

# MEDIA REGULATORY AUTHORITIES AND MEDIA PLURALISM REGIONAL PUBLICATION



Freedom of expression and freedom of the  
media in South-East Europe

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# MEDIA REGULATORY AUTHORITIES AND MEDIA PLURALISM

## REGIONAL PUBLICATION

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*“If all mankind minus one were of one opinion,  
mankind would be no more justified in silencing  
that one person than he, if he had the power,  
would be justified in silencing mankind.”*

*John Stuart Mill*



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\* Kosovo\* – This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.



# Executive Summary

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The initiative “Horizontal Facility for the Western Balkans and Turkey 2019–2022”, funded by the European Union and the Council of Europe, is a co-operation programme, with the scope of work related to capacity building, expert advice on legislative and policy issues, including the assessment of the alignment of legislation and/or policy documents with Council of Europe and European Union standards, in different areas, including freedom of expression and the media, that is particularly covered with its action “Freedom of Expression and Freedom of the Media in South-East Europe” (JUFREX 2). The beneficiaries of this project include, *inter alia*, media regulatory authorities from Albania, Bosnia and Herzegovina, Kosovo\*, Montenegro, North Macedonia and Serbia which acknowledged the relevance of the topic of media pluralism as an important democratic feature to develop and preserve, as it represents an essential ingredient of the democratic societies.<sup>1</sup> This is why it has been agreed to prepare this publication, which addresses the issue of media pluralism by looking at it through the prism of European standards, legislative and institutional frameworks, existing practice and proposed measures towards the enhancement of diversity, as well as at the roles and activities of media regulatory authorities in this field.

This publication notes that, globally, the contemporary media landscape appears to be rich in its offer (aided by technological advancements developing at a rapid pace), but its actual effects on media pluralism and diversity seem to be overwhelmingly adverse, with clear and dangerous polarisations, and media market paradigms characterized by their negative effect on the fundamental premises of the right to freedom of expression and overall endangerment of the democratic fabric. Unfortunately, during the COVID-19 pandemic, these issues have become increasingly problematic and have shown the power of misconceptions, disinformation and manipulation. Societies have found themselves in a crisis of pluralism and democratic values, which demonstrates the need to address the threats to democratic processes by actively and effectively implementing activities to tackle these problems. Within that context, media policies are aiming to protect and promote the diversity of cultural expressions by taking the online world within its realm, with a view to the creation of conditions which are conducive to the protection and promotion of the diversity of cultural expressions.

The publication found the legislative and regulatory mechanisms on media pluralism in this region lacking in calibrating itself to the present digital media realities,

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1 Although Croatia is not a Beneficiary of the project, Croatian Agency for Electronic Media is participating in JUFREX 2 activities, sharing its experience and supporting colleagues from the region.

still vastly set for the analogue media environment and, at times, over-regulatory in nature, while in practice they do not seem to alter the media environment. Characterized by an abundance of media outlets, the region is reportedly lacking in diversity, but a consistent and unified method of its measurement is lacking. The beneficiaries, media regulatory authorities predominantly deal with ownership issues of licenced media outlets. The content regulatory mechanisms for linear and non-linear media services are in place and implemented, with initial steps towards the establishment of co-regulatory mechanisms. Public service broadcasters exist but appear, at times, to be heavily politicized. National media content is spilled over borders and distributed throughout the region. Some news media outlets with foreign ownership are present and provide national as well as regional news coverage. There are notable examples of initiatives towards media and information literacy activities, and media pluralism funds. Various support measures of the beneficiaries during the COVID-19 pandemic are noted and praiseworthy. Yet, there is a noted lack of full transparency of media ownership and relevant State institutions in charge of competition issues are lagging in the implementation of media concentration-related matters. While the traditional media still hold strong, the region is also experiencing new media offers, with legal and regulatory responses to challenges for current media pluralism in their infancy. With the transposition of the revised AVMSD, which is compulsory for all beneficiaries' states, they will be driven in the area of regulation of online media, albeit limited in extent and scope.

Information gained from the media regulatory authorities for the purpose of this publication suggests that the related policies throughout the region should provide for evidence-based and impartial regulation, enforcement of compliance with the law and professional standards, as well as effective self- and co-regulation mechanisms, in combination with establishing regular measurements of media pluralism. The sustainability of independent and professional public service media should be required, together with further developing the transparent and level-playing market grounds for all private and public actors and reinforcing the transparency of media ownership and the prevention of negative implications of media concentration. In terms of media content, regulation should not only be about percentages and quotas, but about the necessary focus on the qualitative dimension by implementing measures to ensure quality content. The role of regulators can vary from fostering funding schemes, as is done in some countries of the region, to ensuring the prominence of content with public service value. Regarding online platforms, it has become evident that some kind of content moderation is becoming necessary, but it needs to be proportional and in line with the principles of freedom of expression. A fair and transparent system of public subsidies for media is suggested to be further developed, in order to foster the professional integrity of journalists and media literacy. An appropriate (balanced) compilation of different funding, ownership transparency and the prevention of concentration should be regulated and efficiently enforced. The (re)definition of the role of MRAs in the field of monitoring and enforcement of the concentration prevention and funding and/or ownership transparency should be carefully formulated. It should complement the roles and obligations of other competent authorities (e.g., competition protection) and be ensured by the necessary human resources and effective enforcement powers. Acknowledging the importance of media literacy initiatives and self- and co-regulatory

ry schemes, the legislative acts throughout the region should set out the objectives of co-regulation and the clear role of MRAs and the co-regulatory bodies in the process, as well as in the media literacy initiatives.

The need and importance of MRAs co-operation on all levels (regional and especially on the international level) with the inclusion of all stakeholders, is crucial and vital for further developments and improvements in this regard. Beneficiaries follow the developments on European and other (supra) national proposed measures parallel to those from the revised AVMSD (e.g., the ongoing process relative to the EU Digital Service Act) and various national regulatory proposals. While small in terms of measuring market indicators, the MRAs from this region must have a say in what is a visible trend towards the structural changes happening on the horizon of public policies related to media freedoms.

There is much work to be done in the forthcoming period, but it requires political will and a holistic approach. All stakeholders, from national legislators and governments to supra- and international organisations must be involved in the efforts to preserve media pluralism. Moreover, market-based interests desperately need to be complemented by human-rights interests, and more emphasis placed on the public interest. In that respect, human rights principles should provide clear guidance for the direction in which laws, regulations and policy actions would effectively address various current challenges and revive media pluralism. Hence, this publication offers a shift in embracing public policies, and a national and international collaborative approach to these matters, where the vast array of actors and stakeholders is needed. MRAs, governments and parliaments, election commissions and data protection agencies, together with media, academia and fact-checkers and online platforms need joint efforts to reclaim democracy by rebuilding trust in democratic processes, and staying clear of censorship. While doing that, societies need to make sure not to enter the area of digital oppressiveness, respecting the rights and freedoms, and cautiously, openly and honestly endeavouring to create lasting solutions.

# List of Acronyms

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- AEM HR – Agency for Electronic Media, Croatia
- AEM ME – Agency for Electronic Media, Montenegro
  - AMA – Audiovisual Media Authority, Albania
  - AVM – Audiovisual Media
- AVMSD – Audiovisual Media Service Directive
  - AVMU – Agency for Audio and Audiovisual Media Services, North Macedonia
- Beneficiaries – JUFREX Beneficiaries: Albania, Bosnia and Herzegovina, Kosovo\*, Montenegro, North Macedonia and Serbia while beneficiaries – in the context of this publication refers to media regulatory authorities taking part in this project
- CMPF – Centre for Media Pluralism and Media Freedom
  - CoE – Council of Europe
  - CRA – Communications Regulatory Agency, Bosnia and Herzegovina
  - EC – European Commission
- ECHR – European Convention on Human Rights
- ECtHR – European Court of Human Rights
  - EU – European Union
  - ICT – Information and Communication Technology
  - IMC – Independent Media Commission, Kosovo\*
- MPM – Media Pluralism Monitor
- MRA – Media Regulatory Authority
- MSI-MED – The Council of Europe’s Committee of Experts on Media Pluralism and Transparency of Media Ownership
- MSI-REF – The Council of Europe’s Committee of Experts on Media Environment and Reform
  - OTT – Over-the-Top Platforms
  - REM – Regulatory Authority for Electronic Media, Serbia
  - RTSH – Public Service Broadcaster of Albania (Radio Televizioni Shqiptar)
- UNESCO – United Nations Educational, Scientific and Cultural Organization
  - VOD – Video on Demand
  - VSP – Video-Sharing Platform
  - RTV – Radio and Television
  - RTS – Public Service Broadcaster of Serbia (Radio Televizija Srbije)

# 1. Introduction

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The “Horizontal Facility for the Western Balkans and Turkey 2019–2022”, funded by the European Union and the Council of Europe, enables its beneficiaries to meet their reform agendas in the fields of human rights, rule of law and democracy and to comply with European standards, including where relevant within the framework of the EU enlargement process. This three-year programme covers actions in Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, Serbia, Turkey, and Kosovo\* and it has been implemented by the Council of Europe since May 2019.

Under this umbrella, the action on “Freedom of Expression and Freedom of the Media in South-East Europe (JUFREX)”, which builds on the previous project “Strengthening the judicial expertise on freedom of expression and the media in South East Europe” (JUFREX), upholds the fruitful cooperation of media regulatory agencies (MRAs) through regional events and joint publications. During the conference organised in September 2019, it was agreed to prepare a publication mirroring the format of the two previously published ones: [Media regulatory authorities and hate speech](#) and [Media regulatory authorities and protection of minors](#). This time, the MRAs decided to address the issue of media pluralism by looking at it through the prism of European standards, legislative and institutional frameworks, as well as at the roles, responsibilities, and activities of media regulatory authorities in this field, presenting existing practice and promoting European values, as well as positive examples in this field. To gather the national frameworks and practices, a questionnaire for the beneficiaries was prepared by the editor of the publication, facilitating the collection of relevant information<sup>2</sup>.

This publication is available in both electronic and print formats, and while written in English, it will be translated into the languages of all JUFREX Beneficiaries.

Also, it will be shared with other relevant actors such judicial branches and widely disseminated to various stakeholders, including parliaments, academic institutions, self-regulatory bodies and journalists.

The main aim of this publication is to contribute to a wider understanding of the concept of media pluralism, its institutional and policy-related importance, and the fundamental role of MRAs in this area. It also stresses the need to include various

2 NOTE: This publication has been prepared during the course of 2020, but has been additionally updated in April 2021, including the additional updates received from the beneficiaries, to reflect and encompass the changes that might have occurred since the original collection of relevant data and considering the fact that all beneficiaries are currently in the process of the transposition of the revised AVMSD.

stakeholders to foster a rich media environment both offline and online to ensure diversity of opinions and voices, while addressing measures to avoid a concentration of media which might impair media pluralism, and hence, lead to an impoverished right to freedom of expression. It should represent a useful and important tool in further activities not only for regulatory bodies, but within the realm of wider societal stakeholders.

## 2. Understanding media pluralism and its importance

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**T**he main question for pluralism is: “how power and influence are distributed”. While groups of individuals try to maximise their interests, it is the co-existence of diverse and competing interests that is the basis for a democratic equilibrium. Media pluralism, in a very simplistic understanding and without taking into account the economic dimension, means diversity of voices, opinions, and publicly debated issues, but also the plurality of media outlets and co-habitation (especially in the European context) of public, private, and community media. This publication purposely excluded the references and focus on economic dimensions of media pluralism, concentrating on diversity of voices and outlets, having in mind the fact that another Council of Europe’s publication: “[Pluralism of Media ownership in the new media environment](#)”<sup>3</sup>, originally prepared for AVMU, the media regulatory authority of North Macedonia, but inclusive of the information from the beneficiaries, covers the economic and business aspects. It is a term that implies pluralism within media outlets just as much as within societies themselves.

Media pluralism is connected to the diversity of media ownership, and therefore, the prevention of media concentration. This is a logical and necessary line of thinking as the media have substantial cultural and social significance. The economic/business aspect, as well as concentration matters related to media pluralism are of a great significance as well, but this publication has been designed to focus on the cultural/social/political/legal aspects of media pluralism, and it will attempt to stay clear of business and concentration matters as much as possible. Surely, the media sector contributes to shaping identities and project values, in addition to being a business sector and innovation driver. Hence, the nature of media goods and services is complex and can neither be defined as solely cultural goods nor simply as economic goods. Inevitably, market conditions do heavily influence the state of media pluralism, especially lately, so a light touch on these matters will be provided further in the text.

The notion of the importance of free speech and a plurality of voices and opinions goes way back. Among others, John Milton would argue, in his objections to pre-publication licencing/censorship, that the lack of views and ideas offered to people weaken their ability to recognise and affirm truths by using their reason. He

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3 <https://rm.coe.int/hf37-study-media-ownership-eng/16809f0272>.

believed that truths must be known by the use of reason rather than by acceptance of authority: “*unless a rich body of ideas, including some false ones, is available for rational debate, people’s faculty of reason will not flourish*”<sup>4</sup>. Milton, like John Stuart Mill, Thomas Jefferson and other supporters of the concept of the free marketplace of ideas relied on the premise of reason and rationale. In Mill’s opinion: “*unless men are left to live as they wish ‘in the path which merely concerns themselves’; civilization cannot advance; the truth will not, for lack of a free market in ideas, come to light...Society will be crushed by the weight of ‘collective mediocrity’*”<sup>5</sup>. He, however, also stressed that a struggle always takes place between the competing demands of authority and liberty. He claimed that we cannot have the latter without the former as: “*All that makes existence valuable to anyone depends on the enforcement of restraints upon the actions of other people. Some rules of conduct, therefore, must be imposed—by law in the first place, and by opinion on many things which are not fit subjects for the operation of law*”<sup>6</sup>. Today’s world, much like other eras in history, show signs of an abundance of inferiority in merit and reason, from, for example, the proliferation of flat-earthers on social networks in the 21<sup>st</sup> century, to an array of inconceivable advice for “curing” COVID-19, such as drinking bleach, etc. This makes the case for emphasising the importance of media pluralism, but also adoption and implementation of policies around it even stronger.

Complex notions, like media pluralism, are often to be explained by what they encompass, include and refer to, which will be attempted here, as well. Without any pretension to offer a viable definition, this publication will simply note that media pluralism is a tool and a default condition of the right to freedom of expression<sup>7</sup>.

Media pluralism is not only about the plurality of media supply and the variety of news and information provided to all audiences, but also about access to various sources of news and ideas, the richness of differing and different views, the editorial independence of newsrooms, social inclusiveness and a political climate which is respectful of freedom of the media. Media pluralism is about all these things collectively, an amalgam of public policy objectives designed to provide for the richness and diversity of a number of voices and opinions. Media pluralism is important because it is an essential ingredient of the democratic fabric. It embraces editorial independence and ensures a rich, diverse, and transparent media landscape that promotes freedom of expression, which contributes to well-informed public opinion, and guarantees that journalists are free to carry out their watchdog role. Media pluralism supports diverse cultural representations and offers different ways of its interaction and use. It is imperative for people to be able to enjoy their legally rec-

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4 <https://www.mtsu.edu/first-amendment/article/1259/john-milton>.

5 I. Berlin, ‘Two Concepts of Liberty’, in *Four Essays on Liberty*, Oxford 1969. Cf. W. Galston, *Liberal Pluralism*, Cambridge 2002, p. 6, available at: [https://cactus.dixie.edu/green/B\\_Readings/I\\_Berlin%20Two%20Concepts%20of%20Liberty.pdf](https://cactus.dixie.edu/green/B_Readings/I_Berlin%20Two%20Concepts%20of%20Liberty.pdf).

6 Mill, J.S., *On Liberty*. Indianapolis: Hackett Publishing, 1978.

7 From the many sources of definition of media pluralism, one of the most encompassing is perhaps the one provided for by the Council of Europe’s [Recommendation of the Committee of Ministers to member states on measures to promote media pluralism](#), which defines it as: “*diversity of media supply, reflected, for example, in the existence of a plurality of independent and autonomous media (generally called structural pluralism) as well as a diversity of media types and contents (views and opinions) made available to the public.*”



ognised rights which, besides freedom of expression, include a whole range of rights and freedoms such as the right to vote (and be elected), the right of reply, the right to privacy. Ultimately, media pluralism is a catalyser of public dialogue between society, politics, and the media.

The emergence and rapid development of various online media and platforms for their aggregation and distribution revealed that media pluralism, in addition to the diversity of sources and content, unequivocally demands to be considered from another very important aspect: diversity in exposure – to both sources and content. It covers issues such as discoverability, findability, and access to information, and represents an aspect that is becoming increasingly challenging to ensure. None of these aspects alone can ensure true pluralism: it is possible to have an abundance of media outlets but very little content diversity, and likewise, an abundance of sources that are not easily accessed by people. These things, as a consequence, negatively affect the public discourse.

One of the examples of identifying the issues of relevance to media pluralism and measuring it is the [Media Pluralism Monitor](#) (MPM), a tool developed by the Centre for Media Pluralism and Media Freedom (CMPF), co-funded by the EU, to assess the risks for media pluralism in EU member states and candidate countries.

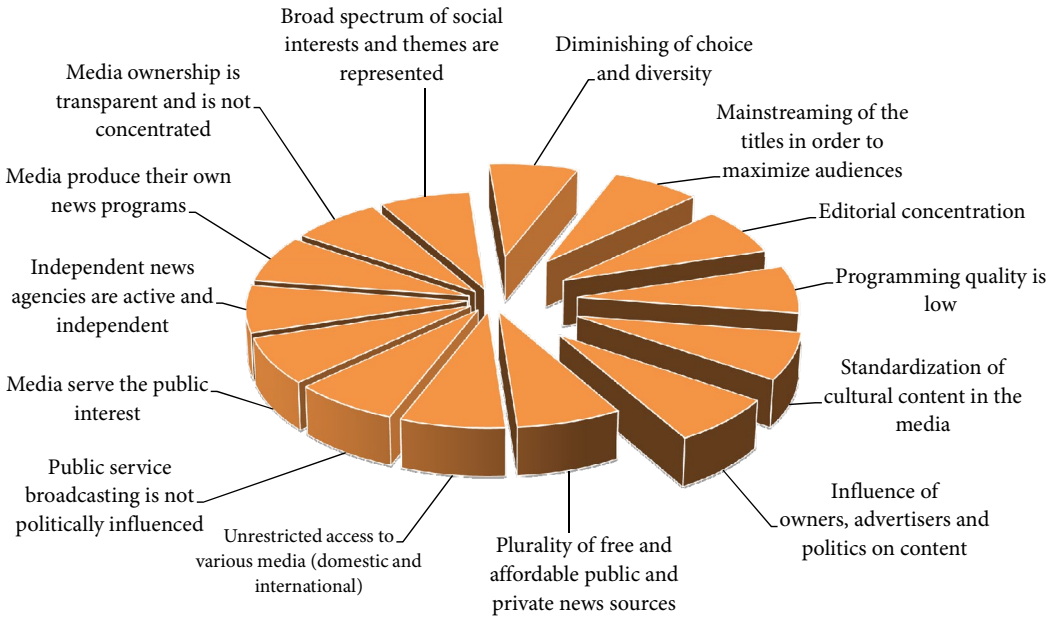
The indicators used by MPM cover four main areas:

- basic protection;
- market plurality;
- political independence and;
- social inclusiveness.

The tool contains variables that cover legal, economic, and socio-political questions measured according to a risk scale (of low, medium, and high). Indicators are adapted, as of 2020, to evaluate both traditional and online dimension of media pluralism. It has indeed been updated to reflect the monumental changes shaped by the internet and the ways in which news and information gathering, production, dissemination, and consumption have changed (issues dealt with in Chapter 5 of this publication). The latest [Media Pluralism Monitor 2020](#), covering the period 2018–2019, shows some worrying trends, including the increasing threat to the sustainability of news media publishers' business models, which are impacted by the disruptive role of internet intermediaries (search engines and social networks) whose capacity for targeted advertising has shifted revenue away from traditional news publishers. Furthermore, ownership concentration jeopardises market pluralism and represents a high risk of influence over editorial content by commercial and owner interests across most of Europe. The high concentration of internet intermediaries, with the top two commanding more than half the market in all countries and two thirds of the digital advertising market in most countries, puts the economic sustainability of quality journalism at significant risk. Moreover, the risks to media pluralism are associated with online surveillance and digital threats to journalists, insufficient internet access and broadband availability, and ineffective implementation of net neutrality.

The following scheme in Graph 1 provides for a non-exhaustive list of the favourable and the negative conditions that affect media pluralism and are important to consider in relation to media pluralism, in line with the indicators of the aforementioned Media Pluralism Monitor.

Graph 1: Conditions affecting media pluralism  
(Inspired by Media Pluralism Monitor criteria)



## 3. Legislative and institutional framework for media pluralism

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**A** legal and institutional framework protecting media pluralism is present on all policy and governing levels, from national legislations to supra- and international levels. Too numerous in volume and substance to be fully detailed here, a quick reference to some of them is given below, hence providing for a non-exhaustive list.

### EUROPEAN UNION

Media pluralism is enshrined in [Article 11](#) of the EU's Charter of Fundamental Rights, which, in addition to ensuring the right to freedom of expression, establishes the respect to the freedom and pluralism of the media. The European Commission places this topic high on the agenda, focusing on numerous activities in this regard. For example, the European Commission facilitated the creation of the European Centre for Press and Media Freedom ([ECPMF](#)) whose mission is to promote, preserve and defend media pluralism. It co-funds the aforementioned Centre for Media Pluralism and Media Freedom ([CMPF](#)), that aims to develop innovative and relevant lines of research on media freedom and pluralism in Europe.

In 2016, the European Commission organised a Colloquium on Fundamental Rights dedicated to Media Pluralism and Democracy, resulting in the publication of numerous reports<sup>8</sup>. Those reports highlight the need for close collaboration and ownership by all involved to protect and promote a free and pluralistic media for the benefit of all Europeans and European democracies. The following actions were provided to address the issues of media pluralism:

- Protect media freedom and independence from political pressure;
- Safeguard the financial independence of the media in the European Union;
- Protect journalists and their freedom of expression;
- Protect journalists and new media actors from hate speech;

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8 More information is available at: [https://ec.europa.eu/newsroom/just/item-detail.cfm?item\\_id=31198](https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=31198).

- Protect whistle-blowers and investigative journalism;
- Promote a healthy political debate and lasting political engagement through media literacy, media ethics, and media pluralism.

In 2018, the Council of the European Union adopted [Conclusions on the strengthening of European content in the digital economy](#). While recognising that the work and content of media, in addition to other creative fields, represent essential pillars of European development, it highlights the political priorities of EU, in terms of:

- Fostering of diversity, visibility, and innovation;
- Establishment of a level playing field;
- Strengthening trust in information and sources;
- Improving skills and competences.

It asserts that: “*Media pluralism is important to ensure that citizens have access to a range of information and viewpoints. Cross-border collaboration among the players of the media sector may help to achieve critical mass and reach wider audiences. Excessive concentration of the content-producing and content-distributing sectors may threaten citizens’ access to a range of content*”. Besides concluding that the continued support for this Media Pluralism Monitoring tool in assessing risks to media pluralism in the EU’s digital environment, it stresses the need to reflect on the growing roles of online business models in content production and dissemination, and their effect on media pluralism in Europe.

The adopted Conclusions further underline that media pluralism depends on the existence of a diversity of media ownership, diversity of content, and independent journalism. Media pluralism also represents a key element to challenging the spread of disinformation and ensuring that European citizens are well-informed. Finally, it invites the European Commission to, *inter alia*, continue to support projects which monitor media freedom and media pluralism, and provide legal and practical help to journalists and media practitioners under threat<sup>9</sup>.

The principal document regulating audiovisual media services in the EU is the revised [Audiovisual Media Services Directive](#) (AVMSD), undergoing the transposition process into national legal frameworks. In relation to media pluralism, AVMSD highlights some of the following notions:

- Transparency of ownership of audiovisual media service providers (Recital 16);
- Appropriate prominence of the content of general interest, i.e., European works (Recital 25);
- Self and co-regulatory mechanisms for video-sharing platforms (Recital 49);
- Role of independent national regulatory authorities in ensuring respect for the objectives of, *inter alia*, media pluralism (Recital 61 and Article 30).

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<sup>9</sup> Many other relevant reports and studies are continuously published and highlighted by the European Commission in this regard. For further details, please visit: <https://ec.europa.eu/digital-single-market/en/policies/media-freedom-and-pluralism>

In addition, the European Commission's 2010 [Digital Agenda](#) contains actions to further enhance the media pluralism, recalling the 2005 UNESCO [Convention on Cultural Diversity](#) (ratified at EU level in 2006). It highlights the importance of promotion of cultural diversity and creative content, with the Internet being recognized as a driver of greater pluralism in the media: *“giving both access to a wider range of sources and points of view as well as the means for individuals – who might otherwise be denied the opportunity – to express themselves fully and openly.”* The UNESCO Convention aims (among other goals) to support national policies and measures for the promotion of creation, production, distribution, and access to diverse cultural goods and services, and to contribute to informed, transparent and participatory systems of governance for culture. The EC's European Democracy Action Plan<sup>10</sup>, presented in December 2020, designed to *“build more resilient democracies across the EU by promoting free and fair elections, strengthening media freedom and countering disinformation”* also highlights the importance of strengthening media freedom and pluralism. It further makes references to various actions to be taken by the [European Media and Audiovisual Action Plan \(March 2021\)](#), adopted in order to: *“boost European media and help maintain European cultural and technological autonomy in the Digital Decade”*, and to support media pluralism by actions intended to boost financial viability and recovery of the media sector, as well as by providing opportunity for the digital transformation of the media.

## COUNCIL OF EUROPE

Numerous activities on media pluralism have been and are ongoing at the level of the Council of Europe, placing the topic as one of its top priorities. They are too numerous to comprehensively list them here, but a few are worth mentioning.

First of all, media pluralism derives from Article 10 – The right to freedom of expression of the [European Convention for the Protection of Human Rights and Fundamental Freedoms](#) (the Convention), an essential human right which can be negatively affected by weakened media pluralism in a society, hindering the enjoyment of a healthy and strong democratic environment<sup>11</sup>.

The Committee of Experts on Media Pluralism and Transparency of Media Ownership (MSI-MED) worked over a period of two years (2016 – 2017<sup>12</sup>) on policies and other measures such as: ensuring a pluralist media landscape, transparency of media ownership, diversity of media content, inclusiveness in public service media, gender equality in media coverage of election campaigns. MSI-MED prepared standard-setting proposals on media pluralism and transparency of media ownership. MSI-MED also studied the gender equality dimensions of media coverage of elections, principles and rules regarding media coverage of elections, and

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10 For more details, please see: [https://ec.europa.eu/info/strategy/priorities-2019-2024/new-push-european-democracy/european-democracy-action-plan\\_en#documents](https://ec.europa.eu/info/strategy/priorities-2019-2024/new-push-european-democracy/european-democracy-action-plan_en#documents).

11 For more details on Article 10 and the European Court of Human Rights standards, refer to, *inter alia*: <https://rm.CouncilofEurope.int/16806da515>.

12 The Committee worked under the supervision of the Steering Committee on Media and Information Society (CDMSI), which has the important mission to steer the work of the Council of Europe in the fields of freedom of expression, media, and internet governance.

the use of the internet in elections. Some important results of this work include the previously mentioned mechanisms, as well as the [Recommendation of the Committee of Ministers to member States on media pluralism and transparency of media ownership](#) and the [Recommendation of the Committee of Ministers to member States on the role and responsibilities of internet intermediaries](#). These documents contain guidelines to reinforce the transparency of media ownership and promote diversity in the digital media environment, and to identify the responsibilities of internet intermediaries in protecting human rights online.

