

MONITORING THE IMPLEMENTATION OF THE LAW  
ON AUDIO AND AUDIOVISUAL MEDIA SERVICES  
IN MACEDONIA

# TRANSPARENCY OF THE REGULATOR STRENGTHENED, BUT NOT FULLY IMPLEMENTED

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Transparency and accountability are regarded as safeguards of the independence of the audiovisual regulatory bodies across Europe. These standards are reflected by the new Law on Audio and Audiovisual Media Services (2013) in Macedonia. It specifies safeguarding of a transparent, independent, effective and accountable regulatory body in the area of audio and audiovisual media services among the main goals of the law (Article 2).<sup>1</sup>

Despite having been kept as a guiding principle by the policy makers in the past, this vision was repeatedly disregarded due to political influences over the regulator. The regulatory body has long been subject to serious criticism by the media community because of the appointment procedures for the members of its governing body (the Council), its insufficient transparency in decision-making and licensing procedures. The appointment procedures for the members of the regulator's governing body have been conducted in a non-transparent manner in several occasions in the past. That influenced the regulator's independence. Although the legislative framework has been improved by introducing mechanisms for increased independence of the regulatory body, the political centers of power had always found ways to influence its work.

The new law initiated structural novelties for the regulator, which was transformed into the Agency for Audio and Audiovisual Media Services, replacing the former Broadcasting Council. The law introduces a director as a managerial body entrusted with broader competences compared to the president of the Broadcasting Council under the previous legislation (2005). Aiming to strengthen the legal basis and to ensure greater independence of the regulator, the new legislation further specified the provisions that refer to transparency and accountability.

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1 'Zakon za audio i audiovizuelni medijumski uslugi' (2013). Available at: [www.avmu.mk](http://www.avmu.mk). Accessed 2 April 2015.

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Transparency, as a key indicator for assessment of the independent and efficient functioning of the regulatory bodies, comprises different dimensions that should be reflected in the legal framework, decision-making processes and accountability of relevant stakeholders, nomination procedures, appointment and dismissal of Board Members, knowledge and expertise of human resources, as well as in the licensing procedures.<sup>2</sup> This report intends to explore whether the newly established Agency in Macedonia has been complying thoroughly with the principles of transparency in its work. More specifically, it focuses on the preconditions for transparency in the legislative framework; the manner of appointment of the members of the Agency's Council as its governing body; the regulatory body's operations, and the licensing procedures. It will also present some of the challenges in this area and how they have been addressed.

The monitoring was conducted from March through May 2015. Several qualitative methods were used for collecting and analysing data, including in-depth interviews with the representatives of the regulatory body, broadcasters and civil society organisations (CSOs). Qualitative analysis of domestic legal acts and official documents published by the regulator and other relevant international organisations has also been conducted. The analyses and publications of other relevant media organisations have been reviewed as well. The methods also included an analysis of secondary data provided by relevant official sources in Macedonia.

## 1 TRANSPARENCY IN LEGISLATION AND PRACTICE

### 1. 1 LEGISLATIVE FRAMEWORK AND ITS IMPLEMENTATION

Since the adoption of the first Law on Broadcasting Activity in 1997, there has been a steady improvement of the legislative framework which incorporated mechanisms for increasing transparency and accountability and reducing political influences in the work of the regulator. However, the implementation of the legal framework has always been marred by politicization of the appointment procedure and the decision-making of the regulator, including awarding licenses to "appropriate" applicants. In many cases the regulatory body had overtly breached regulations and detoured from its strategic goals in favour of the political and business interests of the centers of power.

Compared to the previous Law on Broadcasting Activity (2005), the new Law on Audio and Audiovisual Media Services (2013) provides much more

<sup>2</sup> European Commission, *INDIREG Indicators for Independence and Efficient Functioning of Audiovisual Media Services for the purpose of enforcing the rules in the AVMS Directive, 2011*. Available at: [http://ec.europa.eu/archives/information\\_society/avpolicy/docs/library/studies/regulators/final\\_report.pdf](http://ec.europa.eu/archives/information_society/avpolicy/docs/library/studies/regulators/final_report.pdf). Accessed 2 April 2015.

THE NEW LAW ON AUDIO AND AUDIOVISUAL MEDIA SERVICES (2013) PROVIDES EXTENSIVE AND DETAILED PROVISIONS WHICH CLEARLY DEFINE THE RESPONSIBILITIES OF THE AGENCY FOR ENSURING TRANSPARENCY, ACCOUNTABILITY AND PUBLIC PARTICIPATION.

extensive and detailed provisions on transparency and accountability. The transparency has been underlined as one of the goals of the law (Article 2), while several other articles clearly define the responsibilities of the Agency for ensuring transparency, accountability and public participation. In general, the new legal framework concerning the transparency of the regulator and its operations can be considered adequate.

