

2013-1

The Digital Switchover

LEAD ARTICLE

Digital Plans and Reality: Switchover in Russia and Other CIS Countries

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- Other countries belonging to the Commonwealth of Independent States (AM - AZ - BY - KZ - KG - MD - TJ - TM - UA - UZ)

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Digital Switchover

Foreword

The European Commission's report on the telecommunications market and regulatory development (see also IRIS 2012-9/8) describes, among other things, the current status of the introduction of digital television in the EU member states. According to section 5.3.2 of the report, at the time of publication (18 June 2012) it was already clear that Bulgaria, Poland, Hungary, Romania and Greece were the only EU member states that would not have completed the digitisation process before the deadline of 31 December 2012.

But how is the switchover to digital television progressing in other parts of Europe? An overview of the situation in the 11 countries of the Commonwealth of Independent States shows how painfully slow the journey from tried and trusted analogue TV to the pleasure of digital viewing can be, particularly in countries that have not enjoyed decades of free competition and independent media regulation. The lead article examines the numerous stages that had to be and, in some cases, are yet to be completed in order to successfully launch the first multiplex. It looks in particular at numerous legislative amendments, plans and draft strategies, selection procedures, investments and technical aspects, market structures and restructuring, and finally, the role of authorities and state bodies.

However, it is not only in the Commonwealth of Independent States that there are still hurdles to overcome before the post-analogue era is well and truly established or, at least, can finally begin. Planning, legislation, court decisions and accompanying measures are also commonplace within the EU. This is demonstrated in the Related Reporting section, with articles from seven European Union countries written in 2012.

Furthermore, the ZOOM section provides a detailed insight into the progress of the digital switchover in South-East Europe. It summarises the findings of the SEE Digi.TV project, based on an evaluation of the legal and actual situation in ten different countries. By the end of 2012, the digital switchover had reached varying levels of completion in these countries. While Italy, Croatia, Austria and Slovenia had already switched off the analogue signal by the turn of the year, Albania, Hungary, Serbia and "the former Yugoslav Republic of Macedonia" were still in the transition phase. In Bosnia-Herzegovina and Montenegro, the journey towards digital television has not even begun. Nevertheless, the reports on each country have helped to determine the aspects that are important for the successful transition from analogue to digital television. Thanks to the agreement of the project participants and the enormous commitment of the report's author, we are able to include these results in the ZOOM section of this IRIS *plus*.

The comprehensive contents of this publication show that the transition to digital television is a complex, challenging and lengthy process. A conclusion that is all too easily forgotten when digital channels can finally be accessed so simply at the touch of a button in the living room.

Strasbourg, February 2013

Susanne Nikoltchev

IRIS Coordinator

Head of the Department for Legal Information

European Audiovisual Observatory

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Digital Plans and Reality: Switchover in Russia and other CIS Countries

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Plans for the introduction of digital terrestrial broadcasting in Russia and all other Commonwealth of Independent States (CIS) countries are based on international accords such as the Regional Agreement GE06 (Geneva 2006), which is a binding international treaty signed by national administrations and registered with the United Nations. This Agreement served as a stimulus for adopting national policies in the switchover to digital broadcasting. All CIS countries are due to switch over to digital TV by 17 June 2015.

Since the publication of previous reviews for the readers of IRIS¹ quite a number of developments have taken place in Russian broadcasting that are worth reporting and analysing, this time in the context of Russia's neighbouring countries.

I. Russian Federation

1. New broadcasting law and the line-up of must-carry digital TV channels

The most important development in the regulation of broadcasting in post-Soviet Russia was the adoption of amendments to the media law in 2011 by the parliament. Designed as a broadcasting statute, the set of norms was implanted in the 1991 Statute "On the mass media".²

While a first draft of this statute was in fact submitted to the Supreme Soviet (parliament) of the Soviet Union in 1991, neither this bill nor those prepared later by the Russian Parliament have ever been adopted and/or promulgated because of the different political positions of the stakeholders on this issue. In the 1990s the parliament aimed repeatedly to develop a statutory system for electronic media. To this end, the parliament tried to overturn the opposition of the upper chamber (whose members were appointed by the President) or the presidential veto on a number of occasions, but failed each time. Moreover, in 2000 the government put an unannounced moratorium on the preparation of a draft law on television and radio broadcasting, which continued until 2010, when suddenly the green light was given to the bill "On amending some legal acts of the Russian Federation in order to improve legal regulation in the sphere of mass information". The

1) Richter, A. and Shevchenko, T., "Development of Digital Terrestrial Television in Russia and Ukraine", in *IRIS plus* 2010-1, *Digital Television*, European Audiovisual Observatory (ed.), Strasbourg 2010. Richter, A., "The Regulatory Framework for Audiovisual Media Services in Russia", S. Nikoltchev (ed.), *IRIS Special*, European Audiovisual Observatory, Strasbourg 2010, 64 p.

2) The Statute was adopted on 27 December 1991, No. 2124-1.

bill was introduced on 29 November 2010 by the chair of the parliamentary committee on the mass media, Valery Komissarov, from the ruling party United Russia. It was adopted in the first reading by the State Duma (lower chamber) on 22 February 2011, and in the second and third readings in only one day – on 3 June 2011. The Council of the Federation (upper chamber) approved the bill on 8 June 2011, and the Statute was signed by the President of the Russian Federation on 14 June 2011. Most of the provisions of the Statute entered into force on 10 November 2011.

Approximately 90% of the Statute amends and expands the Statute of the Russian Federation “On the mass media”. In several ways the new Act counteracts the recent Resolution of the Plenary of the Supreme Court of the Russian Federation “On Judicial Practice Related to the Statute of the Russian Federation ‘On the Mass Media’” of 15 June 2010.³

The new Statute widens the scope of Article 31 of the Statute “On the mass media” and adds Articles 31.1 to 31.9 in order to detail the process for the licensing of broadcasting. In particular, these articles stipulate that licensing may be based on a tender, competition or auction as shall be determined by the government. The relevant procedures as well as fees for the participants/applicants shall be determined by the government. Each applicant must submit a programme policy, in which it should conceptualise and describe the range of programmes it proposes to offer. If it wins the licence, the programme policy becomes part of its licence and its terms must be respected. Other conditions of the licence shall be determined by the government. The new Act allows the government to also license broadcasting online.

The term of the licence shall increase from the current five to ten years. It may be extended in case, *inter alia*, there are no uncorrected violations of the terms of the licence. The government determines the licensing body, which is currently *Roskomnadzor* at the Ministry of Communications and Mass Communications. This body may also decide on the extension of a licence. A licence shall not be transferred to a different legal entity.

A new provision, Article 32-1, of the Statute “On the mass media” gives powers to the President of the Russian Federation to approve the list of must-carry channels on all platforms. The channels that enter the list obtain licences without tender (competition, auction).

In the new Statute, the parliament essentially gave all powers to regulate broadcasting to the government and the President. In particular, it included in the statutory law the right of the President to establish the list of broadcasting channels to enter the first multiplex of digital TV and radio. The original decree laying down this list had been adopted on 24 June 2009, but was twice amended thereafter.⁴ The first instance was a decree which on 12 May 2011 amended the earlier list of the eight mandatory TV channels on the first multiplex of digital terrestrial television, as several of them had changed their names (and programme policies) between 2009 and 2011. Channel Sport became Rossiya-2, with a gradually decreasing number of sports broadcasts to the benefit of offering more entertainment; Channel Kultura was rebranded as Rossiya-K; and the Russian Information Channel was rebranded as Rossiya-24. Petersburg-Channel 5 changed its remit as a regional channel and now presents itself as a federal broadcaster, under the name Channel 5. The decree also specified that a channel mentioned earlier as a “channel for children and youth” is indeed a brand new channel known as Karusel, which is owned by a state-run joint stock company of the same name.