While the first Recommendation focuses on media pluralism and transparency of media ownership by stressing the positive obligation for States to ensure pluralistic and free media, it takes into consideration the evolution of media landscapes and acknowledges that the variety of roles played by internet intermediaries, in the creation or distribution of content, can impact pluralism and diversity. It provides a set of guidelines for the institutional and legal framework that States should set up to regulate transparency, control, and concentration of media ownership. These also include measures that support independent public service media, local and community media.

The second Recommendation focuses on the duties and responsibilities of internet intermediaries and, whilst acknowledging the importance of the way freedom of expression has benefited from the internet, it also notes that it has created challenges in other areas. Thus, it offers guidance as to what States and internet intermediaries should do to respect and protect the rights to freedom of expression, privacy and data protection, and access to an effective remedy.

The Committee of Ministers declarations from 13 February 2019 on 1) [sustainability of quality journalism in the digital age](#) and 2) [on manipulative capabilities of algorithmic processes](#) further identify the present dangers of information disorder and provide for recourses to tackling this issue. The emphasis is put on the importance of media freedom and pluralism and quality of journalism. These documents acknowledge that online media and internet platforms enable access to information from diverse sources, but also raise concerns for media pluralism. In fact, internet intermediaries have acquired increasing control over the flow, availability, findability, and accessibility of information and other content online.

## JUFREX BENEFICIARIES IN SOUTH-EAST EUROPE

The reflection of legal instruments related to media pluralism in the beneficiaries shows that, except for Croatia and North Macedonia which contain more elaborated provisions and restrictions related to this issue, the protection of media pluralism is only nominally recognised in the rest of the region. The transparency of media ownership is somewhat emphasised in most cases, and most of the issues are dealt with from the perspective of regulations related to issuance and transfer or changes of licence's ownership. In addition to the provisions from media-related legislations, countries also have competition legislation which, for the most part, deals with general aspects of concentrations.

Graph 2 below illustrates in more detail the legislative frameworks in the region, which have been provided by the Beneficiaries, and which are detailed in Annex 1 of this publication.

Graph 2: Relevant legislative framework in the Western Balkans.

AL: Albania, BA: Bosnia and Herzegovina, HR: Croatia, XK: Kosovo\*, ME: Montenegro, MK: North Macedonia, RS: Serbia (acronyms source: Eurostat<sup>13</sup>).

	AL	BA	HR	ME	MK	RS	XK
Nominal protection of media pluralism in media-related legislation	✓	✓	✓	✓	✓	✓	✓
Transparency obligations	✓	✓		✓	✓	✓	✓
Restrictions in ownership in media legislation (from the perspective of media pluralism)	✓	✓			✓		✓
Definitions and restrictions in relation to linked persons/companies	✓	✓			✓		✓
Impermissible media concentrations	✓	✓	✓	✓	✓	✓	✓
Regulation of change of ownership	✓	✓	✓	✓	✓	✓	✓
A priori regulation of ownership change	✓	✓	✓	✓	✓	✓	✓
General restrictions of concentration in competition laws	✓	✓	✓	✓	✓	✓	✓

An update in the Beneficiaries on a) the legislative matters relative to the transposition status of the revised AVMSD and b) any new developments in the field of media pluralism, inclusive of possible novelties in relation to the online information environment include:

	Revised AVMSD transposition	New developments in the field of media pluralism (including the online information environment)
<b>AL</b>	No revision yet.	No new developments.
<b>BA</b>	After a standstill in the process of drafting the future Law on electronic communications and electronic media (caused by the COVID-19 pandemic), the Ministry of Communications and Transport of Bosnia and Herzegovina has recently resumed the activities of the working group. The Law should only partially transpose the revised AVMSD by including some of its general provisions (such as giving the remit to CRA to regulate video-sharing platforms), whereas more detailed provisions would be transposed by the CRA bylaws. However, since the timeframe for adopting the law is uncertain, the CRA has prepared amendments to its regulatory framework to cover both scenarios – full and partial transposition. In any case, the bylaws are planned to be adopted by the end of 2021.	Perhaps not directly linked to media pluralism, but it could be of relevance to point out that the CRA Council recently approved draft amendments to the rules governing the provision of audiovisual and radio media services with a view to extend the licencees' editorial responsibility to their online content. More specifically, it is proposed that all content published on broadcasters' official websites or websites marked with their logo is subject to the same basic tier of rules as the broadcast content, in terms of incitement to violence, hatred and discrimination, prejudice to public health and safety, protection of minors and their privacy, as well as the right of reply. This proposal is currently open to public consultations.

13 Eurostat: AL – Albania, BA – Bosnia and Herzegovina, HR – Croatia, XK – Kosovo\*, ME – Montenegro, MK – North Macedonia, RS – Serbia.

Revised AVMSD transposition	New developments in the field of media pluralism (including the online information environment)
<p><b>HR</b></p> <p>The draft of the new Electronic Media Law is currently going through parliamentary procedure, namely, through the second reading, when it is expected that the proposed law will undergo some changes. The law should be enacted by Mid-July 2021 or at the beginning of the autumn 2021 Parliamentary sitting.</p>	<p>In the new Electronic Media Law, there will be changes regarding rules on media concentration. Among other, the criteria for the assessment of media concentration could include monitoring of the audience shares. The final outcome in this regard is pending the parliamentary adoption procedure.</p>
<p><b>ME</b></p> <p>No new developments.</p>	<p>The new Law on AVM Services is, as stated previously, expected to ensure the transposition of the revised AVMSD and accordingly (re)define key competencies of MRA related to media pluralism as well as to VSPs.</p>
<p><b>MK</b></p> <p>The competent Ministry announced that a working group for amending the regulations would be established and that expert assistance would be used so as to ensure that media-related laws are fully compliant with the Audio and Audiovisual Media Services Directive and its basic principles and standards, as well as with the remaining relevant EU acts, with the aim of providing a pluralist media environment.</p>	<p>No additional developments.</p>
<p><b>RS</b></p> <p>During 2020, the Government of the Republic of Serbia adopted the Strategy for the Development of Public Information Media in the Republic of Serbia for the period 2020–2025 (Media Strategy) and its Action Plan.</p> <p>The Action Plan foresees the transposition of the AVMS Directive through amendments to the Law on Electronic Media, which is envisaged for the 2nd quarter of 2022.</p> <p>There is no new or additional information about this process.</p>	<p>No new developments.</p>
<p><b>XK</b></p> <p>No new developments.</p>	<p>The IMC is in process of drafting the Regulation on Ownership and Concentration of the Audio and Audiovisual Media Service Providers. The first draft was presented to the stakeholders and it is in the process of the review by an international expert engaged in this process. It is foreseen that after its review, the draft will again be in disposal for public comments, there will be a discussion meeting related to the draft after which all the submitted comments and proposals will be reviewed and taken into consideration. The final step will be the adoption of the Regulation by the Commission of the IMC, by the end of 2021, pending the COVID-19 related situation.</p>

Information presented within the table above has been provided by the beneficiaries at the beginning of April 2021.



## 4. Media pluralism and the role of media regulatory authorities

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**M**edia regulation plays a very important role in safeguarding media pluralism, especially in the contemporary media ecosystem, which is a complex one and which accentuates the need for safeguarding media pluralism as an important public policy. Also present are apparent conflicting notions between business and civil liberties, the pulls and pushes among media business models, which affect the most fundamental rights of citizens.

Media regulation, conducted by independent media regulatory authorities, attempts to reconcile market and economic qualities with democratic and cultural values, and social inclusion. These can and do at times represent very conflicting and contested notions, placing the media regulator in a position that is less than desirable. That is a very challenging task indeed. Before asserting the success or failure of particular regulatory mechanisms, the fact that the regulation of this industry can be difficult and strenuous should be considered. However, the regulation of this sector is also rewarding and gratifying, following the simplest yet most difficult recipe: the identical application of rules brings equivalent results, i.e., reaching decisions on the principle of independence or at least the autonomy in relation to other public authorities, enforcing central public policies and protection of public interests (respect for fundamental rights, social cohesion, formation of opinions, etc.), in impartial manner in the face of the multiplicity of partisan interests, reaching decisions not to protect anybody's singular interests, but everybody's collective interests.

Having media pluralism as a principle to be achieved and preserved requires a full range of regulations that touch upon most, if not all, areas of regulatory practice: from licencing regimes to considerations based on market analyses, digitalisation issues, content regulation, and (where applicable) adoption of regulatory rules. In order to assess regulatory practice, a quick recapitulation of the main issues from the perspective of beneficiaries is provided in Table 1 below.

Table 1: MRA's views expressed in the questionnaire<sup>14</sup>

Beneficiary	Media pluralism – the main issues from the perspective of media regulatory authorities in Western Balkans
AL	<p>Since 2016, the Audiovisual Media Authority (AMA) has published a periodical bulletin which presents the data set and performance indicators of the audio and audiovisual entities. One of the elements included in these publications are data on transparency of and media ownership.</p> <p>There are several legal provisions in the special law, the implementation of which aims to guarantee media pluralism. Thus, in Article 63 of the law that provides rules of use of the digital network, it is foreseen that the holders of the national, regional and local licences, will have the obligation to provide access up to 40% of their capacity to other entities licenced by the AMA. A licenced entity cannot have more than one third of the programs, according to the type of licences it holds (if it is a local entity, it cannot have more than 1/3 of all local programs)</p> <p>Meanwhile, the amendment of Article 62 of Law no. 97/2013 “On audiovisual media in the Republic of Albania”, was initiated by the Albanian electronic media association, and at the end of the review of this request, the Constitutional Court decided to accept it by abolishing item 3 of Article 62 of the law.</p> <p>Since 2019, the AMA closely cooperates with the Competition Authority case by case, for drafting bylaws (including licencing regulations) and in cases where entities announce property changes in order to avoid monopoly situations or in cases of doubt of dominant position in the market.</p>
BA	<p>The inadequacy or non-existence of legal regulations governing media pluralism has been recognised by a consortium of stakeholders: (BH Journalist Association, the Mediacentar Foundation, the Press Council and Online Media in Bosnia and Herzegovina, and the NGO JaBiHEU). They gathered around a project <a href="#">Media and Public Reputation</a>, with the aim to promote transparency of media ownership and legitimate forms of media financing and advertising in Bosnia and Herzegovina. The Consortium drafted the Law on Transparency of Media Ownership, which should cover all media sectors, from radio and TV broadcasters, through print media and agencies to online media, as well as media-related sectors, such as audience measurement agencies. The draft law provides for the obligation to provide information on direct, indirect, and related ownership, related interests, sources of revenue, etc. The establishment of a centralised register on ownership for all media sectors has been envisaged, but it has not been defined which institution would be responsible for keeping such a register. The proposed institutions include the Communication Regulatory Agency (CRA), the Press Council, the Agency for Statistics, and the Agency for Prevention of Corruption. Alternatively, the draft proposal it is suggested that the competencies be divided between CRA and the Press Council. The draft law was analysed by Council of Europe experts upon request of the Ministry of Human Rights and Refugees and was presented at a round table, organised under the project “Human rights reporting and the role of media in Bosnia and Herzegovina“ in December 2019, where the representatives of the Consortium and the relevant state institutions (Ministry for Human Rights and Refugees, Ministry for Communications and Transport, Ministry of Justice, Ministry of Security, as well as members of the Parliament) agreed that the efforts on completing the draft and commencing the legislative procedure will be further coordinated by the Ministry of Communications and Transport and the Ministry of Human Rights</p>

14 As indicated in the Introduction, a questionnaire was prepared by the editor of the publication, in order to collect information on the national frameworks and practices relative to media pluralism in the Western Balkans.

Beneficiary	Media pluralism – the main issues from the perspective of media regulatory authorities in Western Balkans
BA	and Refugees. A follow-up event took place in February 2020 to reiterate the engagement of state institutions and the media community to proceed with the legal reform and a follow-up to the project is under discussion. As of April 2021, and according to the information available to CRA, the aforementioned Ministry has not yet initiated the legislative procedure.
HR	<p>For the past five years, audiovisual media services (AVMS) providers have only been active during the drafting of a new Electronic Media Act, which was in public consultations in February-March 2020. The proposal of the new Electronic Media Act also contains a new approach to the regulation of media ownership and concentration, by introducing economic and market criteria, and modernises the approach by extending certain audiovisual rules to video sharing platforms.</p> <p>In the past five years, non-governmental organisations were not significantly active on the issue of media pluralism. Prior to that, the civil society organisation GONG (especially in the period 2013–2014) advocated for a change in legislation that would enable greater transparency of media ownership. In 2013, they published a study “<i>Uska grla lokalnih radija u Hrvatskoj</i>”, proposing better standards of transparency, more effective implementation, and monitoring of legal obligations on the transparency of radio ownership. However, after 2015, this topic went out of their focus.</p>
MK	<p>On several occasions, the telecom operator has pointed out that the ban on owning a television station from the Law on Audio and Audiovisual Media Services is only to the detriment of the Macedonian audience, as though, if there were no such prohibition, they would be able to provide a high-quality and diverse programme offer and significantly contribute to the development of media industry. In 2018, a television station filed a lawsuit before a competent court, demanding that the court annul the Decision whereby the Agency had banned the change to its ownership structure. The Decision prohibiting the change to the ownership structure was reached because the Agency had found that, if implemented, it would have created illicit media concentration. Namely, the natural person who, according to the planned change, was going to be the new owner of the television station, was a family member of the owner of a public electronic communication network (a cable operator). The court ruled that the Agency had implemented the legal provisions appropriately and that the lawsuit was unfounded.</p> <p>In 2018, as part of the project “#ReForMediaMKD – Enhancing Cooperation among Civil Society, Institutions and Citizens to Implement Reforms in the Media Sphere,” the Macedonian Media Institute carried out an analysis of “<a href="#">The role of Regulatory Authorities in Shaping Structural Pluralism in the Audiovisual Sector in Macedonia, Croatia and Montenegro</a>”. Some of the conclusions of this analysis were that “<i>media pluralism as one of the regulators’ objectives in the audiovisual field is not clearly recognized in the domestic legislation. To date, the development of the audiovisual sector and media pluralism in Macedonia has not evolved in a strategic manner, and the regulator has been left to take care of this matter alone and to implement a strategic vision of its own. In addition, the inherited market fragmentation, the political and industrial pressures on the regulator have contributed to the deterioration of the overall media picture.</i>”</p> <p>In the aforementioned Council of Europe’s study “Pluralism of media ownership in the new media environment”, it was underlined that safeguarding media pluralism is a fundamental policy objective, reminding that in accordance to the European Court of Human Rights’ case law “in addition to its negative duty of non-interference, the State has a positive obligation to put in place an appropriate legislative and administrative framework to guarantee effective pluralism.”</p>

Beneficiary	Media pluralism – the main issues from the perspective of media regulatory authorities in Western Balkans
ME	<p>During the revision of the media legislation (Law on Electronic Media), several broadcasters submitted a proposal to limit the cross-ownership between the AVMS owners (broadcasters) and media /advertising/media buying agencies.</p> <p>The proposal was not accepted by the Working Group. However, the Draft of the new AVMS Law (intended to replace the Law on Electronic Media) has a provision that imposes the AVMS and VSP providers to submit to Agency for Electronic Media, Montenegro (AEM ME), not only data about cross-ownership with other AVMS providers but also data about their:</p> <ol style="list-style-type: none"> <li>1) own ownership interest or ownership interest of its owners greater than 10% in legal entities whose business activity involves the collection, design, and brokering the sale of audiovisual commercial communications;</li> <li>2) own ownership interest or ownership interest of its owners greater than 10% in legal entities whose activity involves the collection, analysis, and publication of information on the AVMS' viewership, listenership, or traffic (visits) i.e., audience measurement.</li> </ol>
RS	<p>Regarding the recapitulation of the main issues from the perspective of Regulatory Authority for Electronic Media (REM), it can be pointed out that the media laws of Serbia introduced the monitoring of media pluralism through listening and viewing rating shares, which was not the case with the previous laws.</p> <p>The laws do not clearly define the method of determining and measuring these shares, nor the methods of verifying data on the preferences of the media audience. Data in the process of determining media concentration are also obtained through the statements of media publishers, without further verification of the accuracy of these data.</p> <p>The concept of media pluralism cannot be equated with the concept of media ownership, because, in the case of the media, pluralism also refers to the diversity of sources of information and media content.</p> <p>The rules on media concentration do not sufficiently elaborate the criteria for assessing the simultaneous ownership of media in different sectors. Also, there are no rules on platform neutrality that would measure the pluralism of media content on the Internet, cable and other forms of distribution, OTT platforms, etc.</p>
XK	<p>The draft regulation on the ownership and concentration of audiovisual media service providers, "Freedom of Expression and Freedom of the Media in Kosovo*" initially drafted by the Independent Media Commission (IMC), is an on-going process in coordination with EU/Council of Europe action. The roadmap for adoption of the regulation was drafted in collaboration between the IMC, Council of Europe and the EU. Due to the situation with the pandemic, the process was on hold for several months, but it restarted after the summer 2020. Until the regulation is finalised, a set of sub-activities are projected, including a restricted consultation meeting and public consultation. An international expert is supporting the IMC in this process.</p>

The role of the MRAs in beneficiaries' in relation to media pluralism differs to a certain extent, but some notable similar features are present. It is particularly visible in the role related to licencing procedures and/or change of ownership of licences, where the issues of the ownership of applicants or licences are examined by all MRAs in the region, with a somewhat extended role such as in case of North Macedonia, which includes the preparation of studies on media pluralism, as presented in Annex 2 to this publication. Legal mandate in terms of adoption of secondary legislative regulation is important to stress for shaping structural pluralism, as the regulatory authorities may adopt rules and decisions whereby it would regulate in

detail issues inclusive of: the procedure for granting the licences or endorsements to perform audiovisual activity, the formats of the radio and television programme services; the technical, financial, spatial and staffing requirements that radio and television stations that had been issued licences need to meet, etc.) Finally, enforcement mechanisms and sanctioning powers of MRA's are relevant to mention, which can be used in cases of violations of relevant rules and regulations.

Detailed graphical presentation these MRA's role *vis-à-vis* media pluralism is as follows:

AL	<ul style="list-style-type: none"> <li>• Approving changes in ownership structure of licences:</li> <li>• Issuing licences for non-profit (community) radio</li> <li>• Competence to adopt by-laws, supervise the implementation of the provisions of the law and undertake measures and impose sanctions for violations</li> <li>• Licencing of audio and audiovisual media service providers and distributors</li> <li>• Promotion of the local production, as well as European produced programming</li> </ul>
BA	<ul style="list-style-type: none"> <li>• Adoption and application of bylaws, inter alia, contain rules on programme quota such as inhouse production; as well as rules on fairness and impartiality and impose sanctions for violations</li> <li>• Approving changes in ownership structure of licences</li> <li>• Maintaining a publicly available register of its licences</li> <li>• Issuing licences for non-profit (community) radio</li> </ul>
HR	<ul style="list-style-type: none"> <li>• Monitoring media concentration</li> <li>• Public display of ownership structure of media service providers</li> <li>• Allocation of funds through Media Pluralism Fund</li> </ul>
ME	<ul style="list-style-type: none"> <li>• Oversight of ownership concentration and prevention of unlawful media concentration in relation to broadcast media</li> <li>• Publication of annual data in the Official gazette and online on natural and legal persons (name, head office/residence) that over the previous year have directly or indirectly become holders of share or a stake in the any AVM service provider, giving details of the actual percentage of such a share or stake</li> <li>• Publication of data provided by AVM services on 1) own ownership stake in other legal entities providing AVM services; and 2) more than 10% share held by its owners in other legal entities providing AVM services. Once a year, AEM publishes the review of submitted data on ownership structure of all AVM service providers at the end of the previous year</li> <li>• Allocation of money for the Fund for Stimulation of Media Pluralism and Diversity to commercial and non-profit broadcasters</li> </ul>
MK	<ul style="list-style-type: none"> <li>• Competence to grant or withdraw radio and television broadcasting licences, or endorsements for performing audiovisual media services</li> <li>• Competence to adopt by-laws, supervise the implementation of the provisions of the law and undertake measures and impose sanctions for violations</li> <li>• Competence to monitor and prevent illicit media concentration</li> </ul>
RS	<ul style="list-style-type: none"> <li>• Identifying to media pluralism/Establishing the existence of violation of media pluralism</li> <li>• Issuing licences for the provision of media services and protection of media pluralism</li> <li>• Establishing (every 3 years) a list of radio or television programmes that shall be transmitted by operators whose electronic communications network for distribution and broadcast media for receiving media content, in order to protect public interest and media pluralism</li> </ul>
XK	<ul style="list-style-type: none"> <li>• Support for the freedom and pluralism of audiovisual services</li> <li>• Licencing of audio and audiovisual media service providers and distributors</li> <li>• Promotion of the local production, as well as European produced programming, financial viability and technical quality of broadcasting, etc.</li> </ul>

In Croatia, for example, in addition to transparency of ownership, the relevant legislation also regulates provisions directed towards related/linked persons and the ownership concentration. The AEM HR can impose fines or an offence on a legal person, which establishes an impermissible concentration. As envisaged by the proposed new Electronic Media Law, which transposes the revised AVMSD, media concentration-related rules would include the criteria of monitoring of the audience shares for the assessment of media concentration, but as this draft is currently in parliamentary procedure, whether this will be the case remains to be seen.

In Montenegro, the relevant legislation regulates both the transparency of ownership and the definition of related/linked persons and the ownership concentration. One of the most important matters is that of defining the term media as well as regulating the obligations to improve the transparency of media ownership and media funding out of public revenues. Unlike the previous law, the list of media or non-media is now replaced by a descriptive definition that should respond to the dynamic development of the media sector and the constant emergence of new services and actors. Further, the AEM ME shall not grant a broadcasting licence if it is established that its granting would lead to unlawful media concentration within the meaning of the Law. In such cases, AEM ME, it can order the broadcaster, not later than within three months from establishing such a fact, to rectify the irregularities regarding unlawful media concentration. In case a broadcaster, with no justifiable reason, fails to act in accordance with the order, AEM ME can revoke the licence. On a yearly basis, AEM ME publishes (on its website and in the Official gazette of Montenegro) data on natural and legal persons (name, head office/residence) that over the previous years have directly or indirectly become holders of a share or a stake in any AVM service provider, giving details of the actual percentage of such a share or stake. The new Media Law introduces the obligation to keep records of financial resources allocated to the media by public sector bodies, with the aim to improve the transparency of media funding out of public revenues. Such records will be kept by the Ministry of Culture. The Ministry will publish, on its website in the form of an annual report, the total appropriated financial resources of the public sector allocated to the media, ending with June 1 of the current year for the previous year.

In North Macedonia, there is no all-inclusive system for monitoring media pluralism. However, the AVMU has analysed certain aspects of media pluralism on several occasions to date. The issue of media content pluralism has been integrated into the AVMU Strategy, for the period 2019–2023. The first two parts of the Strategy refer to the pluralism of media content, where the first part deals with the diversity of media and genres, and the second one – with political pluralism. Adhering to these, at the first level, the AVMU detected a lack of pluralism, particularly with the television stations. At the second level, it established a lack of current affairs programmes with a documentary approach (those which are often taken as synonymous with investigative journalism) and current affairs programmes in the field of art and culture, finding as prevalent the current affairs news programmes that are most often realised either as debates or as interviews. The second part deals with political pluralism, given that media coverage must inevitably reflect the diversity of political views in society, and at the same time provide them with equal treatment and leave room for citizens to take a stand on their own. Political pluralism, as one of the aspects of media pluralism, was also the subject of separate analysis, titled

“Political Pluralism during an Election Campaign”, prepared by AVMU in 2014. Also, the monitoring of media ownership is one of AVMU’s regular activities. The media regulator in North Macedonia possesses accurate data on the owners of the broadcasting entities, which are provided by the Central Registry – an institution founded by the state, in which all trade companies are registered, including the media outlets. This includes the ability to monitor the identity of media owner(s) and, in cases where the owner is a legal entity, identification of natural person(s) behind the legal entity, as well as obtaining data about which other legal entities the legal and natural persons who own the media outlet also own. In addition, this allows the regulatory authority to monitor whether a broadcaster has changed its ownership structure without first notifying the Agency about this. The AVMU publishes the data about the owners of the media outlets on its website, thus making these data easily accessible for the general public. The AVMU also prepares annual reports on media ownership, which contain data on the broadcasters’ owners, data on the integration of broadcasters’ capital, data on any changes in the broadcasters’ ownership structure during the previous year, and data on the procedures initiated by the AVMU during the previous year to establish the possible existence of illicit media concentration. AVMU publishes these reports on its website as well so that the data contained in these reports are available to the public.

In Serbia, there is a monitoring system of media pluralism, executed by REM, where it takes into account the violation of media pluralism *ex officio* and upon the application of the media service providers. There is also a monitoring system of media ownership, conducted by the Competition authority.

In some cases, like in Bosnia and Herzegovina, where the relevant media pluralism legislative rules are not in place, the MRA raise awareness and stress the need for the adoption of a comprehensive media ownership legislation: This is of importance, as the MRA is in the position to emphasize the need for the adoption of these rules, which would not only tackle the issues of ownership over the entire media sector (all kinds of media but also affiliated companies such as advertising and audience measurement agencies), but would also establish competencies and cooperation mechanisms between different authorities.

The role of MRAs from the region is also seen in enabling financial support for media pluralism, such as the media pluralism fund which exists in Croatia and used to be operational in Montenegro (new support mechanism will be introduced in line with the new Media Law adopted in mid-2020), and with proposals for its introduction in Bosnia and Herzegovina. In addition to permanent schemes like the Croatian one, this support can also be on an *ad-hoc* basis such as the support measures due to the COVID-19 pandemic. This was found in almost all cases, in terms of various measures, such as waivers against licence fee payments, general business relief measures and direct monetary support schemes. These financial schemes, in most cases, are in infancies, except in the case of Croatia, and, coupled with the poor financial conditions throughout the region, attract many potential beneficiaries. For these reasons, the schemes could always gain from more comprehensive financial aid packages, but take into consideration the principles under which the resources are to be allocated, such as allocation for production of local programmes, investigative journalism, etc.

