MONITORING EU GUIDELINES IN SERBIA

NEW LAWS, OLD THREATS

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

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

INDEPENDENCE AND PROFESSIONAL CONDUCT OF THE REGULATOR

PAST PERFORMANCE

The regulatory body for broadcasting (Republic Broadcasting Agency, RRA) in Serbia was introduced by the Broadcasting Law in 2002 and became operational in 2004. During 10 years of operation, the RRA has not managed to establish itself as an independent, transparent and professional institution. It does not have a track record of good performance. The independence of the regulatory body has been under question from its inception. Its institutional design was changed many times. Every change in the election and composition of the decision-making body of the regulator (2004, 2005, 2006, and 2009) steadily increased political influence on the RRA, without any protest by its members at the time. The initial idea of a staggered governing body (Council), whose members are not elected at the same time, was compromised over time. In early 2010, the Council operated with only five instead of nine members.

In making number of decisions, the RRA did not demonstrate neither independence nor fairness. It is widely believed that in allocating broadcasting licenses the RRA promoted the interests of ruling parties and media owners close to them. RRA never tried to reveal real media owners and was not actually concerned with concentration of ownership. According to the Anti-Corruption Council, it contributed to concentration of ownership by allowing illegal changes in ownership structure in two national broadcasters, which finally belonged to the same physical person. Many of its decisions on penalizing broadcasters, who have been violating *en masse* the restrictions stipulated by the Broadcasting Law, were also criticized for the lack of transparency and

South East European MEDIAOBSERVATORY
2015 MONITORING REPORTS
MEDIA INTEGRITY MATTERS

inconsistency and for serving the ruling parties and economic interests of big media owners. In many cases, the regulator took action against pornography, violence, insults and hate speech in reality shows only under public pressure, claiming that the purpose of its existence is not censorship but development of the broadcasting sector. There are only few members of the Council who have a track record of professionalism and personal resistance to improper pressures and inducements. Professional competences of the professional service of the regulatory body are also questionable. The regulator has never had highly qualified experts for the tasks in its mandate, for example specialized lawyers and researchers.

INDEPENDENCE OF THE REGULATOR

The 2014 Law on Electronic Media introduced several new solutions that strengthened the ground for the independence of the regulator in Serbia, now called the regulatory Authority of Electronic Media (REM). However, the law at the same time introduced some new and preserved some old threats to its independent functioning.

New legal rules on the election of members of the regulator's governing body (Council) diminish political influences in the nomination process of candidates for membership. The former election procedure gave the right to the state bodies to nominate four of the nine Council members (three proposed by the responsible committee of the national Parliament and one by the Parliament of the Province of Vojvodina), in addition to the influence they could exert on the nomination of the member from the Province of Kosovo. According to the new law, the member from Kosovo will no longer be in the Council, the national Parliament nominates candidates for two instead of three members, and the number of authorized nominators is increased from six to eight, both new nominators being the civil society groups (Article 9). The number of members susceptible to political influence is thus decreased from five to three. New rules for the election of the Council members will be applied after their current tenures (6 years) expire, starting from the end of 2015.

THE 2014 LAW ON ELECTRONIC MEDIA INTRODUCED SEVERAL NEW SOLUTIONS THAT STRENGTHENED THE GROUND FOR THE INDEPENDENCE OF THE REGULATOR IN SERBIA, NOW CALLED THE REGULATORY AUTHORITY OF ELECTRONIC MEDIA (REM). HOWEVER, THE LAW AT THE SAME TIME INTRODUCED SOME NEW AND PRESERVED SOME OLD THREATS TO ITS INDEPENDENT FUNCTIONING.

However, operational independence of the regulator still lacks a strong legal backing. Regulatory bodies are new entities of public authority in a country without a strong tradition of independent public institutions. Their organizational and legal forms have not been fully developed. No legal document clearly defines the legal status of regulatory bodies, the basis of their legitimacy and their relations with political authorities. The Article 5 of the Law on Electronic Media stipulates that the broadcasting regulator is functionally and financially independent of government bodies and organizations. However, the same article creates a controversy in the understanding of the nature of this independence by including the employees of the professional service of the regulator in the corps of civil servants. Civil servants are abided by the Law on Civil Servants and subjected to the oversight of the government. The "civil servant"

provision was inserted in the law shortly before the law was adopted and met by surprise of its drafters and the Council members. This legal change is widely interpreted as a ground for decrease of salaries of employees in the regulatory body, which were decreased for the Council members by special provisions of the law. The unclear legal status of the regulator's professional staff and a sharp decrease in the earnings of members of the Council could be seen as new threats to the independent functioning of the regulator.

The Law on Electronic Media failed to ground the Council's independence in professional competences of its members. It preserved the scarce and imprecise elaboration of the merit system for nomination and election of members of the Council. The rules, which stipulate that the members are "elected from the ranks of distinguished experts in fields important for performing duties from the jurisdiction of the regulator (media experts, economists, lawyers, telecommunication engineers, etc)" (Article 7), have already been abused in previous elections of the Council members. Only one or two of the nine Council members could be perceived as a distinguished expert in a relevant field. Professional credentials of other members (a lawyer, media manager, economist, journalist, photography director, philologist, and theologian) go below "distinguished experts", both in terms of their education and relevant work experience.