During 2014, the Agency has, in line with its responsibilities, submitted to the Parliament the Annual Operation Report and the Financial Report for the previous year. The 2015 Annual Programme, the Annual Plan for Programme Monitoring and the Financial Plan have been submitted as well. All of these documents are available on the website of the Agency (in accordance with the Article 8). Conducting public research and analysis on the developments and the situation in the media market is also one of the tasks of the regulator that should serve as a basis for shaping or implementation of media policy. Such studies have regularly been conducted in the past, but the findings have actually never been effectively used by the former Broadcasting Council for further development of the media policy. The performance of the new Council of the Agency regarding this aspect is yet to be seen.

The regulator is also obliged to organise public meeting at least once in three months in order to allow all interested parties to express their positions and opinions regarding the situation in the media market. The meetings shall also provide opportunity for stakeholders to express their views on the activities implemented by the regulator to achieve the objectives specified in its Annual Operation Programme. Four public consultations in 2014 and one in March 2015 were organised by the regulator following that requirement in the new legislation.

All information related to the license-awarding procedures, submission of proposals from interested parties, as well as to the data and information published by the Agency and access to them, should be regulated with by-laws (Article 9). In order to allow public discussion and provide opportunity for all stakeholders to express their opinion, the regulator must publish on its website the proposal of its Annual Operation Programme for the next year and the draft by-laws before their adoption or amendment. The opinions and the comments gathered during the public discussion, as well as the Agency's position have to be also made public (Article 10). In 2014, the regulator had adopted 13 relevant by-laws. All of them were subject of public consultations and were later on published on its website. However, some by-laws were adopted without prior publishing of draft-versions on the Agency's website and allowing 30-day period for public discussion.

In 2014, in accordance with the dynamics introduced by the new law, the regulator mainly focused on establishment of its internal infrastructure, as well as on development of the working procedures and documents. Therefore, the effective implementation of the law should be further assessed in future. Some

of the measures taken by the Agency during its first operational year indicate a need for a closer monitoring of the regulators' operations.

## 1.2

### APPOINTMENT OF THE MEMBERS TO THE GOVERNING BODY

The tradition of exposing the regulator to political influence has become a norm rather than an exception in the last two decades. The independence of the regulator is one of the most contested issues, especially because nomination and appointment of members of the governing body have been strongly influenced by the ruling political parties. Although mechanisms were incorporated already in the previous legislation (2005) in order to prevent the influence of the Government, political parties and media owners over the regulatory body, the centers of power have always found ways to influence the appointment and decision making.<sup>3</sup> In 2006, in the first composition of the Broadcasting Council, for example, two of the nominated candidates were considered very close to the leaders of the ruling parties at that time (i.e. SDSM).<sup>4</sup> In 2011, an increased number of the Broadcasting Council's members, from 9 to 15, was introduced by the Government's amendment in order to authorize new nominators, most of which were political institutions and regulators. Formally, this change was explained by the need to foster the efficiency and transparency of the regulator, but *de facto* it aimed at gaining political majority in the Council for the new ruling party VMRO-DPMNE.<sup>5</sup>

The model for appointment of the Agency's Council members, presented in the new law (2013) is almost the same as in the 2005 law. It has been established to provide transparent and democratic appointment procedures, and independence of the regulator. The model has also aimed at minimizing political influence that was largely practiced.<sup>6</sup> The new law brought minor interventions in the list of authorized nominators, introducing the Bar Association and the Association of the Units of Local Self-Government of the Republic of Macedonia as new nominators that replaced the Macedonian Academy of Science and Arts. Other authorized nominators upon whose proposals the Parliament appoints the Council members are: the Parliamentary Committee on Election and Appointment Issues (nominates two members), two associations of journalists and the Intra-University Conference (Article 14).

3 Trpevska, S. and Micevski, I., 'Macedonia' in *Media Integrity Matters*, Peace Institute, Ljubljana, 2014, p. 261.

4 VMRO-DPMNE, which won the Parliamentary elections in June/July 2006 considered the entire composition of the newly appointed regulator as very close to their political opponent SDSM.

5 Macedonian Institute for Media, *Development of the Media in Macedonia according to UNESCO Indicators*, Skopje, 2012, p. 23. Available at: <http://mim.org.mk/mk/istrazuvanja/item/408-analiza-za-razvojot-na-mediumite>. Accessed 10 May 2015.

6 Trpevska, S. and Micevski, I., 'Macedonia' in *Media Integrity Matters*, Peace Institute, Ljubljana, 2014, p. 261.

During the adoption of the 2013 law, some media experts raised concerns that political influences are still made possible through the members nominated by the Parliamentary Committee and the Association of Self-Government Units. The Macedonian Development Center (MDC) suggested that instead of allowing the Parliamentary Committee nominate two members, one member should be nominated by civil society organisations and the Parliamentary Committee should be left with only one. In that way the threat of direct political influence could be reduced and the recommendations of the international organisations accepted.<sup>7</sup> However, that solution was not been included in the 2013 law.