Table 2: Media support schemes in Beneficiaries, information provided by media regulatory authorities

Beneficiary	Permanent media pluralism funds	COVID-19 support measures
AL	No.	<p>Due to the situation created in March-April 2020 by the pandemic COVID-19, the AMA decided to facilitate and financially support the entities authorized/licensed by it through Decision no. 32, dated 04.05.2020 “On the extension of the deadline for the application of interest on arrears on annual payments for licence/ authorization for 2020, until June 30, 2020”, extending the deadline for annual payments for authorization and licence from 31 March to 30 June, 2020, without applying late interest.</p> <p>The AMA, following the postponement by the General Directorate of Taxes (GDT) of the submission of financial statements for 2019, until 03 August 2020, extended the deadline for the submission of annual balance sheets for 2019 by the entities authorized/licensed by the AMA, to September 2020.</p>
BA	No – proposed to be adopted in the relevant draft legislation.	<ol style="list-style-type: none"> <li>1) In March, the decision to reduce the value used for the calculation of the broadcasting licence fee went to 25% (instead of 50%) of overall revenues of the licence in the fiscal year 2019. The implementation of this measure is said to reduce the broadcasting licence holders’ costs in the amount of € 92,000.</li> <li>2) The deadline for payment of the fee was extended to 30 August 2020 (instead of 30 April).</li> <li>3) CRA proposed that the Council of Ministers cover the full annual amount of the state contribution for the use of the frequency spectrum, but this proposal was not accepted. The implementation of this measure should have reduced broadcasting licence holders’ costs to the amount of € 310,000.</li> </ol>
HR	<p>Yes – The scheme for financial support of media pluralism in the Republic of Croatia is being implemented and particularly promoted by the Fund for Promotion of Pluralism and Diversity of Electronic Media. The fund is administered by AEM HR and is financed by 3% through the licence fees revenues generated by the public service broadcaster Croatian Radio-Television. The Fund’s means shall stimulate the production and broadcasting: of audiovisual and radio programs and the content of television and/or radio broadcasters at the local and regional levels, of non-profit television and/or radio broadcaster as well as non-profit media service providers of audiovisual media services on demand and satellite, internet and cable transfer of audiovisual and/or radio programs, of non-profit electronic publications providers and non-profit producers of audiovisual and/or radio programs. Regulation on the manner and procedure of public tenders for co-financing of audiovisual and radio programs from the Fund’s resources, monitoring of the spending money and realization of the programs, are determined by a specific <a href="#">Ordinance</a>.</p>	<ol style="list-style-type: none"> <li>1) The media, as companies, can use general measures (aimed at saving jobs and liquidity entrepreneurs).</li> <li>2) Media may also use measures related to the General Tax Act. With the exemption from paying tax obligations in whole or in part to taxpayers who are prohibited, disabled or impeded from doing business and work; the possibility of delaying the payment of VAT due; extending the deadline for filing and paying the corporate income tax liability for 2019.</li> <li>3) Agency for Electronic Media (AEM HR) prepared a Fund to promote quality and investigative journalism of public interest in the total value of € 130,000. The funds are intended for articles on web portals, and each journalist can receive up to € 4,000.</li> <li>4) The Ministry of Culture and Media has established a social fund for freelance journalists.  Freelancers who prove that their income decreased by 50% or more from March to May, will receive € 530 (gross) in three months, a total of € 1,590. This Fund will be managed by the AEM HR.</li> </ol>



Beneficiary	Permanent media pluralism funds	COVID-19 support measures
HR		<p>5) AEM HR has published an Information for broadcasters relating to programmatic obligations stating that it is fully aware of the extraordinary circumstances and the position of the broadcasters caused by the pandemic. This is based on the understanding that in exceptional circumstances the production of audiovisual and radio content will be significantly hindered and even impeded, and that certain legal program quotas will be difficult to meet. Therefore, AEM HR will not take into account the fulfilment of prescribed proportions of own production nor its re-runs until 30 August 2020. This exception does not apply to news production.</p>
MK	<p>No – AVMU has emphasised the need for establishing a media pluralism support system in its 2019–2023 <a href="#">Strategy for the Development of Audio and Audiovisual Media Industry</a>.</p>	<p>1) In March, AVMU adopted a <a href="#">decision</a> to grant financial assistance – a donation – to help deal with the pandemic, totalling € 1.7 mil. Most of the funds, i.e., € 1.67 mil, have been granted to the broadcasters (€ 1.19 mil for the broadcasters – both commercial and non-profit – which currently perform television or radio broadcasting, and € 480,000.00 for the public broadcasting service, i.e., the Macedonian Radio and Television). These funds were allocated for the protection of the broadcasters’ employees through the procurement of personal protection equipment, for costs related to the production, procurement, and broadcasting of programmes, for alleviating the impact of the Coronavirus crisis on their economic operations and for enabling their smooth functioning. The funds donated to the broadcasters have been distributed as follows:</p> <ul style="list-style-type: none"> <li>– All broadcasters that had paid the annual television or radio broadcasting fees for 2019 and 2020 have had these amounts reimbursed to them, reduced by the amount of value-added tax.</li> <li>– As regards the broadcasters that have deadlines for payment of their annual licence fee following the Donation Decision, until the end of 2020, AVMU shall not claim payment of their annual fee, but will issue the invoices to the amount of the value-added tax only.</li> </ul> <p>2) In March, AVMU also granted € 16,000.00 each to the Ministry of Interior and the Ministry of Health. This is intended for measures and activities for the protection of their employees through the procurement of personal protection equipment, the provision of other equipment, and means necessary for the performance of the Ministries’ activities aimed at preventing the spread of the Coronavirus and dealing with its consequences. With all these entities, the Agency concluded donation agreements.</p>

Beneficiary	Permanent media pluralism funds	COVID-19 support measures
ME	<p>No. However, two schemes were in existence from 2010 – 2018, and a new scheme was introduced by the new Media Law (2020):</p> <ol style="list-style-type: none"> <li>1) A fund aimed at fostering media pluralism and diversity, originally having commercial media as potential beneficiaries. After the amendment from 2016, the fund became accessible to commercial TV broadcasters and non-profit broadcasters. The funding was supposed to come from a share of games of chance revenues. The fund was meant to foster the production of programmes of public interest (e.g. members of minority nations and minority communities; awareness raising, prevention, and combating all forms of discrimination; fostering and promotion of social integration of persons with disabilities) This support scheme was managed by the Commission for Allocation of Part of Revenue from Games of Chance set up within the Ministry of Finance. However, according to the Decree on Criteria to Determine User and Way to Distribute Part of Games of Chance Income, only 10% of the funds had to be “distributed for plans and programmes of media pluralism”. With this in mind, most of this 10% were allocated to NGOs and only 10% of this 10% (around 1% of the available revenues) to the broadcast media. In 2017, the Law on Games of Chances was amended so that this scheme was abolished as of 31 December 2017.</li> <li>2) A fund for the support to commercial radio broadcasters was established by the amendment to the Law on Road Traffic Safety in 2014, funded by the collection of a fee of € 2 on radio receivers in motor vehicles. AEM ME adopted in May 2015 a Rulebook for this purpose, and the main purpose was to provide support to commercial radio broadcasters to improve the scope, structure, or diversity of the in-house programme production. The allocation of the funds was decided every six months by the AEM ME’s Council following a public call. Following an appeal, this support scheme was abolished by a decision of the Constitutional Court in December 2016, implemented since March 2017.</li> </ol> <p>Articles 17–23 of the new Media Law govern the establishment, sources, mode of allocating, and the use of financial resources from the Media Pluralism and Diversity Promotion Fund. The state will fund projects using the Fund in the field of information by providing financial resources from the budget of Montenegro (Article 17). The Law sets forth that the financial resources are to be provided independently and transparently, with guarantees of editorial, programme, and institutional autonomy. The fund is financed in the amount of at least 0.09% of the current budget of Montenegro determined by the</p>	<ol style="list-style-type: none"> <li>1) The AEM ME published the Instructions and Recommendations on Media Reporting about COVID-19 on its website. In March and November 2020, the AEM ME adopted a decision to release commercial and public broadcasters from the obligation to pay the second and fourth quarterly instalment of the broadcasting fee for 2020. Additionally, all broadcasters participating in the project “Uči doma” (“Learn from Home”) were released from the obligation to pay entire fee for 2020.” Furthermore, the AEM ME informed the broadcasters that it would have understanding, as long as interim measures for prevention of importation, control and prevention of infection by coronavirus are in effect, and for the changes in the reported programming structure. Regarding the potential changes to the programming structure related to the news programmes, it must not deprive the citizens of timely and complete information related primarily to the protection of public health and prevention of the spread of infection. Given that the public gathering of citizens, both indoors and outdoors, was temporarily prohibited by the order, including public, sporting, cultural, arts, and other events, the AEM ME took into account the realistic expectation that these measures will affect the quantity of information focusing on culture, sports, and entertainment.</li> <li>2) The Ministry of Culture developed the support scheme for broadcast media.</li> <li>3) Broadcasters are eligible for special loans made available by the Investment and Development Fund. Under the measures adopted by the Government of Montenegro, this Fund created a new credit line “Media Liquidity Support Program for Mitigating the Consequences of the Coronavirus Pandemic.” The funds will be used exclusively to solve the problem of illiquidity of electronic and print media, which are registered in Montenegro and operate in accordance with the media laws of Montenegro, arising as a direct consequence of the overall situation in Montenegro and the world.</li> <li>4) Loan funds can be used for: <ul style="list-style-type: none"> <li>– working capital (costs of materials, raw materials, and production services);</li> <li>– payment of net salaries to employees for the duration of protection measures (for a period of up to 3 months);</li> <li>– lease costs for the period of protection measures (for a period of up to 3 months).</li> </ul> </li> </ol> <p>Credit terms:</p> <ul style="list-style-type: none"> <li>– Maximum loan amount – up to € 600,000.00;</li> <li>– Interest rate – 2.0%;</li> <li>– Grace period – up to 2 years;</li> </ul>

Beneficiary	Permanent media pluralism funds	COVID-19 support measures
ME	<p>annual budget law. (Article 18). The financial resources from the Fund shall be allocated as follows: (1) 60% by the AEM ME Council of Agency for electronic media (sub-fund for commercial and non-profit media); and 40% by the independent commission established by the Ministry of Culture (sub-fund for daily and weekly print media and online publications).</p> <p>Financial resources intended for the sub-funds will be paid to separate current accounts of the bodies in charge of allocation (Agency and Ministry). They will pertain: 95% to sub-funds, and 5% for operating costs of the bodies in charge of allocating funds (the Ministry and the Agency). Article 19 of the Law sets forward that a total of 5% of funds are to be allocated annually from each of the sub-funds for the operating costs of various self-regulatory mechanisms. Once a year, self-regulatory organisations have to submit an application to have the operating costs of their activities covered. The application will be submitted to the body in charge of allocating funds from the sub-fund when that body announces a public competition. It has been set forth that the self-regulatory organisation of the national public broadcaster Radio and Television of Montenegro (Ombudsman) is not to be funded out of the Fund's financial resources. An application may be submitted by a self-regulatory organisation that meets the following conditions: it was established at least three years before the submission of the application; and the founders of the media over which the self-regulatory organisation has been established meet the conditions referred to in Article 21 of this Law. Article 20 of the Law sets forth the types of contents for whose creation and publication the financial resources from the Fund will be used. It has also been set forth that financial resources from the Fund may not be allocated for projects funded by donations, sponsorships, or grants from domestic and foreign institutions. According to Article 21 of the Law, the Agency Council will allocate the financial resources of the Fund once a year and based on a public competition. Pursuant to Article 21 of the Law, founders of audiovisual media services that meet the following conditions may apply to the competition for allocation of financial resources from the sub-fund for commercial and non-profit media (which will be managed by the Agency): media founders that have published ownership structure data, in accordance with Article 11, paras. 1, 2 and 4 of the Law; media founders that have submitted data on the share of funding from the budget of Montenegro or the budget of local self-government units, i.e., from legal entities that are state-owned or which are entirely or majority funded out of public revenues (advertising, grants, loans, subsidies,</p>	<ul style="list-style-type: none"> <li>- Return period – up to 8 years (including grace period);</li> <li>- Loan term – up to 6 months.</li> </ul> <p>Useful information:</p> <ul style="list-style-type: none"> <li>- This credit line cannot solve media problems that arose before the pandemic was declared;</li> <li>- The loan amount cannot exceed 20% of the operating revenues stated in the financial statements for 2019;</li> <li>- Depending on the creditworthiness of the applicant, it will be decided whether it will be possible to accept soft collateral and pledges as collateral, or whether the client will be obliged to provide mortgages on real estate with soft collateral.</li> </ul>

Beneficiary	Permanent media pluralism funds	COVID-19 support measures
ME	<p>and others), in the structure of revenues in the year preceding the year in which the competition is announced, pursuant to Art. 13 and 16 of the Law; the media that settled its financial liabilities due for taxes, social security contributions and fees for broadcasting radio or television programme by the deadline for applying to the public competition; media founders that are not undergoing bankruptcy or liquidation; media founders that have not had their account frozen within a forced collection procedure through courts; the media whose broadcasting licence has not been temporarily revoked, and the media that did not misuse previously allocated financial resources from the Fund. Under Article 22 of the Law, the Agency has to adopt an act defining the rights and obligations to provide public services for which financial resources are received from the Fund. The act in question should contain: the criteria and procedure for allocating financial resources from the sub-fund, the mode of using such financial resources, as well as the maximum amount of financial resources that can be allocated from the Fund to a medium within a year. Financial resources are to be allocated for a clearly defined purpose, without discrimination and based on pre-defined, clear, objective, and transparent criteria and scoring methodology. The Agency will be obliged to keep records of allocated financial resources for the provision of public services and to publish a report on the allocation of financial resources on its website within 30 days of the allocation of financial resources. The beneficiary of the Fund's resources is obliged to: submit a detailed written report to the Agency on the project implementation, within 30 days from the day of the project completion (Article 23 of the Law), and keep separate accounting for the provision of public services and the provision of commercial audiovisual services. If the beneficiary of the Fund's resources uses the allocated financial resources contrary to the purpose for which they were allocated or if the amount of allocated financial resources exceeds the number of financial resources necessary for the provision of public services, the Agency will order that such unlawfully spent financial resources be repaid to the Fund's account and that they be exclusively used for public service activities, in accordance with the Law.</p>	
RS	<p>REM periodically (at least once every three years), in the national, provincial, or specific geographic relevant market (in terms of regulations governing the protection of competition), establishes a list of radio or television programmes. The list shall be transmitted by operators whose electronic communications network for distribution and broadcast media content is used by a significant number of</p>	<p>In March, The Council of the Regulator (REM) adopted a decision to postpone the payment of fees (which are due in the period March-May 2020) for all MSP which submit a request for it.</p> <p>In March, REM published (on its website) information, addressed to the public media services (RTS and RTV) and commercial media service providers with national</p>

Beneficiary	Permanent media pluralism funds	COVID-19 support measures
RS	end-users as the sole or primary method for receiving media content, in order to protect the public interest and media pluralism. The principles observed are those of proportionality and transparency. The request for determination of the obligation of the broadcast is submitted to the Regulatory body in charge of electronic communications.	coverage, that they are obliged to make all communications available from public authorities of urgent nature relating to COVID-19 through open captions or Serbian sign language.
XK	On 29 September 2019, IMC approved the Regulation for the Support of Audio and Audiovisual Media Service Providers with Local and Regional Terrestrial Coverage. This regulation aims to establish a Fund to support AMSP in order to promote diverse quality programs in the public interest.	As part of the emergency package approved by the Government, at the end of March, there was support for the media in general.

Relevant to mention here is the role of MRAs in the promulgation and/or the implementation of rules concerning e.g., programme quotas (news and current affairs, in-house production, European works), accuracy, fairness and impartiality, presentation of different and differing views, which can all be regarded from the perspective of ensuring media pluralism. These are all present in the regulatory framework of this region. Another distinctive characteristic in the region is the relatively, and in some cases very high, number of media outlets, financially struggling but still managing to persevere on the market.<sup>15</sup> However, the general review of the media landscape throughout the region does tend to regard it as polarised, particularly on political, but occasionally also on national lines. The origin of such problems is perhaps not to be found in the applied regulatory schemes, but rather in the overall political climate, and especially, the harsh economic realities of the region, particularly further jeopardised by the COVID-19 pandemic. Also, the fact that advertisement revenues increasingly migrate online adds to the rather grim picture of the media sphere in general and media pluralism in particular, the possible redresses and avenues that might be found further in the text.

Finally, the importance of media and information literacy is noted, as tools to achieve the necessary critical abilities of citizens to assess the sources of the content they are receiving, or choosing, which is a predominant practice lately. As stated in the aforementioned Council of Europe's Recommendation of the Committee of Ministers to member States on media pluralism and transparency of media ownership: *"In light of the increased range of media and content, it is very important for individuals to develop the cognitive, technical and social skills and capacities that enable them to effectively access and critically analyse media content; to make informed decisions about which media they use and how to use them; to understand the ethical implications of media and new technologies, and to communicate effectively, including by creating content. Furthermore, media literacy contributes to media pluralism and diversity by reducing the digital divide; by facilitating informed decision making, especially in respect of political and public affairs and commercial content;*

15 Numerous accounts from the region emphasize the influx of state advertising, but also the fact that there is a number of publicly owned media outlets, apart from public service broadcasters, such as municipally-owned radio and TV stations, which receive partial funding from their founders, especially around elections. More detailed information can be found in the aforementioned Council of Europe's study "Pluralism of media ownership in the new media environment".

*and by enabling the identification and countering of false or misleading information and harmful and illegal online content.”* More in-depth information on the activities of the beneficiaries’ MRAs on media and information literacy has been provided in the aforementioned Council of Europe’s publication: Media regulatory authorities and protection of minors, referred to in Chapter 1, which also identified the importance of media and information literacy activities in order to empower users to actively engage in (and make informed decisions about) their children’s exposure to media content, as well as: *“continued cooperation of MRAs among themselves and the inclusion of all stakeholders throughout the region remaining (op.ed.) crucial and vital for further developments and improvements”*.

The cases that beneficiaries’ MRAs dealt with, in terms of possible breaches of rules and regulations, predominantly relate to issues of changes to the ownership structures of licences without *a priori* approval. Some interesting examples have been found in Croatia, where there was a decision against the concentration of media, both on the part of AEM HR and the Competition authority, who decided not to approve the concentration of certain media subjects. All relevant details of decisions can be found in Annex 2 of this publication.

## 5. Looking ahead – from broadcasting to algorithms

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**F**rom newspapers to radio and then TV broadcasting, the media offers to the audience were rather slow in development. After the shy start of the internet in 1985, time seems to have compressed, with the appearance of technological inventions and developments at an unprecedented speed. The time it would take some media-related technological development to result in services to the audience, conversely to the past, is reduced to a minimum. In today's world, technological development instantly leads to full-blown services, from portals to on-demand video services, podcasts, video-sharing platforms, and so forth. Long gone also is the world of media exclusivities. What we now call traditional media, referring to TV, radio, and print, competes with the vast array of online media services that have been adopted rapidly. The effects of online media services, equally positive and negative, are huge and incredibly vulnerable to abuse. What is seemingly rich content offer, creates echo chambers effects, bunker-like mentality, closed belief systems, the cessation of the free circulation of different and differing views, infodemics, and dis-/mis-/mal-information, and occurrences of deep-fakes (manipulating and/or generating visual and audio content with a high potential to deceive, based on machine deep learning, AI, etc.). In fact, a deep-fake photo or video combined with inaccurate and misinformative content highlights the areas of suspected computer manipulation<sup>16</sup> and its adverse effect. Overwhelmingly, there is a polarisation of views and absence of dialog. It appears to be a strongly expressed desire to silence the opponent and an increasing notion of refusal to come to any sort of agreement, even if it means an agreement not to agree with the holder of the opposing view. This is coupled with the rise of populist political agendas, vigorously and not rarely being articulated in textbook hate speech, fuelled by propaganda and misconceptions. Media pluralism is increasingly being challenged, resulting in diminished responsive democratic capacities. Hence, the very core of democracy is being challenged throughout the world, owing or not to the technology.

When we acknowledge that informed citizenry is the cornerstone of democracy, but their perceptions of realities these days are often distorted in the online world by different interests and actors, aided by algorithms, artificial intelligence (AI), and machine-learning, we realize that the very core of democratic fabric is in serious jeopardy. The world lives in an era of personalisation, and it is everything but what

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16 <https://www.reuters.com/article/us-cyber-deepfake-activist/deepfake-used-to-attack-activist-couple-shows-new-disinformation-frontier-idUSKCN24G15E>.

the world needs, as democracy requires media pluralistic conditions that allow citizens to see all sides and especially to hear and listen to (and engage in and respect) opposing views.

Alongside this trend, notable is the development of a particular aspect of the online business model: click-driven revenues that arguably encourage the provision of more and more controversial, divisive and sensational stories, and when no real stories are available, ad-hungry sites may be tempted to invent attractive content. There seems to be a darker side to our online life which is ruled by bots, algorithms, machine (deep) learning mechanisms, the “sell-out” of personal data, fraud, propaganda, and voter theft. Furthermore, from the competitive perspective, online businesses have brought on the problems of contestability, fairness, and the possibility of market entry, as the major online platforms more or less control the digital economy’s ecosystems.

These issues are especially problematic in times of crises and extraordinary circumstances. This is not just a hypothetical distant possibility: the COVID-19 pandemic has shown us yet again the power of misconceptions and sheer ignorance. Exemplifying the information crisis that today’s society has found itself in, ideas and opinions are not based on facts, evidence and knowledge, and many citizens are being influenced and manipulated by various interests and the chase for profit. This is not to say that our reality is shaped by higher agendas that are beyond our comprehension; the biggest danger comes from a reliance on superficial, quick, and second-hand information. While the most obvious consequence is a risk to people’s lives and well-being, there is another, less direct damage: experiencing information overload and creating confusion and mistrust in everything we hear and see around us.

The European audiovisual market is experiencing profound changes. According to the European Audiovisual Observatory [Yearbook 2019/2020 Key Trends](#), the audiovisual media consumption in 2019 reflects the continued shift of advertising revenues online, a significant shift towards a subscription to video on demand (VOD), a high increase in podcast consumption, difficulties in public broadcaster funding and market “consolidations” in terms of the acquisition of media outlets, thus continuing the trend of creation and expansion of big media conglomerates. Most notably, the market is experiencing a deep “platformisation”<sup>17</sup> of these services, a trend which “*refers to the rise of the platform as the dominant infrastructural and/or economic model in media, electronic communications and information, communication and technology (ICT) sectors*”.<sup>18</sup>

However, while there is a decline in the use of traditional broadcasting services, their resilience remains present, as they are also adopting new business forms and providing various VOD services. Furthermore, it is argued that “*the industrial structures and practices are deeply entrenched in existing structures of power, which are nearly*

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17 Defined as “*the penetration of infrastructures, economic processes and governmental frameworks of digital platforms in different economic sectors and spheres of life, as well as the reorganisation of cultural practices and imaginations around these platforms*”. [https://www.researchgate.net/publication/337717560\\_Platformisation](https://www.researchgate.net/publication/337717560_Platformisation)

18 Evens, Tom and Donders, Karen (2018) *Platform Power and Policy in Transforming Television Markets*. Palgrave Global Media Policy and Business.



*unalterable or, at the least, take time to change. It is not so much about adopting new technology, but about changing the economic structures that underlie the industry. The platformisation of the industry will alter market structures, affect competitive strategies and change the ‘rules of the game’, but its impact also has to be mediated by power structures and institutional relationships that have been persistent for decades. In other words, the more things change, the more they might stay the same”.*<sup>19</sup>

The current COVID-19 crisis is affecting some of these trends. While the consumption of news on social networks was rising, this crisis showed that people tend to turn back to public service media and “reputable” media, looking for reliable sources of information<sup>20</sup>. This is also confirmed by the UK Ofcom’s<sup>21</sup> ongoing weekly online survey to monitor how people are getting news and information about the crisis, which shows that official sources and traditional broadcasters remain the most trusted sources for information on COVID-19 while the least trusted ones are social media and closed groups.<sup>22</sup>

While the regulatory mechanisms for broadcasters, which require fair access and representation of political actors in the media, accuracy, balance, and impartiality, are public policies that are understood as a given, this is (still) not the case with online services. Volumes of literature have been produced in this regard, and numerous efforts to curtail these negative trends are taking place around Europe, on national, supra- and international levels. All of these identify the present dangers of information disorder and provide some recourse to tackling this issue. They raise concerns for media pluralism and emphasise its importance. Together with quality journalism, this literature acknowledges the need for net neutrality, and for online media and internet platforms enabling access to information from diverse sources. The current Council of Europe’s [Committee of Experts on Media Environment and Reform](#) (MSI-REF) is working on the preparation of a standard-setting proposal on election communication and media coverage of electoral campaigns, and on guiding principles for media and communication governance to address the shift from established channels to social networks and of related risks (manipulation of public opinion, lack of public trust, information disorder). It is tasked with preparing a draft recommendation on guiding principles for media and communication governance, a draft recommendation on election communication and media coverage of election campaigns, and a guidance note on the prioritisation of public interest content, all eagerly awaited.

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19 Evens, Tom and Donders, Karen (2018) *Platform Power and Policy in Transforming Television Markets*. Palgrave Global Media Policy and Business. Reference also found in EPRA Introductory document: Reconciling regulatory and market approaches: Understanding key market trends, 2020. [https://cdn.epra.org/attachments/files/3672/original/Understanding\\_market\\_trends\\_introductory\\_paper.pdf?1589806403](https://cdn.epra.org/attachments/files/3672/original/Understanding_market_trends_introductory_paper.pdf?1589806403)

20 Among various sources, suggested is to consult the Eurobarometer on media use and media trust in EU – Media use in the European Union, <https://op.europa.eu/en/publication-detail/-/publication/a575c1c9-58b6-11e8-ab41-01aa75ed71a1>.

21 A number of MRAs in the region have had collaborative activities with the UK’s communications regulator Ofcom, particularly in relation to its research activities and are following these regularly.

22 [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0031/194377/covid-19-news-consumption-weeks-one-to-three-findings.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0031/194377/covid-19-news-consumption-weeks-one-to-three-findings.pdf)

Several initiatives and responses to the above listed challenges are also ongoing by national legislators throughout Europe, some regarding the transposition of the revised AVMSD but also on the adoption of other national laws dealing with online harms.

This leads directly to the latest changes in the revised AVMSD, and the introduction of video-sharing platforms partially within the scope of regulation, where self and co-regulation and media literacy education is emphasised. The reasoning for the inclusion of video-sharing platform service providers within, to the extent, the realms of AVMSD lies in the fact that these services provide audiovisual content that is increasingly accessed by the general public, in particular by young people, also applying to social media services. These services are an important medium to share information and to entertain and educate, including by providing access to programmes and user-generated videos. Therefore, the provisions of the AVMSD considered the need to protect minors from harmful content and all citizens from incitement to hatred, violence, and terrorism. In that, an array of measures has been proposed by the AVMSD: ensuring that users can flag and report content that may be harmful, implementing age limits and control systems, ensuring that operations and functions of the platform are transparent and enable a clear system of contact for the users to address any questions or complaints.

At the level of the Council of Europe, there is a long tradition of promoting self-regulation.<sup>23</sup> The support for alternative methods of regulation has been extended to the new media environment, as well.<sup>24</sup> The key concept in self-regulation revolves

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23 At the third European Ministerial Conference on Mass Media in 1991, the Ministers adopted a Resolution on Media economics and political and cultural pluralism in which, with a focus on self-regulation in the protection of consumers, they “*encourage professional circles concerned to adopt self-regulatory measures so as to contribute to the formulation of national and European policy in regard to advertising, sponsorship and new forms of commercial promotion and funding for broadcasting undertakings*”.

At the fourth European Ministerial Conference on Mass Media in 1994, the Ministers focused on journalism ethics and adopted a resolution on Journalistic freedoms and human rights in which they agreed on a list of eight principles, including a principle according to which “*public authorities should [...] recognise that all those engaged in the practice of journalism have the right to elaborate self-regulatory standards – for example, in the form of codes of conduct – which describe how their rights and freedoms are to be reconciled with other rights, freedoms and interests with which they may come into conflict, as well as their responsibilities.*”

24 At the Conference of Ministers responsible for Media and New Communication Services in 2009, the resolution towards a new notion of media was adopted in which the Ministers considered that “*as for traditional media, self-regulation should be a key element for ensuring compliance with standards while respecting editorial independence; where necessary, self-regulation can be supported or underpinned by co-regulation. As a form of interference, regulation should be subject to the limits and conditions established by the European Convention on Human Rights and the relevant case law of the ECtHR and meet the tests elaborated by the latter. Media or media-like regulatory or accountability mechanisms, whether self- or co-regulatory or, if necessary, state driven, must be effective, transparent, independent and accountable. The Council of Europe should explore how to improve the functioning of those mechanisms, in particular how to improve the access to those mechanisms for persons or groups who consider that their rights have been breached by media or media-like service providers*”. Also, at the Conference of Ministers responsible for Media and Information Society in 2013, in a resolution on Preserving the essential role of media in the digital age (Council of Europe - Conference of Ministers responsible for Media and Information Society 2013), one of the conclusions of the Ministers was that they consider it important to further consolidate effective media self-regulation as a prerequisite for media freedom and independence of the media; regulation, including its milder form of co-regulation, or ‘regulated’ self-regulation, should comply with the require-

around the notion of a “code of conduct”, which is sometimes translated in similar notions such as “standards” or “guidelines”. It revolves around agreements within the industry which are not imposed by law, regulation, or administrative provision of a State, and thus, defines the behaviour of traders who undertake to be bound by the code.