Since the adoption of the law in August 2014, there were no visible actions by the government that could be qualified as interference with independence of the broadcasting regulator. However, it is widely believed that the regulator is influenced by informal power structures. The current composition of the regulator's governing body was established by the nomination procedure defined in the previous law, which allowed political influence on at least five out of the nine members. Informal political influences on the regulator are better perceived in the lack of its actions than in actions and decisions it takes. The regulator did not react in any way to the October 2014 cancellation of the influential and commercially successful political debate show "Utisak nedelje" by the management of TV B92, which was explained by the show's author Olja Bećković as the result of pressures of the Prime Minister on this broadcaster. No reactions were seen on drastic political propaganda in favour of the government in the news programs of the state-owned TV Studio B, which became the main editorial orientation of this broadcaster after the replacement of its former editorial team in May 2014. The regulator keeps silent on constant political propaganda in favour of the government and disqualification political campaigns against opposition actors which are run in the daily call-in show "Kafa sa Đukom", hosted by Vladimir Đukanović, a high official of the ruling party SNS and its representative in the national Parliament, by the cable broadcaster Kopernikus 1. The cancellation of the politically diverse show "Utisak nedelje" and "legalisation" of drastic deviations from professional standards in reporting have significantly reduced media pluralism and diversity of political news on most pressuring social issues.

TRANSPARENCY AND EFFICIENCY OF THE REGULATOR

The 2014 Law on Electronic Media also provided several mechanisms for increased transparency of the broadcasting regulator. By the previous law (Broadcasting Law), the regulatory body was allowed to define by itself the way it will make its work transparent. A great deal of public criticism of the work of the regulatory body concerned insufficient transparency in the way it made decisions. The new law broadened the jurisdiction of the regulatory body and obliged the regulator to transparency in developing regulations and making its decisions on clearly defined grounds. The basis for decisions should be provided in bylaws (rulebooks and guidelines), which elaborate the obligations of media regarding the content (protection of human dignity, rights of minors, prohibition of hate speech, obligations during election campaigns, etc.) and define the procedures for the work of the regulator (procedure for issuing broadcasting licenses and authorization on transfer of licenses, procedure for sanctioning of media, etc). In preparation of general acts which are directly related to media service providers, the regulator is obliged to hear the voice of all interested stakeholders in the form of public hearings (Article 40). In sanctioning the media, the regulator must observe the principles of objectivity, impartiality and proportionality (Article 28).

The new law specifies the types of documents and information the regulator must make available to the public by placing them on its website (Article 38). The law also defines the content of the annual reports on the work of the regulator and stipulates its obligation to publish and submit these reports to the national parliament at the end of the first quarter of the following year, including the financial plan and financial report. In practice, the implementation of novelties in increasing the transparency of the regulator is still under way. The process is not as fast as it was expected to be and is already beyond some established deadlines (adoption of bylaws, submission of the annual report to the Parliament, etc).

The previous work of the regulatory body was widely considered inefficient and biased towards the most commercialized media and media owners with strong political ties. The strongest public criticism concerned its work in sanctioning non-adherence to the content rules, making transparent media ownership and prevention of media concentration. The new law (2014) gives the regulator broader jurisdiction and provides it with mechanisms to perform its duties in a more efficient way. In terms of content, the regulator is now in charge of improving the quality and variety of media services and development of freedom of expression in order to protect the public interest in communication. It shall consider complaints raised for endangering either personal interests or the public interest. The regulator is specifically given the responsibility in protecting media pluralism. Another novelty is that a member of the Council may be dismissed if found to be negligible and working improperly (Article 16).

Procedures for penalizing unlawful conduct and criteria for imposed measures are now more precisely defined. In the past, the regulatory body could

sanction the media for broadcasting the content in contravention with rules by a reprimand, a warning and by a temporary or permanent revoke of broadcasting license. The 2014 law provides the regulator again with four types of sanctioning measures, but a suspension of a broadcasting license is now replaced by a temporary ban on broadcasting the improper program content. The sanctioned media are obliged to publicize the decisions of the regulator in their programs. The law emphasizes that the reasons for sanctions include a violation of the program concept described in the broadcasting license. In penalizing violations of content obligations, the regulator is obliged to observe the principles of objectivity, impartiality and proportionality (Article 28). It should take into account the degree of responsibility of the media, the manner of the performed liability breach, the motives behind the violation, the degree of danger or damage caused, graveness of consequence, frequency of activity, etc (Article 29).

The intention of the regulator to use its powers to act more efficiently against breaches of the Law on Electronic Media still has to be tested. Acting under the previous law (2005–2014), the regulatory body used its power to suspend and cancel a broadcasting licence due to the breach of content rules only once, at the very beginning of work (2004), although the media programming abounded with hate speech, obscenity, pornographic content and disqualification campaigns against individuals and political actors and although many electronic media drifted away from their initial program concepts. In the eighth month of functioning under a new law (August 2014–April 2015), the regulator for the first time punished a broadcaster with suspension of the program. It imposed a 24-hour ban on a reality program by a national broadcaster TV Happy because of contents harmful to minors shown in appropriate hours.

In these eight months, the regulator issued four warnings, as opposed to 14 that were imposed in 10 years (2004–2014). Non-publicized reprimands under the old law were issued 78 times during 10 years and the new ones, publicized ones by violators, seven times in eight months. Most of recent sanctions against media concern harmful content for minors, shown in inappropriate hours.

The regulator's warning of TV Pink for violating human dignity and harming children participating in a reality show "DNK" did not influence this broadcaster to change its programming. The 31 March 2015 show "DNK" portrayed violent behaviour of a husband against his wife; two days later this person killed his wife. On 8 April, more than 70 civil society organizations appealed to the regulator to suspend further broadcasting of the show and to revoke the license to TV Pink. The regulator did not react to this petition by the end of April 2015.