What happened in practice? In July 2014, the new Council of the Agency was appointed. Five out of seven members of the Council were also members of the governing body of the former Broadcasting Council, while the current director of the Agency was the last president of the former governing body. The majority of members were once again appointed with a 7-year term of office. Despite the stipulation in both laws that members cannot be re-elected/reappointed (Article 28 in the 2005 law and Article 15 in the 2013 law), the transitional and final provisions (in both laws) allow current members to be appointed for members of the new governing body. The legal experts explain that appointment of same candidates is possible in case when a new law is adopted introducing either the new scope of the regulation or the new structure of the regulator.

In the past decade original mandate of several members of the governing body was “extended” in this way, contributing to their longer term of office.<sup>8</sup> Despite concerns that the appointment of the same members is not in line with the spirit of the law and the recommendations of the Council of Europe, the legislator found a legal way to ensure appointment of the same politically appropriate candidates. It resulted with a composition of the 2014 Council with some members having affiliations with the ruling political parties. Such connections contribute to views that the steps taken by the regulator in several controversial cases are politically motivated.

Knowledge and competences of the regulatory body’s members have “an impact on its ability to take appropriate decisions in the interest of the public at large”<sup>9</sup> and consequently on its level of independence. These qualities increase the regulator’s ability to resist influences by different actors, including

7 Media Development Center, *Monitoring of the implementation of the new media legislation, the Agency for Audio and Audiovisual Media Services and the Macedonian Radio Television*, March 2014, Skopje, p. 5. Available at: [www.mdc.org.mk](http://www.mdc.org.mk). Accessed 17 May 2015.

8 Council of Europe, *Recommendation (2000) 23*. Available at: [http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec%282000%29023%26expmem\\_en.asp](http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec%282000%29023%26expmem_en.asp). Accessed 10 April 2015.

9 European Commission, *INDIREG Indicators for Independence and Efficient Functioning of Audiovisual Media Services for the purpose of enforcing the rules in the AVMS Directive*, 2011, p. 387. Available at: [http://ec.europa.eu/archives/information\\_society/avpolicy/docs/library/studies/regulators/final\\_report.pdf](http://ec.europa.eu/archives/information_society/avpolicy/docs/library/studies/regulators/final_report.pdf). Accessed 2 April 2015.

DESPITE CONCERNS THAT THE APPOINTMENT OF THE SAME MEMBERS IS NOT IN LINE WITH THE SPIRIT OF THE LAW AND THE RECOMMENDATIONS OF THE COUNCIL OF EUROPE, THE LEGISLATOR HAD FOUND A LEGAL WAY TO ENSURE APPOINTMENT OF THE SAME POLITICALLY APPROPRIATE CANDIDATES. THIS RESULTED WITH A COMPOSITION OF THE 2014 COUNCIL WITH SOME MEMBERS HAVING AFFILIATIONS WITH THE RULING POLITICAL PARTIES.



the entities it regulates.<sup>10</sup> Although the criteria for professional competence of the candidates, their qualifications and experience had been set in the 2005 law as well, they were often disregarded in the nomination procedures. In many cases the appointed members did not have expertise in the respective fields (but in machine engineering, chemistry, etc.) or had not even completed higher education. Their main reference was their affiliation with the political parties.

According to the 2013 law, members of the Council have to be appointed taking into account the following criteria: they must be citizens of the Republic of Macedonia with a completed higher education and at least five-year relevant professional experience. More specifically, they must be distinguished professionals in communications, journalism, electronic communications, information science, culture, economy, law or similar relevant area (Article 16). In July 2014, the composition of the new Council was unanimously confirmed by the Parliamentary Committee on Elections and Appointment Issues, and the Parliament appointed all nominated members without any real debate about their qualifications and expertise.

The new law stipulates that the Council's members should have different professional backgrounds, enabling the body to deal with the diverse and increased powers. Relevant international standards recommend expertise in the audiovisual and related fields, such as advertising, technical aspects of broadcasting, etc.<sup>11</sup> The Macedonian civil society, for instance MDC, specifically recommend that the authorized nominators nominate representatives from their own profession or at least a similar or related profession. It aims at avoiding the situation when the Journalists' Association nominates a lawyer instead of a journalist or the Bar Association nominates a mechanical engineer instead of a lawyer, as it is in the current composition of the Council.<sup>12</sup>

### 1.3

#### PRINCIPLES OF TRANSPARENT AND IMPARTIAL PROCEDURES

The circumvention of the transparency rules was widely established practice in the past, when most of the regulator's obligations under the 2005 Broadcasting Law were formally implemented. It was a common practice for the members of the former Broadcasting Council to hold "coordination" meetings behind closed doors regarding specific issues on the agenda, and these

10 Council of Europe, *Recommendation (2000) 23*. Available at: [http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec%282000%29023%26expmem\\_en.asp](http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec%282000%29023%26expmem_en.asp). Accessed 10 April 2015.

11 European Commission, *INDIREG Indicators for Independence and Efficient Functioning of Audiovisual Media Services for the purpose of enforcing the rules in the AVMS Directive*, 2011, p. 387. Available at: [http://ec.europa.eu/archives/information\\_society/avpolicy/docs/library/studies/regulators/final\\_report.pdf](http://ec.europa.eu/archives/information_society/avpolicy/docs/library/studies/regulators/final_report.pdf). Accessed 7 April 2015.