Despite examples of self-regulation throughout the region<sup>25</sup>, there is yet little movement towards co-regulatory schemes in the Beneficiaries’ countries. As the transposition process is underway, some foreseen mechanisms for the enhancement of media pluralism through these mechanisms is expected<sup>26</sup>. The state of play, for now, does prescribe some of these mechanisms, particularly self-regulatory ones. However, actual implementation is yet to be seen, as can be seen in Annex 3 of this publication.

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ments set out in Article 10 of the ECHR and the standards that stem from the relevant case law of the ECtHR. The Ministers, therefore, invited the Council of Europe to “*promote truly independent media in Europe based on effective self-regulation*”.

25 Detailed information on this is provided in the aforementioned Council of Europe’s publication: “Media regulatory authorities and protection of minors.”

26 In Serbia, a working group has taken up the transposition, while no news in this regard have been reported in Albania and Kosovo\*.

## 6. Recommendations and conclusions

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The legislative and regulatory mechanisms on media pluralism in this region were conceived for an analogue media environment. They are at times over-regulatory in nature, while in practice do not seem to alter the media environment. Although the region is characterised by a high number of media outlets, it somewhat lacks in diversity of media content. However, since the Media Pluralism Monitor (mentioned in Chapter 2) does not cover most of the beneficiaries of this project, the data, based on a unified method of measurement, is somewhat lacking. The regulatory authorities are, to a great extent, dealing with ownership issues of media outlets that they licence. The content regulatory mechanisms oriented towards linear and non-linear media services are in place and are being implemented. Public service broadcasters exist but appear, at times, as heavily politicised. National media content is spilled over borders and distributed all over the region. Some news media outlets with foreign ownership<sup>27</sup> are present throughout the region and provide national as well as regional news coverage. There are notable examples of initiatives towards media and information activities, and media pluralism funds. The responses of the regulatory authorities in terms of support measures during the COVID-19 pandemic are reported. Yet, there is a noted lack of full transparency of media ownership in some cases. Relevant State institutions in charge of competition issues are lagging in the implementation of media concentration-related matters, as is visible in some countries.

While there is still high audience attention towards the traditional media, the region is also experiencing new media offers and consumption habits, which is replacing older structures. Although, the dichotomy in scope and applicability of rules to these two types of media is visible, the legal and regulatory responses to challenges for current media pluralism are in their infancy. With the transposition of the revised AVMSD, which is compulsory for all beneficiaries' states regardless of their status in the EU accession processes, they will be driven in the area of regulation of online media (albeit limited in extent and scope) as well as in the development or the enhancement of self and co-regulatory mechanisms. The current state of play shows the tendency to nominally transpose the provisions of the revised AVMSD verbatim, particularly in relation to obligations for VSPs, while it is still too early to assess the actual extent of the regulatory realm extension towards online media services. One noted example of proposed amendments to the rules and regu-

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27 News channels associated with the global media conglomerates of CNN.

lations governing the provision of audiovisual and radio media services in Bosnia and Herzegovina is the extension of the licencees' editorial responsibility to their online content, falling under the same basic tier of rules as the broadcast content, in relation to the incitement to violence, hatred and discrimination, prejudice to public health and safety, protection of minors and their privacy, as well as the right of reply.

In the region, but also everywhere in Europe, the current media market paradigms show some disturbing trends. Despite the abundance of media and media-like offer, what is visibly lacking is not only diverse offer from the compendious meaning of media pluralism but also the diversity of values; that is credibility, transparency, high-quality journalism, and their findability. The online platforms are not the only ones to blame, but the unprecedented speed and reach of various unwanted content on these platforms perhaps just accentuated by the human condition, with everyone having a share of responsibility for the current situation.

As societies, we have found ourselves in a crisis of pluralism and democratic premise, which demonstrates the need to address the threats to democratic processes by providing the momentum to implement the activities to tackle these problems, imperatively and thoroughly. Media policies should aim to protect and promote the diversity of cultural expressions by taking the online world within its realm, with a view to the creation of conditions which are conducive to the protection and promotion of the diversity of cultural expressions, based on the international standards regarding the right to freedom of expression.

The following recommendations, which stem from the input provided by the MRAs, are directed towards the policies in this area, which should be effective by providing, *inter alia*:

- evidence-based and impartial regulation;
- effective self- and co-regulation instruments;
- measurements of media pluralism in regular intervals, based on unified methods and criteria;
- enforcement of compliance with the law and professional standards;
- sustainability of independent and professional public service media;
- transparent and level-playing market grounds for all private and public actors;
- reinforced transparency of media ownership and prevention of negative implications of media concentration;
- fair and transparent system of public subsidies for media;
- fostering the professional integrity of journalists and media literacy.

Some key trends, as far as the current state of media pluralism is concerned, are good indicators of what the public policy should be focused on in this regard. They can be found in the previously mentioned Media Pluralism Monitor 2020 results. Unfortunately, the safety of journalists, both physical and digital, continues to deteriorate, which poses a serious risk for journalists' freedom of expression.

Furthermore, as far as the digital environment is concerned, a main source of risk is a lack of transparency among online platforms in justifying and reporting their content moderation policies and techniques. From the perspective of media pluralism, it is evident that new platforms have a huge impact on the sustainability of the media system. In fact, the media viability is impacted by the disruptive role of digital intermediaries (search engines and social networks) whose capacity for targeted advertising has shifted revenue away from traditional news publishers.

Despite tectonic shifts in the media environment, it is, perhaps more than ever, necessary to continue protecting the basic principles and values of the profession, making it possible for journalists and media to perform their role in society and safeguarding democracy. These problems are especially prominent in the SEE region, where journalists' rights are being continuously heavily violated, media outlets struggle for survival and different forms of government funding still exist in the media sector<sup>28</sup>. The lack of transparency of media financing and media ownership (including indirect or hidden ownership) continues to impact media sectors throughout the region, together with high media clientelism and politicisation.

On a more global scale, the decisive role of digital intermediaries and platforms in ensuring media pluralism needs to be acknowledged, and adequate policies and measures need to be adopted. The rules on preventing media concentration also need to take into account the fact that, in addition to traditional players in the media market, the digital players are becoming a crucial element in the overall equation.

An appropriate (balanced) compilation of funding and ownership transparency and the obligation to concentration should be regulated and efficiently enforced. The (re)definition of the role of MRAs in the field of monitoring and enforcement of the concentration prevention and funding and/or ownership transparency should be carefully formulated. It should complement the roles and obligations of other competent authorities (e.g., competition protection) and be ensured by the necessary human resources and effective enforcement powers.

The initiatives of online platforms to combat, for example, hate speech, information disorder, etc., are still covered with a blanket of non-transparency, leaving the public with questions as to what rules are applied and by whom. Initiatives such as Facebook's long-awaited Oversight Board, where the members were announced in May 2020 and who will have final say over certain content moderation decisions independent of its executives and staff, are yet to be assessed and determined as to whether this is a shift in paradigm or a reputational shield.

After the adoption of the [EC Action Plan against Disinformation](#) from May 2018 and the subsequent adoption of the [Code of Practice on disinformation](#), agreed with the platforms (i.e., the leading social networks, advertisers, and advertising industry in October 2018 to address the spread of online disinformation), the European Regulators Group for Audiovisual Services (ERGA) was involved in monitoring the activities carried out in several member-states<sup>29</sup> regarding transparency of political advertisement for the 2019 European elections, and in the publication of the interim

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28 As numerous reports on national and international levels show.

29 The monitoring was based on material stored in the archives of political advertising established by each of the platforms using their own criteria.

and the final report on this matter. The first report stressed that the monitoring was seriously constrained, due to the lack of access to the overall database and archives of political advertising.<sup>30</sup> Additionally, the final 2020 report<sup>31</sup> emphasised the importance of the Code but also emphasised its weaknesses, namely the lack of transparency in its implementation, the lack of mechanisms for verification of data provided by the signatories, the lack of uniformity in the procedures, and the definitions adopted by the different platforms. Coupled with that, there is concern about the limited number of signatories to the Code (with, for example, WhatsApp, and Messenger not being included). ERGA suggests the improvement of the Code by “*requiring that all of the platforms comply with the same obligations in a uniform manner (whenever possible taking into account the specificity of the individual platforms) and adopt more precise definitions, procedures and commitments, as well as measurable key performance indicators*”. Furthermore, ERGA suggests a move from the self-regulatory model to a more structured co-regulation “*to provide for more consistency in its formulation and in its implementation and the introduction of a formal backstop mechanism to deliver the required monitoring and enforcement elements. This should include a mechanism to incentivize industry players to take part in a self (or co)-regulatory structure*”. The recent statement from German and French heads of regulatory authorities, expressed the intent to reinforce the role of sustainable regulation by seeking the right balance between, on one side, the freedom of expression and, on the other, its legitimate limitations. It also stressed that the current legal framework designating the authors of illegal and harmful content as the first ones responsible for it no longer corresponds to reality. They are calling for tools that are more suited to the contemporary realities, for redistribution of responsibilities on the internet, for organising intergovernmental actions, and for an immediate discussion on the regulatory framework applicable to large digital players in Europe. It has been emphasised that the mission of regulators: “*is not and cannot be to control the internet or act as judges, but to ensure that platforms fulfil their obligations of cooperation and transparency, which will be determined by future regulations.*”<sup>32</sup>

National and other (supra) national proposed measures parallel to those from the revised AVMSD, such as the ongoing process relative to EU Digital Services Act package, inclusive of the Digital Service Act<sup>33</sup> and national legislative proposals for combatting dissemination of illegal content online are noted and should be carefully followed and examined from the perspective of their overall impact, when adopted. Important to emphasize is the proposed shift from the self-regulatory and voluntary mechanisms to a direct *ex ante* regulatory approach taken by the European Commission in these proposals.

Considering the fact that media services are converging and that the way in which these services are consumed and delivered is changing constantly, in line with technological developments, media policies should be transparent, inclusive, flexible,

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30 [https://erga-online.eu/wp-content/uploads/2019/06/ERGA-2019-06\\_Report-intermediate-monitoring-Code-of-Practice-on-disinformation.pdf](https://erga-online.eu/wp-content/uploads/2019/06/ERGA-2019-06_Report-intermediate-monitoring-Code-of-Practice-on-disinformation.pdf)

31 <https://erga-online.eu/wp-content/uploads/2020/05/ERGA-2019-report-published-2020-LQ.pdf>

32 <https://www.csa.fr/Informer/Espace-presse/Interventions-publiques/Tribune-commune-de-Roch-Olivier-Maistre-et-Tobias-Schmid-en-faveur-d-une-nouvelle-regulation-europeenne>.

33 <https://ec.europa.eu/digital-single-market/en/digital-services-act-package>.

effective, functional, and practical. Thus, bearing in mind the well-being of the population, the protection of human rights and human dignity, and stressing the promotion of political and cultural pluralism, the development of media policy should be in line with the right to freedom of expression, which guarantees freedom of media and information.

The guiding principles, in the aforementioned Council of Europe's Recommendation on media pluralism and transparency of media ownership, emphasise that State authorities should follow the legal processes to request restrictions on access to content and adopt a flexible approach to any regulation. While recognising that algorithms can be useful tools, the automated decision-making processes that govern the distribution of online content should integrate the objective of improving the effective exposure of users to the broadest possible diversity of media content online. It is further recommended that *“any self-regulatory mechanisms developed in this area should operate independently and transparently, be open to meaningful participation from all relevant stakeholders, be accountable to the public and work in accordance with ethical standards that take full account of the multimedia ecosystem.”*

Media pluralism is a multi-faceted concept, and there are many different ways in which regulatory interventions could be designed and targeted. In terms of media content, regulation should not only be about percentages and quotas, but it is necessary to focus on the qualitative dimension by implementing measures to ensure quality content. The role of regulators can vary from fostering funding schemes, as is done in some countries of the region, to ensuring the prominence of content with public service value. Regarding digital platforms, it has become evident that some kind of content moderation is becoming necessary, in line with the principles of freedom of expression.

In this respect, acknowledging the importance of media literacy initiatives, self- and co-regulatory schemes is desirable. Self-regulation is an important tool to safeguard editorial freedom, promote quality, ensure the credibility of media outlets, and the reputation of journalists. It is also a vital mechanism for reducing the influence of the State on media to a minimum.

Co-regulation, much like self-regulation is designed to achieve public policy objectives. It contains elements of both the self-regulation and traditional public regulation conducted by MRAs. For self and co-regulation to be effective, the following criteria must be met: public awareness, transparency, significant industry participation, adequate resources, clarity of processes, the ability to enforce codes, audits of performance, the system of redress in place, the involvement of independent members, regular review of objectives, and non-collusive behaviour. The main point that should be stressed in this context is volunteerism, which relates directly to the issue of self- and co-regulation, in which all interested parties work towards developing and maintaining a uniform and efficient system, including implementation which results in all audiovisual media service providers voluntarily agreeing to adhere to it. The need and importance of MRAs co-operation on all levels (regional and especially on the international level) and with the inclusion of all stakeholders throughout the country/jurisdiction, is crucial and vital for further developments and improvements in this regard.



The legislative acts throughout the region should set out the objectives of co-regulation and the clear role of the NRA and the co-regulatory body in the process. The procedural mechanisms regarding the functioning of the co-regulatory body and the current transposition processes are opportunities in that direction.

While small in terms of measuring market indicators, the MRAs from this region must have a say in what is a visible trend towards the structural changes happening on the horizon of public policies related to media freedoms. Their role in conducting market research is an important one in this respect. The regulators can use their knowledge, expertise, influence, and relations with both the industry and state actors to push public policies in the right direction.

There can be a reluctance to “dive into” new spheres of and forms of public policy. This reluctance can be justifiable if perceived from the mathematical equation, which on the one hand provides for many unknowns, that are to be equated with the change, all together having a public interest and preservation of the right to freedom of expression as common denominators. So many unknowns are present, but perhaps it shows that there is an urgent need for a paradigm shift. It has to start somewhere, and, in that respect, as Plato suggests: “*the beginning is the most important part of the work.*”

Instead of reaching for measures on traceability obligations, a data retention mandate, requirements for certain forms of content to be removed immediately, and user verification requirements for social media and communications services (as seen in some recent legislative acts globally), which can be counterproductive and pose risks for freedom of expression and privacy, what this publication would like to offer is a shift in embracing public policies. While respecting the business aspect of media economies, it recognises the need to abandon the *laissez-faire* approach, because this is what democracy requires, and because media pluralism lies at the core of democracy. It offers a national and international collaborative approach to these matters, where the vast array of actors and stakeholders is needed. MRAs, governments and parliaments, election commissions and data protection agencies, together with media, academia and fact-checkers and online and social platforms need to joint efforts to reclaim democracy by rebuilding trust in democratic processes, and staying clear of censorship.

There is still work to be done, but it requires first and foremost political will and a holistic approach. It should be emphasised that it cannot be expected that the MRAs can alone safeguard media pluralism. Media pluralism encompasses business and public interests, and the current challenges to media pluralism are not local but rather a global phenomenon, involving a wide range of stakeholders. All these actors, from national legislators and governments to supra- and international organisations must be involved in the efforts to preserve media pluralism. Moreover, market-based interests desperately need to be complemented by human-rights interests, and more emphasis placed on the public interest instead of predominantly the interests of the industry. In that respect, human rights principles should provide clear guidance for the direction in which laws, regulations, and policy actions would effectively address various current challenges and revive media pluralism.

Although there is no time to waste to remedy dangerous trends, it is important to acknowledge that there are many areas where new and innovative public policies are needed. It is imperative to make sure that rights and freedoms are maintained, cautiously, openly and honestly endeavouring in lasting solutions, in collaboration with online platforms, civil society, academia, supra-, and international bodies. While countries try to establish their digital sovereignty, it is crucial not to go in the direction of digital oppressiveness.<sup>34</sup>

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34 Responses and approaches to dealing with the online challenges are taking place on national, supra and international levels, but some are questioned from the perspective of freedom of expression, such as internet shutdowns, restrictive laws (e.g., Hungary), etc. More references are available in, e.g., 2020 World Press Freedom Index: “Entering a decisive decade for journalism, exacerbated by coronavirus”, available at: <https://rsf.org/en/2020-world-press-freedom-index-entering-decisive-decade-journalism-exacerbated-coronavirus>.

# Annexes



# Annex 1:

## Legal framework overviews

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### 1. ALBANIAN LEGAL AND INSTITUTIONAL CONTEXT

#### 1. Regulatory authority establishment, mandate and powers

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The AMA is the regulatory authority in the field of audio and/or visual broadcasting programmes and other supporting services in the territory of the Republic of Albania. The AMA is a juridical person, independent, with head office in Tirana. The AMA is composed of the Chairman, the Deputy Chairman and five members. The AMA members are appointed by the Assembly for a five-year term, with the right of renewal only once.

According to Article 19 of the *Law No. 97/2013 “On audiovisual media in the Republic of Albania” as amended*, the main functions of the AMA are to:

- a) review proposals and applications for the exercise of broadcasting services, including applications for digital broadcasting and the issue of relevant authorizations or licences, in accordance with the law, including the services provided by RTSH
- b) grant and remove licences and / or authorizations by qualified majority;
- c) ensure fair competition and, at the same time, ensure further development of RTSH,
- d) cooperate with the Commission for Consumer Protection to ensure consumer protection in the field of electronic media, in the case of unfair practices of AAMSP and of the service’s provision of abusive prices;
- e) develop strategies for the provision of broadcasting services in the Republic of Albania;
- f) supervise the implementation of the service contract concluded with RTSH;
- g) develop and approve the code and audio-visual broadcasting regulations and other sublegal acts, in accordance with this law;
- h) draft and approve regulations on the procedures and criteria for granting licences and / or authorizations under the provisions of this law;
- i) determine fees for licences;

- j) prepare and issue guidelines for RTSH, concerning the fulfilling of its obligations;
- k) determine the criteria and regulatory measures for the co-usage of RTSH broadcasting infrastructure;
- l) resolve disputes between the providers of audio or audio-visual broadcasting services, including disputes with the public broadcaster;
- m) cooperate with the Minister for the drafting of the National Frequency Plan;
- n) cooperate and consult with EPCA, the Competition Authority, the Copyright, and other bodies in the fulfilment of the obligations set forth in this law.

AMA controls the implementation of this law by the subjects that exercise their activity in this field and in case of violations, it imposes sanctions.

The AMA, apart from the above functions:

- a) collects, administrates and publishes information on the broadcast sector in the Republic of Albania, including the applied technology,
- b) supervises the evolvement of audio-visual media activities at the international level;
- c) realizes, organizes, supports and promotes research regarding audio-visual media issues;
- d) cooperates with other bodies, including the representative bodies within the audio-visual media sector to help in the training activity in the audio-visual media sector;
- e) cooperates with the analogous bodies of other states;
- f) undertakes and encourages research and other relevant activities, that have to do with the role of media, including cooperation with the broadcaster and other field subjects;

Website: [www.ama.gov.al](http://www.ama.gov.al)

At the beginning of each year, AMA reports on its annual activities and submits that to the Committee on Education and Public Information Media and to the Assembly.

## 2. Legislation related to media pluralism

### *(1) Law No. 97/2013 “On audiovisual media in the Republic of Albania”*

#### **Article 19**

#### **AMA Functions**

The main functions of the AMA are to:

...

- h) drafting and approval of regulations on the procedures and criteria for granting licences and/or authorizations under the provisions of this law;....

## Article 62

### Property/Ownership regulation in terrestrial audio and audiovisual broadcasting

1. The national licence of audio broadcasting or a national licence of audiovisual broadcasting is granted only to joint-stock companies registered in the Republic of Albania, which have as exclusive object the audiovisual activity.
2. The shares representing the capital in a company that holds a national licence of audio broadcasting or a national licence of audiovisual broadcasting are nominative.
3. .... *repealed*
4. A physical or juridical person who holds shares in a company that has a national licence of audio broadcasting or a national licence of audiovisual broadcasting cannot have more than 20 percent of total capital in a second company, which holds a national licence of audio broadcasting or a national licence of audiovisual broadcasting. With regard to the analogue audio broadcasting, the participation up to 10 percent in a third national company is allowed. Such a person is not allowed to receive an audio broadcasting licence, or regional or local nor an audiovisual broadcasting licence.
5. Also, the national licences for the service of audio and/or audiovisual programme are subject to the above conditions.
6. The local or regional licence of audio broadcasting and the local or regional service licence of audiovisual broadcasting are granted to physical or juridical persons registered in the Republic of Albania, which have as exclusive object the audiovisual activity.
7. A physical or juridical person that has 100% of shares in a company, and which holds a local or regional audiovisual licence, can be given only a second licence for local or regional audio broadcasting.
8. A physical or juridical person that has shares in a company, and which holds a local or regional audio licence, cannot have more than 40% of the general capital in a second company that holds a local or regional licence of audio broadcasting.
9. A physical or juridical person that has shares in a company and holds a local or regional audiovisual licence cannot have more than 40% of the general capital in a second company that holds a local or regional licence of audiovisual broadcasting.
10. In terms of this section, a shareholder is considered a holder of shares and persons related to him until the second degree of the relation to the shareholder.
11. The above conditions are also applicable to juridical subjects authorised for the provision of audio programme services and authorisations of audiovisual programme service supported in satellite networks.
12. No holder of national licences of audio broadcasting and of national licences of audiovisual broadcasting, including AAMSP-s licenced for the provision of audio programme services and authorised for audiovisual programme service supported in satellite networks (according to this law), can broadcast more than 30 percent of advertising in the audiovisual broadcasting market. The AMA monitors and publishes periodic information on the volume of advertising broadcasted by national AAMSP-s.

## Article 63

### The use of multiplex

1. The holders of national regional and local licences of audio digital broadcasting and of national regional and local licences of audiovisual digital broadcasting are obliged to give access in right, reasonable and non-discriminating conditions, in not less than 40% of their multiplex capacity, to AAMSP-s that hold a service licence of the audio programme and/or a service licence of the audiovisual programme.

2. Notwithstanding the provisions of clause 1 of this Article, a subject licenced for digital broadcasting or for the provision of audio or audio-visual program cannot have more than one-third of the total amount of the respective local, regional and national programmes.

3. The holders of national regional and local licences of audio digital broadcasting and of national regional and local licences of audiovisual digital broadcasting provide the access for broadcasting in the digital network according to the commercial agreements with AAMSP-s. The fees for providing access to the digital network broadcast must be cost-oriented.

4. The AMA ensures that all services provided to AAMSP-s, which hold a service licence of an audio programme or service licence or audiovisual programme service licence, by the holders of national, regional and local licences of digital audio broadcasting and national, regional and local licences of digital audiovisual broadcasting, are based on fair, reasonable and non-discriminatory conditions.

5. In case of disputes between AAMSP-s and holders of national, regional and local licences of digital audio broadcasting and national licences of digital audiovisual broadcasting, the parties shall address the AMA.

6. The AMA, having regard for the guarantee of equal and non-discriminatory access for AAMSPs and the guarantee of fair competition and the diversity of services, and after listening to the claims of the parties, decides on the resolution of the dispute.

7. Against the decision of the AMA, the parties may appeal to the court.

## ***(2) Law No. 9121/2003 On the protection of competition, a law applied by the Competition Authority***

### **Article 70**

1. The central and local administration authorities, entities, and other regulatory institutions, while performing the tasks of regulating the economic activity in the territory of the Republic of Albania, are obliged to apply the provisions of this law and ensure fair and effective competition.

2. The Authority, for reasons of general interest, assesses, in particular, regulatory barriers to the competition involved in economic and administrative regulation. In these cases, the Authority makes relevant recommendations.

3. The Authority, for the implementation of this law in the regulated sectors, cooperates with other regulatory bodies and institutions.”

## ***(3) AMA Regulations:***

“On the procedures and criteria for granting an audio broadcasting licence” (v. 153/2016, as amended);

“On the procedures and criteria for granting an audiovisual broadcasting licence through the Beauty Contest procedure” (v. 28/2015);

“On the procedures and criteria for issuing a national audiovisual broadcasting licence” (v. 219/2016);

“On the procedures and criteria for granting the local licence for local digital audiovisual broadcasting in the transitional period (v. 100/2017);

“On the procedures and criteria for granting an audiovisual program service licence” (v.2/2020);



“On the procedures and criteria for granting authorizations” (v.100/2017 (only for satellite service)).

## **2. BOSNIAN AND HERZEGOVINIAN LEGAL AND INSTITUTIONAL CONTEXT**

### **1. Regulatory authority establishment, mandate, and powers**

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The Regulatory Authority of Bosnia and Herzegovina is the Communications Regulatory Agency of Bosnia and Herzegovina (CRA), established by the Law on Communications. CRA is a converged regulator for the sectors of broadcasting, telecommunications, and frequency spectrum. CRA’s competencies are:

- development and promotion of rules in the sectors of telecommunications and broadcasting;
- cooperation on development of all strategic rules and decisions regarding this sector,
- licencing of operators in the broadcasting and telecommunications sectors;
- planning, management, and allocation of the frequency spectrum;
- implementation of technical and other standards related to quality; establishing and maintenance of licence fees and tariffs;
- issuance of sanctions for breaches of relevant rules. Sanctions at CRA’s disposal include: oral and written warnings, financial fines, suspension, and revocation of licence.

CRA consists of sectors and departments led by the Director General, who issues first-instance decisions. The CRA Council acts as a second-instance body related to all decisions of CRA. An administrative dispute procedure can be initiated before the Court of Bosnia and Herzegovina. The procedure can be initiated before the Constitutional Court of Bosnia and Herzegovina in cases related to ECHR.

Website: [www.rak.ba](http://www.rak.ba)

CRA publishes all its decisions related to programme content on its website. As of 2020, CRA started publishing a periodical report containing an overview of all programme-related cases it dealt with in the reporting period, including a short analysis of selected cases. This report also contains descriptions of cases in which no breach of rules was found. Furthermore, CRA prepares annual reports, as well as regular reports on the decisions of CRA, together with trends in breaches, which are all published on its website.

### **2. Legislation related to media pluralism**

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There is no legislative framework in Bosnia and Herzegovina regulating the transparency of media ownership. Other relevant provisions include:

## **(1) Law on Communications of Bosnia and Herzegovina**

### **Article 3**

#### **(Responsibilities of the Institutions of Bosnia and Herzegovina in Respect of Communications)**

4. The Council of Ministers and the Agency according to the respective competencies as set out in this Law shall take all reasonable measures that are aimed at achieving the following objectives:

- a) The promotion of fair competition in order that users derive maximum benefit in terms of choice, price and quality;
- b) That there is no distortion or restriction of competition in the communications sector according to the Council of Ministers' sector policies;

...

### **Article 4**

#### **(Regulatory Principles of Broadcasting and Telecommunications)**

1. The regulatory principles of broadcasting shall include:

- a) The protection of freedom of expression and diversity of opinion while respecting generally accepted standards of decency, non-discrimination, fairness, accuracy, and impartiality;

...

- c) That broadcasters shall be separate from political control and manipulation, so as to strengthen democratic principles and the foundations of a market economy.