Thus, in 2011 the list of TV channels included Rossiya-1, Rossiya-2, Rossiya-24 and Rossiya-K (all belong to the state broadcaster All-Russian State Television and Radio Company, VGTRK); Channel 1 (Pervyi kanal) (run by the state and loyal to government businesses); NTV (run by a Gazprom-owned company); Channel 5 (owned by another loyal private broadcaster); and Karusel (see Table 1).

3) See Richter, A., *Russia's Modern Approach to Media Law / A Landmark for Mass Media in Russia*, IRIS plus 2011-1, Strasbourg, 2011.

4) See IRIS 2009-10/18; IRIS 2011-7/41; IRIS 2012-5/36. All IRIS quotes refer to articles published in the monthly electronic newsletter *IRIS Legal Observations of the European Audiovisual Observatory* (to subscribe to this free-of-charge service see http://merlin.obs.coe.int/iris_subscribe.php). The articles are also available free of charge on the IRIS Merlin database at: <http://merlin.obs.coe.int>

Table 1: Must-carry channels in Russia

No. of the spot	2009	2011	2012	Ownership/property:
2	Rossiia	Rossiia-1	Rossiia-1	VGTRK
7	Russian Information Channel	Rossiia-24	Rossiia-24	VGTRK
6	Kultura	Rossiia-K	Rossiia-K	VGTRK
3	Sport	Rossiia-2	Rossiia-2	VGTRK
8	Channel for children and youth (unnamed)	Karusel	Karusel	VGTRK
1	Pervyi kanal	Pervyi kanal	Pervyi kanal	51% owned by the government
5	Petersburg-Channel 5	Channel 5	Channel 5	National Media Group
4	NTV	NTV	NTV	Gazprom-media
10		Regional channel (unnamed)	Regional channel (unnamed)	
9			Public Television of Russia (to be established in 2013)	State property

As expected, the decree also expanded the powers of the state broadcasting communications network "Russian Television and Radio Networks" (RTRN) in regard to contracting private networks and facilities for the distribution of the must-carry channels. It also allowed RTRN to use the first multiplex of digital terrestrial television to deliver one additional regional channel in each "broadcasting zone" of Russia, quite possibly channels of its own choice.

RTRN was confirmed in 2012 by the government as the only operator of the second multiplex.⁵ It has neither been decided who will be allowed to operate the third and other multiplexes, nor is it clear based on which rules (if any) such a company is to be determined.

The second instance was on 17 April 2012, when for the first time in Russia, a decree of the President of the Russian Federation set the legal conditions to establish a national public service broadcasting (PSB) channel, named "Public Television of Russia". Its aim is to inform the population "in a timely, trustworthy and all-round manner on current affairs of domestic and foreign policy, culture, education, sciences, spiritual life and in other spheres". On the same day by a separate but related decree, the President amended the list of national mandatory free television and radio channels by adding the TV channel "Public Television of Russia". He also announced that the new channel would start broadcasting on 1 January 2013.

5) Government of the Russian Federation, План использования полос радиочастот в рамках развития перспективных радиотехнологий в Российской Федерации (Plan on the use of radio bands within the framework of development of prospective radio technologies in the Russian Federation), Resolution of the Government of 21 January 2012, No. 57-r as amended on 3 March 2012 by Resolution No. 287-r. See the text at: http://minsvyaz.ru/common/upload/Plan_57.pdf, accessed on 3 November 2012.

2. Rules for the second and third multiplexes

Following the entry into force of the Statute "On amending some legal acts of the Russian Federation in order to improve legal regulation in the sphere of mass information", on 8 December 2011 the Government of the Russian Federation adopted an ordinance that introduced new rules on licensing television and radio broadcasting,⁶ replacing those of 7 December 1994.⁷

The new rules stipulate that Roskomnadzor remains the licensing body. Roskomnadzor is the Federal Service for Supervision in the Sphere of Telecommunications, Information Technologies and Mass Communications, a service controlled by the Ministry of Communications and Mass Communications and therefore part of the government.

A necessary precondition for issuing a licence to an applicant is now the establishment of an editorial board that must obtain its own statute (by-laws) and governmental registration certificate in accordance with the Statute "On the mass media". In the case of rebroadcasting there should be a valid contract with an editorial board of the TV or radio channel, established in accordance with the Statute "On the mass media". The realm of broadcasting is now understood under Russian law to encompass any form or platform of dissemination of TV and radio channels as a conglomerate of programmes formed in accordance with the relevant TV or radio programme listings.

Any violation of the programme policy, a blueprint document in which the applicant should conceptualise and describe the range of programmes it proposes to offer, is considered to be a gross infringement of the licensing rules.

The rules confirm that licensing may be based on a tender, competition or auction, but still fail to provide details as to how the procedural choice will be determined.

The original version of the (later amended) decree of 24 June 2009 had provided a line-up for the first multiplex based on recommendations developed by the Governmental Commission on Development of TV and Radio Broadcasting. Back then the extensive work of the Commission had been the focus of media attention. There is no evidence that further consultations with the Commission were held preceding the amendments to the decree or the establishment of the PSB channel. Nevertheless, the Commission at its meeting on 16 December 2010 set certain rules for the line-up of the second and third multiplexes of digital television. According to the press release of the Ministry of Communications and Mass Communications, the channels on both multiplexes will be offered free-of-charge to the audience.

The third multiplex will contain four "municipal channels" with regional services that will be different in different parts of Russia. It will also contain one national HDTV channel to be determined by the Federal Competition Commission (FCC). The municipal stations can be affiliated with the TV networks that will not enter the second multiplex. The municipal channels are to be selected in a competition procedure, but the exact role of the FCC has not been determined. The press release of the Ministry mentions the criteria of higher ratings, 24-hour broadcasting and "social importance" for determining the potential winners.

6) Rules on Licensing Television Broadcasting and Radio Broadcasting (Положение о лицензировании телевизионного вещания и радиовещания), approved by Ordinance No. 1025 of the Government of the Russian Federation on 8 December 2011. See IRIS 2012-2/35.

7) Rules on Licensing Television Broadcasting and Radio Broadcasting in the Russian Federation (Положение о лицензировании телевизионного вещания и радиовещания в Российской Федерации) approved by Ordinance No. 1359 of the Government of the Russian Federation on 7 December 1994.

A ruling of Roskomnadzor adopted on 15 October 2012 gave some shape to the second multiplex:⁸ After having been postponed several times, licensing of broadcasters on the second DTT multiplex is now scheduled to take place on 14 December 2012.⁹ Only Russian legal entities could take part in the open competitions. All applicants for the ten slots made available on the second multiplex were to hold a valid national licence, dispose of experience to conduct terrestrial, cable, and satellite broadcasting in at least five regions of Russia and be able to broadcast 24 hours every day of the week. There were no demands as to the programme concepts, topical directions, or formats (so-called “free concept”), but there is a minimum quota of 55% of airtime to be allotted to national products.

The broadcasters for the second DTT multiplex were selected by the FCC,¹⁰ based on the criteria of higher ratings and “social importance”. There is a one-time licence fee of RUB 36,095,000 (approximately EUR 900,000) for potential winners and a non-refundable fee for each applicant of RUB 721,900 (approximately EUR 18,000).

Within three months from the competition day, all winners are to sign a 10-year contract with RTRN for its service, which consists of providing, in stages, access to viewers in Russia. Each winner will form packages of TV programmes for broadcasting in different time zones – that is, every set of programmes will be prepared for four time-shifted intervals. They will supply to RTRN the signals in accordance with the technical specifications set by RTRN, as well as provide it with the electronic programming guides.

According to the director-general of RTRN, Andrei Romanchenko, the distribution of a channel in the second multiplex will cost each winner RUB 944 million (approximately EUR 23.4 million) per year. The entire sum becomes due as soon as the second multiplex is completely functioning, which is expected to occur in the year 2016. In addition there continues to be a fee for the distribution of the analogue signal, ranging from EUR 8.9 to 16 million.¹¹

No competition or tender for the slots on the third multiplex is planned so far.