12 Media Development Center, *Monitoring of the implementation of the new media legislation, the Agency for Audio and Audiovisual Media Services and the Macedonian Radio Television*, August 2014, Skopje, p. 7. Available at: <http://mdc.org.mk/>. Accessed 7 April 2015.

discussions were never included in the minutes. This practice represented a “serious violation of the principle of transparency of public work, which should be one of the basic working principles of the independent regulatory body.”<sup>13</sup>

Despite adequate legislative framework on the regulator’s transparency in the new law, the absence of the provision which clearly specifies that “the work of the Agency is public” is considered a major shortcoming compared to the previous law (2005). However, in January 2015, the Agency adopted the Rules of Procedure for ensuring transparency of its work (Article 9) stipulating that the work of the Agency is public and its sessions are open for journalists and other stakeholders. It also specifies that the Agency should provide information to all key actors and make them publicly accessible.

In practice, in some cases the newly established Agency did not respect the principle of openness to the public and providing impartiality towards broadcasters. Although the regulator is obliged to always act in a transparent manner and be subject to democratic control,<sup>14</sup> there were several deviations from the transparency principles in 2014.

Some sessions were closed for the interested parties and the public was deprived of the access to specific financial documents. Although the 2015 Financial Plan was published on its website, the Agency closed the doors when its savings and time-deposit saving accounts were discussed. The information about the amount, the banks and the conditions under which the Agency had placed its funds in time-deposit saving accounts, remained secret.<sup>15</sup> According to the President of the Council Lazo Petrusovski, the closed sessions were held in order to protect the confidential information such as different interest rates the banks offered to the Agency. He explains why managing time-deposit saving account by the Agency is a legal and appropriate activity: “The Agency is not that financially strong as other regulative bodies. The money is needed for current operations of the Agency, such as, paying the rent for the offices, the employees, current expenditures, monitoring cable operators across the country... These finances are presented in the budget, everybody who knows economy should understand.”<sup>16</sup>

Civil society representatives, on the other hand, emphasize that the Agency’s field of operation is of enormous public interest and its work is important to the

13 Media Development Center, *Proposal of Solutions for By-law Procedures which are in Competence of the Agency for Audio and Audiovisual Media Services*, Skopje, 2014. Available at: [http://mdc.org.mk/wp-content/uploads/2014/07/crm\\_Dokument-za-javna-politika\\_avmu-podzakonski-akti\\_23072014.pdf](http://mdc.org.mk/wp-content/uploads/2014/07/crm_Dokument-za-javna-politika_avmu-podzakonski-akti_23072014.pdf). Accessed 12 April 2015.

14 Council of Europe *Recommendation (2000) 23*. Available at: [http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec%282000%29023%26expmem\\_en.asp](http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec%282000%29023%26expmem_en.asp). Accessed 10 April 2015.

15 Media Development Center, *Monitoring of the implementation of the new media legislation, the Agency for Audio and Audiovisual Media Services and the Macedonian Radio Television*, August 2014. Skopje, p. 6. Available at: <http://mdc.org.mk/>. Accessed 15 April 2015.

16 Interview with Lazo Petrusovski, President of the Council of the Agency for Audio and Audiovisual Media Services, 20 April 2015

ALTHOUGH THE  
REGULATOR IS  
OBLIGED TO ACT IN A  
TRANSPARENT MANNER  
AND BE SUBJECT TO  
DEMOCRATIC CONTROL,  
DURING 2014 THERE  
WERE SEVERAL  
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THE TRANSPARENCY  
PRINCIPLES. SOME  
SESSIONS WERE  
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INTERESTED PARTIES  
AND THE PUBLIC  
WAS DEPRIVED OF  
THE ACCESS TO  
SPECIFIC FINANCIAL  
DOCUMENTS.

democratic development of the country, which is why it must be transparent on any grounds, including “the manner of holding the sessions, the manner of deciding, internal procedures, how the money is spent, especially because it is public money. There shouldn’t be any exception in relation to the transparency of its operation, manner of deciding, policy making...”<sup>17</sup>

The transparency of the Agency could be also assessed through the minutes and the decisions adopted. In general, these documents are detailed and duly justified.<sup>18</sup> It was not always the case in the past. The minutes from the sessions of the Agency and all other documents are now published on its website allowing everybody to check what has been said and how every member of the Council voted. As it was pointed out by the president of the Council Lazo Petrushevski: “now every member bears responsibility for their vote.”<sup>19</sup>

Still, some by-laws were adopted without their draft-versions being published on the Agency’s website for a 30-day public discussion, although such requirement is specified in the law. MDC noticed that these by-laws refer to the reimbursement of the travel costs of the Council’s members, use of official vehicles, official mobile phones, the internal organisation and systematisation of the posts and tasks, as well as the net salaries of its staff and the monthly reimbursement of the members of the Council.<sup>20</sup> The civil society organisation requested from the Agency to reveal the salaries of the director and his deputy, the monthly reimbursements of the members of the Council, the reimbursements for travel costs and use of mobile phones. They argue that “the public has a right to know the amount of money every elected or appointed official receives, because the financial transparency is one of the basic principles for responsible and accountable performance of the public work.”<sup>21</sup>

This is especially important taking into account that the Audit Reports for the work of the Broadcasting Council in 2011 revealed many irregularities, such as lack of financial documentation for the expenses incurred by the regulator for software upgrade or outsourcing experts, as well as irregularities in the use and maintenance of the official vehicles.