In acting under the new law, the regulator has not shown concern for content pluralism and for protecting the audience right to balanced and reliable information without being exposed to bias and propaganda. In the past, three out of 67 reprimands whose reasons were disclosed by the Council, dealt with non-objective reporting, and three of 14 warnings concerned disqualification campaigns against personalities and political actors. No actions have been

IN ACTING UNDER THE NEW LAW, THE REGULATOR HAS NOT SHOWN CONCERN FOR CONTENT PLURALISM AND FOR PROTECTING THE AUDIENCE RIGHT TO BALANCED AND RELIABLE INFORMATION WITHOUT BEING EXPOSED TO BIAS AND PROPAGANDA.

taken so far for breaching the content rule on providing free, true, objective, comprehensive and timely information (Article 47). Media analysts point out that the ratio of analytical reporting has been reducing during the last year and that some of major TV channels act as bulletin boards of the government.

The Law on Electronic Media (2014) obliges the regulator to conduct public hearings in the preparation of general acts, which are directly related to broadcasters. This is a novelty in the method of work of the regulator. This new working method was applied for the first time in the procedure of adoption of three rulebooks, necessary for the implementation of the law in December 2014 - the Rulebook on protection of rights of minors in the provision of media services, Rulebook on the procedure for imposing measures on media and the Rulebook on the procedure for preparation of the list of events of special significance to all citizens and the exercise of the right to access events of great public interest.

The regulator is planning to organize public hearings for other bylaws it has to adopt. The interest of stakeholders for participation in first three public hearings was low. The regulator's report on public hearings is very short and crude. It does not inform about the opinions of stakeholders on drafted legislation or the degree to which they influenced their final forms.

FINANCIAL AUTONOMY OF THE REGULATOR

The regulator is autonomously financed since 2007. The only sources of its income are the fees paid by broadcasters for the right to a broadcasting license issued by the regulator. In the past, the regulatory body was obliged to get the approval for its annual financial plan by the government. This solution was criticized for providing a basis for political pressures on the regulatory body. The new law (2014) authorizes the national Parliament to approve this financial plan. The annual report of the work of the regulatory body contains details about finances earned and spent.

In all the years of autonomous financing, the income of the regulatory body was larger than its expenditure, despite the fact that a significant number of license holders fail to pay their fees. According to the report of the Anti-Corruption Council, more than 400 broadcasters had debts to the regulator on 30 June 2014; debts of 19 of them add up to more than 10 million EUR. This raises the question of justification of the fee amount, especially in the time when a majority of media suffer financial crisis and solvency problems. The regulator pays the excess of revenues over expenses into the state budget.

TRANSPARENCY OF OWNERSHIP, CROSS-OWNERSHIP AND ECONOMIC PERFORMANCE OF MEDIA OUTLETS

The records on media ownership that exist at this moment are neither transparent nor credible. New records are under construction. The creation of a new type of records was prescribed by the Law on Public Information and Media in August 2014. By a decision of the Ministry of Culture and Information

in a relevant bylaw, they should be accessible in August 2015. The record on media ownership of all the media, not only of broadcasters, should be publicly available in the Media Register, which is kept by the Serbian Business Registers Agency. According to the 2014 Law on Public Information and Media, the Media Register shall contain the information about the legal and natural persons who directly or indirectly have more than 5 percent share in the founding capital of a media outlet, information about other persons associated with these owners and information about other media in which they have more than 5 percent of shares (Article 39). The information shall be submitted by media.

Media do not have a legal obligation to register in the Media Register. It is assumed that all the media will voluntarily register because that is the only way they will be eligible for the state aid, state advertising or use of any of their services by state bodies. Therefore, records on media ownership should be available, except for the media that decide not to have any business contracts with the state bodies.

The 2014 Law on Electronic Media requires the regulator to maintain the Register of Media Services. However, the list of the content of the Register of Media Services does not include the data on media ownership (Article 86). This is unusual because the regulator obtains the data on the ownership structure of media in the procedure of their application for broadcasting license. According to the Law on Electronic Media, the media are obliged to submit information on the capital ownership structure, i.e. on the legal or natural person, who directly or indirectly has a share in capital and the amount of the share (Article 95). They also have to report to the regulator any change in the ownership structure (Article 105). It remains unclear why the ownership data are not made integral part of the Register.

The 2014 legislation limits acquisition between broadcasters and cross-ownership between broadcasters and press publishers in order to protect media pluralism. It does not allow the merge of two or more audio or audio-visual broadcasters if their combined ratings shares in the calendar year preceding the merger exceed 35 percent of the total listening or viewing ratings within their zone of coverage in the said year (Article 45). Cross-ownership is not allowed in relation to the publisher of a daily general newspaper with the average sold circulation over 50,000 copies a year over the limit of 50 percent of shares in the founding capital (Article 46).

Monitoring of violations of the rules on acquisitions between broadcasters and cross acquisition that involves a broadcaster is the task of the regulator. The regulator acts either on a complaint by an interested party or ex officio (Law on Electronic Media, Article 103). The missing part of the legislation is prevention of vertical concentration between cable operators and content providers. This ban was included in the Draft Law on Electronic Media, but after extensive lobbying in Brussels, it was excluded from the law, allowing cable operators to produce content, albeit through an affiliated legal entity. The regulator has not

made any decisions regarding concentration of ownership since the introduction of the Law on Electronic Media in August 2014. According to the 2014 Law on Electronic Media, the sanction for violation of anti-monopoly rules is revocation of a broadcasting license. If the regulator identifies unlawful acquisitions or cross-acquisitions, i.e. the violation of media pluralism, it will warn the holder of the license and instruct it to end the practice which led to violation of media pluralism within six months. If the license holder does not comply with the regulator's warning, the regulator will revoke its license (Law on Electronic Media, Article 103). A warning issued by the regulator to broadcasters that violate anti-monopoly rules should be published in the Register of Media Services and Media Register.