According to the estimates of the National Association of Broadcasters, there are 920 TV broadcasters in Russia. Out of this number, 142 produce four hours or more of daily programming of their own.¹²

3. Investments and technical aspects

By October 2012, approximately 57 (out of approximately 143) million Russian citizens in 45 (out of 83) regions of the country could watch eight programmes of the first multiplex.¹³ Most

8) The exact date and number of the document are not clear as the official website of Roskomnadzor published only a “report” on it. No other official publication of the document is known to the author. Its title seems to be: “On conducting competitions to obtain the right to terrestrial broadcasting with the use of the second multiplex” (О проведении конкурсов на получение права осуществлять эфирное наземное вещание, с использованием позиции во втором мультиплексе). See the text at: www.rsoc.ru/docs/S00BSHHENIE_o_provedenii_12.20121.rtf, accessed on 3 November 2012.

9) The competition was indeed held by the FCC on that day. According to the press release of the Federal Service for Supervision in the Sphere of Telecommunications, Information Technologies and Mass Communications, the FCC “has managed to compile the second multiplex in such a way that the programme concepts [of the winners] responded to the interests of the multiethnic and extremely different audience”. The winners are ten channels: “TV Centre” (run by Moscow City Government), “Zvezda” (Ministry of Defence), “Mir” (the channel of the CIS member states), two sports channels “Sport” (VGTRK) and “NTV Plus Sport” (Gazprom-media), general broadcaster “RenTV”, and the private entertainment channels “MuzTV”, “TNT”, “STS”, and “Domashniy”. See www.rsoc.ru/news/rsoc/news17878.htm

10) The author had expressed reservations in this regard, see Richter, A. “The Russian approach to the line-up of digital TV channels”, *International Journal of Digital Television*, 1:2, p. 237.

11) Balashova, A., Novy V., “Телеканалы метят в десятку” (TV channels aim at 10) *Kommersant* daily, 17 October 2012 No. 195. See the text at: www.kommersant.ru/doc/2046156, last consulted on 3 November 2012.

12) Presentation of the proposals of the National Association of Broadcasters at its 16th congress in Moscow, 6-8 November 2012.

13) Kitaeva, K., “Участие во втором мультиплексе окажется по карману всего нескольким телеканалам” (Participation in the second multiplex will be affordable only to a few TV channels) *RBC*-daily, 17 October 2012. See: www.rbcdaily.ru/2012/10/17/media/562949984941459, last accessed on 3 November 2012.

of those regions are in the Far East, along the borders with China, or in the west near the European borders of Russia.

According to the plan on the use of radio bands within the framework of the development of prospective radio technologies in the Russian Federation,¹⁴ the DVB-T2 standard was chosen to replace DVB-T for terrestrial digital broadcasting. The DVB-T2 standard allows even more programmes to be broadcast on a given multiplex. The new model was used when one more channel – that of future public service broadcasting – was added to the line-up of the first multiplex in April 2012.

Standards for set-top boxes were developed by a “technological partner” of RTRN and approved by the Ministry of Communications and Mass Communications in March 2012.¹⁵

As to the digital dividend, on 8 September 2011 the State Commission on Radio Frequencies at the Ministry of Communications and Mass Communications adopted a decision to allocate the band of 791-862 Mhz to develop LTE-type communication networks.¹⁶ In July 2012 Roskomnadzor held the long-expected competition for the frequencies of the digital dividend in the 791-862 Mhz band. Four nationwide lots of two 7.5 Mhz bands each for LTE services were won by the “Big Four” of Russian telecom companies (MTS, MegaFon, VimpelCom and Rostelecom).¹⁷

To summarise, based on current evidence, television policies in Russia tend to consolidate the power of the executive to control the broadcasting spectrum and “make order” in the array of broadcasters that exist at national and especially regional level. The first decree of the President on must-carry channels of 24 June 2009 raised doubts as to his powers to deal with licensing issues. In 2011 statutory rules were introduced that seem to significantly widen the power of the government and the President to rule on broadcasting. This power has economic (budgetary spending and digital dividend distribution) and political (more political control with competition left for entertainment programming only) consequences. As Russia remains a trendsetter for most of the other CIS countries, this seems to be having repercussions for its neighbours.¹⁸

II. Other countries belonging to the Commonwealth of Independent States

1. Armenia

From among the Commonwealth of Independent States (CIS) countries Armenia has chosen a path towards the digital switchover which seemed to be the closest to Western models: public discussion and reform of the Statute on broadcasting. The results of the process resemble, however, those elsewhere in the region: despite public discussion the government retains control of the licensing and the legal framework is far from clear.

14) Government of the Russian Federation, План использования полос радиочастот в рамках развития перспективных радиотехнологий в Российской Федерации (Plan on the use of radio bands within the framework of development of prospective radio technologies in the Russian Federation), Resolution of the Government of 21 January 2012, No. 57-r as amended on 3 March 2012 by Resolution No. 287-r. See the text at: http://minsvyaz.ru/common/upload/Plan_57.pdf, accessed on 3 November 2012.

15) Kodachigov, V., “Минкомсвязи выбрало неизвестного поставщика систем доступа к каналам” (Mincom chose an unknown supplier for access to channels systems), *Vedomosti.ru*, 30 March 2012, www.vedomosti.ru/tech/news/1582097/kod_dlya_svoih, accessed on 3 November 2012.

16) State Commission on Radiofrequencies at the Ministry of Communications and Mass Communications of the Russian Federation, Об использовании радиочастотного спектра радиоэлектронными средствами стандарта LTE и последующих его модификаций (On the use of radiofrequency spectrum by radio-electronic devices of the LTE standard and its further modifications), Decision of 8 September 2011, No. 11-12-02. See the full text at: www.grfc.ru/idc/groups/public/documents/grhcresheniya/009823.doc, accessed on 3 November 2012.

17) Maltsev, S., Частоты LTE достались “большой четверке” (LTE frequencies went to the “Big four”), 13 July 2012. See: www.ict-online.ru/news/n87718/, accessed on 3 November 2012.

18) Richter A., “The trends in digital switchover of Russia and other CIS countries”, *International Journal of Digital Television*, 3:3, 2012, pp. 235-238.

Armenia was one of the first countries in the CIS to establish a two-year moratorium on the licensing of analogue broadcasters. The freeze on the allocation of frequencies was first ordered by the government, and then, in 2008, by an amendment to the broadcasting law. The amendment followed (and was probably triggered by) the judgment of the European Court of Human Rights in the case of *Meltex Ltd. and Mesrop Movsesyan v. Armenia*.¹⁹ The judgment of 17 June 2008 pointed to the need to review the licensing procedures used to decide on the frequency application of the independent television broadcaster A1+. A1+ had been denied a licence seven times since 2002.²⁰ Despite the European Court of Human Rights' judgment, the government did not review the application of A1+, possibly because awarding a licence would have been impossible due to the absence of available frequencies.

According to the government's goals, the two-year moratorium was meant to give the relevant public authorities time to prepare the switch to digital broadcasting to the maximum, to elaborate a concept paper on the transition to digital broadcasting and to make changes to the Law "On Television and Radio" in order to ensure a smooth passage to digitalisation.

In line with this expectation, the Interdepartmental Commission on Implementation of Digital TV and Radio Broadcasting in the territory of Armenia prepared a Concept Paper "On migrating to digital radio and TV broadcasting system in Armenia", which the government approved in November 2009. However, according to the Committee to Protect Freedom of Expression, an Armenian human rights NGO, the Concept Paper "reminded more of a declaration of good intentions than a strategy for actions".²¹ An analysis of the Concept Paper commissioned by the Office of the OSCE Representative on Freedom of the Media was more diplomatic: "the Concept Paper mentions the need for changes in the laws but is not very clear on the substance of such changes."²²

Nevertheless, on 17 June 2010 Armenian President Serzh Sargsian signed into law the Statute "On Introducing Amendments and Supplements to the Law 'On Television and Radio'". The Statute had already been adopted by the parliament on 10 June 2010. The law had been drafted by the Ministry of Economy and justified by the need to switch from analogue to digital broadcasting.