17 Interview with the representatives of Media Development Center, 31 March 2015.

18 In order to increase the transparency of the regulator, the Council of Europe’s *Recommendation (2000) 23* clearly states that “all decisions taken and all regulations adopted by the regulatory authorities should be duly reasoned in accordance with national law, open to review by the competent jurisdictions according to national law and made available to the public.” Available at: [http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec%282000%29023%26expmem\\_en.asp](http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec%282000%29023%26expmem_en.asp). Accessed 15 April 2015.

19 Interview with Lazo Petrushevski, President of the Council of the Agency for Audio and Audiovisual Media Services, 20 April 2015.

20 Media Development Center, *Monitoring of the implementation of the new media legislation, the Agency for Audio and Audiovisual Media Services and the Macedonian Radio Television*, August 2014, Skopje, p. 11. Available at: <http://mdc.org.mk/>. Accessed 15 April 2015.

21 Ibid, p. 13.



In terms of transparent and fair relation with broadcasters, several measures taken by the Agency against some media in 2014 were perceived as controversial. During the 2014 elections, *TV Telma* and *TV 24 Vesti* (both considered a critical to the government and rather a balanced media) were accused by the Agency's director (the then-President of the Council) for having attempted to manipulate the voters by publishing an unrepresentative public opinion survey. He claimed this is done by the two broadcasters in order to ensure victory of the opposition candidate.<sup>22</sup> Such observation was included in the official monitoring report written by the permanent services of the Agency that initially described *Telma's* reporting as "relatively balanced."<sup>23</sup>

Indications of selective approach of the Agency towards the media was also noted in the 2014 EU Progress Report for Macedonia, which stressed that "there continue to be concerns about the fairness, objectivity and transparency of its approach."<sup>24</sup>

The President of the Council, Petrusovski, does not agree with the EC observation, stressing that the new composition of the Council, for the first time in 20 years, forced the owner of the commercial broadcaster *TV Sitel* to choose between being a media owner or resigning from the Parliament. He said: "Look at the sanctioning measures, they are same for all, we do not relent to anyone. We initiated a procedure for hate speech against a journalist perceived as being supportive to the Government. We do not make any difference."<sup>25</sup>

The Agency's does not initiate actions to protect political pluralism when necessary and without exception. It results with distrust in equal treatment of broadcasters, and indicates that the actions depend on political affiliation. In early 2015, for example, the public broadcaster *MRT* decided not to report on the phone-tapping scandal disclosed by the opposition party *SDSM*, although it revealed corruption, the Government's illegal interference in the judicial system, the media, public administration, elections etc. A member of the Council proposed to the Agency to send a public appeal to *MRT* suggesting it should report this subject in professional and objective manner, but the regulator rejected the proposal explaining it should not take part in political issues and

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22 Trajcevski was appointed for director of the Agency in October 2014, while previously he was President of the Broadcasting Council.

23 "Nepriherenten napad na Trajcevski vrz Telma", *TV Telma*, 17 April 2014. Available at: [www.telma.com.mk](http://www.telma.com.mk). Accessed 15 April 2015.

24 European Commission, *Progress Report on Macedonia, 2014*. Available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf). Accessed 1 July 2015.

25 Interview with Lazo Petrusovski, President of the Council of the Agency for Audio and Audiovisual Media Services, 20 April 2015.

claiming that *MRT* has a right to decide how to treat the material presented by the opposition.<sup>26</sup>

#### 1. 4

### TRANSPARENCY IN LICENSING PROCEDURES AND TRANSFORMATION OF THE LICENSES

The granting of TV and radio licenses has frequently been subject to criticism in the past two decades, both in terms of political bias and transparency. Political pressures on the regulator had been strongest when granting the licenses. Media owners used the broadcast media (especially television) as means of political influence or for accomplishing their business interests. Individuals holding key positions in the regulatory body have used their power to decide on the allocation of significant resources, such as broadcasting frequencies, in order to achieve personal benefit, gain political support from the ruling party or retain their function in the regulator or other state institutions. Previous research has clearly described and documented the license-awarding process as a form of political clientelism or institutional corruption in the media sector in Macedonia.<sup>27</sup>

While the legal procedure, the criteria and the transparency in the licensing procedures were clearly defined in the legislation (2005 and 2013), the implementation of the rules has always been a major problem. In an attempt to cover up the political pressures and to grant licenses to applicants which did not meet the conflict of interest or other legal criteria, the licensing procedures were often violated or insufficiently transparent. In the past, during the period 2008-2009, for example, the Broadcasting Council (BC) allocated new analogue licenses in order to fulfil the promises given to new media owners. Under pressure of other influential media owners that felt their positions were jeopardized by newcomers, the Council issued additional national TV licenses to all of them, thus replicating the TV channels.<sup>28</sup> Most controversial was the way in which the BC allocated the new licenses in 2008, including violations of the law, tendering documents and the rules set out in the Code of Conduct of the regulator.<sup>29</sup> Such misconduct was aimed at gaining political support or achieving personal benefit of some of its members.