## **(2) Broadcasting Sector Policy (2007)**

Restriction of concentration and media pluralism:

... The task of state institutions is to protect pluralism and diversity of the media (restriction of concentration), and above all, to enable a uniform and even development of all types of media in the country without favouring any type. ... Determining the real diversity of programme content and the need for it, with particular emphasis on local content, is one of the key tasks in the coming period. This task must be accomplished by conducting new public competitions, which will enable the further development of media pluralism in a transparent and effective manner. In addition, it is necessary to ensure that economically underdeveloped areas, as well as areas that do not currently have or do not have adequate access to various programs, in the future, receive what the rest of the country is greatly benefiting from. Given the importance of broadcasting for the democratic and cultural needs of each society, the state must have a particular interest in addressing this issue and the potential to influence the development of the transmission network so that as many citizens as possible receive the signals of public service broadcasters.

- Obligations of the Council of Ministers of Bosnia and Herzegovina, the Government of the Federation of Bosnia and Herzegovina and the Government of Republika Srpska

The obligations of the State and the Entities should guarantee the following:

- 1.2. guarantee the protection and promotion of media pluralism,

...

## 2. Tasks of the Communications Regulatory Agency

The main tasks of the Regulatory Agency are:

- 2.1. to protect the plurality and diversity of media (restriction of concentration), and above all to enable constant and uniform development of the radio sector in the country.

## 3. CRA by-laws

### *Rule 77/2015 on the Provision of Audiovisual Media Services*

#### Article 22

##### (Transfer of the Licence)

- (1) The licensee may not, in part or whole, transfer a licence or assign another user to the licence through sale or by a specific contract.
- (2) The Agency may, at the request of the licensee, transfer the licence to another natural or legal person under the same ownership or in the process of fusion, merger, division, or change of form of legal entity or craft, or to several persons who are licensees, only if there is prior written consent of all owners/co-owners of the licensee for such a transfer.
- (3) Any change in the original ownership of the licenced user exceeding 5% of the share represents a partial transfer of ownership and requires prior written approval from the Agency. If the Agency allows the transfer of the ownership, the licensee shall inform the Agency on changes made after the registration in the court registry (i.e., the register of securities).
- (4) Each request from paragraphs (2) and (3) shall be examined by the Agency in accordance with internal procedures and all applicable regulations, including the relevant regulations related to the efficient use of the radio frequency spectrum. The Agency shall, in the course of processing the request, examine the same requirements as for the issuance of the licence and shall give its consent. However, the Agency gives the consent only if it determines that the future licence user will continue to ensure that the qualifying standards are being fulfilled on the basis of which the licence was issued in the remaining period of validity and that there are no outstanding claims to the user by the Agency.
- (5) The change in the official name of the licence without the change in ownership structure shall not be considered as a transfer of a licence or the issuance of a new licence, and shall only be duly registered by the Agency.
- (6) In case of death of the natural person who is the owner of the licence, the Agency shall be informed of any changes made after the inheritance proceedings. The Agency will require the new owner to sign a statement that the licensee will continue to use the rights and perform the obligations under the licence, and will ensure the continued fulfilment of qualification standards based on which the licence was issued. Upon receipt of such a statement, a retroactive approval for the change of ownership shall be given.
- (7) The Agency shall be duly notified in the event of insolvency proceedings being opened against the licensee, not later than 14 days from the date of the decision to open insolvency proceedings. In accordance with Article 4, paragraph (6), the insolvency proceedings may result in the revision of the issued licence and subsequent revocation of the licence, if it is found that the standards of qualification on which the present licence is based on are not being fulfilled.

(8) The licensee shall notify the insolvency administrator about all their obligations towards the Agency. Should there be a potential buyer during the insolvency proceedings, the Agency shall be duly notified to carry out the procedure as set out in paragraph (4) above.

(9) Any change in the original ownership of the licensee greater than 5% of the share and for which a prior written consent of the Agency was not obtained, will result in the imposition of appropriate sanctions. Only in exceptional cases, if it is certain that the requirements of paragraph (4) of this Article have been fulfilled, the Agency may issue subsequent consent.

### 3. CROATIAN LEGAL AND INSTITUTIONAL CONTEXT

#### 1. Regulatory Authority establishment, mandate, and powers

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The Electronic Media Council, the national regulatory authority of the Republic of Croatia, manages the Agency for Electronic Media and carries out the duties of a regulatory body in the area of electronic media in Croatia. The Council has seven members, and one of which, the president of the Council, is the Director of the Agency. The president and other members of the Council are appointed for a five-year term by the Croatian Parliament upon the proposal of the Government of the Republic of Croatia. The Agency for Electronic Media is in itself not a “converged” regulator, as it shares its competences with HAKOM (Croatian Post and Electronic Communications Agency) which deals with frequency allocation. The law relating to electronic media, the Electronic Media Act, regulates the rights, obligations, and responsibilities of legal and natural persons that provide audio and audiovisual media services and services of electronic publications by electronic communication networks, as well as the interest of the Republic of Croatia in the field of electronic media. AEM HR’s competencies are the regulation of audiovisual and audio media services, including supervision over programmes, protection of minors, and development of pluralism. Additionally, among other things AEM HR ensures fair competition, conducting the procedure of granting concessions, monitoring the purposeful spending of the Fund for Promotion of Pluralism and Diversity of Electronic Media, encourages and undertakes the research and related activities, systematically works on the strengthening of media literacy and other competencies following from Article 69 of the Electronic Media Act.

Website: [www.aem.hr](http://www.aem.hr)

#### 2. Legislation related to media pluralism

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##### a) *Electronic Media Act*

Article 52

Paragraph 1

By January 31 of each calendar year, media service providers shall be obliged to forward to the Electronic Media Council the data on a legal person and its seat (i.e., name, surname, and permanent residence of all legal and natural persons who have directly

or indirectly become holders of stocks or a share in that legal person), along with the data on the percentage of stocks or the share they possess.

### Article 53

Linked persons, pursuant to this Act, shall be the persons who are mutually linked by way of management, capital, or in another manner which enables them to jointly shape the business policy, conduct business in a coordinated manner with the intention of achieving mutual objectives, or in such a manner that one person has the possibility to direct another person or influence him/her in a significant manner while deciding about the financing and business management (i.e., deciding about the programme basis of the media).

Persons linked in the following manner shall be considered linked persons:

- blood relatives, such as members of the immediate family (parents, children, brothers and sisters, adopters and adoptees);
- by marriage or extramarital community;
- in-laws, as members of the immediate family of a spouse;
- when a person, or persons, holds a total business share, stocks, or other rights on the basis of which they participate in the management of another person with at least 25% of the voter's rights; – when the same person has a total business share, stocks or other rights in both persons, on the basis of which they participate in the management of each of them with at least 25% of voter's rights;
- when they earn more than 30% of income from advertising by way of marketing contracts or other contracts, through a period of three months or a longer period within a year, – when they form linked companies pursuant to the Act on Trading Companies;
- when they are members of the management or supervisory board in a company in which they perform this duty, as well as persons who are considered to be linked with the heads of management or supervisory board of that company, in the manner determined in this paragraph.

### Article 54

The following shall be considered as an impermissible concentration within the meaning of this Act:

- the television and/or radio broadcaster who has a concession at the state level and a share exceeding 25% of the capital of another broadcaster with the same kind of concession or a concession on the regional, county, city, or municipality level, and vice versa;
- the television and/or radio broadcaster who has a concession at the state level and a share exceeding 10% of the capital of publisher which publishes daily newspapers printed in more than 3,000 copies, and vice versa;
- the television and/or radio broadcaster who has a concession at the state level and a share exceeding 10% of the capital of a legal person which performs the activity of a newspaper agency, and vice versa;
- the television and/or radio broadcaster who has a concession at the state level and simultaneously publishes daily newspapers printed in more than 3,000 copies;

- the television and/or radio broadcaster with a concession at the local or regional level of coverage and shares exceeding 30% of the capital of another similar broadcaster with the concession at the local or regional level of coverage in the same area;
- the television and/or radio broadcaster who has a concession at the regional or local level of coverage and simultaneously publishes daily newspapers of local importance in the same or the neighbouring area;
- the media service provider, set out in Article 79 of this Act, who simultaneously publishes daily newspapers printed in more than 3,000 copies;
- the media service provider, set out in Article 79 of this Act, who has a share exceeding 10% of the capital of a publisher which publishes daily newspapers printed in more than 3,000 copies, and vice versa.

#### **Article 55**

It shall also be considered that impermissible concentration exists in the area of media when, in cases referred to in Article 54 of this Act, a natural or legal person who is the founder of the television and/or radio broadcaster or The Electronic Media Act OG 153/09, 84/11, 94/13 and 136/13 23 the media service provider set out in Article 79 of this Act, or a founder, or persons related to him/her in the sense of Article 53 of this Act, has a share in the capital of another television and/or radio broadcaster, a newspaper publisher of a daily newspaper or news agency, above the determined amount of capital.

#### **Article 61**

An operator who performs the activity of audiovisual and/or radio programme transmission may not be the television and/or radio broadcaster as well as the media service provider, referred to in Articles 79 of this Act.

#### **Article 63**

The Fund for Promotion of Pluralism and Diversity of Electronic Media (hereinafter: the Fund) is the Fund of the Electronic Media Agency. The sources of financial means for the Fund shall be the funds secured by the provisions of this Act and the Croatian Radio Television Act.

## **2) Competition Act**

### **Article 17 Paragraph 1**

In order to assess the compatibility of a concentration, within the meaning of this Act, the parties to the concentration are obliged to notify any proposed concentration to the Agency, if the following criteria are cumulatively met:

1. the total turnover (consolidated aggregate annual turnover) of all the undertakings of the parties to the concentration, realised by the sale of goods and/or services in the global market, amounts to at least HRK 1 billion in the financial year preceding the concentration in compliance with financial statements, where at least one of the parties to the concentration has its seat and/or subsidiary in the Republic of Croatia, and
2. the total turnover of at least two parties to the concentration, realised in the national market of the Republic of Croatia, amounts to at least HRK 100,000,000 in the financial year preceding the concentration in compliance with financial statements.

### 3) *The Ordinance on The Fund for the promotion of pluralism and diversity in electronic media*

#### Article 4

Assistance from the Fund is allocated to particular beneficiaries of the Fund in the following proportion:

1. Television broadcasters at the local and regional level, non-profit television broadcasters and non-profit media service providers according to Article 19 and 79 of the Electronic Media Act – 46.5 %;
2. Radio broadcasters at the local and regional level, non-profit radio broadcasters and non-profit media service providers according to Article 19 and 79 of the Electronic Media Act – 46.5 %;
3. Non-profit providers of electronic publications – 3 %;
4. Non-profit producers of audiovisual programmes – 3 % 5. non-profit producers of radio programmes – 1 %.

## 4. KOSOVAR LEGAL AND INSTITUTIONAL CONTEXT

### 1. Regulatory authority establishment, mandate, and powers

The regulatory authority is the Independent Media Commission (IMC), established by the Constitution and Law no. 04/L-44 on the Independent Media Commission. IMC is an independent body, responsible for the regulation of audio and audiovisual media services, including the adoption of sub-legislation, licencing procedures, management and supervision of the broadcasting frequency spectrum, determination and collection of licence fees, as well as imposition of sanctions for breaches of rules and regulations.

IMC is in charge of the preparation of strategy documents, such as that related to the transition to digital broadcasting, as well as other strategic documents for audiovisual media services, for approval by the Government. The IMC consists of: a Commission, a Chief Executive Officer and an Appeals Board. The members of the Commission and Appeals Board are elected by the Assembly, while the Chief Executive Officer is appointed by the Commission. The decisions of the IMC can be appealed to the Appeals Board. Consequently, the second-instance appellate procedure can be initiated before the Court.

Website: [www.kpm-ks.org](http://www.kpm-ks.org)

IMC prepares annual reports, which are published, following its approval by the Assembly.

### 2. Legislation related to media pluralism

#### a) *Law on the Independent Media Commission*

##### Article 5

“IMC shall support the freedom and pluralism of audiovisual media services.”

## Article 9

6. “The Broadcasting Policy shall promote the application of provisions that will prevent the monopoly of broadcasting, in order to promote a fair broadcasting competition for rendering audiovisual media service.”

## Article 22

The decision-making of the IMC during the licencing of Audiovisual Media Service Providers based on the criteria IMC Regulation for Issuing of Licence.

### *b) Law on Protection of Competition*

This law defines the rules and measures for the protection of free and effective competition. This law concerns the market, the competencies, and the organisation of the Kosovo Competition Authority for the protection of competition as well as for the procedures concerning implementation of this law.

This law applies to all public enterprises and business entities that are registered in Kosovo and perform economic activities.

### *c) IMC Regulation for Issuing of Licence*

The regulation dealing with licencing procedures.

## 5. MONTENEGRIN LEGAL AND INSTITUTIONAL CONTEXT

### 1. Regulatory authority establishment, mandate, and powers

The national regulatory authority of Montenegro is the Agency for Electronic Media of Montenegro, established by the Law on Electronic Media. AEM ME's competencies are:

- drafting of audiovisual media services Development Programme;
- approving the draft radio frequency allocation plan;
- issuance of broadcasting and on-demand audiovisual media services licences;
- determination of licence fees;
- keeping a register of AVM service providers and electronic publications;
- deciding as per complaints regarding the operation of AVM service providers;
- overseeing the implementation of the law;
- adoption and implementation of secondary legislation accompanying the law;
- performing other tasks.

AEM ME's Director is the first instance body, while AEM ME's Council acts as an appellate body. An administrative dispute procedure can be initiated before the Administrative Court of Montenegro. The procedure can be initiated before the Constitutional Court of Montenegro against any rulebook or other general by-laws regulating the work of the audiovisual media service providers.

Website: [www.aemcg.org](http://www.aemcg.org)



All decisions related to the complaints' procedures or ex officio procedures about the licences' conditions' breaches are published on the website. Additionally, all annual financial and operational plans and reports as well as annual audit reports are published on the website.

## **2. Legislation related to media pluralism**

### **a) Law on electronic media**

#### **Types of broadcasters**

##### **Article 70**

- (1) By being granted a broadcasting licence, a legal or a natural person acquires the status of a broadcaster.
- (2) A broadcaster may produce and transmit radio and/or television programmes as:
  - 1) a commercial broadcaster;
  - 2) a non-profit broadcaster;
  - 3) a public broadcaster.

#### **Commercial broadcaster**

##### **Article 71**

A commercial broadcaster may produce and broadcast radio and/or television programmes as:

- 1) a national commercial broadcaster covering at least 75% of the population in more than 10 local self-government units (national coverage or commercial broadcaster network);
- 2) a regional commercial broadcaster if covering at least 80% of the population within the territory covering between four and 10 local self-government units (regional coverage or commercial broadcaster network);
- 3) a local commercial broadcaster if covering at least 85% of the population within the territory covering less than four local self-government units (local coverage or commercial broadcaster network).

#### **Non-profit broadcaster**

##### **Article 72**

- (1) The status of a non-profit broadcaster, as defined by this Law, shall be determined by the Council on the occasion of granting the broadcasting licence.
- (2) The provisions of Articles 98 to 115 herein shall apply *mutatis mutandis* to the procedure of granting or revoking broadcasting licences to non-profit broadcasters.
- (3) Non-profit broadcasters may only be educational establishments, religious, student, and non-governmental organisations registered at least three years before applying for acquiring the status of a non-profit broadcaster.
- (4) A non-profit broadcaster is a broadcaster who daily transmits 50% of its own production on news, cultural, educational, and entertainment programmes, with at least 25% of the daily production serving the informational, educational, scientific, professional, artistic, cultural and other needs of the public.

(5) The provisions of this Law referring to programme obligations of public broadcasters shall apply to non-profit broadcasters.

(6) The funds for the operation of non-profit broadcasters may be raised from donations, contributions of citizens, sponsorships, and other sources of revenues, in accordance with a special law governing the establishment and operation of non-governmental organisations.

(7) Non-profit broadcasters are exempted from payment of the broadcasting licence fee.

(8) A non-profit broadcaster may use profits from radio ad/or television programme production and transmission solely to improve and develop its own activity.

### **Public broadcaster**

#### **Article 73**

(1) A public broadcaster may be:

- 1) a national public broadcaster, founded by the state;
- 2) a regional public broadcaster, founded by several local self-government units;
- 3) a local public broadcaster, founded by a local self-government unit.

(2) National public broadcasters are obliged to ensure good quality reception of radio and television programmes for at least 85% of Montenegro's population (national coverage by a public broadcaster).

(3) Regional public broadcasters are obliged to ensure good quality reception of radio and television programmes for at least 80% of the population of each local self-government unit within whose territory the programme is broadcast (regional coverage by a public broadcaster).

(4) Local public broadcasters are obliged to ensure good quality reception of radio or television programmes for at least 85% of the population of the local self-government unit within whose territory the programme is broadcast (local coverage by a public broadcaster).

## **VIII. PROTECTION OF ELECTRONIC MEDIA PLURALISM AND DIVERSITY**

### **Ownership transparency among AVM's service providers**

#### **Article 129**

(1) An AVM service provider is obliged, by 31 December of the current year, to provide to AEM, the data on natural and legal persons (name, head office/residence) that in the course of the year have directly or indirectly become holders of share or a stake in the given AVM's service provider, giving details of the actual percentage of such a share or stake.

(2) An AVM's service provider is obliged, by 31 December of the current year, to provide to AEM the data on:

- 1) their own ownership stake in other legal entities providing AVM services;
- 2) more than 10% share held by its owners in other legal entities providing AVM services.

(3) AEM is obliged to publish the data from paragraphs 1 and 2 above in the Official Gazette of Montenegro.

(4) Data on share and stakeholders up to 1% of capital value shall be published collectively.

## **Related persons**

### **Article 130**

(1) Related persons, within the meaning of this Law, shall be the persons mutually linked by management, capital or in some other way which enables them to jointly set a business policy to operate in accord with the intention of attaining shared goals, or so that one person has the ability to guide another or to substantially affect their financial and business decisions, or decisions on the programme base of electronic media.

(2) Related persons, within the meaning of this Law, shall be:

- 1) closer family members (parents, children, siblings, adoptive parents, and children);
- 2) persons related by marriage or common-law marriage;
- 3) in-laws as close family members of the spouse;
- 4) holders of a stake or share in the business or other titles that give them the right to participate in the management of another entity with at least 20% of voting rights;
- 5) the same person who holds a stake or share in the business or other titles that give them the right to participate in the management of another entity with at least 20% of voting rights in both legal entities;
- 6) through a marketing or other agreement, when over three months or longer within one year, they receive over 30% of advertising revenues;
- 7) by being members of management bodies of a legal entity in which they perform this function, and persons deemed as related persons with members of management bodies of that legal entity in the manner envisaged by this paragraph.

## **Existence of media concentration**

### **Article 131**

(1) Media concentration shall exist when a broadcaster:

- 1) has a share in the founding capital of another broadcaster, a legal entity publishing a daily newspaper or a legal person performing the activity of an information agency or vice versa;
- 2) concurrently holds several broadcasting licences;
- 3) concurrently broadcasts a radio and a television programme;
- 4) concurrently broadcasts a radio and/or television programme and publishes daily newspapers which are distributed within the area of the said radio and/or television programme coverage;
- 5) concurrently broadcasts a radio and/or television programme and pursues the activity of news agencies.

(2) Media concentration shall also exist when a broadcaster's founders are natural or legal persons who are at the same time:

- 1) founders of another broadcaster;
- 2) founders of a legal person publishing a daily printed media within the area of radio or television programme coverage;

- 3) founders of an information agency;
- 4) spouses and common law spouses up to the second degree in the direct or side line of natural persons referred to in paragraph 2 items 1, 2 and 3 above.

(3) A broadcaster holding several licences for provision of AVM services is obliged to keep separate accounting in compliance with the law governing accounting practices.

### **Unlawful media concentration**

#### **Article 132**

Unlawful media concentration shall exist when a broadcaster:

- 1) holding a licence for national coverage broadcasting:
  - holds a stake in the founding capital of another broadcaster with an identical licence of more than 25% share of capital or voting rights,
  - holds more than a 10% stake in the founding capital of a legal entity publishing daily print media with its circulation exceeding 3,000 copies or vice versa,
  - holds more than a 10% stake in the founding capital of a legal entity performing the activity of a news agency and vice versa,
  - concurrently publishes the daily print media with its circulation exceeding 3,000 copies;
- 2) except for the national public broadcaster, broadcasts in the same coverage zone more than one television and one radio programme with the same or similar programme structure;
- 3) radio or television programme licenced for broadcasting with local or regional coverage:
  - holds more than 30% stake in the founding capital of another broadcaster with regional or local coverage over the same area;
  - concurrently, over the same or in neighbouring areas, publishes local print media daily.

### **Special cases of unlawful media concentration**

#### **Article 133**

It shall be deemed that unlawful media concentration exists even when, in cases from Article 132 of this Law, a natural person who is a founder of a broadcaster or a person who is a relative in direct line (up to the second degree) or a spouse holds a stake in the founding capital of another broadcaster or founder of a daily print media or news agency.

### **Granting licences and unlawful media concentration**

#### **Article 134**

(1) AEM shall not grant a broadcasting licence if it is established that its granting would lead to unlawful media concentration within the meaning of this Law.

(2) An applicant for a broadcasting licence is obliged, together with the application to the public competition for granting broadcasting rights or the request for granting a broadcasting licence, to submit a certified statement that no unlawful media concentration would occur with possible granting of the licence.

(3) Should AEM establish that, following the granting of a broadcasting licence, unlawful media concentration occurred, it would order the broadcaster, not later than within three months from establishing such a fact, to rectify the irregularities regarding unlawful media concentration.

(4) Should a broadcaster, through no justifiable reason, fail to act in accordance with paragraph 3 above, AEM shall revoke that licence.

### **Changes in the ownership structure of broadcasters**

#### **Article 135**

(1) A broadcaster is obliged to notify AEM in writing of any changes in its ownership structure.

(2) A broadcaster shall procure the prior written approval of the Council for any change in ownership structure exceeding a 10% share.

(3) A domestic legal person having as its founders also foreign legal persons incorporated in countries in which it is not possible to establish the origin of the founding capital shall not be eligible as a licence holder.

(4) Should it be established, following the granting of a licence, that one of the co-owners of the broadcaster is a foreign legal person as described in paragraph 3 above, the licence shall be revoked.

### **Fostering media pluralism**

#### **Article 136**

(1) In order to foster media pluralism, through commercial broadcaster production and preservation of the diversity of electronic media in Montenegro, funds shall be provided from a share of games of chance revenues in the amount and in the manner laid down by a separate law governing games of chance.

(2) The funds from paragraph 1 above shall be used to foster the production of commercial TV broadcasters and non-profit broadcasters<sup>35</sup>, which are particularly significant for:

- 1) members of minority nations and other minority communities in Montenegro;
- 2) promotion, prevention, and combating all forms of discrimination;
- 3) fostering and promotion of social integration of persons with disabilities;
- 4) fostering AVM's service providers to make their services gradually accessible to persons with a hearing or visual disability;
- 5) promotion on the preservation of nature, environment, and health;
- 6) fostering the culture of public dialogue;
- 7) fostering cultural creation;
- 8) development of education, science, and arts;
- 9) preservation of Montenegrin national and cultural identity;
- 10) fostering and promotion of human rights exercise and safeguarding;
- 11) raising awareness of gender equality.

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35 This is the current provision. The original one from 2010, prescribed that only commercial broadcasters (Radio and TV) were eligible for the fund. The amendment was adopted in parallel with the adoption of the scheme that created a separate fund for support to commercial radio broadcasters (according to the Law on Road Traffic Safety).

## Criteria for awarding funds

### Article 137

(1) The criteria for awarding funds from Article 136 of this Law shall be the following:

- 1) the complexity of programme production (professional standards adhered to, author and editor creativity, meeting the technical requirement, use of human and technical resources);
- 2) the programme importance with a view to attaining the goals from Article 136 herein;
- 3) the programme economy and durability.

(2) The funds from Article 136 of this Law shall not be awarded for:

- 1) retransmission of other stations' programmes;
- 2) purchased programmes;
- 3) reruns of own production;
- 4) programmes of own production for which broadcasters have provided coverage of costs from own revenues, donations, sponsorship or grants by domestic and foreign institutions;
- 5) programmes already co-financed on any grounds from the Budget of Montenegro or budgets of local self-government units.

(3) By way of derogation from paragraph 2 above, investigative, review, or documentary programmes partly co-financed by another institution or organisation shall be treated as co-production.

## *b) Law on Media*

### Article 11

The imprint shall contain the name of the medium, e-mail address of the medium or website, name of the editor-in-chief of the medium, name, and registered office/residence of the founder and TIN of the medium's founder.

In addition to the data referred to in paragraph 1 of this Article, the imprint of a print medium shall contain the date of issue and the number of printed copies.

The imprint shall be visible, easily recognisable and always available.

Media founders shall provide a straightforward, direct and permanent access to data on legal and natural persons that hold, either directly or indirectly, more than 5% share in the founding capital of the medium, data on their related parties within the meaning of the law governing audiovisual media services and data on other media founders in which these persons hold more than 5% share in the founding capital.

The data referred to in paragraph 4 of this Article shall be: business name/name, registered office and tax identification number of the legal entity, personal name of the natural person, as well as their individual percentage share in management rights.

The public sector may not advertise in the media that have not published the data referred to in paragraphs 1 and 4 of this Article.

### III. TRANSPARENCY OF MEDIA FUNDING OUT OF PUBLIC REVENUES

#### Article 13

The Ministry shall keep records of financial resources allocated to the media out of public revenues.

The records referred to in paragraph 1 of this Article shall contain:

- 1) data on the amount of financial resources allocated to the media for the provision of public services in accordance with this Law;
- 2) data on the amount of financial resources received from the public sector, defined by the law governing budget and fiscal responsibility (hereinafter referred to as the: “public sector”);

The data referred to in paragraph 2, item 1 of this Article shall be submitted by the body that allocates financial resources for the provision of public services.

The data referred to in paragraph 2, item 2 of this Article shall be submitted by media founders.

The body that allocates financial resources for the provision of public services shall submit the data referred to in paragraph 2, item 1 of this Article to the Ministry within 30 days from the date of allocation of such financial resources.

Media founders shall report the data referred to in paragraph 2, item 2 of this Article to the Ministry within 30 days from the day of receiving those financial resources.

The records referred to in paragraph 2 of this Article shall be kept in a form published on the website of the Ministry.

The Ministry shall publish on its website, in the form of an annual report, the total appropriated financial resources of the public sector allocated to the media, ending with June 1 of the current year for the previous year.

#### Article 14

Public sector bodies shall publish on their website, by March 31 of the current year for the previous year, records of payments to the media for advertising and other contracted services.

The records referred to in paragraph 1 of this Article shall also include financial resources sent through intermediary agencies. That paragraph provides that the grounds for payment for advertising shall be separated from other contracted services paid to the media.

Notwithstanding paragraph 1 of this Article, bodies of local self-government units and legal entities founded by local self-government units shall submit to the Chief Administrator records of total payments to the media for advertising and other contracted services by March 31 of the current year.

The records referred to in paragraph 3 of this Article shall be published by the Chief Administrator on the website of the local self-government unit.

Records referred to in paragraphs 1 and 3 of this Article shall be kept in a form published on the website of the Ministry.

The advertising procedure referred to in paragraphs 1 and 3 of this Article shall be subject to the provisions of the law governing public procurement.

#### **Article 15**

Public sector bodies shall submit the records of payments to the media for advertising and other contracted services to the Ministry within 15 days from the day of publishing the records in accordance with Article 14 of this Law.

The Ministry shall publish on its website, in the form of an annual report, the total appropriations of the public sector for advertising and other contracted services, ending with June 1 of the current year for the previous year.