The Statute amended the existing Law "On Television and Radio"²³ in that it introduced a new text addressing digitalisation issues. Even with these changes the new law was very close in its structure and approaches to the norms of the previous one.²⁴

The amending Statute did not lay down any legal grounds for private operators of digital broadcasting to be established. For example, the Statute now provides that "in order to create a private network of digital broadcasting by legal persons starting from 1 January 2015, the procedure and terms for multiplex licencing will be established by law". It neither stipulates when precisely (after 2014) the law will provide these important terms nor does it specify why their adoption was delayed to start with.

The Statute has been criticised by journalistic and international organisations. They noted that the new law does not solve the crucial issues of broadcast regulation and recommended to introduce some essential changes. In response the President established an expert committee of representatives of the government and NGOs, headed by the Ombudsman of the Republic of Armenia. By June 2011,

19) See: <http://merlin.obs.coe.int/iris/2008/8/article1.en.html>

20) Richter, A., *Post-Soviet Perspective on Censorship and Freedom of the Media*, Moscow: UNESCO, 2007, p. 153-155; Burgess, J., *Throwing the Switch: Challenges in the Conversion to Digital Broadcasting. A Report to the Center for International Media Assistance*, Washington, DC: Center for International Media Assistance, 2009, p. 11.

21) Committee to Protect Freedom of Expression, "Transition process to digital TV and radio broadcasting in Armenia. Analysis of the situation and recommendations", 2010, www.partnership.am/res/POS%20Publications_Eng/Recom-Digital-%28eng%29-2010.doc, accessed on 3 November 2012.

22) Nyman-Metcalf, K. and Richter, A., "Analysis of the concept paper on migrating to digital radio and TV broadcasting system in Armenia", Office of the Representative on Freedom of the Media, Organization for Security and Co-operation in Europe, 2010, www.osce.org/fom/67722, accessed on 3 November 2012.

23) Statute "On Television and Radio Broadcasting" of 9 October 2000.

24) See IRIS 2010-8/8.

the group had drafted a new bill on broadcasting, which despite having been submitted to the parliament was never formally considered.

In July 2010, the regulatory authority for broadcasting, the National Council for Television and Radio, or NCTR, invited applicants to its tender for 18 DTT broadcast slots. A total of five licences for commercial broadcasters were allocated in December 2010; two licences were reserved for the public service broadcaster. In addition, one licence was awarded for the capital city Yerevan and one for each of the 10 provinces. The NCTR turned down the 13th licence bid of *A1+* with the argument that *A1+* had provided false financial information in its licence application, an allegation that *A1+* refutes.

ALM TV, which is managed by the leader of the opposition People's Party, was also denied a DTT licence despite a seemingly superior application that offered more coverage and financing in comparison with the broadcaster *Yerevan* that received the licence.

Prior to the competitions of December 2010, 42 licensed private TV channels existed in Armenia: 16 of them in Yerevan and 26 in the provinces. Since then the number of broadcasters diminished. Today 15 private TV channels are operated (in addition to the Public Television of Armenia). There are six nationwide TV channels, of which one is allocated for the rebroadcasting of foreign broadcasters. Nine TV channels are operated in Yerevan and three of them are rebroadcasters. Besides, ten regional TV channels – one for each of the Armenian regions – were licensed to broadcast in the digital network. The regional TV companies that did not take part in the competitions or were not successful with their applications will continue to broadcast in analogue mode until the end of 2014. Most of the private TV channels are owned by politicians and major entrepreneurs, associated with the authorities.²⁵

2. Azerbaijan

In early 2011 the Cabinet of Ministers of Azerbaijan approved a programme “On Establishment and Development of Digital Broadcasting System DVB-T on the Territory of the Azerbaijani Republic”. Transition from analogue to digital broadcasting is to be attained in two stages. By the end of stage one (2012), digital broadcasting shall be ensured in major cities and in the areas along the borders of the country. Upon the completion of the second stage (2015), all TV viewers shall be able to receive 2, 3, 4 or more packages, each of which can consist of up to 12 TV channels. At the same time the analogue broadcasting will be switched off.

The process of digitalisation started in Azerbaijan back in 2004. As of 2011 digital television is offered to 35% of the population. However, the prospects of digitalisation are often questioned due to the high costs for some TV companies and residents of Azerbaijan.²⁶

3. Belarus

In this country a “State programme to implement digital television and radio broadcasting” was adopted on 8 December 2005 by an ordinance of the Council of Ministers. In comparison with other members of the Commonwealth of Independent States, Belarus has an advanced telecom infrastructure. Cable TV penetration is 71% of the population (Russia, to compare, has about 20%). The line-up of the channels of the so-called “social package” multiplex, which consists of free digital broadcasting, was approved by an order of the Ministry of Information on 6 July 2009. The original list contained six channels, including two from Russia. As of today it consists of state TV channels Belarus 1, Belarus 2, ONT (that rebroadcasts programmes of Russia's *Pervyi kanal*), STV (a stock company affiliated with Russian commercial TV channel *Ren*), the two Russian channels NTV and RTR-Planeta (international version of *Rossiya-1*), as well as the CIS common channel *Mir*.

25) Poghosbekian, E. (ed.), *Media Landscapes of Eastern Partnership Countries*, Yerevan, 2011, p. 10, www.ypc.am/upload/Media%20Landscapes%20of%20EaP%20Countries_eng.pdf, accessed on 3 November 2012.

26) *Ibid.* p. 28.

Another channel that had been part of the first multiplex – 8th Channel (a private company) – was suspended from its communication services on 1 January 2012 for outstanding debts.

The second must-carry free package includes Moscow channels TV-Centre, TNT, Ren-TV and Russia Today (RT).²⁷ Altogether there are 87 TV media outlets in the country, out of which 55 enterprises are not affiliated to the state, and 32 are state broadcasters.²⁸

All non-state broadcast media are fully controlled by the public authorities – both local and national – through the system of broadcast licensing. The licensing body, the Commission on Television and Radio Broadcasting of the Republic of Belarus at the Ministry of Information, grants an automatic right for terrestrial broadcasting to TV organisations established by the decisions of the Belarusian President or the Council of Ministers. In all other cases the competition rules apply. The assignment of licences for broadcasting is regulated by an ordinance of the Council of Ministers adopted in 2003.²⁹

The Council of Ministers and the Ministry of Communication and Information jointly appoint all the members of the licensing body, including its chair. This position is traditionally reserved for the Minister of Communication and Information. Thus, the government fully controls the process of distribution of all frequencies and licences.³⁰

The standard for DTB is MPEG-4, DVB-T. According to the state broadcasting network operator, BRTPC, as of 4 July 2012 the penetration of digital TV broadcasting with the DVB-T standard reached 95.25% of the country's population.³¹ MMDS operators of television services had completed switchover by 1 June 2012.

National factories produce set-top boxes and TV sets that are compatible with the digital TV standards. At the same time consumer demand for these products is low. Only 20,000 set-top boxes were sold in the period from January to November 2011.³² While there are 2 million analogue TV sets in Belarus, the sales of digital TV sets amounted to only 10,000 in 2011 and 5,000 in 2010.³³ The low sales figures are viewed as the major problem on the way to analogue TV switch-off.

4. Kazakhstan

On 2 March 2012 the first broadcasting statute entered into force in Kazakhstan.³⁴ It had originally been designed to reflect the needs of digital switchover. To this end, the state-controlled stock company Kazteleradio was assigned the role of national operator of broadcasting. The Statute guarantees all existing analogue TV broadcasters inclusion in the line-up of the digital networks. However, only some of them became part of a free “social package” determined by the State

27) Rak, I., О развитии телекоммуникационной сети Республики Беларусь (“On development of telecommunication network of the Republic of Belarus”), report at the conference *Media Sphere of Russia and Belarus under Conditions of Contemporary Geopolitical Transformations*, Minsk, 21 October 2010.