Concerns related to the implementation of transparent and fair licensing procedures include suspicions for politically motivated licensing in several cases. These include awarding license for national broadcasting to *Radio Slobodna Makedonija* in 2013 and allowing to six local TV stations to transform licenses

26 AVMU, 'Zapisnik od 13 sednica na Sovetot' (Minutes from 19<sup>th</sup> Session of the Council). Available at: [http://avmu.mk/images/Zapisnik\\_%do%be%do%B4\\_13\\_sednica.pdf](http://avmu.mk/images/Zapisnik_%do%be%do%B4_13_sednica.pdf). Accessed 18 May 2015.

27 See Trpevska and Micevski (2014).

28 Ibid, p. 262.

29 Ibid.

into regional ones, while all these broadcasters are perceived as having close relations with the ruling party.

The decisions for awarding licenses in 2013 are not published on the Agency's website. Therefore, for the purpose of this research, a request for access to information of public character was submitted to the Agency in May 2015. After that the regulator issued all the decisions. They contain mainly technical information and are not disputable as such. On the other hand, the minutes of the Council's sessions raise concerns about possible irregularities with the legal documentation and introduction of fast procedure for granting analogue licenses just two months before the digital switch-over took place in June 2013.

*Radio Slobodna Makedonija* was competing for the license for national broadcasting against another applicant. Some members of the Council complained that another national radio will additionally weaken the media market.<sup>30</sup> More importantly, neither of two applicants for national broadcasting radio license submitted documents that would guarantee stable financing of their proposed plans. Although the President of the Council expressed reservations about the supporting documentation, he later elaborated that the applicants had "good intention" and "a chance should be given" to them.<sup>31</sup> Taking into account that continuous requests by the representative of the Albanian community in the Council for allocation of national broadcasting license to the Albanian language radio have been denied for "technical reasons", this sudden licensing of *Radio Slobodna Makedonija* raises additional concerns.

*Radio Slobodna Makedonija* began its broadcasting in December 2013 and earned 240,000 euro from state advertising in only 20 days.<sup>32</sup> The sudden surge in the income of the radio and the shortcomings of the fast procedure for granting the license reveal the licensing is being politicized. That is additionally indicated by the radio's editorial policy being supportive to the ruling party VMRO-DPMNE.<sup>33</sup>

At the same time, the six local TV stations given approval to transform their licenses into regional ones are described in the investigative journalism reports as being bought by people close to the ruling party.<sup>34</sup> These stations were bought in the same day by three companies, which had again been established in the same day. As it was pointed out by the civil society representative, "this

30 AVMU, 'Zapisnik od 19 sednica na Sovetot' (Minutes of the 19<sup>th</sup> session of the Council), 17 April 2013. Available at: [http://avmu.mk/images/usvoen\\_Zapisnik\\_od\\_19\\_sednica\\_-\\_so\\_prilozi\\_zabeleskite\\_na\\_clenovite.pdf](http://avmu.mk/images/usvoen_Zapisnik_od_19_sednica_-_so_prilozi_zabeleskite_na_clenovite.pdf). Accessed 18 May 2015.

31 AVMU, 'Zapisnik od 35 sednica na Sovetot' (Minutes of the 35<sup>th</sup> session of the Council), 15 July 2013. Available at: [http://avmu.mk/images/usvoen\\_Zapisnik\\_od\\_35\\_sednica\\_-\\_2013.pdf](http://avmu.mk/images/usvoen_Zapisnik_od_35_sednica_-_2013.pdf). Accessed 18 May 2015.

32 "Radio Slobodna Makedonija ima bliznak televizija", Database on media ownership *MediaPedia*. Available at: <http://mediapedia.mk/istrazuvanja/>. Accessed 10 May 2015.