At the moment, annual financial reports of media publishers are available on the website of the Business Registers Agency. However, they are of the same type as for all other business companies and do not reflect the specifics of media economy.

New media laws adopted in August 2014 do not much improve the situation. The only novelties are that the new Media Register, planned to be completed in August 2015, shall contain information on the amount of funds granted for co-financing of media projects, on the amount of funds received from public authorities and on the average media circulation sold in a calendar year for the print media (Law on Public Information and Media, Article 39). The economic performance of media outlets is therefore expected to remain obscure. Neither the media-related laws nor other legal instruments oblige the media to make public the information on all types and sources of revenues, content production costs, average viewing and listening figures, wages of journalists and other relevant business indicators.

REGULATION OF STATE FUNDING

Principles of fairness, neutrality and equal treatment in distribution of public money to media were introduced in the Serbian legal system in 2014 with the Law on Public Information and Media. The law obliges the authorities at the national, provincial and local level to pursue the public interest in the field of public information and to provide funds for this aim from their budgets. Full implementation of the law is expected after July 2015, which is the deadline for privatisation of all media with state ownership participation, which are still financed by direct state subsidies. Necessary bylaws were adopted to arrange the procedure of allocation of budget funds though public competitions, involving independent committees for making decisions. In 2015, many local municipalities started financing local information provided by local media on the basis of public competition. However, new practice is met with many difficulties.

In contrast to budgetary co-financing of public interest, state advertising is not yet treated as a form of state aid. State advertising is unregulated, uncontrolled, and non-transparent. No legal document regulates the allocation of

advertising funds by state bodies. The Public Procurement Law does not clearly say whether state advertising in broadcast media falls under its rules. A new Advertising Law, which was drafted in 2015, failed to deal with state advertising as a potential tool for undermining market competition and creation of clientelistic relations between the state and the media. The majority of state advertising thus continues to be based on non-transparent decisions, guided by political rather than economic interests. It is widely used to financially pressure the media and to secure positive publicity to state bodies.

There are no accurate data on the overall share of public money in the media industry. No institution collects and releases this information. Estimates range from 25–40 percent of the net value of overall advertising market. The state funds get on importance with the prolongation of the financial crisis in media. The new law introduces a novelty with regard to information on public funds in the media. The Media Register, which is kept by the Serbian Business Registers Agency with the purpose of providing public availability of the information about the media, should contain information on the amount of funds granted to a registered media outlet according to the law and information on the amount of funds received from public authorities, including state authorities, the authorities of the territorial autonomy, the authorities of local self-government, organizations vested with public powers, and legal persons founded or funded, fully or mostly, by a state authority (Article 39). The Media Register should be operational in August 2015.

SECTOR ANALYSIS AS A BASIS FOR PUBLIC POLICY

So far, policy measures in the broadcasting sector have been taken without expert studies and audience measurement. A lot of basic data about the sector are not recorded and remain unknown. The new Law on Electronic Media obliges the regulatory body to conduct analysis of the relevant media market, in cooperation with the body responsible for the protection of competition (Article 22, 16). Methodology for the analysis will be prescribed by the act passed by the regulator. In April 2015, this act was under preparation.

Sector analysis is a new task for the regulator. The law neither explains the purposes of the use of sector analysis nor prescribes how often the sector analysis should be performed. The analysis is only mentioned as an element in the elaboration of the Draft Strategy for Development of Media Services, i.e. type of media content of providers in each broadcasting area, which will be used in announcing a public competition for licenses (Article 23). Such analysis of the broadcasting sector has never been made, by any institution. Audience measurement is made only by commercial agencies, on a daily basis for TV, and a monthly basis for radio and press. Their data are accessible to clients only. The credibility of audience measurements has often been a matter of controversy.

There are grounded doubts in the capacity of the regulatory body to efficiently conduct sector analysis. The regulator has no experience in the analysis

of the market and lacks professional capacity for undertaking the analytical work on its own. The Commission for Protection of Competition that the regulator should cooperate with has no experience in this kind of analysis as well. The regulatory body so far has made only two analyses – about accessibility of broadcasting programs to persons with inabilities, and about gender equality and stereotypes in public broadcaster RTS, both in June 2014. So far, only partial sector analyses aimed at disclosing informal economic influences on media have been made. The first was published in 2011 and the second in 2015. Both were conducted by the Anti-Corruption Council (ACC), on its own initiative. The ACC is an expert advisory body of the Government of Serbia, but its work has been ignored by every government since its inception in 2001. The ACC's reports analyzed media politicization and clientelism and disclosed many mechanisms of economic pressures on independent reporting.

Legal checks against informal economic pressures on independent reporting are weak. They include transparency of ownership and finances from state funds, but do not touch numerous other ways of clientelistic support to media. Hidden media ownership by politicians and by business tycoons is not efficiently checked. There is no check of all financial flows to the media. Public procurement procedures for audio-visual state advertising are ambiguous. The Public Procurement Law does not clearly say if advertising falls under the public procurement regime. The market of advertising agencies is not regulated. After every parliamentary elections in the 2000s, there have been significant changes in the advertising market, with agencies close to the new government getting a better position. Conflict of interest is not regulated in this area, therefore informal ties between owners of advertising agencies and politicians allow for the use of advertising contracts as a leverage to influence media reporting. Labour relations in the media are not protected against the external influences on journalists and the domain of journalist autonomy in regard to media owners is not defined nor protected.