#### **Article 16**

Media founders shall keep records of payments made by public sector bodies for advertising and other contracted services.

The records referred to in paragraph 1 of this Article shall also include financial resources, sent through intermediary agencies, for services at the request of public sector bodies.

Media founders shall submit the records referred to in paragraph 1 of this Article to the Ministry no later than March 31 of the current year, for the previous year.

The records referred to in paragraph 1 of this Article shall be kept in a form published on the website of the Ministry.

### **IV. MEDIA PLURALISM AND DIVERSITY PROMOTION FUND**

#### **Article 17**

The state shall fund projects in the field of information from the budget of Montenegro, by providing financial resources for the provision of public services through the Media Pluralism and Diversity Promotion Fund (hereinafter referred to as: "the Fund").

The state may provide part of the financial resources from the budget of Montenegro with a view to providing public services, for the purpose of exercising rights guaranteed by the Constitution and law for:

- 1) non-commercial content of public interest, in the languages of national minorities and other minority ethnic groups; and
- 2) non-commercial content of public interest in non-profit print media.

The financial resources referred to in paragraph 2, item 2 of this Article shall be allocated pursuant to the modality, under the conditions and in accordance with the criteria prescribed in an act of the Ministry.

Financial resources shall be provided in an independent and transparent manner, with guarantees of editorial, programme and institutional autonomy.

#### **Article 18**

At least 0.09% of the financial resources of the Fund shall derive from the current budget of Montenegro fixed by the annual budget law.

Financial resources referred to in paragraph 1 of this Article shall be allocated by:

- 1) 60% of financial resources by the Council of the regulatory authority for audiovisual media services, to be directed to the sub-fund for commercial and non-profit media; and
- 2) 40% of financial resources by an independent commission formed by the Ministry, to be directed to the sub-fund for daily and weekly print media and online publications.



Financial resources intended for the sub-funds referred to in paragraph 2 of this Article shall be paid to separate current accounts of the bodies in charge of allocation and shall pertain:

- 1) 95% to sub-funds; and
- 2) 5% for operating costs of the bodies in charge of allocating financial resources: to the Ministry and the regulatory authority for audiovisual media services.

#### **Article 19**

A total of 5% of financial resources shall be allocated annually from each of the sub-funds, referred to in Article 18, paragraph 2 of this Law, for the operating costs of various self-regulatory mechanisms.

Self-regulatory organisations shall apply once a year to have their operating costs necessary for their business activities covered.

An application may be submitted by a self-regulatory organisation that meets the following conditions:

- 1) it was established at least three years before the submission of the application; and
- 2) founders of the media over which the self-regulatory organisation has been established meet the conditions referred to in Article 21 of this Law.

The application shall be submitted to the body in charge of allocating financial resources from the sub-fund when that body announces the public competition referred to in Article 21, paragraph 1 of this Law.

The self-regulatory organisation of the national public broadcaster Radio and Television of Montenegro shall not be funded out of the Fund's resources.

#### **Article 20**

Financial resources from the Fund shall be used to promote media pluralism, and in particular to produce and publish content that is relevant to:

- 1) promotion of cultural diversity, preservation of the tradition and identity of Montenegro;
- 2) European integration of Montenegro;
- 3) current social, political, and economic topics;
- 4) science, culture, arts, and education;
- 5) protecting the rights and dignity of national minorities and other minority ethnic groups against discrimination, stereotypes, and prejudices;
- 6) children, sports and youth;
- 7) environmental protection, sustainable development, and tourism;
- 8) promotion of health and healthy lifestyles;
- 9) promotion of agriculture and tourism;
- 10) promotion of entrepreneurship;
- 11) consumer protection;
- 12) fight against corruption;

- 13) fight against addiction;
- 14) social integration of vulnerable groups (persons with disabilities, unemployed persons, third-age people, single parents, victims of domestic violence, and others);
- 15) development of civil society and volunteerism; and
- 16) promotion of media literacy and media professionalism.

Financial resources from the Fund may not be allocated for projects funded by donations, sponsorships, or grants from domestic and foreign institutions.

#### **Article 21**

The Council of the regulatory authority for audiovisual media services and the independent commission referred to in Article 18, paragraph 2, item 2 of this Law, shall allocate financial resources from the Fund, once a year, based on a public competition.

Founders of commercial, print media, audiovisual media service or non-profit media and online publications who meet the following conditions may apply to the competition referred to in paragraph 1 of this Article:

- 1) media founders have published data on the ownership structure, in accordance with Article 11, paras. 1, 2 and 4 of this Law;
- 2) media founders have submitted data on the share of funding from the budget of Montenegro or the budget of local self-government units, i.e., from legal entities that are state-owned or which are entirely or majority funded out of public revenues (advertising, grants, loans, subsidies, and others), in the structure of revenues in the year preceding the year in which the competition is announced, pursuant to Art. 13 and 16 of this Law;
- 3) the medium has settled its financial liabilities due for taxes, social security contributions, and fees for broadcasting radio or television programme by the deadline for submitting an application to the public competition;
- 4) media founders are not undergoing bankruptcy or liquidation;
- 5) media founders have not had their account frozen within a Council of Europe collection procedure;
- 6) the medium's broadcasting licence has not been temporarily revoked; and
- 7) the medium did not misuse previously allocated financial resources from the Fund.

#### **Article 22**

The Ministry and the regulatory authority for audiovisual media services shall adopt acts defining the rights and obligations to provide public services for which financial resources are received from the Fund.

The acts, referred to in paragraph 1 of this Article, shall contain the criteria and procedure for allocating financial resources from a particular sub-fund, the mode of using such financial resources, as well as the maximum amount of financial resources that can be allocated from the Fund to a medium in the course of a year.

Financial resources shall be allocated for a clearly defined purpose, without discrimination and based on pre-defined, clear, objective, and transparent criteria and scoring methodology.

The Ministry and the regulatory authority for audiovisual media services shall keep records of allocated financial resources for the provision of public services and publish a report on the allocation of financial resources on their website within 30 days of the allocation of financial resources.

#### **Article 23**

The beneficiary of the Fund's resources shall submit a detailed written report on the project implementation to the body in charge of allocating the financial resources, within 30 days from the day of the project completion.

The beneficiary of the Fund's resources shall keep separate accounting for the provision of public services from the provision of commercial audiovisual services.

The amount of financial resources for the provision of public services may not exceed the net costs necessary to provide those services, taking into account other direct or indirect revenues arising from the provision of such services.

In determining the net cost of providing public services, the net benefits of all commercial audiovisual services related to those services shall be taken into account.

If the beneficiary of the Fund's resources uses the allocated financial resources contrary to the purpose for which they were allocated or if the amount of allocated financial resources exceeds the amount of financial resources necessary for the provision of public services, the Fund shall order that unlawfully spent financial resources be repaid and that they be used exclusively for public service activities, in accordance with this Law.

Unlawfully spent financial resources shall be repaid by way of payment into the Fund's account.

### ***c) Law on traffic safety***

#### **Article 270**

The vehicle can be registered if it possesses:

...

5a) proof of paid tax for a vehicle radio set.

#### **Article 270a**

Every owner of vehicles in Montenegro that has a radio set installed is obliged to pay the tax of 2 EUR during the registration of the vehicle. This tax is payable to the account of the Agency and belongs:

- 95% to the Agency's fund for aid to commercial broadcasters;
- 5% to the Agency.

## **6. MACEDONIAN LEGAL AND INSTITUTIONAL CONTEXT**

### **1. Regulatory authority establishment, mandate, and powers**

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The regulatory authority is the Agency for Audio and Audiovisual Media Services (AVMU), established by the Law on Audio and Audiovisual Media Services. AVMU competencies are:

- ensuring transparency of broadcasters;
- promoting freedom of expression; protection and development of pluralism in the audio and audiovisual media services;
- encouraging and supporting the existence of diverse and independent audio and audiovisual media services;
- undertaking measures in cases of violation of relevant law, by-laws and licence conditions;
- ensuring the protection of minors; adoption of sub-legislation; protection of citizen's interests in the audio and audiovisual media services;
- determining illegal media concentration; awarding, revoking, or extending licences for television or radio broadcasting; undertaking measures for temporary termination of transmission and reception of audio and audiovisual media services from third countries;
- adopting a list of major events; encouraging media literacy;
- performing program, administrative and expert supervision;
- maintaining the registries of TV, radio, press, and AV media services on demand;
- conducting research and analysis related to issues concerning the audio and audiovisual media services; conducting the measuring of the viewers and listeners of the programme services.

The decisions adopted in cases of violation of the provisions of law, licence conditions, registration certificate, by-laws, and other Agency acts are final. These decisions may be subject to an administrative dispute before a competent court.

AVMU is legally obliged to publish all reports from the monitoring and its measures on the website (since 2014). The annual report is also published each year. Besides that, the analyses of the measures undertaken and the repetitious violations, as well as the analyses of second-instance legal proceedings are regularly published on the website.

## **2. Legislation related to media pluralism**

### ***a) Law on Audio And Audiovisual Media Services***

#### **Article 34 – Prohibition of undisclosed partners**

A broadcaster's ownership may not include any undisclosed partners, which means that an undisclosed partner may not participate in a broadcaster's ownership by means of monetary or non-monetary capital contribution.

#### **Article 35 – Participation on the part of a foreign natural or legal person**

A foreign natural or legal person may found or take part in the ownership of a domestic broadcaster under the same terms that apply to domestic natural persons or legal entities, defined by this Law.

A domestic legal person, the founders of which are foreign persons, registered in countries where (in accordance with those countries' legislation) it is not permitted or is not possible to establish the origin of the initial capital, may not perform broadcasting activities, pursuant to this Law, nor may it acquire a portion of a broadcaster's ownership.

If subsequently, one of a broadcaster's founders is found to be a legal person, described under Paragraph (2) of this Article, the provisions of Article 43 of this Law shall be implemented accordingly.

#### **Article 36 – Related persons**

(1) Related persons, within the meaning of this Law, are persons who are mutually connected through management, capital, or in other ways. These persons, owing to this connection, may jointly create the business policy (i.e., act in a coordinated fashion to achieve common goals, or when one person has an opportunity to direct or exert significant influence over another person when deciding about the financing), business operations, or the programming concept of a broadcaster.

(2) The persons considered as related persons, as defined in Paragraph (1) of this Article, are the following:

- family members;
- members of the immediate family of a spouse or an unmarried partner;
- persons who, as holders of the total share of ownership, shares or other rights within another entity, take part in the management of the latter, holding at least 25% of the voting rights;
- the entities within which one and the same person holds the total share of ownership, shares, or other rights, on the basis of which they participate in the management of each of these entities with at least 25% of the voting rights;
- related companies, within the meaning used in the Law on Trade Companies;
- persons who, based on a marketing or another [type of] contract, have generated more than 30% of the revenues through advertising, teleshopping or sponsorship during a three-month or a longer period of time within a year, and;
- members of a broadcaster's managing or supervisory board, and the persons that are considered related to the members of the managing or supervisory board in a manner defined by this Article.

#### **Article 37 – Limitations on an acquisition of ownership**

(1) A natural or legal person that is the majority partner or majority shareholder within a broadcasting entity which holds a licence for television broadcasting at the national level, as well as any person related to a partner or shareholder within a broadcaster that holds a licence for television broadcasting at the national level, may appear as a partner or shareholder (i.e., participate in the ownership) of only one more broadcaster that holds a licence for television broadcasting at the national level. Yet, the person may not exceed 50% of the core capital of that broadcaster or 50% of the decision-making rights.

(2) A natural or legal person that is the majority partner or majority shareholder within a broadcasting entity which holds a licence for television broadcasting at the national level, as well as any person related to a partner or shareholder within a broadcaster that holds a licence for television broadcasting at the national level, may appear as the majority partner or majority shareholder (i.e., participate in the ownership) of a maximum of one more broadcaster that holds a licence to perform television broadcasting activity at a regional level. It must be ensured that the areas at the regional level are non-adjacent, and within the ownership of not more than two other broadcasters

that hold licences for television broadcasting at the local level, provided that these local-level regions do not share a common border.

(3) A natural or legal person that is the majority partner or majority shareholder within a broadcaster that holds a licence for television broadcasting at the regional level, as well as any person related to a partner or shareholder within a broadcaster that holds a licence for television broadcasting at the regional level, may appear as the majority partner or majority shareholder (i.e., participate in the ownership) of only one more broadcaster that holds a licence to perform television broadcasting activity at the regional level. It must be ensured that the areas of the two are not adjacent, and within a maximum of two more broadcasters that hold licences for television broadcasting at the local level, provided that the two local-level areas do not share a common border.

(4) A natural or legal person that is the majority partner or majority shareholder within a broadcasting entity that holds a licence for television broadcasting at the local level, as well as any person related to a partner or shareholder within a broadcaster that holds a licence for television broadcasting at the local level, may appear as majority partner or majority shareholder within no more than two other broadcasters which hold licences for television broadcasting at the local level, provided that the local-level areas they cover do not share a common border.

(5) A natural or legal person that is the majority partner or majority shareholder within a broadcasting entity, or a person related to a partner or shareholder within a broadcaster, may not found or appear as a partner or shareholder, i.e., participate in the ownership, of a print media publisher that issues a daily newspaper, a news agency, an advertising and propaganda company, a company doing market research and public opinion surveys, a company for distribution of audiovisual works, a film production company or an operator of an electronic communications network that provides retransmission or broadcasting of radio/television programmes.

(6) The provisions laid down in paragraphs (1), (2), (3) and (4) of this Article shall apply accordingly to both natural and legal persons that are majority partners or majority shareholders within a broadcasting entity that holds a radio broadcasting licence.

#### **Article 38 – Specific prohibition of ownership acquisition**

Political parties, state organs, state administration bodies, public enterprises, local self-government units, holders of public offices, and members of their families, may not pursue a broadcasting activity, nor appear as founders or co-founders, or take part in the ownership of any broadcasting entity.

#### **Article 39 – Illicit media concentration**

(1) Illicit media concentration, within the meaning of this Law, exists when natural persons or legal entities that are founders of a broadcaster, here also including natural persons who hold offices within the broadcaster's management, simultaneously appear as:

- related persons within the meaning of the provisions of this Law;
- founders of other broadcasters, contrary to the provisions of Article 37, Paragraphs (1), (2), (3) and (4), of this Law;
- founders of a printed media publisher issuing a daily newspaper that is distributed on the territory where the radio and/or television programme is being broadcasted;
- founders of a news agency, and;

- founders of an advertising and propaganda company, a company doing market research and public opinion surveys, a company for distribution of audiovisual works, a film production company, or an operator of an electronic communications network that provides retransmission or broadcasting of radio/television programmes.
- (2) Illicit media concentration within the meaning of this Law exists if a broadcaster:
- participates in the initial capital of another broadcaster, contrary to the provisions of Article 37 of this Law;
  - participates in the initial capital of a print media publisher that issues a daily newspaper, or of a news agency;
  - participates in the initial capital of an advertising and propaganda company;
  - participates in the initial capital of a company conducting market research and public opinion surveys;
  - participates in the initial capital of a company that distributes audiovisual works or a film production company;
  - participates in the initial capital of an operator of an electronic communications network that provides broadcasting and retransmission of radio/television programmes;
  - simultaneously broadcasts radio and television programme, here excluding the Public Broadcasting Service;
  - broadcasts radio or television programmes and at the same time publishes a daily newspaper that is distributed on the same territory where the radio or television programme is being broadcasted;
  - broadcasts radio or television programmes and performs the activities of a news agency, an advertising and propaganda company, a company doing market research and public opinion surveys, a company that distributes audiovisual works, a film production company, or an operator of an electronic communications network that provides retransmission or broadcasting of radio or television programmes.

#### **Article 40 – Establishing the existence of illicit media concentration**

(1) Under this Law, the Agency shall be the authority that establishes the existence of illicit media concentration and the presence of a violation of the prohibitions referred to in Articles 34, 35, Paragraph (2), or Article 38 of this Law.

(2) In the course of the procedure for establishing the existence of illicit media concentration and violation of the prohibitions laid down in Articles 34, 35, Paragraph (2), or Article 38 of this Law, the provisions of the Law on General Administrative Procedure shall apply, unless specified otherwise by this Law.

#### **Article 41 – Prior notification on changes to the ownership structure**

(1) Prior to the implementation of any changes to the ownership structure, the broadcaster shall be obligated to inform the Agency accordingly.

(2) The broadcaster may not implement any change to its ownership structure before this change is approved by the Agency, or before the final completion of the administrative dispute as mentioned in paragraph (9) of this Article.

(3) The Agency shall be obliged to examine, within 30 days from the day of receipt of the notification referred to in Paragraph (1) of this Article, whether the proposed changes to the ownership structure would create illicit media concentration within the meaning of this Law, that is, examine whether the proposed changes to the ownership structure violate the prohibitions laid down in Articles 34, 35 Paragraph (2), or Article 38 of this Law. In so doing, the Agency shall be obliged to cooperate and exchange information with certain state bodies and authorities, in accordance with this Law.

(4) The Agency may extend the deadline set in Paragraph (3) of this Article for justified reasons. However, it may do so only once and for no more than 30 days and must inform the broadcaster thereof in writing at least three days prior to the expiration of the deadline set in Paragraph (3) of this Article.

(5) In order to examine the notification referred to in Paragraph (1) of this Article, the broadcaster shall be obliged, upon the Agency's written request, to submit data relevant to the decision-making process.

(6) Provided that, within the deadlines set in accordance with Paragraphs (3) and (4) of this Article, it is established that the proposed changes to the ownership structure would not create any illicit media concentration within the meaning of this Law (i.e., that the said changes are not contrary to the prohibitions laid down in Article 34, Article 35 Paragraph (2), or Article 38 of this Law). The Agency shall adopt a decision, within the deadlines set in Paragraphs (3) and (4) of this Article, permitting implementation of the change to the ownership structure.

(7) In case it is established, within the deadlines set in accordance with Paragraphs (3) and (4) of this Article, the proposed changes to the ownership structure would create an illicit media concentration within the meaning of this Law, i.e., that the said changes are contrary to the prohibitions laid down in Article 34, Article 35 Paragraph (2), or Article 38 of this Law. The Agency shall, within the deadlines set in Paragraphs (3) and (4) of this Article, adopt a decision prohibiting the implementation of the change to the ownership structure.

(8) The decision referred to in Paragraph (7) of this Article must contain the reasons for which the Agency prohibits the implementation of the change into the ownership structure.

(9) In case the Agency does not adopt a decision within the deadlines set in Paragraphs (3) and (4) of this Article, it shall be considered that the implementation of the change to the ownership structure has been approved.

(10) The deadlines, set by Paragraphs (3) and (4) of this Article, shall start to be counted from the date the broadcaster has submitted to the Agency all data, defined by the Act referred to in Paragraph (11) of this Article.

(11) The Agency shall prescribe the form and content of the notification referred to in Paragraph (1) of this Article, as well as the required documentation that needs to be submitted along with the notification, through a separate Act.

#### **Article 42 – Annulment of a decision permitting implementation of changes to the ownership structure**

(1) The Agency shall cancel the Decision permitting the implementation of changes to the ownership structure, by means of a new decision, if the former decision has been adopted on the grounds of inaccurate and/or incomplete data which are the broad-



caster's responsibility, or the same have been obtained through fraud and have had a decisive influence on the reaching of a positive decision.

(2) By means of the decision referred to in Paragraph (1) of this Article, the Agency shall:

- annul the decision whereby it has permitted the implementation of changes to the ownership structure;
- establish that the proposed changes to the ownership structure would create illicit media concentration, i.e., that the said changes are contrary to the prohibitions referred to in Article 34, Article 35 Paragraph (2), or Article 38 of this Law, and;
- impose on the broadcaster to harmonise its ownership structure, with the provisions of this Law, within a deadline not shorter than 30 days and not longer than 90 days from the day of receipt of the decision referred to in Paragraph (1) of this Article.

(3) The Agency may adopt a decision in accordance with Paragraph (1) of this Article, without being limited by the deadlines set in Article 41 of this Law.

(4) In case the broadcaster does not comply with the decision referred to in Paragraph (1) of this Article, the Agency shall revoke the broadcaster's television or radio broadcasting licence in accordance with the manner and procedure defined by this Law.

#### **Article 43 – Initiating an ex officio procedure for establishing illicit media concentration**

(1) Should the Agency become aware of any possible existence of illicit media concentration, based on its own findings or on data received from concerned parties (i.e., of any violation of the prohibitions referred to in Article 34, Article 35 Paragraph (2), or Article 38 of this Law), it shall inspect these findings ex officio without delay.

(2) When investigating the information referred to in Paragraph (1) of this Article, the Agency shall request the broadcaster to submit all relevant data for the Agency's deliberation, within a deadline not shorter than 15 days and not longer than 45 days.

(3) If, during the investigation of the findings referred to in Paragraph (1) of this Article, the Agency adopts a decision establishing the presence of illicit media concentration (i.e., violation of the prohibitions referred to in Article 34, Article 35 Paragraph (2), or Article 38 of this Law), it shall impose on the broadcaster to harmonise its ownership structure with the provisions of this Law, within a deadline not shorter than 30 days and not longer than 90 days.

(4) In case the broadcaster does not comply with the decision referred to in Paragraph (3) of this Article, the Agency shall revoke the broadcaster's television or radio broadcasting licence, following the manner and procedure defined by this Law.

### **b) Law on media<sup>36</sup>**

#### **Publicity of media publishers**

##### **Article 15**

The broadcasters shall be obliged to submit data, in a special form prescribed by the competent regulatory body, not later than the 31st of March in the current year, as follows:

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36 Amendments to this law are available at: [https://avmu.mk/wp-content/uploads/2017/05/Pre-vod\\_Zakon\\_za\\_mediumi\\_final.pdf](https://avmu.mk/wp-content/uploads/2017/05/Pre-vod_Zakon_za_mediumi_final.pdf).

- the ownership structure (i.e., data on the name and head office address of the legal persons or the name and place of residence of natural persons who possess shares or holdings of the media publisher, including the percentage of acquired shares or holdings and the date of acquisition thereof);
- data of the editor-in-chief/editors;
- data on sources of financing for the broadcaster in the previous year (advertisement, sponsorships, sales of content, services provided to third parties and similar);
- data on the total revenues and expenditures realised by the broadcaster in the previous year from the provision of its activities and;
- data on the average viewership or number of listeners of the broadcaster in the previous year.

(2) The publishers of a print medium shall be obliged to publish the data referred to in paragraph (1), items 1 of this Article, in at least one daily newspaper, once a year, not later than the 31st of March in the current year. They must also submit an excerpt of the announcement to the competent regulatory body within 15 days from the date of publication.

(3) The broadcasters shall be obliged to broadcast the data referred to in paragraph (1), items 1, 2, and 3 of this Article, on their own programme, at least three times a year, during prime-time slots. They must also submit a recording of the announcement to the competent regulatory body within 15 days from the date of broadcasting, in a manner prescribed by the regulatory body.

(4) The submission forms referred to in paragraph (1) of this Article shall be published on the website of the competent regulatory body.

(5) The broadcasters shall be obliged to submit to the competent regulatory body a written report on the implementation of the obligations defined in the radio or television broadcasting licence, and particularly on the implementation of the programme concept not later than the 31st of March in the current year. They shall also submit information, enclosed in the Report, on the technical means used for transmission or retransmission of their programme service in the country or abroad. The written report shall be submitted in the form prescribed by the competent regulatory body.

(6) The competent regulatory body will warn, in writing, the media publisher who has not complied with the obligations referred to in this Article. It will allow an additional timeframe, which may not be shorter than 45 days, during which the media publisher shall be obliged to comply with the obligations referred to in this Article. If the media publisher does not comply with the obligations referred to in this Article within the additional deadline, the competent regulatory body will revoke its licence for television or radio broadcasting.

(7) The media publisher shall be obliged to submit a copy of all its printed media to the National and University Library of the North Macedonia at no cost.

(8) The provisions set in this Article shall not apply to the Public Broadcasting Service.

## 7. SERBIAN LEGAL AND INSTITUTIONAL CONTEXT

### 1. Regulatory authority establishment, mandate, and powers

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The regulatory authority is the Regulatory Authority for Electronic media (REM), established by the Law on Electronic Media. REM competencies are:

- defining the proposal of a strategy for the development of the media service of radio and audiovisual media services, and forward it to the Government for approval;
- adoption of the Statute;
- issuance of general by-laws prescribed by the Act;
- issuance of licences for the provision of media service of television and radio linear media service;
- detailing the procedure, requirements and criteria for licencing in accordance with the provisions of the Law and prescription of the form and content of the licence;
- issuance of licences for the provision of media services upon request and specification of the procedure for issuing the licence;
- maintenance of the Register of media services and keeping a record of on-demand audiovisual media service providers;
- control of the operation of media service providers and insurance of consistent application of the provisions of the Law;
- imposition of measures on media service providers in accordance with the Law;
- prescription of rules that are binding for media service providers, especially those that ensure implementation of the strategy referred to at the beginning;
- deciding on charges in connection with the programming activities of media service providers;
- specification of logical channel numbering;
- providing its opinion to the competent state authorities in connection with the accession to international conventions related to the field of providing broadcasting services;
- initiation of the preparation and amendment of laws, regulations, and general acts for the effective performance of tasks within their scope of work;
- determination of specific rules relating to programme content about the protection of human dignity and other personal rights, protecting the rights of minors, the prohibition of hate speech, etc.;
- performing analysis of the relevant media market, in cooperation with the body responsible for the protection of competition in accordance with the methodology prescribed by an act passed by the Regulator;

- conducting research of the needs of the users of media services and protecting their interests;
- cooperation and coordination of work with the body in charge of electronic communications and the body responsible for the protection of competition, as well as other Regulatory bodies in accordance with the Law;
- encouragement of the preservation and protection of Serbian culture and language as well as the culture and languages of national minorities;
- promotion of improved access to media services for persons with disabilities;
- encouragement of the development of creativity in the field of radio, television, and other audiovisual media services;
- promotion of the development of professionalism and high level of education of employees in the electronic media in the Republic of Serbia, as well as improvement of the editorial independence and autonomy of providers of media services.

Sanctions at the disposal of REM include: notification, warning, a temporary ban on provision of programme content, i.e., suspension of licence due to breaches of programme standards and licence obligations. For expertise and administrative jobs within REM, there are REM expert departments, while the bodies of the Agency include the Council and the President of the Council.

An administrative dispute procedure can be initiated before the Administrative Court against any final decision of the REM Council adopted in cases of licence breach.

Website: [www.rem.rs](http://www.rem.rs)

All decisions of REM related to application procedures or ex officio procedures are published on the website.

REM's annual reports contain key data about the structure of the measures issued against the AVMS providers.

## **2. Legislation related to media pluralism**

### ***a) Law on electronic media***

#### **VI PROTECTION OF MEDIA PLURALISM**

##### **Establishing the existence of a violation of media pluralism**

##### **Article 103**

The violation of media pluralism envisaged by the provisions of the law governing public information and media (in the case of unifying the founding or the management rights of two or more publishers of electronic media, or cross acquisition of the share whose participant is at least one electronic medium) shall be determined by the Regulator, by the application of an interested party or ex officio.

If the Regulator determines the existence of violations of media pluralism, she/he shall warn the holder of the licence for the provision of media services and instruct them to, within six months from the date of receipt of the notice, submit evidence that his/her acts ended the practice which led to the violation of media pluralism.

The Regulator shall issue ex officio a warning referred to in paragraph 3 of this Article on its website, enter it in the Register of media services and notify the authority responsible for maintaining the Register of media.

If the holder of the licence for the provision of media services does not comply with the warning referred to in paragraph 2 of this Article, the Regulator shall revoke it in accordance with the provisions of this Law.