28) As of 1 September 2012, Data of the Ministry of Information of the Republic of Belarus. See: www.mininform.gov.by/rus/smi/elek/

29) Ordinance of the Council of Ministers of the Republic of Belarus of 30 May 2003 No. 726 “On approval of the Rules on competitions for the right to terrestrial television and radio broadcasting” (Об утверждении Положения о предоставлении на конкурсной основе права наземного эфирного телерадиовещания). See: www.pravoby.info/docum09/part22/akt22232.htm, accessed on 3 November 2012.

30) Poghosbekian, E. (ed.), *Media Landscapes of Eastern Partnership Countries*, Yerevan, 2011, p. 41-42, www.yrc.am/upload/Media%20Landscapes%20of%20EaP%20Countries_eng.pdf, accessed on 3 November 2012.

31) Belarusian Radio and TV Transmitting Network (BRTPC), “Цифровое телевидение” (Digital television), 2012, www.brtpc.by/services/television/digital, accessed 3 November 2012.

32) Solonovich, A., Переход на цифровое вещание может оставить белорусов без телевизоров (Digital switchover may leave Belarusians without TV sets), *Naviny.by*, 7 December 2011, http://naviny.by/rubrics/society/2011/12/07/ic_articles_116_176087/, accessed on 3 November 2012.

33) Platov, A., Беларусь готовится к цифровому телевидению (Belarus gets ready for digital TV), *Компьютерная Газета* (Minsk), No. 9. 2 March 2012, <http://pressenter.ru/index.pl?act=PRODUCT&id=77>, accessed on 3 November 2012.

34) Statute of the Republic of Kazakhstan “On television and radio broadcasting” of 18 January 2012, No. 545-IV. See: IRIS 2012-3/28.

Commission on Development of Broadcasting in November 2012. The Commission was formally established on 6 June 2012 by the government with the Minister of Culture and Information as its chair and his vice-minister as the deputy chair. It basically replaced the Commission on Broadcasting as it had been known before then.

To implement the broadcasting law and in view of the coming digital switchover the Government of the Republic of Kazakhstan adopted on 26 July 2012 an ordinance titled "On approval of the Rules for competition on selection of the must-carry television and radio channels".³⁵ According to the Ordinance, the Committee on Information and Archives of the Ministry of Culture and Information has the mandate to assist the procedures for the selection of broadcasting channels for the line-up on the multiplex. The competition itself will be conducted by the Commission on Development of Broadcasting that reviews programme policies, technical specifications and financial resources of the applicants. The Commission's decisions on the results of the competition are to be approved by the government within one month after the competition.

As approved by the Ordinance the selection criteria for the competition include "social importance of proposed programmes, availability of broadcasts on culture, educational programmes, programmes aimed at youth and children, coverage of state policies concerning the social and economic development of the country". As other criteria the ordinance lists the general format of a channel, the requirement that a certain proportion of programmes must be produced by the applicants, that a proportion of programmes must be broadcast in Kazakh language, the availability of professional staff, and an average length of broadcasting per day.³⁶

While tariffs for the digital transmission service will be determined only in 2014, Kaztelradio will not charge broadcasters until the switch-off of analogue broadcasting. In return Kaztelradio will be compensated from the national budget.

DVB-T2 is the minimum standard. The first DTT national multiplex started regular broadcasting in five major cities in July 2012 with a set of eight programmes including two regional ones.

5. Kyrgyzstan

In the framework of the GE06, 14 multiplex frequencies have been reserved for Kyrgyzstan. A pilot project to test the problems of the digital switchover started in 2009 in the Batken region. This south-western province was chosen as its mountainous landscape and intersecting signals from neighbouring countries constituted additional challenges in the context of testing the setting up of digital transmitters. Currently, eight TV and two radio channels broadcast in digital format in the province using one multiplex that is owned by Kyrgyz Telecom, a state-controlled and partly state-owned company.

On 2 November 2011, a programme for the digital switchover was approved by the Government of the Kyrgyz Republic,³⁷ following a process of consultations with civil society and media NGOs. It outlines the technical and political steps to be taken by stakeholders. In particular it establishes DVB-T2 as the minimum standard. The programme appoints the state-run Kyrgyz Telecom as the main service provider and obliges it to broadcast the free-of-charge "social package" multiplex to 95% of the population by 2013.

35) Ordinance of the Government of the Republic of Kazakhstan "On approval of the Rules for competition on selection of the must-carry television and radio channels" of 26 July 2012 No. 970. See: http://online.zakon.kz/Document/?doc_id=31233586, accessed on 3 November 2012.

36) Ordinance of the Government of the Republic of Kazakhstan "On approval of the Rules for competition on selection of the must-carry television and radio channels" (Об утверждении Правил проведения конкурса по формированию перечня обязательных теле-, радиоканалов) of 26 July 2012, No. 970. Published in *Kazakhstanskaya pravda* official daily on 16 August 2012, No. 271-273.

37) Government of the Kyrgyz Republic, Resolution О переходе на цифровое телерадиовещание в Кыргызской Республике (On the digital television switchover in the Kyrgyz Republic) of 2 November 2011, www.gov.kg/?p=4733, accessed on 3 November 2012.

The programme tasks the State Communications Agency (SCA) with implementing the switchover in four stages:

1. The SCA and the Ministry of Transport and Communications (MTC) are to develop criteria for the allocation of licences.
2. Allocation of multiplex frequencies is to take place through a competition. The Ministry of Culture must identify specific TV programmes that are to be included in a free-of-charge multiplex, the so-called “social package”.
3. Private broadcasters are to develop their digital broadcasting networks. The government pledges to create favourable conditions for the domestic production.
4. Measures to prevent a negative impact on the socially vulnerable population are to be implemented by the Ministry of Social Protection, the Ministry of Finance, the MTC, the SCA and the Ministry of Culture.

The programme foresees that the 14 multiplexes allocated for Kyrgyzstan will be distributed in the following way. Four of them go to Kyrgyz Telecom, including the “social package” multiplex; and one is reserved for a free-of-charge educational TV to be determined through a competition; between three and ten multiplexes are to be allocated to private service providers on the basis of a competition or auction by 2014 and until then will be considered as reserve frequencies.

The programme suggests that in each of the seven provinces one or two of the “commercial” multiplexes are allocated for private broadcasters to be auctioned among private telecommunication enterprises in three lots. The multiplex operators are to select and contract local broadcasters on the inclusion of their programmes in the line-up.

At the same time high initial costs are likely to limit any interest of commercial service providers to bid for multiplexes. According to the OSCE sources, local broadcasters are poor and lack resources to produce or purchase enough content. There is already a strong preference of the population for satellite TV, a trend that may be accelerated with the digital switchover. It should be noted that currently satellite TV for viewers in Kyrgyzstan does not offer any national content.

Though adopted recently the programme is already behind schedule.

6. Moldova

According to the plan agreed in Geneva in 2006 (GE06), Moldova will have six national multiplexes (36 television channels) and two regional multiplexes (26 television channels).³⁸

The first concept for introducing digital terrestrial television in Moldova was drafted in 2007. The Ministry of Information Technologies and Communications (MITC) announced its intention to begin the process of switchover only in 2011. According to the government, digital licences in the first multiplex will be given to both public and private institutions.³⁹

In June 2010, the MITC finalised the drafting of the Strategy Regarding Transition from Terrestrial Analogue to Terrestrial Digital Television (hereafter, the Strategy) and submitted it to broadcasters for public consultation. After debates with industry bodies, the Strategy was posted online for a wider public discussion. The final draft was submitted to the government in February 2011 and by autumn was ready to go through all the stages of the legislative process.⁴⁰ However, it has not been approved. Local authors believe that this is mainly because of “the fact that the topic itself is complex and there are few people in Moldova able to grasp the full extent of the upcoming

38) Gotisan, V., Pirtac, O., Dogaru, V. et al., *Mapping Digital Media: Moldova*, Open Society Media Program, 2012, p. 89. See: www.opensocietyfoundations.org/reports/mapping-digital-media-moldova, accessed on 3 November 2012.