PRIVATISATION OF STATE-OWNED MEDIA

Until 2014, the survival of state ownership in media was both legitimate and illegitimate, due to contradictions in relevant laws. Mandatory privatisation was first stipulated by law in 2002 for broadcasters and in 2003 for print media but practically froze in 2007. The 2011 Strategy for the Development of the Public Information System confirmed the orientation towards privatisation of all remaining publicly owned media. The 2014 Law on Public Information and Media ordered it mandatory by 1 July 2015. The process of privatisation of state-owned media is under way, including 73 outlets according to the Privatisation Agency. All of them shall be privatised by the sale of capital. New owners are obliged to enable the continuity in the production of media content of public interest in a period of five years, instead of two or three years which are prescribed for companies in other business fields (Article 142).

The media shall be sold on public tenders. The starting price shall be the estimation of the market value of capital, provided by the current owners. It the sale fails, the shares shall be transferred to media employees free of charge. If the employees do no accept the shares, the media will cease to exist.

Some ambiguities in the implementation of the law were resolved in March 2015 by the decree of the government of Serbia. By this decree, the media with a negative value of capital will not enter the privatisation process but will cease to exist. This contradicts the expectation that they would be offered to employees, without being offered for sale. The Decree also specifies that free shares of media enterprises could be obtained only by those employees that had not received free shares of public enterprises on some other ground, which significantly reduces the number of employees eligible for becoming new media owners.

The privatisation process is lagging behind plans. By 1 April 2015, 64 local municipalities had to submit a decision on privatisation and documents about financial situation of the media (value of capital, property and debts) in their ownership. However, necessary acts were not submitted at all for 30 media, were incomplete for 17 and proper only for 7 outlets. According to some sources, the Privatisation Agency received about 150 letters of interest by potential investors by the end of 2014, mostly by individual persons with no experience in media business. There are no media companies among potential investors. One of publicly known big business owners expressed interest in privatisation of a regional daily paper publisher and one party official. There are fears that the most influential media (national state agency Tanjug, Belgrade broadcaster Studio B, publishers of daily papers Politika and Novosti) will be bought by tycoons close to the ruling parties. This practice has been established in the previous wave of privatisation, and some of tycoons complained they were forced to this business operation.

PUBLIC SERVICE MEDIA

Serbia has two public service broadcasters: Radio Television of Serbia (RTS), with two television channels and three radio networks covering the entire territory of the country and Radio Television of Vojvodina (RTV), with two TV and three radio channels, targeting the Autonomous Province of Vojvodina. Their tasks are the same, with the provincial broadcaster having an emphasized role in serving numerous ethnic minorities living in Vojvodina.

PUBLIC SERVICE REMIT

The public service media remit is defined in the Law on Public Service Broadcasting, which was adopted in 2014 after broad public consultation. According to the law, public service broadcasters should serve the public interest in the area of public communication. Their functioning in public interest is

defined through 19 concrete tasks (Article 7), which include a diverse program offer, free formation of individual and public opinion, promotion of the values of democratic society and human rights, respect of pluralism of ideas, serving of all sections of the population without discrimination, expression of the cultural identity of the Serbian people and other ethnic groups and affirmation of their cultural values and languages, development of media literacy, production of domestic documentary and feature programming, provision of information to domestic citizens about current events in the world, to Serbian citizens abroad and to foreign public about events in Serbia, etc.

The Law on Public Service Broadcasting differs from the previous regulation of PSB by providing a clear definition of the public interest that a public service broadcaster should pursue. However, the law does not define who and how should assess the fulfillment of the PSB remit. For example, programming requirements are not defined as verifiable and measurable obligations. No one is in charge of verifying whether the public broadcaster provide "impartial coverage of political, historical, economic, social, medical, cultural, educational, scientific, environmental, and other issues, enabling equal encounters of different views" (Article 7). When the breach of this obligation is identified by independent research (See "Public broadcasters are (not) in the service of citizens", to be published by SEE Media Observatory in May/June 2015), there is no way to sanction the public broadcasters because sanctions are not prescribed.

EDITORIAL INDEPENDENCE OF PSBs

According to the law, the public broadcaster is defined as an independent and autonomous legal entity. The law provides an ample legal basis for its independence by listing the principles of operation of PSB that should be followed (independence of editorial policy; independence from financing sources; prohibition of any form of censorship and unlawful influence on the operation of the public service broadcaster, editorial team, and reporters, Article 4), by defining the content of institutional and editorial independence of PSB (determining concepts and selecting programming, scheduling of programming; organizing activities; selecting executive officers, editors-in-chief, and employees, managing financial resources, etc., Article 5) and by stipulating that the method and conditions of securing the means for financing the activity of PSB must not influence its editorial independence and institutional autonomy (Article 35).

THE 2014 LAW ON PUBLIC SERVICE BROADCASTING DIFFERS FROM THE PREVIOUS REGULATION OF PSB BY PROVIDING A CLEAR DEFINITION OF THE PUBLIC INTEREST THAT A PUBLIC SERVICE BROADCASTER SHOULD PURSUE. HOWEVER, THE LAW DOES NOT DEFINE WHO AND HOW SHOULD ASSESS THE FULFILLMENT OF THE PSB REMIT.

The institutional safeguards for PSB independence are the procedures for the election of its management bodies and their competencies, the Management Board and Director General. Director General has the operational power while the Management Board serves as a supervisory body. Director General is elected by the Management Board on the basis of a public competition. In turn, the Management Board (9 members) is elected by the Council of the regulatory body for electronic media, also on the basis of a public competition. Neither

the Management Board members nor Director General could be holders of public office or political party positions.