33 Ibid.

34 "Nova mediumska zetva vo vladinot reklamen kombajn", Database on media ownership *MediaPedia*. Available at: <http://mediapedia.mk/istrazuvanja/>. Accessed 10 April 2015.

looks like an organised action.”<sup>35</sup> There is no evident connection among the new owners with the political centers of power. The only joint string among the TV stations is their substantial income from public advertising. After 2014, some regional TV stations suddenly started receiving hundreds of advertisements more than others, and these six were among them. When state advertisements suddenly started to “pour” in certain media on local level, the suspicions for their political allegiances with the ruling party were stirred.<sup>36</sup> A national broadcaster’s representative describe how such politically connected players influence the market: “The regional TV stations were re-branded, well equipped and new staff was engaged. They broadcast serious and more expensive programmes than local TV stations can afford. Since in financial and programme terms they are secured, they actually represent serious competition for the local TVs on the local media markets.”<sup>37</sup>

Lazo Petrushevski, the President of the Agency’s Council, explains that the Agency has allowed change of the ownership to the six local TV stations and their transformation in regional broadcasters after the permanent services of the regulator did not confirm media concentration.<sup>38</sup> Namely, the Agency has no power to check hidden connections between political centers of power and the broadcasters.

After examining the transparency of the regulator and its impartiality towards broadcasters, we can confirm indications of political interests behind some of the latest licensing decisions. Such developments in the past two years signalize that the ruling political centers have been trying to create a sort of a “TV network” of supportive media, on local and regional level. This scheme is an upgrade and extension of the ruling’s party model of “colonisation” of influential national media. These networks are being sustained through the state advertising allocated to them by the Government. They serve as extended “zones” of political propaganda where public money is used for colonisation of the public space by particular political groups. In such environment, independence and transparency of the regulator and its strong powers to examine the threats to and act in protection of political pluralism in the media are vital.

AFTER EXAMINING THE TRANSPARENCY OF THE REGULATOR AND ITS IMPARTIALITY TOWARDS BROADCASTERS, WE CAN CONFIRM INDICATIONS OF POLITICAL INTERESTS BEHIND SOME OF THE LATEST LICENSING DECISIONS. THIS SIGNALIZES THAT THE RULING POLITICAL CENTERS HAVE BEEN TRYING TO CREATE A SORT OF A “TV NETWORK” OF SUPPORTIVE MEDIA, ON LOCAL AND REGIONAL LEVEL.

35 Interview with the representatives of Media Development Center, 31 March 2015.

36 Database on media ownership *MediaPedia*. Available at: [www.mediapedia.mk](http://www.mediapedia.mk). Accessed 18 May 2015.

37 Interview with an anonymous owner of a national broadcaster, 10 April 2015.

38 Interview with Lazo Petrushevski, President of the Council of the Agency for Audio and Audiovisual Media Services, 20 April 2015.

Although the grounds for increasing transparency and accountability in the work of the regulator have been further strengthened in the new Law on Audio and Audiovisual Media Services (2013), the regulator in some cases complies with the rules only formally. Appointment procedures for the governing body, disclosing financial documents or licensing procedures, being the essence of the legislation and the European standards, are often neglected.

The independence of the regulatory authority has been one of the most contested media policy issues in the past two decades. Particularly the appointment of the members of the regulator's governing body has been strongly influenced by the ruling political parties. Although mechanisms had been incorporated in the legislation (2005 and 2013) in order to prevent misuse of the regulator for political and business interests, politically appropriate rather than distinguished professionals have often been appointed for members in the governing body. This practice resulted with incompetent governing body prone to political and business interests often taking the decisions in their favour. Extension of the mandate of the governing body's members after the adoption of the new law (in 2005 and 2013) is eventually legal, but it does not contribute to the credibility and trust in the independence of the regulator. It is against the spirit of the legislation and the international standards, and seems instrumental for development of clientelistic allegiances.

Despite the lack of provision in the 2013 law which clearly stipulate that the work of the regulator is public, the Council of the Agency expressed its commitment to the transparency principles in the Rules of Procedure. The Council makes efforts to demonstrate greater transparency and accountability in the eyes of the public and the stakeholders through a variety of mechanisms. That is certainly a positive step in comparison to its predecessors. However, whenever financial information are on the agenda of its sessions or should be presented to the public, the regulator's conduct is quite the opposite. Transparency of the regulatory body is evaded in such cases. Discussing and deciding at closed sessions or holding "coordination" meetings before the sessions without disclosing the contents of such meetings, give rise to suspicions that the regulator does not exercise full transparency and accountability.

The process of granting licenses continues to be the main issue of concern. There are doubts whether the licensing procedures are fully open, impartial and regular. Some findings indicate that the procedure for awarding or transforming licenses to certain media close to the ruling party have been agreed in advance. Such practices contribute to the distrust in full commitment of the regulator to transparency as one of the key safeguards of its independence.



1. The merit based system, established in the law, shall be fully and impartially applied in the appointment procedures for the members of the governing body of the Agency. Each nomination for the members of the governing body shall be publicly discussed and examined during the appointment procedure in the Parliament taking into account expertise, qualifications, exceptional achievements and credibility of the candidates for the work entrusted to the governing body and for strengthening the public interest within the mission of the regulator.
2. The Agency needs to demonstrate full transparency of all decisions and activities, providing clear explanation, particularly for the actions which are disputed. The regulator may restrict access to information only for strictly confidential matters, applying the public interest values in the first place.
3. The license-awarding decisions of the Agency should be taken in an open, transparent and impartial manner and should be open for public scrutiny, thus minimizing the possibilities for political pressures and influence.
4. In the license-awarding process the Agency should take into consideration the level of political pluralism and take measures for its strengthening, particularly in the TV sector.
5. The Agency should further strengthen its role in the media system by developing and sharing its expertise, data and analyses. Benefiting from increased public exposure, it can gain public trust and use it to protect own independence against particular political and business interest, and to educate the public.

