial, comprehensive and relevant information and present them in a clear, unambiguous manner, so the citizens have opportunity to freely form their own opinion. They should be politically independent and must not advocate or favour any party (Article 111).

However, no government in recent years has been ready to give up its influence on PSB, imposed through either covert or open pressure on its management and editorial staff or through financial pressure. Almost all executive directors in MRTV in the period after 2005 were people close to one or another political party. The current management and editorial staff of MRT also have close relations to the ruling party that has been reflected through the editorial policy. This connection is one of the issues in the phone-tapping scandal that involves high political figures in the Government and was revealed by the opposition party SDSM in early 2015. The disclosed conversations brought suspicions that some journalists, editors and thus the content of the news broadcasted on MRT are under influence of the ruling party VMRO-DPMNE, while the party decided on employment of "appropriate" staff in PSB.

According to the Law on Audio and Audiovisual Media Services (2013), there are two supervisory bodies. MRT Program Council is monitoring programme

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content and remit (Article 116) while MRT Supervisory Board is monitoring material and financial operations (Article 125). The Program Council composes of 13 members, compared to the Council of MRT that functioned under the previous Broadcasting Law (2005) and had 23 members. The MRT Program Council is designed to represent the society in large, since the Law stipulates that the members of the MRT Program Council should represent the diversity of the Macedonian society with equitable representation of both genders (Article 116 (4)). The majority of the Program Council' members are proposed by the state institutions – the Association of the Local Self-Government Units and the Parliamentary Committee, while the latter at the same time confirms the proposals (Article 118). Following the decision for election adopted by the Parliament in December 2014, the new Program Council was established in early 2015. The procedure and the list of nominated members raised concerns of possible political influences over the program and operations of PSB. There are also concerns that the appointed members of the Council are actually not adequate representatives of the citizens' interests.

The sources of MRT funding are: broadcasting tax (subscription/licence fee), advertising, donations (which must not jeopardize independency), selling programme and services, and funds allocated from the state budget (for elevating programme quality and technological developments) (Article 105). In 2014, the Taxation Office collected 68 percent of the broadcasting tax (subscription/licence fee), while in 2013 it collected 51 percent. Although the collection rate has been increasing since 2011, the amount of collected money is still not sufficient for the public service broadcaster to fulfil the program functions and obligations required by the law. Therefore, in the last two years MRT also received finances from the State budget. In 2014, this financial support amounted to 18 percent of the total income. Such funding model still does not secure independent and stable financing of the public service. Consequently, the programs of the public broadcaster still do not satisfy the functions of public service and have not gained the confidence of the public.

TRANSPARENT AND ACCOUNTABLE PSB – STILL IMAGINARY GOALS

One of the goals of the Law on Audio and Audiovisual Media Services (2013, Article 2) is to ensure “transparent, independent, efficient and accountable PSB”. In order to achieve the accountability, the MRT Programme Council adopts Annual Operations Report for the previous year and Annual Operations Programme for the following year (Article 124 (1)). MRT is obliged to submit the Annual Operations Report and Financial Report for the previous year, as well as the draft Annual Operations Programme and Financial Plan for the next year to the Parliament (Article 106). Before submitting the Draft Operations Programme, MRT is obliged to publish it on the web-site in order to allow a public debate (Article 113). The debate should last at least 30 days, while the

audience's comments, remarks and proposals should be published together with the replies of the MRT Programme Council. However, in the reality the reactions of the audience are not published. While in the past MRT was not transparent in a sense of publishing these documents, recently it has published some of the 2014 and 2015 reports on its web-site. Nevertheless, the draft-programme for operation of MRT in 2015 was not published.

The MRT has a separate code of ethics on a level of the newsroom, though its use is not evident in the everyday work of the newsroom. The Code of Ethics of the Association of Journalists is applied to all journalists, including those working in PSB. Furthermore, the Law on Audio and Audiovisual Media Services contains standards and principles that refer to professional and ethical conduct of journalists and editors of MRT (Article 111). Nevertheless, in 2014 there have been plenty of violations.

There is no specialised body in MRT to deal with viewers' complaints, nor effective mechanism for communication with the audience. It is responsibility of the MRT Programme Council to monitor the comments and suggestions of the audience regarding the broadcast programme. The Programme Council may request from the Director of MRT to adjust the scope, structure and overall quality of the programme content (Article 124). However, this measure is not effective for dealing with viewers complaints. The audience research commissioned by the Agency on Audio and Audiovisual Media Services contains viewing figures, audience perceptions on the quality of MRT programming and audience trust in MRT news programs. The latest figures for 2014 show that only 6.20 percent of audience find MRT 1 as most favourite TV station, taking in consideration the general quality of the programme. Furthermore, 10.6 percent of the audience watch news on MRT 1, while only 7.8 percent have trust in MRT 1 news.

DIGITALISATION BRINGS NEW OPPORTUNITIES FOR PSB

The digitalisation process was completed in June 2013. The media community raised concerns that the digitalisation process was being implemented in fast and non-transparent manner, but there are no analyses that tackle this issue. The reactions of the broadcasters are that the digitalisation affected especially the local media, since the new equipment and new licenses, represented additional financial burden.

In total, seven multiplexes, out of eight, are allocated by now to different operators of digital public communication networks (multiplexes). The public company Macedonian Broadcasting was allocated two multiplexes for digital broadcasting of public programme services of MTV. The private operator of public communication network DigiPlus Media, a part of the telecommunication company ONE, got three multiplexes for transmitting national terrestrial and retransmitting foreign channels through a pay-based platform (subscription is paid by users). The telecommunication operator ONE got 2 multiplexes

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for free-to air digital broadcasting of television program services of commercial broadcasters on national and regional level.

It was expected that the digitalisation will bring new development opportunities for MTV, aimed at the introduction of new program services that will ensure fulfilling its mission of a public service. Some experts claim that in order to be able to fulfil the mission of public service and in order to enhance the plurality of its program offer, MTV needs at least one more channel in Macedonian language (the first channel to offer informative and current-affairs programs and the second for sport, entertainment, culture etc.) and a specialized (thematic) program channel (for example, educational).

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