The Law on Public Service Broadcasting introduced several important changes in these general solutions against politicization of PSB, which under the previous law regime did not prove effective. Many independent studies identified a strong pro-government bias in the programs of both RTS and RTV, which have developed clientelist ties with the ruling political structures. The law broadened the jurisdiction and increased the accountability of the Management Board. Its new functions include the adoption of the development strategy of PSB, the programming concept, the procurement plan and business plan; control of financial operations, oversight of the legality of activity performance and making transparent elaborated decisions on the election of Director General and other management positions. These new tasks should increase the responsibility of the Management Board, which according to the previous law was not accountable to anybody for its decisions and for business performance of the public service broadcaster. They also prevent marginalization of the Management Board, whose work in the past used to be reduced to the approval of proposals submitted by the Director General. The study of minutes of the RTS Management Board meetings in 2012 and 2013 concluded that the Board did not have a single serious and expert debate about any agenda topic while all its decisions were made unanimously.

Previously, there were no specific criteria for the election of Director General, who was given enormous competences and little accountability. Now, Director General must have a degree in higher education, 10 years of experience in senior management positions and be a prominent expert in the relevant field. The candidates for the position must submit a plan of work and management. The procedure for the election of Director General is complex and involves point-voting by the Board members (defined in the special document, adopted by the Management Board). Instead of the lack of any rules pertaining to the election of directors of TV and radio programs and their editors in chief, who often were close to particular political parties, this procedure is now precisely defined. It involves interviews with all candidates by Director General who nominates them, but with participation of at least two members of the Management Board.

A weak aspect of the new law is the system of election of the Management Board, which remained the same. Qualifications for the Board members are still vague and general, lacking the criteria for judging them as "prominent experts" in the fields of media, culture, management, law, and finance, (Article 17). The nine-member Board of the national broadcaster RTS, elected in 2011, had one media expert and two journalists, in addition to two historians, a sociologist, political scientist, psychologist an economist and no experts in management, law or finances. However, the unacceptable conflicts of interests are now more precisely defined. They are subject to regulation that governs the prevention of conflict of

interests in public office. In addition, members cannot be employees of a media service provider and must not perform services or other tasks for the public service broadcaster (which was the case with some previous members). The election of the member of the Management Board of RTS is expected in 2016, after completion of a 5-year term of the current members, elected in 2011.

The new law was first implemented in the election of new RTS Director General in spring of 2015. The Management Board interviewed 11 candidates (out of 26 candidates) who met the criteria for the position and submitted their plans of work of RTS. At the beginning of May, the Board elected a known journalist Dragan Bujošević as new Director General. Bujošević has been engaged in political journalism in the press and on TV and is not clearly affiliated to any political party. The election of a journalist to this position could be a sign that the Management Board has the greatest concern for the news and current affairs programming of the national public broadcaster.

The Management Board, which is a supervising body, is designed as an expert body. The representative function of society in large is given to the Program Council, which is an advisory body. The Program Council members should be experts in the fields of media, media employees, scientists, authors in the field of culture, and representatives of associations that focus on human rights and democracy. The nomination of candidates for the Programming Council is the task of the relevant Committee of the Parliament. Following a public competition, the Committee proposes a list of 30 candidates that reflect the territorial, ethnic, religious, gender, and other structures of the population. The Management Board elects 15 members from the list (Article 28–29).

The Programming Council takes care of fulfilling the interests of listeners and viewers in terms of programme selection. Its authority is to give recommendations and suggestions to the Director-General and Management Board and to monitor if the programme selection principles and obligations prescribed by the law are respected by PSB (Article 30). The novelty is that the members of the Council may not be holders of public or political office. By the previous law, 7 out of 19 members were members of the Parliament, i.e. representatives of political parties, elected by the Parliament. Although political officials cannot be members of the Programming Council any more, the nomination role of the Parliament, characterized by strong political divisions, raises doubts in the public that the composition of the Programming Council will be subject to political influences. Another weak aspect of the institution of Programming Council is its weak mandate, limited to making recommendations, which are to be considered by management bodies. The former Programming Council of the national public service broadcaster was not very active and had a negligible influence on the RTS's programme selection. On the contrary, the Programming Council of RTV was very active, but its influence on the programme selection is not known. New Programming Councils of both RTS and RTV should be elected at the end of 2015.

FINANCIAL AUTONOMY AND SUSTAINABILITY

Both the national and provincial public broadcaster have operated with a financial loss for years. They reached the edge of financial collapse in 2013. RTS had a loss of 1.463 million RSD in 2012, and 2.626 million RSD in 2013, which for the first time exceeded the value of capital (in the amount of 335 million RSD, about 3 million EUR). The government decided to suspend the subscription fee, as the principal financial source, and to replace it with direct state funding. Budget funding is a temporary solution – until the end of 2015 – for the permanent lack of financial sustainability of PSB.

Starting the beginning of 2016, PSB will be financed in accordance to the 2014 Law on Public Service Broadcasting. The law introduced some changes in PSB financing mechanisms. It obliges public broadcasters to clearly separate financial flows for funding the public and commercial activities, which was not the case before. Public activities will be financed from the tax, mandatory charged to television and radio set owners, in the amount up to 500 RSD a month (less than 5 EUR). The law introduced a new, elaborated system for the collection of the tax for PSB, replacing the poorly regulated, non-transparent and inefficient old procedure for the collection of subscription fees. PSB is also entitled to budget funds for clearly defined purposes, such as the production or broadcast of programs intended for foreign countries, the diaspora and the population living in Kosovo, and projects intended for the development of new technologies or new distribution services, digitalisation of archives and similar. Commercial activities are to be financed from commercial incomes, mostly from advertising, which is limited as before to half the time allowed for commercial broadcasters.