39) Ibid., p. 18. See the text of the Concept (in Russian) at: www.mtic.gov.md/img/law/2009/proiect/2009-10-31b/conceptia_ru.pdf, accessed on 3 November 2012.

40) Ibid., p. 89.

transition and to provide meaningful input".⁴¹ The fact that approval is still pending is probably also related to the second observation that no information campaigns have been carried out to explain the implications of digital switchover to the general public.⁴²

Meanwhile, in February 2012, the MITC "downgraded" the Strategy to a Programme of the same name. The Programme was put forward for public consultation, published on the website and stakeholders were invited to send comments and suggestions. In summer 2012, the Programme was revised and consolidated with the suggestions received as a result of the public consultations. Thereafter stakeholders were again invited to send their comments and suggestions. Following this public consultation, MITC is expected to forward the draft Programme to the government for approval.

What is clear at this point is that the national, state-owned transmission network operator Radiocomunicatii will operate the DTT platform to be built on the basis of the current three analogue networks.⁴³ Radiocomunicatii, the major transmission network operator in Moldova, was founded and is run by the MITC and remains a state-owned enterprise. The first DTT trial, offering services from one transmitter, began in September 2003 in Chisinau. The second transmitter was installed in October 2003. Currently, one multiplex is available offering access to four television programme services. Another DTT trial operation exists in the town of Slobozia.⁴⁴ Other sources say that only three programmes – public broadcaster *Moldova1*, as well as private broadcasters *2 Plus* and *Prime*, have national coverage in the digital format.⁴⁵

The launch of a nationwide or regional DTT platform was expected to begin by the end of 2009, but the first practical steps were taken only in October 2010, when Radiocomunicatii began installing new equipment that would ensure the reception of the digital terrestrial signal. It is expected that after completion of the process of digitising terrestrial platforms, there will be about eight television stations in the first multiplex using MPEG-4 compression technology. The second multiplex was to be launched in 2012 (although this has not occurred), allowing viewers to access 16 television stations.⁴⁶

The line-up of the first, second, and probable third multiplexes is not yet finalised. The broadcast regulator is to conduct competitions for the line-up of the first free multiplex in 2013. In this context, the draft Programme mentioned that one aim of the digital switchover should be to migrate all existing analogue programmes to the new platform, the "effectiveness and importance of which had been demonstrated for many years in various aspects".⁴⁷ Local broadcasters are expected to establish associations to fill in the slots on regional multiplexes which they first have to build at their own expense or by attracting investments.⁴⁸ Many of them are likely to lose terrestrial access to the audiences with the switch-off.⁴⁹

41) Ibid., p. 90.

42) Ibid., p. 108. See also: Gotisan, V., "Digital mass media in Moldova: Evolution and perspectives", *Mass Media in Moldova*, June 2012, p. 10, available at: www.ijc.md/bulmm/2012%20iunie/eng/8_11_MM-June-2012-ENG-3.pdf, accessed on 3 November 2012.

43) Programme on Transition from Terrestrial Analogue to Terrestrial Digital Television (2012), draft to be approved by the Government of the Republic of Moldova, see the text (in Moldovan) at: www.mtic.gov.md/img/d2011/download/2012/03-20/program_TV-digital_februarie_2012_V2%20.pdf, accessed on 3 November 2012.

44) Gotisan, V., Pirtac, O., Dogaru, V. et al., *Mapping Digital Media: Moldova*, Open Society Media Program, 2012, p. 38. See: www.opensocietyfoundations.org/reports/mapping-digital-media-moldova, accessed on 3 November 2012.

45) Moiseev, S., Наземное цифровое телевидение в Молдове (Terrestrial digital television in Moldova), *Ekonomicheskoe obozrenie*, No. 8, 2 March 2012, www.logos.press.md/node/33716, accessed on 3 November 2012.

46) Gotisan, V., Pirtac, O., Dogaru, V. et al., *Mapping Digital Media: Moldova*, Open Society Media Program, 2012, p. 38. See: www.opensocietyfoundations.org/reports/mapping-digital-media-moldova, accessed on 3 November 2012.

47) Programme on Transition from Terrestrial Analogue to Terrestrial Digital Television (2012). See also: Nyman-Metcalf, K., (2012) Analysis of the Programme on the transition from analogue terrestrial television to digital terrestrial television in the Republic of Moldova at: www.osce.org/fom/92575, accessed on 3 November 2012.

48) Ibid.

49) Grosul, O., Вещатели пишут завещание (Broadcasters write last will), *Kommersant.md*, 10 July 2012, www.kommersant.md/node/9059, accessed on 3 November 2012.

Due to the small size of Moldova (which is almost equal to that of Belgium), the total expenses for the digital switchover are relatively low-scale compared to those of other CIS states. According to some experts, the total budget for completing the digital switchover is around EUR 3 million.⁵⁰ The funding for the switchover is expected to come from private investors.⁵¹ The standard will be MPEG-4, DVB-T.

The Strategy includes a commitment to provide set-top boxes to those who cannot afford them and to elaborate criteria for the provision thereof some time in the future.⁵² This is a crucial issue, as according to researchers “most Moldovan households are not equipped to access digital content due to the poverty that plagues a significant part of the Moldovan population”.⁵³ Technical standards for the set-top boxes are yet to be approved. Cable, satellite and similar technologies had a penetration of 22.5% in 2011, which means that more than three quarters of the population need new equipment.

As for the self-proclaimed independent state of Transdnistria, (IDC), its main telecom operator, migrated its TV cable and MMDS services to digital at the beginning of 2012. Back then, IDC announced it had already distributed 80,000 set-tops across Transdnistria for its clients free-of-charge. The must-carry package includes five free channels.⁵⁴

7. Tajikistan

The State Programme for development of digital television in the Republic of Tajikistan for 2010-2015 was approved by the government in 2010. Its implementation is administered by the State Committee on Television and Radio, which is part of the Government of Tajikistan. The government made it the Committee’s “main task” to create the conditions allowing citizens to obtain socially important and reliable information, to provide for the development of new platforms including mobile television, IPTV, HDTV and satellite transmissions from Tajikistan, and to secure the functioning of the analogue infrastructure until the switch-off.⁵⁵

According to the Programme, the switchover will be carried out in six phases and is planned to be completed by the end of 2016. It will be funded from the state budget (60%) and “other sources”.⁵⁶

The “social package” will include four state-run national programmes, while remaining slots will be taken by regional broadcasters. Sources in the State Committee on Television and Radio indicated at the end of 2011 that Russian broadcasters were also invited to express commercial interest in obtaining slots in the social package under the conditions set by the national communications authority.

No decisions were taken with regard to the exact line-up of this multiplex, the rules for inclusion of programmes and licensing, and sources that might subsidise set-top boxes. The standard chosen will probably be DVB-T2, with 16 slots in one multiplex.

50) Gotisan, V., Pirtac, O., Dogaru, V. et al., *Mapping Digital Media: Moldova*, Open Society Media Program, 2012, p. 37. See: www.opensocietyfoundations.org/reports/mapping-digital-media-moldova, accessed on 3 November 2012.

51) Programme on Transition from Terrestrial Analogue to Terrestrial Digital Television (2012).

52) Gotisan, V., Pirtac, O., Dogaru, V. et al., *Mapping Digital Media: Moldova*, Open Society Media Program, 2012, p. 90. See: www.opensocietyfoundations.org/reports/mapping-digital-media-moldova, accessed on 3 November 2012. See also: Programme on Transition from Terrestrial Analogue to Terrestrial Digital Television (2012), draft to be approved by the Government of the Republic of Moldova (on file with the author).

53) Gotisan, V., “Digital mass media in Moldova: Evolution and perspectives”, *Mass Media in Moldova*, June 2012, p. 10, available at: www.ijc.md/bulmm/2012%20iunie/eng/8_11_MM-June-2012-ENG-3.pdf, accessed on 3 November 2012.