### **Issuing licences for the provision of media services and protection of media pluralism**

#### **Article 104**

The Regulator shall not issue a licence for the provision of media services if she/he determines that this would lead to the violation of media pluralism in terms of the law governing public information and media.

### **Report on change in the structure of share in the capital assets**

#### **Article 105**

In the case of any change in the ownership structure of the issued capital (changes of the founder or changes in the founder's participation in the capital), the holder of the licence for the provision of media services has to report to the Regulator in writing.

If the Regulator determines that the planned changes in the ownership structure of the capital assets could lead to the violation of media pluralism, she/he shall recommend to the holder of the licence for the provision of media services to coordinate changes in a way that would prevent this situation.

If the holder of the licence for the provision of media services does not act in accordance with the recommendation of the Regulator, which leads to cases of violating media pluralism foreseen by law, the Regulator shall revoke the licence in accordance with the provisions of this Law.

If the structure of the share in capital assets of the licence holder changes, the programme concept on the basis of which the licence was issued cannot be changed without the consent of the Regulator.

The Regulator shall specify the actions according to the reported changes in ownership structure.

### **Obligation of transfer as a measure to protect media pluralism**

#### **Article 106**

The Regulator periodically, at least once every three years, in the national, provincial, or specific geographic relevant market (in terms of regulations governing the protection of competition) shall establish a list of radio or television programmes that shall be transmitted by operators whose electronic communications network for distribution and broadcast media content is used by a significant number of end-users as the sole or primary method for receiving media content, in order to protect the public interest and media pluralism.

In compiling the list referred to in paragraph 1 of this Article, the Regulator shall observe the principle of proportionality and transparency, bearing in mind that the obligations prescribed for the Operator shall not be unreasonable.

Request for determination of the obligation of the broadcast, together with the list referred to in paragraph 1 of this Article, shall be submitted to the Regulatory body in charge of electronic communications.

## *b) Law on public information and media*

### **VII PROTECTION OF MEDIA PLURALISM**

#### **Prohibition of Violation of Media Pluralism**

##### **Article 45**

In order to prevent the occurrence or strengthening of a predominant influence in the public information sector – which considerably restricts media pluralism – it is forbidden to merge the following:

- Founding and management rights of two or more publishers of daily newspapers, publishing information on all areas of social life, whose total annual circulation exceeds 50% of sold or, in another way, realised newspaper's circulation on the territory of the Republic of Serbia in a calendar year preceding the year of merging;
- Founding or managerial rights of two or more publishers that provide audio and/or audiovisual services – if the ratings share of these publishers in the calendar year preceding the merger would, when combined, exceed 35% of the total combined ratings of all publishers that provide services within their zone of coverage in the same year.

Merging of founding and/or management rights means having a decisive influence on how the business is run in two or more publishers. This concerns especially the capacity of the controlling (parent) company or the controlling member or shareholder, based on the property or other ownership rights pertaining to a property or part thereof, on the rights stemming from a contract, an agreement, or securities, and based on claims or negotiable instruments or in accordance with business practice.

Paragraphs 1 and 2 of this Article are without prejudice to the provisions of the law governing the protection of competition.

##### **Article 46**

It is forbidden to acquire over 50% of shares in the authorised share capital between a publisher of a daily newspaper that publishes information on all areas of social life whose average realised circulation exceeds 50,000 copies a year, and a publisher that provides audio or audiovisual media services.

A person that, apart from its activity in media publishing, also deals with the distribution of media content shall be compelled to carry out their media publishing activities through an affiliated legal person.

Affiliated legal persons, within the meaning of this law, are those persons that are affiliated in such a way that one or more of them have the ability to define the influence on the management of operations on the other legal person or other legal persons. This influence especially arises from:

- 1) the role of the controlling (parent) company, i.e., controlling member or shareholder, independently or through joint activity, according to the rules on affiliated companies within the meaning of the law that governs the positions of companies;
- 2) ownership or other kinds of rights to the property or part of the property of another legal person;
- 3) a contract, an agreement, or ownership rights to securities;
- 4) accounts receivable, security means, or business practice terms whose holder is or are determined by a controlled person.

## **Identifying a Threat to Media Pluralism**

### **Article 47**

A threat to media pluralism in the case of printed media shall be identified by the ministry responsible for information, and if there is merging or cross-acquisition of shares, where at least one electronic medium is involved, the threat shall be identified by an independent regulatory body, in accordance with the law regulating electronic media.

The ministry responsible for information shall initiate the procedure referred to in paragraph 1 of this Article following a report of an interested party.

Where the ministry referred to in paragraph 2 of this Article, has established that media pluralism has been threatened, it shall notify the publisher about it and order proof of the actions taken in order to remove the causes of threat to media pluralism be submitted within six months of the day of receipt of the notification.

The ministry referred to in paragraph 2 of this Article, acting in an official capacity, shall inform the Registrar about the notification issued to the publisher.

If the publisher of a printed media fails to act in accordance with the notification referred to in paragraph 3 of this Article, the Registrar shall, following the decision of the ministry, delete the medium in question from the Register.

## **c) *Law on Protection of Competition***

This law applies to the media in the Republic of Serbia, as it applies to all companies registered in accordance with the Companies Act.

The provisions of the Law on Protection of Competition on the concentration of all companies, including the media, are as follows:

### **Obligation to report concentration**

#### **Article 61**

The concentration must be reported to the Commission in the case of:

- 1) The total annual revenue of all concentration participants generated on the international market in the preceding financial year exceeds 100 million EUR, provided that at least one concentration participant revenue generated on the market of the Republic of Serbia exceeds ten million EUR;
- 2) The total annual revenue of at least two concentration participants generated on the market of the Republic of Serbia exceeds 20 million EUR in the preceding financial year, provided that at least two concentration participants generated revenue on the market of the Republic of Serbia exceeds one million EUR per participant, in the same period;

Revenue generated by these undertakings in a reciprocal exchange shall not be added during the calculation of total annual revenue under Paragraph 1 of this Article.

Concentration implemented by means of a takeover bid, within the meaning of regulation governing takeover of joint-stock companies, must be reported even if conditions contained in Paragraph 1 of this Article are not fulfilled.

### **Investigation of concentration ex officio**

#### **Article 62**

Upon learning of the implemented concentration, the Commission may conduct an investigation of concentration if it finds that the combined market share of concentra-

tion participants on the market of the Republic of Serbia is at least 40%, i.e., reasonably assumes that the concentration fails to fulfil the conditions of permissibility from Article 19 hereof as well as in the case of other concentration not approved in accordance with this Law.

If during the reported concentrations proceeding, it is determined that the conditions for instituting investigation procedure ex officio are fulfilled under Paragraph 1 of this Article, the procedure shall be continued ex officio based on the conclusion enacted by the President of the Commission.

The Commission shall bear the burden of proving the existence of the market share and conditions contained in Paragraph 1 of this Article.

The Commission shall be obliged to enact a decision in concentrations proceeding within four months from the date of initiation of procedure ex officio.

*d) Rulebook on the procedure for issuing the approval for the act to transfer the licence for the provision of media services and the procedure pursuant to a notification of changes in the ownership structure, adopted by REM Council on 7 November 2015.*

## INTRODUCTORY PROVISION

### Article 1

This Rulebook regulates in detail the content of the request for the issuance of approval for the act to transfer the licence for the provision of media services (hereinafter: licence), the documents to be submitted with the request and the procedure by the Regulatory Authority for Electronic Media (hereinafter: Regulator) pursuant to the submitted request. It also regulates the content of the notification of the change in the ownership structure of equity capital, and the documents to be submitted with the notification and the procedure by the Regulator based on the submitted requests.

## II. PROCEDURE FOR ISSUING THE APPROVAL FOR THE ACT TO TRANSFER THE LICENCE

### 1. Licence transfer in case of status changes

#### Request for issuance of approval

### Article 2

A licence issued under a public competition is not transferable, except in cases of the status change of the licence holder, as prescribed by the law regulating the status of companies and under the condition that it does not lead to violation of media pluralism as prescribed by the regulation on public information and media.

The licence holder for the provision of media services (hereinafter: licence holder) shall file, directly or by mail, to the Regulator, the request for issuing the approval to the act for licence transfer.

If more than one licence holder is involved in the status change, they shall jointly submit the request from paragraph 2 of this Article.

#### The content of the request

### Article 3

The request for the approval of issuance shall state the type of status change that the licence holder intends to make, in which legal entities are involved in the status change, and where the legal entity would be the licence holder after the status change is made.



## **Documents to be submitted with the request**

### **Article 4**

The request for the approval of issuance shall attach the draft agreement on the status change, or a draft plan of the division if only one legal entity is involved in the status change.

If the procedure of status change involves also a legal entity who is not a licence holder, and who is not linked to any other licence holder, the document from paragraph 1 of this Article shall attach the following documents:

- 1) an excerpt from the registry maintained by the competent authority for the relevant legal entity;
- 2) a statement with data on the legal entity (name, seat, ownership structure, and the registration number) or the physical entity (name, residence, and unique personal identification number (JMBG) or passport number and name of the state issuing the passport in case of foreign nationals) who directly or indirectly, through other entities, has a stake (share, etc.) in the ownership structure of such entity, and data on the amount of such share, the accuracy of which is guaranteed by the applicant's signature;
- 3) evidence that the legal entity, who is to be the licence holder after the status change is made, will fulfil the technical and organisational requirements for programme production based on which the licence was issued, as well as the organisational-technical concept plan and the structure of human resources.

If the process of status change involves more than one licence holder or legal entity linked with another licence holder, along with the document from paragraph 1 of this Article, the following shall be submitted:

- 1) statement indicating the licence holder to which such legal entity is linked and in which manner;
- 2) statement by legal representatives of the applicant or applicants stating that the status change shall not result in a violation of media pluralism, according to Article 45, paragraph 1, item 2, and Article 46 of the Law on Public Information and Media ("The Official Gazette RS", No. 83/14 and 58/15), or that the data of the registered audience measurement surveyors in the zone of coverage during the calendar year preceding the merger the audience does not exceed 35% of the total audience in the zone of coverage.

The applicant shall also submit other documents requested by the Regulator in accordance with the law.

The applicant may also submit other documents if it believes that they could be relevant for the decision-making.

Documents submitted are original and certified copies.

Documents submitted in foreign languages shall be translated into the Serbian language and certified by a court interpreter.

## **Completeness of the request**

### **Article 5**

If the request is incomplete or contains inaccurate data, or if the documents attached to the request are incomplete, the Regulator shall allow the applicant an adequate deadline, which shall not extend beyond 30 days, to remedy the identified defects.

If the applicant fails to remedy the defects within the given deadline, the request shall be rejected in accordance with Article 58, paragraph 2, of the General Administrative Procedure Law (“The Official Gazette RS”, No. 33/97 and 31/01 and “The Official Gazette RS”, No. 30/10).

### **Protection of media pluralism**

#### **Article 6**

If the process of status change involves several licence holders or an entity linked with another licence holder, the Regulator shall, following the methodology prescribed by the law that it adopts, in line with Article 22, paragraph 1, item 16) of the Law on Electronic Media, determine whether the planned change in status could result in a situation which violates media pluralism.

### **Making a decision on the request**

#### **Article 7**

The Regulator shall, by its decision, reject the request if it has determined that the legal entity, which would be the licence holder after the status change, would not fulfil the requirements from Article 4, paragraph 2, item 3) of this Rulebook or if it determines that the status change would result in a situation violating media pluralism.

The Regulator shall issue its approval of the act for transfer of licence if it determines that the legal entity, which would be the licence holder after the status change, would fulfil the requirements from Article 4, paragraph 2, item 3) of this Rulebook or if it determines that the status change would not result in a situation violating media pluralism.

The decisions from paragraph 2 of this Article shall include an order to the legal entity, which the licence is transferred to through the status change, to submit the signed agreement on the status change, the plan of division, and the evidence that the status change has been carried out.

## **2. Transfer of the licence issued at the request.**

### **Request for approval**

#### **Article 8**

The licence issued at request can be transferred to another person only if that person accepts all the obligations resulting from the licence.

The licence holder shall submit, directly or by mail, to the Regulator, the request to issue the approval for licence transfer.

If the licence is transferred to a licence holder, the licence holders participating in the transfer shall jointly submit the request from paragraph 2 of this Article.

### **The content of the request**

#### **Article 9**

The request for the issuing of the approval shall state which legal entity would be the licence holder after the transfer is made.

### **Documents to be submitted with the request**

#### **Article 10**

The request for issuing the approval shall include the draft agreement on the licence transfer and a statement by the legal representative of the legal entity, which the licence is transferred to, that this entity accepts all obligations resulting from the licence.

If the licence is to be transferred to a legal entity which is not a licence holder nor linked to any licence holder, along with the documents from paragraph 1 of this Article, the following documents shall also be attached:

- 1) an excerpt from the registry maintained by the competent authority for the relevant legal entity;
- 2) a statement with data on the legal entity (name, seat, ownership structure, and the registration number) or the physical entity (name, residence, and unique personal identification number (JMBG) or passport number and name of the state issuing the passport in case of foreign nationals) who, directly or indirectly through other entities, has a stake (share, etc.) in the ownership structure of such entity, and data on the amount of such share, the accuracy of which is guaranteed by the applicant's signature;
- 3) evidence that the legal entity, who is to be the licence holder after the status change is made, will fulfil the technical and organisational requirements for programme production, based on which the licence was issued as well as the organisational-technical concept plan and the structure of human resources.

If the licence is to be transferred to a legal entity who is a licence holder or a legal entity which is linked to a licence holder according to the terms identified in paragraph 1 of this Article, the following documents shall also be attached:

- 1) statement indicating the licence holder to which such legal entity is linked and in which manner;
- 2) statement by legal representatives of the applicant or applicants stating that the licence transfer shall not result in a violation of media pluralism, according to Article 45, paragraph 1, item 2, and Article 46 of the Law on Public Information and Media ("The Official Gazette RS", No. 83/14 and 58/15), or that the data of the registered audience measurement surveyors in the zone of coverage during the calendar year preceding the merger the audience does not exceed 35% of the total audience in the zone of coverage.

The applicant filing in the request shall also submit other documents requested by the Regulator in accordance with the law.

The applicant may also submit other documents if it believes that they could be relevant for the decision-making.

Documents submitted are original and certified copies.

Documents submitted in foreign languages shall be translated into the Serbian language and certified by a court interpreter.

### **Assessing the completeness of the request**

#### **Article 11**

If the request is incomplete or contains inaccurate data, or if the documents attached to the request are incomplete, the Regulator shall allow the applicant an adequate deadline, which shall not exceed beyond 30 days, to remedy the identified defects.

If the applicant fails to remedy the defects within the given deadline, the request shall be rejected in accordance with Article 58, paragraph 2, of the General Administrative Procedure Law ("The Official Gazette RS", No. 33/97 and 31/01 and "The Official Gazette RS", No. 30/10).

## **Protection of media pluralism**

### **Article 12**

If the licence is to be transferred to a legal entity, which is a licence holder or legal entity linked with a licence holder, the Regulator shall, following the methodology prescribed by a by-law that it adopts, in line with Article 22, paragraph 1, item 16) of the Law on Electronic Media, determine whether the planned licence transfer could result in a situation which violates media pluralism.

### **Making a decision on the request**

#### **Article 13**

The Regulator shall, by its decision, reject the request if it has determined that the legal entity, which the licence would be transferred to, does not fulfil the requirements from Article 10, paragraph 2, item 3) of this Rulebook, or if it determines that the licence transfer would result in a situation violating media pluralism, or if it determines that the private person to which the licence would be transferred does not accept all the obligations.

The Regulator shall issue its approval of the act for licence transfer if it determines that the legal entity, which the licence would be transferred to, would fulfil the requirements from Article 10, paragraph 2, item 3) of this Rulebook, or if it determines that the licence transfer would not result in a situation violating media pluralism, or if the private person to which the licence would be transferred does accept all the obligations.

The decisions from paragraph 2 of this Article shall include an order to the applicant to submit the signed agreement on the licence transfer.

## **III. PROCEDURE UPON NOTIFICATION OF CHANGES OF OWNERSHIP STRUCTURE**

### **Notification of change in ownership structure**

#### **Article 14**

The licence holder shall notify the Regulator in writing on any change of ownership structure of the equity capital (change of the founder or change of the founder's share in the capital) by filing a report on the change in ownership structure.

The change of ownership structure for the purposes of paragraph 1 of this Article shall mean any change in the equity capital of licence holders and change in the equity capital of the legal entity participating directly or indirectly in the ownership structure.

The report on changes in the ownership structure shall be submitted to the Regulator by the licence holder directly or by mail.

### **Content of report**

#### **Article 15**

The report on the change in the ownership structure shall state the type of intended change in the ownership structure (i.e., change of the founder or change of the founder's share in the capital), information on the legal entities who are participating in the change, and the ownership structure after the change is made (founders and their shares in equity capital).

### **Documents submitted with the report**

#### **Article 16**

If the change of the ownership structure also involves a legal entity which is a licence holder, having indirect or direct share in the equity capital of another licence holder or

linked with another licence holder, the report on the changes of ownership structure shall include the following:

- 1) data regarding the licence the entity has or the licence holder this entity is linked to and in which way;
- 2) statement by legal representatives of the entity submitting the report stating that the change in ownership structure shall not result in a violation of media pluralism, according to Article 45, paragraph 1, line 2, and Article 46 of the Law on Public Information and Media (“The Official Gazette RS”, No. 83/14 and 58/15), or that the data of the registered audience measurement surveyors in the zone of coverage during the calendar year preceding the merger indicates that the audience does not exceed 35% of the total audience in the zone of coverage.

If the change of ownership structure involves a legal entity which is not a licence holder and which is not linked with a licence holder, the report on the changes of ownership structure shall also include the following documents:

- 1) if the future founder is a legal person:
  - (1) an excerpt from the registry maintained by the competent authority for the relevant legal entity;
  - (2) a statement with data on the legal entity (name, seat, ownership structure, and the registration number) or the physical entity (name, residence, and unique personal identification number (JMBG) or passport number and name of the state issuing the passport in case of foreign nationals) who directly or indirectly through other entities, has a stake (share, etc.) in the ownership structure of such entity, and data on the amount of such share, the accuracy of which is guaranteed by the applicant’s signature;
  - (3) a statement with data on the legal entity (name, seat, ownership structure, and the registration number) in which the founder or the future founder of the entity filing in the report has a share in equity capital and data on the legal entity with whom the future founder of the entity filing in the report is linked in terms of the law regulating the legal status of companies, the accuracy of which is guaranteed by the applicant’s signature;
- 2) if the future founder is a physical person:
  - (1) copy of the personal ID card of the person, or copy of passport in case of a foreign citizen;
  - (2) a statement with data on the legal entity (name, seat, ownership structure, and the registration number) in which the physical person has a share of equity capital and data on legal persons with whom this physical person is linked in terms of the law regulating the legal status of companies, the accuracy of which is guaranteed by the applicant’s signature.

The entity filing the report shall also submit other documents requested by the Regulator in accordance with the law.

The entity filing the report may also submit other documents if it believes that they could be relevant for the decision-making.

Documents submitted are the original and certified copies.

Documents submitted in foreign languages shall be translated into the Serbian language and certified by a court interpreter.

## **Assessing the completeness of the report**

### **Article 17**

If the report is incomplete or contains inaccurate data, or if the documents attached to the report are incomplete, the Regulator shall allow the applicant an adequate deadline, which shall not exceed beyond 30 days to remedy the identified defects.

If the entity filing the report fails to remedy the defects within the given deadline, the report shall be rejected in accordance with Article 58, paragraph 2, of the General Administrative Procedure Law (“The Official Gazette RS”, No. 33/97 and 31/01 and “The Official Gazette RS”, No. 30/10).

## **Determining violation of media pluralism**

### **Article 18**

The Regulator shall, following the methodology prescribed by law that it adopts, in line with Article 22, paragraph 1, item 16) of the Law on Electronic Media, determine whether the planned change in the ownership structure could result in a situation which violates media pluralism.

## **Making a decision on the report**

### **Article 19**

Should the Regulator determine that the intended change of ownership structure of the licence holder will not result in a situation violating media pluralism, the Regulator shall make a decision to that effect.

Should the Regulator determine that the intended change of ownership structure of the licence holder could result in a situation violating media pluralism, the Regulator shall make a decision recommending the licence holder to harmonise the changes in order to avoid such situation.

Should the licence holder fail to act in accordance with the recommendation of the Regulator, which results in a case violating media pluralism according to the law, the Regulator shall revoke the licence according to Article 89, paragraph 1, item 6) of the Law on Electronic Media.

# Annex 2:

## Cases related to media pluralism

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### 1. ALBANIA

#### AMA decisions

During the review of applications for issuing broadcasting licences, there were discussions on this issue. Amongst them, there was a clarification of the situations of cross-ownership (e.g., parent company) which took into account the cross-ownership of a joint-stock company with two other companies, where each has a licence in the audiovisual broadcasting market.

#### Decisions of other authorities

The decision of the Competition Authority, dating back from 25 June 2018, “On issuing some recommendations to the Audiovisual Media Authority”, a decision in relation to the aforementioned decision of AMA, which took into account the cross-ownership of a joint-stock company with two other companies, where each has a licence in the audiovisual broadcasting market.

### 2. BOSNIA AND HERZEGOVINA

The transparency of media ownership in Bosnia and Herzegovina is only partially regulated through the process of registering media-owned businesses and organisations.

The CRA keeps a register<sup>37</sup> of all its licencees which contains information on the legal or natural person owning the media service provider in question, but it does not contain information on the ownership structure of licence holders, i.e., indirect ownership. Even though the CRA was keen on also making this information public, it did not receive a positive opinion on this matter by the Data Protection Agency on the basis of it interfering with the right to privacy and the processing of personal data.

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37 Available here: <https://rak.ba/bs-Latn-BA/brdcst-license-holders>

However, even if the CRA could maintain such a register, this would be limited to electronic media, which represents only a part of the total media market. The Press and Online Media Council in Bosnia and Herzegovina makes it impossible to assess mixed ownership.

The lack of adequate legislation is particularly reflected in the online media, which are often not even registered as media businesses. There is no single register of online media, but only those established as business entities, which are scattered across a number of different registers depending on the court instance where the registration was made. Nobody knows the exact number of online media in Bosnia and Herzegovina, and for many of them, information about the ownership structure, financing methods, and employees are completely unknown. Online media with a national domain (.ba) offer some transparency thanks to the information provided by the University Information Center, which is responsible for issuing “.ba“ domains. On their website [www.nic.ba](http://www.nic.ba), it is possible to determine ownership of any site with a national domain, but this information does not offer a detailed insight into the existence of indirect or affiliated owners<sup>38</sup>.

## CRA Decisions

In the licencing process for terrestrial broadcasting, in cases where there are two or more applicants in the same geographical area that fulfil all the licence award criteria, the CRA applies a comparative analysis where preference is given to the applicant offering programme content which is either missing or scarce in that geographical area.

In terms of ownership issues, there is a restriction of ownership by political parties. Namely, according to the Law on the Financing of Political Parties<sup>39</sup>, Article 2, companies owned by political parties may only carry out culture-related or publishing activities. This means that a political party may not be the owner of a company holding a broadcasting licence.

Furthermore, certain restrictions apply to foreign investment ownership of foreign companies, in line with the Law on the Policy of Foreign Direct Investment in Bosnia and Herzegovina<sup>40</sup>, Article 4:

“(a) Notwithstanding the policy of free admission of foreign direct investment into Bosnia and Herzegovina set forth in Article 3 of this Law, foreign equity ownership of a business entity engaged in the production and sale of arms, ammunition, explosives for the military use, military equipment and media shall not exceed 49% of the equity in that business entity.

(b) In case of investments in sectors subject to the restrictions referred to in paragraph (a) of this Article, foreign investors must receive prior approval from the competent body of the respective Entity.”

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38 <https://bhnovinari.ba/wp-content/uploads/2019/09/Media-Ownership-Transparency.pdf>

39 <http://www.ohr.int/ohr-dept/legal/laws-of-bih/pdf/New2015/BH%20Law%20on%20Political%20Party%20Financing%2095-12.pdf>

40 [http://www.fipa.gov.ba/publikacije\\_materijali/zakoni/05.08.2016.Cleansed%20text%20of%20the%20LAW%20ON%20THE%20POLICY%20OF%20FOREIGN%20DIRECT%20INVESTMENT%20IN%20BiH.pdf](http://www.fipa.gov.ba/publikacije_materijali/zakoni/05.08.2016.Cleansed%20text%20of%20the%20LAW%20ON%20THE%20POLICY%20OF%20FOREIGN%20DIRECT%20INVESTMENT%20IN%20BiH.pdf)



In that sense, in the process of licencing or requests for the approval of the change in the ownership structure involving foreign investments, the CRA asks the applicant to submit the opinion of the competent body.

According to the opinions received by the CRA in previous cases, cases in which a company founded in Bosnia and Herzegovina has foreign ownership do not constitute a foreign direct investment.

The CRA decides upon the requests for licence transfers or changes in the original ownership of the licensee exceeding 5% of the share, in accordance with Article 22, paragraph (2) and (3) of the Rule 77/2015 on Provision of Audiovisual Media Services. In the course of this procedure, the Agency examines whether the changed ownership structure will ensure at least the same standards and conditions on the basis of which the licence was issued in the first place. In order to establish that, the Agency asks the applicant to provide relevant financial documentation, written consents of all owners, as well as the statement on any change in programme, technical or financial operations that occurred since the issuance of the licence.

It should be pointed out that the change in ownership structure of a company is not in the Agency's direct remit. Therefore, the Agency's prior consent is not required by the court to perform the actual change. The Agency's consent is required to maintain the broadcasting licence, in order to guarantee that the new owners will continue to respect the same terms and conditions approved by the Agency when issuing the licence.

In cases when it is established that the change in ownership structure exceeding 5% of the share occurred without CRA's prior approval, the Agency may issue a sanction for the breach of Rule 77/2015. Notwithstanding the established breach, it may still carry out the due procedure and issue a subsequent consent.

## Decisions of other authorities

The Competition Council adopted three decisions related to the distribution of the "Sport Klub" channel in 2013, 2015, and 2017 respectively.

The legislative basis: The Law on Competition of Bosnia and Herzegovina<sup>41</sup>, Article 10 (Abuse of Dominant Position):

- (1) Any abuse of the dominant position by one or more economic entities in the relevant market shall be prohibited.
- (2) Abuse of the dominant position, in particular relates to the following:
  - a) directly or indirectly imposing unfair purchase and selling prices or other trading conditions which restrict competition;
  - b) limiting production, markets or technical development to the prejudice of consumers;
  - c) applying dissimilar conditions to equivalent or similar transactions with other parties, thereby placing them at an unequal and unfavourable competitive position;

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41 <http://bihkonk.gov.ba/en/competition-act-unofficial-consolidated-text.html>

d) conclusion of the contracts subject to acceptance by the other party of additional obligations which, by their nature or according to commercial practice, have no connection with a subject of such contract.

1) In the first decision, it was established that the company IKO Balkan S.R.L. G-RAL David Praporgescu, Romania, directly and/or through its representative Sport Klub d.o.o. Sarajevo, abused the dominant position in the market of distribution of sports channels with football content, which included the live streaming package of the English Premier League in Bosnia and Herzegovina, by imposing the obligatory minimum number of subscribers in the Contract on the distribution of Sport Klub channels concluded with cable operators in Bosnia and Herzegovina. This represents the direct or indirect imposition of other commercial terms restricting competition within the meaning of Article 10 (2) (a) of the Competition Law and applying different conditions in the Contracts for the distribution of the Sport Klub with the operators in Bosnia and Herzegovina, thereby placing them at an unequal and unfavourable competitive position, within the meaning of Article 10 (2) (c) of the Competition Law. The Competition Council also ordered them to align the Sport Klub distribution contracts with the Competition Law, as well as imposed a fine of 125.000 KM.