The lack of financial sustainability has always been a problem for the editorial independence of PSB. Public broadcasters have insisted that the state had to ensure sufficient funds for the PSB and readily turned to the state for direct and indirect subsidies, without worrying how that would influence their programming. The current system of budget funding only made the practice of providing state funds a regular activity and in a way legalized assertion of political influences on PSB. Independent research studies show that the bias in favor of the government intensified in 2015 (See "Public broadcasters are (not) in the service of citizens", to be published by SEE Media Observatory in June 2015).

Suspension of budget funding, expected in 2016, is widely accepted as a condition for financial independence of PSB. However, sustainability of PSB is expected to remain problematic. In the case of national broadcaster RTS, financial problems were not caused only by the inefficient collection of subscription fee. They have roots in clientelist ties with political and business circles, resulting in non-transparent commercial operations. RTS has no criteria for contracts with advertising agencies, contracts for co-productions or selection of works of independent producers. Commercial income, which was going down

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in the last years, is expected to shrink. The sale of advertising time through advertising agencies instead of direct deals with advertising was going up. In 2011–2013 period, the RTS share of advertising income earned by direct sale of advertising time in total revenues decreased from 34 percent to 26 percent (Toplicki centar za demokratiju i ljudska prava, 2015). The largest advertising agencies are connected to political parties and thus serve as a channel of political influence. According to 2011 and 2015 reports of the Anti-Corruption Council, RTS made many decisions on co-production of TV serials on its own financial harm. Neither the Law on Public Service Broadcasting nor the new Draft Law on Advertising deals with these problems.

In addition to high long-term and short-term financial debts, public broadcasters have enormous expenditures. They include salaries for a great number of employees (in 2013, RTS had 3255 employees, whose salaries made 45 percent of expenditures) and non-transparent expenditures for specific services, like cleaning and catering, which in the case of RTS cost more than it earns from production of films and serials in 2013 (194 million RSD vs. 57 million, ie. 1.7 million EUR vs. 0.5 million EUR). While the Law on Public Service Broadcasting introduces a stronger financial control, transparency and accountability of finances, there are no clear plans for the reduction of the number of employees in PSB.

It is not clear if the funds collected in 2016, by the Law on Public Service Broadcasting, would be sufficient for performing PSB remit. In 2014, public service broadcasters got 8.4 billion RSD (70 million EUR) from the budget (6.5 for RTS and 1.9 for RTV) but also had some income from subscription fee before it was officially suspended in August. In 2015, the budget funds were increased to 8.7 billion RSD (72.5 million EUR), while the total non-commercial income is evaluated to be 20 percent less than in 2014. Budget funds for 2015 correspond to about 58 percent of the subscription fee paid by all subscribers. A normal functioning of public service broadcasters, by some estimates, requires a collection rate of 75 percent.

There is a reasonable expectation that the collection of tax, planned for 2016, will be more efficient than it used to be in the past (dropping to 28 percent on average in 2013, but to a much lower percentage is some parts of the country). However, there is no clear calculation on the amount of money that could be collected from the tax. It is unknown how many people are liberated from paying the tax. They include retirees with the minimum pension, users of the right to financial welfare, handicapped people, if they live in a one-member household or are providers for a multiple-member household (Article 42), whose number is unknown. Furthermore, the amount of tax (no more than 500 RSD, or 4.2 EUR) defined in the law was not based on economic analysis, but appears to be set arbitrarily. Its upper limit equals the amount of a subscription fee in 2014, before it was suspended. Commercial revenues of PSB that could be used for public service tasks are in decline. In 2013, RTS earned 7.3 million RSD (64,000 EUR) less than in 2012.

ACCOUNTABILITY OF PSBs

Public service broadcaster is obliged by the 2014 Law on Public Broadcasting to submit annual reports on activities and business performance, along with reports of an independent authorized auditor, to the National Assembly for examination and decision-making, and to the Council of the regulator for information. The report on activities and business performance must be prepared in a way that clearly separates the main activity from the commercial activity, as well as the financing sources for those activities (Article 51). Separation of these two activities in the annual report is a novelty introduced by the Law on Public Service Broadcasting.

The law additionally obliges public broadcasters to publish their work plans, financial plans, and reports on activities and business performance, as part of their responsibility to the public (Article 6). Also, the law does not request the provincial broadcaster RTV to submit its documents to the Assembly of Vojvodina, although this Assembly has same prerogatives in relation to RTV as the National Assembly has in relation to RTV. Under the previous Broadcasting Law, none of this was a specific obligation of public broadcasters, although they did submit their annual reports to the National Assembly. In the past, national broadcaster RTS was known by hiding its business performance indicators, by refusing to publish financial reports and by refusals to act according to the Law on Access to Public Information.

The first business decision of the management bodies of RTS under the new law does not show signs of a greater transparency and accountability. In December 2014, RTS issued a public invitation bid for the selection of program contents by independent European productions that would be broadcast in 2015. The invitation states that RTS management would select the bids it deems suitable based on editorial policies of RTS, artistic and technical quality of programmes, and economic/financial criteria. Results of the bid were announced in March 2015, with the list of selected producers, without any explanation and without clear terms for making contracts with these producers.