54) See the website of Interdnestrcom at: www.idknet.com/about/vopros-otvet/o_cifrovizacii.php?phrase_id=1070882, accessed on 3 November 2012.

55) Government of Tajikistan, Государственная программа развития цифрового телевизионного вещания в Республике Таджикистан на 2010-2015 годы (State programme for development of digital television in the Republic of Tajikistan for 2010-2015), Ordinance No. 76 of the Government of the Republic of Tajikistan, 27 February 2010, para 22. www.khoma.tj/index.php?option=com_content&view=article&id=48:2011-08-01-08-32-22&catid=7:2011-08-01-08-30-48, accessed on 3 November 2012.

56) Ibid.

8. Turkmenistan

The broadcasting system in this country is quite simple. All TV channels belong to the state and are run through the Committee on Television, Radio Broadcasting and Cinematography which is part of the Government of Turkmenistan. Before 17 October 2011 this sphere was administered by the now defunct Ministry of Culture, and Television and Radio Broadcasting. The digital switchover and resulting increase in the number of television channels is part of the mandate of the Committee.

While only a few years ago not more than three TV channels operated in the country, there are now six national channels. They are: Altyn Asyr (Golden Age, current affairs), youth channel Yasyk, Miraz (Heritage) on history and culture, Turkmenistan (available in seven languages), Turkmenistan Sport, and Owazy, a musical channel of national folk songs. In addition, the local channel Ashkhabad is available in the capital and its suburbs.

All these channels will migrate to a digital broadcasting platform, all in HDTV format, all free for the public. This has led to the revival of government plans to ban aerial dishes that are popular in urban areas to receive signals from Russian or Turkish satellites.

9. Ukraine

Whereas some researchers view "the absence of a legislative framework that would regulate the process" as a serious problem for introducing digital broadcasting in Ukraine,⁵⁷ one might also state the opposite with reference to an abundance of relevant legal acts, at least in comparison with other post-Soviet countries.

A new version of the 1993 Statute On Television and Radio Broadcasting was adopted by the Supreme Rada (the national parliament) as early as 12 January 2006 to include (in Article 22) a number of important provisions regarding the future of digital broadcasting.⁵⁸ The Statute was followed by:

- the Radio Frequency Resource Utilisation Plan approved by a Resolution of the Cabinet of Ministers on 9 June 2006;⁵⁹
- the second "Plan for the Development of the National Television and Radio Sphere of Ukraine", which was adopted by the National Council of Ukraine on TV and Radio Broadcasting (hereinafter the National Council) on 1 December 2010;⁶⁰
- a decree of the President of Ukraine "On Urgent Measures to Provide for the Information Security of Ukraine" of 23 April 2008;⁶¹
- the "State Programme on the Introduction of Digital Television and Radio Broadcasting" approved by the Cabinet of Ministers on 26 November 2008.⁶²

The number of different legal instruments might account for the inconsistency within the legal framework. Further delay in the switchover has been caused by the conflicting opinions of different national authorities as to the path digitalisation should take, and instances of backtracking and numerous amendments to the documents listed above during the switchover process.⁶³

57) Poghosbekian, E. (ed.), *Media Landscapes of Eastern Partnership Countries*, Yerevan, 2011, p. 94, www.ypc.am/upload/Media%20Landscapes%20of%20EaP%20Countries_eng.pdf, accessed on 3 November 2012.

58) Statute of Ukraine "On TV and Radio Broadcasting" (Про телебачення і радіомовлення) No. 3759-12 of 21 December 1993.

59) See its text in Ukrainian at: <http://zakon.nau.ua/doc/?uid=1096.849.7&nobreak=1>, accessed on 3 November 2012.

60) See the text in Ukrainian at: <http://zakon.nau.ua/doc/?code=z1294-10>, accessed on 3 November 2012.

61) See its text in Ukrainian at: <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=n0010525-08>, accessed on 3 November 2012.

62) See its text in Ukrainian at the website of the Supreme Rada (the Ukrainian Parliament) at: <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1085-2008-%EF>, accessed on 3 November 2012.

63) Richter, A. and Shevchenko, T., "Development of Digital Terrestrial Television in Russia and Ukraine", *Digital Television IRIS plus*, 2010-1, Strasbourg: European Audiovisual Observatory, p. 24.

One of the few definite elements is that Ukraine has chosen the DVB-T2 MPEG-4 format for the digital signal.

The process of introducing digital broadcasting in Ukraine was spurred by the designation by the National Council of Ukraine on TV and Radio Broadcasting, the independent regulator, of a national provider, Zeonbud Ltd, in December 2010. Next, Zeonbud announced a schedule for building a network for digital broadcasting, including, in particular, the installation of 668 transmitters to be mounted on 167 transmission stations throughout Ukraine.⁶⁴

The platform was launched in October 2011 and as of August 2012 Zeonbud had an audience of three million (or about 6% of the country's population).⁶⁵ Viewers can access up to 28 television programme services depending on the region.⁶⁶ Zeonbud expected that one million households would access the DTT platform by the end of 2012.

Ukraine has a huge number of broadcasters, most of them municipal and regional, which has led to an excessive demand from them for slots in multiplexes guaranteed to them under Article 22 of the Broadcasting Statute. However, results of the competitions for regional slots (held by the National Council in 2011) allocated them to unknown Kiev companies bypassing leaders of the regional TV markets. Similar decisions marked competitions for slots in nationwide multiplexes. Priority was given to programmes such as "Hockey", "Banking", "Real Estate", and "Weather" rather than to general sports programmes, general news, culture and children's programmes.⁶⁷ A total of 28 programmes in the MX-1, MX-2, MX-3 and MX-5 multiplexes succeeded in the competition out of 59 bids. The results were challenged in court (the cases are pending).⁶⁸

In May 2012 the National Council on Television and Radio cancelled a competition for regional DTT licences citing litigation by a regional broadcaster (which might have led to an invalidation of the competition results). The competition was re-announced for 169 regional digital frequencies, the same number as before. The winning companies will enter into a contract with Zeonbud, which operates four national DTT multiplexes.⁶⁹

There is no clear policy regarding the supply of set-top boxes needed to receive the digital signal with regard to giving them to socially vulnerable layers of the population. The Head of the National Council recently stressed that out of 17.5 million households in Ukraine, only one million are equipped with transmitters capable of receiving digital signals.⁷⁰

During May-June 2012, 185,000 DTT receivers have been sold.⁷¹ Free receivers will be made available to 700,000 eligible households. In 2012 the Ukrainian State Committee for Television and Radio Broadcasting selected Strong to supply DTT receivers to needy sections of the country's population. The company offered to do so for UAH 486.80 (EUR 45.6) per receiver, while Romsat, the other shortlisted bidder, suggested a figure of UAH 487. Although Strong's receivers are currently

64) Poghosbekian, E. (ed.), *Media Landscapes of Eastern Partnership Countries*, Yerevan, 2011, p. 94, www.ypc.am/upload/Media%20Landscapes%20of%20EaP%20Countries_eng.pdf, accessed on 3 November 2012.

65) Dziadul, C., "New landmark for Ukrainian DTT", *Broadband TV News*, 22 August 2012, www.broadbandtvnews.com/2012/08/22/new-landmark-for-ukrainian-dtt/, accessed on 3 November 2012.

66) ProIT, Цифровое ТВ «Зеонбуда» уже смотрит 500 тыс. украинцев (Digital TV Zeonbuda is watched by 500 thousand Ukrainians), 27 June 2012, <http://proit.com.ua/news/telecom/2012/06/27/153212.html>, accessed on 3 November 2012.

67) Крайныак, Ю., Цифровые разводы (Digital plots), *Zerkalo nedeli* (Ukraine), No. 31, 2 September 2011, http://gazeta.zn.ua/ECONOMICS/tsifrovye_razvody.html, accessed on 3 November 2012.