2) In the second decision from 2015, the Competition Council established that the company “United Media Distribution SRL” G-RAL David Praporgescu, Romania, through its representative Sport Klub d.o.o. Sarajevo, failed to implement the first decision and continued to abuse the dominant position. Again, they were ordered to immediately cease this practice and to conclude a distribution contract with all interested providers in Bosnia and Herzegovina under the same conditions as the contracts concluded with “Total TV BH“ and “Telemach“. It should be mentioned that, at the time of the initiation of this proceeding, “United Media” was under the control of the “United media Ltd”, a Cyprus-registered company affiliated with SBB, Telemach, Sport Klub, and Total TV Bosnia and Herzegovina. A fine in the amount of 250.000 KM was imposed.

3) The third decision from 2017 established the same practice of “United Media Distribution SRL” G-RAL David Praporgescu, Romania, through its representative Sport Klub d.o.o. Sarajevo, by deliberately delaying and refusing to sign the contract on the distribution of the Sport Klub channel with BH Telecom. They constantly imposed, in the course of negotiations, additional conditions that were not prescribed by the General Terms and Conditions for Service Provision, and which were not fulfilled by the companies that already had distribution contracts for the said channel, thereby restricting the relevant market at the expense of BH Telecom users. A fine in the amount of 250.000 KM was imposed.

### 3. CROATIA

There has been a small number of cases in which media service providers applied for the tender but AEM HR determined that there is a case of restriction of concentration. The tender was cancelled and the media service provider solved the issue and applied for the tender again. The case of concentration between Slovenia Broadband srl and Nova TV d.d. Slovenia Broadband did not manage to get approval from AEM HR and the Competition Agency did not approve the concentration.

## 4. KOSOVO\*

The issues of media pluralism/ownership are taken into account during the licencing process by the IMC, while there have been no cases for which there would have been a need for a decision by other authorities, namely the Competition Authority.

## 5. MONTENEGRO

### AEM ME Decisions

After having reviewed all relevant information and statements of the broadcaster, in the case of the company “Jumedia Mont” d.o.o., the Director of AEM ME issued a Decision on 18 June 2013, which established the existence of illicit media concentration due to cross-ownership of the owner of this company as a regional broadcaster of the electronic media “Radio D” and the daily print media “Dan”, in cases of:

- ownership of Mladen Milutinović (the owner of the broadcaster) in the share capital of the “M.D. Company” d.o.o., the regional broadcaster of electronic media “Radio D plus”, which amounted to 50%, and;
- ownership of Slavica Jovanović and Vojin Jovanović (the owners of the broadcaster), as relatives in the direct line of the first degree of kinship, in the share capital of the company “MD Company” d.o.o., the regional broadcaster of electronic media “Radio D Plus”, which individually amounted to 25%, and cumulatively to 50%.

With the referred Decision, the company “Jumedia Mont” d.o.o. was instructed to harmonise the ownership structure within 3 months in order to eliminate the established illicit media concentration so that the share of Mladen Milutinović and the cumulative share of Slavica Jovanović and Vojin Jovanović, as relatives in the direct line of the first degree of kinship, in the share capital of the company “MD Company” d.o.o. does not amount to more than 30%.

In such manner, the ownership structure with Article 132 and 133 of the Law on Electronic Media would be harmonised. Namely, Article 132, item 3) stipulates, inter alia, that an illicit media concentration exists when a radio or television broadcaster authorized to broadcast with local or regional coverage participates in the share capital of another broadcaster with regional or local coverage in the same area with more than a 30% share. In addition, Article 133 of the same law stipulates that illicit media concentration also exists when, as in the referred to case, a natural person who is the founder of the broadcaster or persons who are his/her relatives in the direct line up to the second degree of kinship or his/her spouse participate in the share capital of another broadcaster or founder of a daily print media or news agency through an established amount of share capital.

The company “Jumedia Mont” d.o.o. from Podgorica filed an appeal against the issued Decision and requested its annulment because, as assessed, it was not based on properly and completely established facts, provisions of substantive law, the Law on Electronic Media, and the Law on General Administrative Procedure.

Acting upon the subject appeal, the Council of AEM ME established that the procedure that preceded the decision in the first instance was properly conducted and that the Decision was correct and based on the law, and that the appeal was unfounded. It, therefore, instructed the company “Jumedia Mont” d.o.o. from Podgorica to harmonise its ownership structure within three months in order to eliminate illicit media concentration. The broadcaster filed a lawsuit with the Administrative Court, which was later dropped, and the Administrative Court issued a Decision on the suspension of the procedure.

On the other hand, within the time-limit set by the Council of the Agency, the broadcaster informed AEM ME that its founders and the founders of the company “MD Company” decided to change the ownership structure of the “MD Company” d.o.o. to eliminate illicit media concentration due to cross-ownership of owners of both companies and the ownership structure of the company “Jumedia Mont” d.o.o. to remain unchanged.

In compliance with the above, after obtaining the approval of the Council of AEM ME as regards to the significant change in the ownership structure of the company “M.D. Company” d.o.o., 50% of the share of the founder Mladen Milutinović from Podgorica was transferred to Ljiljana Martinović, and 25% of the share of each the founders Slavica Jovanović and Vojin Jovanović was transferred to Dejan Ražnatović from Podgorica, who thus gained 50% of the share in the founding capital.

With reference to the “M.D. Company” d.o.o., after having reviewed all relevant information and statements of the broadcaster, the Director of AEM ME issued a Decision on 18 June 2013, which established the existence of an illicit media concentration due to cross-ownership of the owner of “M.D. Company” d.o.o., as a regional broadcaster of electronic media “Radio D Plus” in cases of:

- the ownership of Milutinović Mladen (the owner of the broadcaster) in the share capital of the company “Jumedia Mont” d.o.o., the regional broadcaster of electronic media “Radio D “ and the publisher of the daily printed media “Dan”, amounting to 50%, and;
- the ownership of Slavica Jovanović and Vojin Jovanović (the owner of the broadcaster), as relatives in the direct line of the first degree of kinship, in the share capital of the company “Jumedia Mont “ d.o.o., regional broadcaster “Radio D” and the publisher of the daily printed media “Dan”, amounting individually to 25%, and cumulatively to 50%.

With the referred Decision, the company “M.D. Company” d.o.o. was instructed to harmonise the ownership structure within three months in order to eliminate the established illicit media concentration so that the participation of Mladen Milutinović and the cumulative participation of Slavica Jovanović and Vojin Jovanović, as relatives in the direct line of the first degree of kinship, in the share capital of the company “Jumedia Mont” d.o.o. does not amount to more than 30%. Acting upon the subject appeal, the Council of the Agency established that the procedure that preceded the decision in the first instance was properly conducted and that the Decision was correct and based on law, and that the appeal was unfounded. It, therefore, instructed the company “Jumedia Mont” d.o.o. from Podgorica to harmonise its ownership structure within three months in order to eliminate illicit media concentration.

The broadcaster again filed an appeal with the Council of AEM ME against the decision in the first instance and requested its annulment since, as assessed, it was not based on properly and completely established facts, provisions of substantive law, the Law on Electronic Media, and the Law on General Administrative Procedure. Acting upon the appeal, the Council of AEM ME established that the procedure that preceded the decision in the first instance was properly conducted and that the decision was correct and based on the law, and that the appeal was unfounded. Thus, it has instructed the company “M.D Company” d.o.o. from Podgorica to harmonise its ownership structure within three months in order to eliminate illicit media concentration.

To annul the second-instance decision, the broadcaster filed a lawsuit with the Administrative Court, which was later dropped, and the Administrative Court issued a Decision on the suspension of the procedure.

As already stated, within the time-limit set for elimination of an illicit media concentration, the broadcaster has initiated the procedure for obtaining approval from the Council of AEM ME regarding the significant change of the ownership structure. Namely, the owners of this broadcaster have decided to transfer their ownership in its entirety to other persons and thus eliminate the illicit media concentration. After obtaining the approval of the Council of AEM ME, the ownership structure of the “M.D. Company” d.o.o. has changed in the manner that 50% of the share of the founder Mladen Milutinović from Podgorica was transferred to Ljiljana Martinović, and 25% of the share of each the founders Slavica Jovanović and Vojin Jovanović was transferred to Dejan Ražnatović from Podgorica, who thus gained 50% of the share in the founding capital<sup>42</sup>.

The procedure for establishing the illicit media concentration was initiated, with respect to the cross-ownership of the owners, the natural persons Željko Ivanović, Katarina Perović, and Ljubiša Mitrović as the founders of the company “Televizija Vijesti” d.o.o. (broadcaster of “Radio Vijesti” and “Televizija Vijesti”), in the share capital of the company “Daily Press” d.o.o., as the founder of the daily print media “Vijesti”.

Although the broadcaster initially challenged the justification for conducting the procedure, it requested an extension of the time-limit for giving a statement in order to more closely review all relevant aspects of this issue. On 25 June 2013, the company “Televizija Vijesti” d.o.o. informed AEM ME that the change in the ownership structure of this broadcaster was underway and on that occasion, an additional time-limit was requested for the submission of information that should be taken into consideration (as they could affect the outcome) when deciding in the subject procedure on the establishment of the existence of illicit media concentration. Based on the submitted request, taking into account the importance of the subject statement as well as the fact that additional time was necessary for its preparation, AEM ME extended the time-limit for submission of statements to the company “Televizija Vijesti” d.o.o.

Meanwhile, the broadcaster initiated the procedure for obtaining the approval from the Council of AEM ME concerning a significant change in the ownership structure due to the transfer of ownership shares in the capital of “Televizija Vijesti”

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42 Decision No. 01- 897/1 dated 27.09.2013

d.o.o. from members Miodrag Perović in the amount of 6.54% and Katarina Perović in the amount of 6.68% to Andrej Perović from Podgorica, whose total share in the Company after the change amounted to 13.22%.

The Council of AEM ME decided to approve the planned change of the ownership structure, after the implementation of which the broadcaster submitted the information on the new ownership structure. Based on that, it was determined that Željko Ivanović, Katarina Perović and Ljubiša Mitrović did not have an ownership share in the capital of the company “Televizija Vijesti” d.o.o. because they had transferred their shares to other owners (Miro Perović, Slavoljub Šćekić) or new owners (Andrej Perović).

As, after the change of ownership structure, it was established that there was no cross-ownership in the broadcaster “Televizija Vijesti” d.o.o. and the publisher of the daily print media “Daily press” d.o.o., the Director of AEM ME issued a Conclusion on the suspension of the procedure for establishing the existence of illicit media concentration.

## 6. NORTH MACEDONIA

### AVMU decisions

AVMU takes into account the protection of media pluralism when granting licences. Before a competition for granting a licence for television or radio broadcasting via a limited resource is announced, AVMU is obliged to first conduct a study to determine if announcing such a competition is justified, in terms of meeting the objectives of the media-related legislation, and in terms of the audience’s needs.

These studies include:

1. an economic analysis (analysis of the relevant market, assessment of the concentration on the market, and analysis of the potential investment);
2. an analysis of the existing media offer (analysis of the formats of the programme services, the broadcasting language, the offered programme contents by genre) and whether it is broadcasting at the state or regional levels;
3. an analysis of the audience’s needs (through an audience survey, which provides information on whether the audience is satisfied with the offer of the domestic television stations and to what extent, which programme contents are missing from the programme offer of the domestic television stations, and data about the audience’s stance regarding the quality of the programme contents offered).

Since 2014, a total of 13 such studies have been conducted, three for granting television broadcasting licences and ten for granting radio broadcasting licences.

When granting permits, AVMU also takes into account the pluralism of media ownership, i.e. determines whether the candidate at the competition meets the conditions for acquiring ownership. AVMU does this by obtaining data from the Central Registry of the Republic of North Macedonia about all trade companies owned by the can-

didate. AVMU will not grant the licence if it is established that the latter owns other media outlets to an extent exceeding the thresholds laid down in the law, or that the candidate is an owner of a print media publisher that publishes a daily newspaper in the area where the programme would be broadcasted; a news agency; an advertising and marketing company; a company for distribution of audiovisual works; a company for film production; an operator of electronic communication networks that provides retransmission or broadcasting of radio/television programmes, or a company that conducts market research and public opinion surveys.

In 2019, AVMU adopted a total of six decisions approving the change of ownership of five radio stations and a television station, and one decision banning the planned change to the ownership structure of a radio station, after having concluded that it would lead to creating illicit media concentration.

That same year, AVMU imposed measures against two broadcasters (one television and one radio station) for having changed their ownership structure without first having notified AVMU or requested approval for the change.

At one of its sessions in February 2019, the AVMU Council discussed initiating a procedure against a television station in order to establish a violation of the provision of the law on the latter's part, according to which holders of public office and members of their families cannot perform the broadcasting activity, nor can they be founders, co-founders, or acquire a portion of the ownership, of a broadcasting entity. The reason for this was the fact that the spouse of one of the owners of this television station had been appointed to a public office by the Macedonian Parliament. On the same day the session was being held (the agendas of the Council's sessions are public and are published on the AVMU's website and Facebook profile at least 24 hours before the sessions are held), this television station informed AVMU that a day before, the wife of the television station's owner had submitted an irrevocable resignation from the public office (seven days after her appointment). The Parliament accepted her resignation and her mandate as public office holder ceased, thus removing the cause for violation of the law.

A few months later, AVMU initiated a procedure against the same television station to establish if it had violated the prohibition of an undisclosed partner, as an undisclosed partner cannot participate in a broadcaster's ownership through either monetary or non-monetary capital contribution. The procedure was initiated because a person who, according to the official documentation, did not own any portion of this television station, had been introducing himself as to its owner. AVMU undertook a number of activities to obtain relevant material evidence so that it could thoroughly examine if the findings implying a violation of the prohibition of an undisclosed partner were grounded. However, this television station's licence was revoked on other grounds before the completion of the above-mentioned procedure.

AVMU also initiated a procedure towards establishing illicit media concentration in the case of a radio station, because it had found that the manager of the legal entity that owned this radio station was also the owner of a company distributing film, video, and television programmes. Under the law, AVMU requested that this radio station submit all documents relevant to reaching the decision. Instead of submitting any documents, the radio station informed AVMU that, following the initia-

tion of the procedure on AVMU's part, the person at issue had been replaced from the managerial position.

## 7. SERBIA

REM shall not issue a licence for the provision of media services if s/he determines that this would lead to the violation of media pluralism in terms of the law governing public information and media.

According to Article 82 of the Law on Electronic media, the licence application shall include, inter alia:

- information on the ownership structure of the applicant, including information on the legal entity (name, headquarters, and ownership structure) or natural person (name, residence, and citizenship), directly or indirectly, through other entities, participating (shares, etc.) in the claimant's ownership structure, as well as information on the amount of that participation;
- a statement that the issuance of a licence will not create a condition that violates media pluralism

REM withdraws a licence to provide a media service if, due to a change in the ownership structure of the media service provider, after the issuance of the licence, it is not possible to reliably determine who has control over the media service provider within the meaning of the law governing the area of competition protection (Article 89, paragraph 1, item 9) Law on Electronic Media).

### REM Decisions

A licence issued on a public competition may not be transferred, except in the case of status changes of the licence holder, in terms of the law governing the status of companies and provided that this does not impair media pluralism in terms of the regulations governing the media and public information.

A licence issued upon request may be transferred to another person only if that person accepts all obligations arising from the licence.

The transfer can only occur only if it is made in writing and the Regulator has previously given its consent.

Any change in the ownership structure in the share capital (i.e., a change of the founder or change in the amount of participation of the founder in the capital) must be reported in advance to the Regulator in writing.

If REM determines that the planned changes in the ownership structure of participation in the share capital may create a condition that violates media pluralism, it will recommend to the holder of the licence for providing the media service to adjust the changes in such a way as to avoid this situation.



If the Licencee for providing media service fails to comply with REM's recommendation, which causes some of the legally prescribed cases of violation of media pluralism, REM shall revoke its licence in accordance with the provisions of the Law on Electronic Media.

REM publishes all decisions regarding media pluralism on its website. That includes both issued consent on the changes of the media ownership or in cases in which REM revokes a licence.

### **Decisions of other authorities**

The Concentration Commission is required to enact a decision on the notification of concentration within one month from the date of receipt of the complete notification, and the relevant case-law of this body is available [here](#) and [here](#).

# Annex 3:

## Foreseen legislative measures

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### 1. BOSNIA AND HERZEGOVINA

As already mentioned in Table 1: Stakeholders' views, there exists a draft Law on Transparency of Media Ownership, which was drafted by a consortium of non-governmental organisations but its legislative path is uncertain at the moment.

The Bosnia and Herzegovina Ministry of Communications and Transport has formed a Working Group in charge of drafting the laws on electronic communications and electronic media. According to the Ministry, this draft law was envisaged to cover the area of transparency of media ownership and limit the concentration of media ownership, but it would not cover print media. The CRA has proposed, through its engagement in the above-mentioned working group in charge of drafting laws on electronic communications and electronic media, the establishment of a media pluralism fund, but this issue is yet to be decided upon.

In addition to the work on drafting the law on electronic communications and electronic media, which is envisaged to incorporate some general provisions partially transposing the revised AVMSD (such as giving the remit to CRA to regulate video-sharing platforms), the CRA is currently revising its regulatory framework to implement the remaining AVMSD provisions. According to the CRA register, Bosnia and Herzegovina has a large number of radio and TV broadcasters: 3 public service broadcasters, 38 TV stations in terrestrial (analogue) broadcasting, 62 TV stations broadcasting over other communications networks – cable, DTH, IPTV, and 152 radio stations. However, the large number of broadcasters and the availability of media content at all levels from local to national only give the illusion of media pluralism and diversity of media content. Numerous reports indicate that there is a polarisation of the media that mirrors the political division of the state and that the media mostly offers biased and one-sided information that serves the political elites and not the public interest. It has been emphasised that the lack of a legal framework on media ownership and the ban on media concentration can lead to cases of significant media concentration, i.e., multiple or mixed ownership, which can pose a potential threat to media pluralism, and fair and open market competition. This could also pose a problem for ensuring the right to freedom of expression. It is also necessary to bear in mind the potential future developments in the media scene, such as the privatisation of local broadcasters, the emergence of new entrants through the process of digital television, and in particular the entry of international

media corporations into the Bosnia and Herzegovina communications market. All this could significantly change the media landscape in Bosnia and Herzegovina.

## 2. CROATIA

The preparation of the new Electronic Media Act is in progress. The Act was in public consultations in February-March 2020. However, the work was slowed due to the coronavirus pandemic, and then the Croatian Parliament passed a decision on its dissolution on 18 May 2020. The draft law is currently in Parliamentary procedure. The suggestions of the points related to ownership are:

### Article 61

(1) Media service providers shall be obliged to submit to the Agency for Electronic Media the data on the legal person and its seat, i.e., the name, surname, and permanent residence of all legal and natural persons who have directly or indirectly become holders of stocks or a share in that media service provider, along with the data on the percentage of stocks or the share they possess.

(2) Media service providers shall be obliged to submit to the Agency for Electronic Media certified copies of the stock or share certificates for the acquisition of stocks or a share in that media service provider during the previous year, as well as an excerpt from the Registry of Ultimate Beneficial Ownership. Such certificates shall not be submitted for the stocks or share up to 1% of the capital value.

(3) A written warning shall be forwarded to a media service provider who fails to comply with the obligation referred to in paragraphs 1 and 2 hereof with the explanation of possible sanctions for non-compliance with the obligation.

(4) A media service provider shall be obliged to publish in the Official Gazette any change in its ownership structure. Data on holders of stocks or share up to 1% of the capital value shall be published collectively.

(5) Concealment of the ownership structure of a media service provider or the ownership of holders of stocks or share in a media service provider through any transaction shall be prohibited. Transactions that conceal the ownership structure of a media service provider or the ownership of holders of stocks or share in a media service provider shall be null and void.

### Article 62

(1) Media service providers must notify in writing the authority in charge of market competition protection of any intention to realise a concentration of undertakings, which meets the requirements for the incurrence of an obligation to notify the intention to realise a concentration within the meaning of the regulations governing the protection of market competition.

(2) Media service providers who have a concession and/or licence to perform media services must notify in writing the Agency for Electronic Media without delay of any intention of merger or acquisition, the intention of any other form of a joint venture or coordinated action, and any ownership change, regardless of the requirements laid down in the regulations governing the protection of market competition.

(3) At the request of the authority in charge of the market competition protection, the Agency for Electronic Media shall submit an expert opinion within thirty days from

the date of receipt of such request. Should the Agency fail to submit the requested opinion after the expiry of this deadline, it shall be deemed that the Agency has no objections to the realisation of the notified concentration referred to in paragraph 1 hereof.

(4) The authority in charge of the market competition protection shall assess the concentration notification referred to in paragraph 1 hereof and shall pass a decision in keeping with provisions of the regulations governing protection of the market competition.

### **Article 63**

(1) The Agency for Electronic Media shall assess the concentration notification referred to in Article 62, paragraph 2, and the effects thereof, with respect to the protection of pluralism and diversity of electronic media.

(2) Merger or acquisition or any other form of a joint venture or coordinated action and ownership change with respect to the protection of pluralism and diversity of electronic media shall be deemed impermissible in the following cases:

- the media service provider who has a concession at the state level and a share exceeding 25% of the capital of another media service provider of the same or lower level of coverage, and vice versa;
- the media service provider who has a concession at the state level and a share exceeding 10% of the capital of a publisher who publishes daily newspapers printed in more than 3,000 copies, and vice versa;
- the media service provider who has a concession at the state level and simultaneously publishes daily newspapers printed in more than 3,000 copies;
- the media service provider who has a concession at the regional or local level and a share exceeding 30% of the capital of another media service provider in the same area, i.e., in the area of a higher or lower level of coverage, and vice versa;
- the media service provider who has a concession and a share exceeding 10% of the capital of a legal person whose activity is the collection, shaping, and mediation in advertising, and vice versa.

(3) The requirements referred to in paragraph 2 hereof shall equally apply to natural and legal persons who hold shares in a media service provider.

(4) The requirements referred to in paragraph 2 hereof shall also apply to media service providers who provide satellite, internet, or cable transmissions and other permissible ways of transmission, providers of media services on-demand, video sharing platforms, as well as to electronic publication providers.

(5) Related parties within the meaning of this Law shall be determined in accordance with the provisions of the law governing general taxation matters.

### **Article 64**

(1) Should the audience share of all programmes of a single media service provider reach an average annual share of 45%, this media service provider shall be deemed to hold a dominant position on the market of the Republic of Croatia, resulting in a disruption of pluralism and diversity of electronic media.

(2) If a media service provider has acquired a dominant market position, it may not acquire shares in other media service providers, in addition to the ones already held, neither it may be granted a new concession and/or licence by the Electronic Media Council nor may it be a provider of a new electronic publication whereby it would expand its business operations.

(3) The Electronic Media Council shall lay down methods, requirements, and means of calculating the reach of the audience share or reach of an electronic publication.

#### **Article 65**

(1) The Electronic Media Council shall not award a concession to the most advantageous bidder selected in the procedure for the award of concession if it has been established that the award of the concession would result in a disruption of pluralism and diversity of electronic media within the meaning of Article 62, paragraph 2, and Article 64, paragraph 2, of this Law.

(2) Each bidder who applies to a public tender for the award of a concession shall be obliged to enclose to the bid a certified statement indicating that a possible award of concession shall not result in a disruption of pluralism and diversity of electronic media within the meaning of this Law.

(3) The media service provider referred to in Article 92 of this Law shall be obliged to enclose to the application for a licence for satellite, internet, cable or another way of transmission of audiovisual and/or radio programme a statement indicating that the issuance of this licence shall not result in a disruption of pluralism and diversity of electronic media within the meaning of this Law.

#### **Article 66**

(1) If in the procedure conducted pursuant to Article 62, paragraph 2 of this Law it has been established that the occurred changes result in a disruption of pluralism and diversity of electronic media, the media service provider shall be ordered to confirm the changes, within an appropriate deadline, in a manner which is not contrary to the provisions of this Law.

(2) Should the media service provider fail to comply with the order referred to in paragraph 1 hereof, the provisions of this Law concerning the termination of the validity of the concession prior to the expiration of the time period for which it was awarded or those concerning the termination of the validity of the licence for satellite, internet, cable, or another way of transmission of audiovisual and/or radio programme shall apply and the decision on the revocation of the concession or the licence shall be passed by the Electronic Media Council.

### **3. MONTENEGRO**

It is expected that a new Law on AVM Services will replace the Law on Electronic Media from 2010. Media Law and Law on RTCG (national PBS), adopted in 2020, which are expected to be revised by end of 2021 and adopted alongside with the new Law on AVM Services<sup>43</sup>.

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43 Source: Draft of the Government of Montenegro's Working Plan for 2021, available at: [https://gsv.gov.me/spi/Program\\_rada\\_Vlade](https://gsv.gov.me/spi/Program_rada_Vlade).

The proposed new Media Law introduces a series of measures to improve the overall public funding data's availability and transparency, and introduces a Fund for Promotion of Media Pluralism and Diversity. Moreover, the AEM ME will continue to monitor the AVMS ownership, according to the future AVMS Law. The Draft AVMS law also includes references to self and co-regulatory mechanisms, particularly to video-sharing platforms. Other features of the draft include a difference in the separation of on-demand AVM service providers from "cable operators" (distributors of radio and TV programmes to end-users). Another novelty is the provision specifying that rights and responsibilities of electronic publications (web-based portals) will be governed by the Media Law, where they are designated as "web-based publications". The Draft still envisages the existence of an independent regulator for AVM services (today's Agency for Electronic Media would be renamed the Agency for AVM services). It will provide a clear definition of its mandate, funding, operation, management, as well as rights and responsibilities in pursuit of its function in an accountable, transparent and professional manner, in line with significantly reinforcing the roles and responsibilities of independent regulators. The Draft further envisages improving the procedure for appointment and dismissal of AEM ME and public broadcasters' councils, including the possibility of judicial review of the decisions made by relevant parliaments to appoint and to dismiss council members, etc. AEM ME is not competent to supervise the adherence of professional standards by the electronic media as these issues should be addressed through self-regulation, under the Media Law.

#### 4. NORTH MACEDONIA

At the request of AVMU, a study has been prepared as part of the JUFREX 2 project, to assess whether the existing legal provisions concerning media ownership in the legislation ensure protection of pluralism and fair competition on the market, but also development of the market, or whether they are already obsolete and overly restrictive in the conditions of the digital environment, i.e., already pose an obstacle for market development. The study further provides guidelines regarding the possible new restrictions on ownership and the thresholds for determining illicit media concentration, as well as regarding the possible rejection or relaxing of some of the existing restrictions. AVMU will submit the study to the competent ministry so that it can take into account the findings when devising the regulations.

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All information on the Beneficiaries' legal and regulatory frameworks and practices related is sourced from the questionnaire which was circulated and completed by the project beneficiaries.



The main aim of this publication is to contribute to a wider understanding of the concept of media pluralism, its institutional and policy-related importance and the fundamental role of media regulatory authorities in this field. It analyses issue of media pluralism through the prism of European standards, legislative and institutional frameworks, existing practice and proposed measures towards the enhancement of diversity.

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

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The Member states of the European Union have decided to link together their know-how, resources and destinies. Together, they have built a zone of stability, democracy and sustainable development whilst maintaining cultural diversity, tolerance and individual freedoms. The European Union is committed to sharing its achievements and its values with countries and peoples beyond its borders.

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