RESPECT FOR AUDIENCES

Public broadcasters have no specialized bodies to deal with complaints from the audiences. The only body directly related to the protection of interests of the audiences is the Program Council. However, it has no specific task to deal with complaints of citizens. Its concrete task is to organize a public debate, at least once a year, on the program content and to submit a report on this debate, along with recommendations for improvement of the programming expressed during the debate, to the Director-General and Management Board.

Trust in PSB, as well as in other media, is very rarely measured. Specific surveys on trust in media are extremely rare. The last publicly available was done in 2008, by marketing agency Strategic Marketing and was financed by IREX. The survey discovered that citizens had low trust in media in general (25 percent had

some trust), but in larger percentage trusted a single preferred source of information. Trust in media is often part of regular public opinion surveys that do not measure citizens' opinions about particular media. For example, according to the survey of trust in various institutions (President, Parliament, political parties, military, etc) done by an NGO in 2013, showed that 20 percent had some trust in media, while 39 percent generally distrusted media and 33 percent had no trust at all.

Both public service broadcasters have centers for audience research. However, these are small units, with no capacity and finances for conducting own research. Audience studies are made only exceptionally, when financially helped by other institutions. Such a study was made, for example, by RTS centre on reactions of Diaspora to RTS programming in 2013, in cooperation with the state Office for Cooperation with the Diaspora. The web survey it was based on did not measure trust in the programme selection. Public service broadcasters rely on marketing agencies for getting data on their audiences. Data on viewers are available on a daily basis from Nielsen Audience Measurement. Data concerns shares of specific programs, rating, reach of population and duration of viewing. Data for radio are available on an irregular basis.

Generally, programs of the national public broadcaster RTS have large audience. In 2014, RTS 1 had the largest share of TV audience (21.7 percent), followed by TV Pink (19 percent) and TV Prva (13.2 percent). In the same period, 40 of the 50 most popular TV shows were aired by RTS 1. They included news and information programs, series and sport programs. The provincial broadcaster records increased audience share three years in a row, partly due to a greater amount of original programs, which attract a national audience as well.

DIGITALISATION

Completion of switchover to digital terrestrial broadcasting is scheduled for 17 June 2015. The process of digitalisation has been long, incoherent, and uncoordinated. Due to the lack of free frequencies and low investment in the transmitting network, the original plan for the one-day switchover (set for 4 April 2012) has been replaced by a gradual introduction of a digital signal on a region-by-region basis, accompanied by simulcast, which started in April 2015. It is estimated that about 40 percent of citizens would have to acquire set-top boxes in order to receive the digital signal. Users of social aid and pensioners with minimal pensions are entitled to set-up boxes free of charge. The process is led by the Ministry of Commerce, Tourism and Telecommunications and operated by the public enterprise "Emisiona tehnika i veze". It is financially helped by EU donation of 10,5 million EUR, by the Serbian budget and the loan of the EBRD. The digitalisation plan includes functioning of tree multiplexes - the first reserved for two public broadcasters and four commercial national channels, and other for local broadcasters. In terms of new technological offers, the only novelty is that RTS has a high resolution (HDTV) channel, being a leader among national broadcasters. Public broadcasters have been included

in the information campaign on the process of digitalisation. The 2014 Law on Public Service Broadcasting obliges the public service broadcasters to secure the use and development of modern technical and technological standards in the production and broadcasting of programming and implement the plans for transferring to new digital technologies according to set deadlines (Article 8).

The law guarantees the public service broadcasters to have at least two television channels and at least three radio networks (for RTS in the territory of the Republic of Serbia and for RTV in the territory of the Autonomous Province of Vojvodina) which they already have. It stipulates clear conditions for starting a new media service. It should be justified by added value in terms of fulfilling the democratic, social, and cultural needs of the population. The proposal for introducing a new media service, containing a clear and complete description of the new media service, explanation of the justification of its introduction, the technical conditions, designation of the user group for which it is intended, description of the financing method, and the assessment of the possible influence on the competition in the relevant market of electronic media must be submitted to the regulator for an opinion in relation to the possible influence of the new media service on the competition in the relevant market (Article 14).

While the procedure for the introduction of a new media service takes into account the competition rules, another article of the law neglects them. The law enables the public service broadcasters to get funding from the state budget for the projects intended for the development of new technologies, digitalisation of archives, digitalisation of technological equipment, and development of new distribution services in accordance with the possibilities enabled by digitalisation (Article 43). This possibility is not provided for commercial broadcasters and does not fall within the regular practice of co-financing media projects, open for commercial media. The way the law formulates the procedure for submitting the project proposal to the government body in charge of public information (the proposal shall be made by the Management Board of the public service broadcaster by 1 March of the current year for the following year, the proposal must contain the precise amount of the lacking financial means that are going to be financed from the state budget; after the budget act is adopted, the body in charge of the public provision of information at the republic or provincial level shall conclude a contract with the public service broadcaster, etc), the law seems to guarantee to public service broadcasters that they would receive necessary funds for projects related to technical innovation and digitalisation. This puts them in a privileged position over other broadcasters and opens a new channel for political influences.

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AUTHOR Jovanka Matić EDITOR Brankica Petković PUBLISHER Peace Institute, Institute for Contemporary Social and Political Studies, Metelkova 6, SI–1000 Ljubljana, Slovenia, <http://www.mirovni-institut.si>. DESIGN DAK, Ljubljana, May 2015

This report has been produced with the financial assistance of the European Union. The contents of the report are the sole responsibility of the Peace Institute and the authors, and can under no circumstances be regarded as reflecting the position of the European Union.

The report has been produced within the project South East European Media Observatory, http://www.mediaobservatory.net.