## SOURCES

- AVMU, 'Zapisnik od 13 sednica na Sovetot' (Minutes of the 13<sup>th</sup> session of the Council), 30 March 2015. Available at: [http://avmu.mk/images/Zapisnik\\_%d0%be%d0%B4\\_13\\_sednica.pdf](http://avmu.mk/images/Zapisnik_%d0%be%d0%B4_13_sednica.pdf). Accessed 18 May 2015.
- AVMU, 'Zapisnik od 19 sednica na Sovetot' (Minutes of the 19th session of the Council), 17 April 2013. Available at: [http://avmu.mk/images/usvoen\\_Zapisnik\\_od\\_19\\_sednica\\_-\\_so\\_prilozi\\_zabeleskite\\_na\\_clenovite.pdf](http://avmu.mk/images/usvoen_Zapisnik_od_19_sednica_-_so_prilozi_zabeleskite_na_clenovite.pdf). Accessed 18 May 2015.
- AVMU, 'Zapisnik od 35 sednica na Sovetot' (Minutes from 35th Session of the Council), 15 July 2013. Available at: [http://avmu.mk/images/usvoen\\_Zapisnik\\_od\\_35\\_sednica\\_-\\_2013.pdf](http://avmu.mk/images/usvoen_Zapisnik_od_35_sednica_-_2013.pdf). Accessed 18 May 2015.
- Council of Europe, *Recommendation (2000) 23*. Available at: [http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec%282000%29023%26expmem\\_en.asp](http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec%282000%29023%26expmem_en.asp). Accessed 2 April 2015.
- European Commission, *INDIREG Indicators for Independence and Efficient Functioning of Audiovisual Media Services for the purpose of enforcing the rules in the AVMS Directive*, 2011. Available at: [http://ec.europa.eu/archives/information\\_society/avpolicy/docs/library/studies/regulators/final\\_report.pdf](http://ec.europa.eu/archives/information_society/avpolicy/docs/library/studies/regulators/final_report.pdf). Accessed 2 April 2015.
- European Commission, *Progress Report on Macedonia*, 2014. Available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf). Accessed 1 July 2015.
- Macedonian Institute for Media, *Development of the Media in Macedonia according to UNESCO Indicators*, Skopje, 2012. Available at: <http://mim.org.mk/mk/istrazuvanja/item/408-analiza-za-razvojot-na-mediumite>. Accessed 10 May 2015.
- Media Development Center, *Monitoring of the implementation of the new media legislation, the Agency for Audio and Audiovisual Media Services and the Macedonian Radio Television*, March 2014, Skopje. Available at: [www.mdc.org.mk](http://www.mdc.org.mk). Accessed 5 May 2015.
- Media Development Center, *Monitoring of the implementation of the new media legislation, the Agency for Audio and Audiovisual Media Services and the Macedonian Radio Television*, August 2014, Skopje. Available at: <http://mdc.org.mk/>. Accessed 5 May 2015.
- Media Development Center, *Proposal of Solutions for By-law Procedures Which are in Competence of the Agency for Audio and Audiovisual Media Services*, Skopje, 2014. Available at: [http://mdc.org.mk/wp-content/uploads/2014/07/crm\\_Dokument-za-javna-politika\\_avmu-podzakonski-akti\\_23072014.pdf](http://mdc.org.mk/wp-content/uploads/2014/07/crm_Dokument-za-javna-politika_avmu-podzakonski-akti_23072014.pdf). Accessed 10 May 2015.
- Trpevska, S. and Micevski, I., 'Macedonia', in *Media Integrity Matters*, Peace Institute, Ljubljana, 2014.
- 'Zakon za audio i audiovizuelni mediumski uslugi', 2013. Available at: [www.avmu.mk](http://www.avmu.mk). Accessed 2 April 2015.

## ARTICLES AND NEWS REPORTS IN THE MEDIA

“Nepriherenten napad na Trajcevski vrz  
Telma”, *TV Telma*, 17 April, 2014.  
Available at: [www.telma.com.mk](http://www.telma.com.mk).  
Accessed 15 April 2015.

“Nova mediumska zetva vo vladiniot  
reklamen kombajn”, Database on media  
ownership *MediaPedia*, 2015. Available

at: <http://mediapedia.mk/istrazuvanja/>,  
2015. Accessed 10 April 2015.

“Radio Slobodna Makedonija ima bliznak  
televizija”, Database on media ownership  
*MediaPedia*, 2015. Available at: <http://mediapedia.mk/istrazuvanja/>, 2015.  
Accessed 10 May 2015.

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Interview with Lazo Petrusovski, President of  
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TRANSPARENCY OF THE REGULATOR  
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