68) Dziadul, C., "Ukraine announces DTT winners", *Broadband TV News*, 18 August 2011, www.broadbandtvnews.com/2011/08/18/ukraine-announces-dtt-winners/, accessed on 3 November 2012.

69) Dziadul, C., "Ukrainian DTT problems continue", *Broadband TV News*, 1 June 2012, www.broadbandtvnews.com/2012/06/01/ukrainian-dtt-problems-continue/, accessed on 3 November 2012.

70) Poghosbekian, E. (ed.), *Media Landscapes of Eastern Partnership Countries*, Yerevan, 2011, p. 94, www.ypc.am/upload/Media%20Landscapes%20of%20EaP%20Countries_eng.pdf, accessed on 3 November 2012.

71) Dziadul, C. "DTT takes off in Ukraine", *Broadband TV News*, 2 July 2012, www.broadbandtvnews.com/2012/07/02/dtt-takes-off-in-ukraine-2/, accessed on 3 November 2012.

manufactured in China, it is considering the possibility of assembling them in Ukraine. The total cost of the subsidised receivers will amount to UAH 333.458 million.⁷²

10. Uzbekistan

Uzbekistan introduced terrestrial digital TV broadcasting in the DVB-T standard in October 2009 with the first multiplex of 12 channels. It includes four state-run channels – O‘zbekiston, Yoshlar, Toshkent and Sport, as well as eight other channels (including five Russian ones). The state company “Centre of radio communication, radio broadcasting and television” (CRRT) is responsible for the development of the digital TV broadcasting networks as well as the preparation of normative acts like the state action plans on transfer to digital TV. In line with the CRRT decision of 25 February 2010, for example, a plan on transfer to terrestrial digital TV broadcasting in Uzbekistan for 2010-2015 was approved.⁷³

Currently the first multiplex provides 12 free channels in a number of regions of the country, mostly in border areas and in highly populated parts. In 2010, two more digital TV platforms were introduced in the capital and the Tashkent region and the number of digital broadcast TV channels rose first to 25 and then to 36. Most of these channels broadcast Russian entertainment or state-run programmes. In November 2011 the first terrestrial HD channel (Uz.HD) was introduced. As of April 2012 digital broadcasting was available to 37.5% of the population.⁷⁴ It is envisaged that 87% of the territory will be covered by the digital signal in 2015, while the target of 100% coverage of the territory will be attained only in 2017. According to data provided by the government, the number of non-state TV programmes reached 63 in 2011.

The telecom operator UzDigital TV LLC was founded in 2009 by CRRT and Aloqabank (in its turn established by the government as a stock company to finance projects in the communications field) to implement the switchover plans. It obtained licences to operate the now existing three multiplexes.

On 17 April 2012, the President of Uzbekistan, Islam Karimov, signed the decree “On the State Programme on technical and technological transfer to digital television broadcasting in the Republic of Uzbekistan”.⁷⁵ The document foresees two stages for the switchover. The first shall take place in 2012-15 and the second in 2016-17. Until 1 January 2018 the CRRT and the state-run National Broadcasting Company (NTRKU) are exempted from taxes on profits as well as duty fees on import of digital equipment so as to allow more spending on the digital switchover. In line with this arrangement, the date for the switch-off of analogue broadcasting was pushed back to 1 January 2018. Until then, the government plans to keep both analogue and digital broadcasting. The NTRKU, the Ministry of Culture and the “Republican Centre of propaganda of spirituality and enlightenment” are invited by the decree to suggest more digital TV channels and programming in order to push forward with the digital switchover. NAESMI, the National Association of Electronic Mass Media of Uzbekistan, has been assigned the task to modernise private TV companies in order to form a line-up of non-state programmes.

The State Programme deals with a number of issues related to the switchover, including the establishment of 12 state-run digital TV programmes, protection of minors and setting of technical standards (in 2012 and 2013). The State Programme embraces the idea that the development of digital networks and the digitalisation of archives will be funded by “low-interest foreign credits”.

72) Dziadul, C. “Strong wins Ukrainian DTT contest”, *Broadband TV News*, 18 April 2012, www.broadbandtvnews.com/2012/04/18/strong-wins-ukrainian-dtt-contest/, accessed on 3 November 2012.

73) UzDaily, “Digital television has been introduced in Samarqand”, 2 October 2010, www.uzdaily.com/articles-id-11639.htm, accessed on 3 November 2012.

74) Spiridonova, N., “Цифровое телевидение охватило 37,5% населения Узбекистана (Digital TV now reaches 37.5% of Uzbekistan’s population)”, *AnonsUZ*, 30 April 2012, www.anons.uz/article/it/6456/, accessed on 3 November 2012.

75) Unpublished document, on file with the author.

The State Programme foresees low-interest loans for special categories of the population to buy set-top boxes and digital TV sets.⁷⁶ The document was not made available to the public.

Set-top boxes have been produced in the country since 2009.

III. Conclusion

The advent of digital television has accelerated the elaboration of regulation and related processes in the countries of the region. Some countries adopted changes in their broadcasting statutes (Ukraine in 2006; Armenia in 2008 and 2010; Kazakhstan in 2012) or their mass media statute (Russia in 2011). One country laid the foundations for the switchover in a presidential decree (Uzbekistan in 2012), while the rest have opted for governmental ordinances and executive orders. Some changes made in the process go beyond merely adjusting the legal framework to digital technology.

76) Khadzhaev, A., *Перспективы развития цифрового телевидения (Perspectives of digital TV development)*, interview of the head of NTRKU with Sado newspaper, 2012, www.mtrk.uz/news/info/company/2461, accessed on 3 November 2012.

News about Seven More Countries

Whereas the lead article examines the transition to digital television in the Commonwealth of Independent States and the ZOOM focuses on developments in various South-East European countries, the following Related Reporting section is dedicated to news announced in other European states in the past year. Three aspects of the digital switchover are dealt with:

The first aspect is the switch-off of the analogue signal, which was completed before the EU deadline in the Czech Republic. This country was therefore one of the first East European countries to complete the digital switchover. Ireland also achieved this objective on 24 October 2012, while Greece announced last year that the analogue signal would be switched off in June 2013.

Secondly, the Related Reporting section describes the judicial examination of multiplex and licence allocations, which are certainly not always without controversy. Here you can read about decisions taken in Bulgaria and Spain.

Thirdly, we also report on follow-up decisions that need to be taken as part of the digital transition. These include Spanish plans to promote digital TV by making the best possible use of frequencies, the numbering of digital channels in France and, finally, decisions on measures to support digital television in Portugal.

News about Seven More Countries

I. Mastering the Transition

Czech Republic

Transition to the Digital Terrestrial Broadcasting Completed

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On 22 August 2012 the Czech Government approved the "Final report of the National Coordination Group for Digital Broadcasting in the Czech Republic to complete its transition to digital television broadcasts".

The report considered the Czech Republic during its transition from terrestrial analogue television broadcasting to digital television broadcasting (DVB-T). The switchover was subject to very complex conditions within the Czech Republic of an economic, legislative, technical and geographical character. The whole transition took place in all 13 designated geographical areas within the time frame established by Government Regulation No. 161/2008 Coll. The Czech Republic also met the European Commission deadline for the disabling of terrestrial analogue television broadcasting in the course of 2012. It is among the first Central European countries with such a high terrestrial platform coverage to do so.

In the Czech Republic there are four networks for DVB-T. The first network (a multiplex attributed to the public service provider) with full coverage reached 99.9% of the population. The second and the third DVB-T multiplexes have a coverage of 99.8% and 96.3%, respectively. The fourth network's coverage reached 22.7% of the population; it is used only in the local areas of Prague, Brno and Ostrava.

The transition to digital terrestrial television led to an increase in the range of television stations available - from 4 analogue programmes to at least 9 digital nationwide programmes and several regional programmes. The switch-off brought the long-awaited "digital dividend", in helping towards the release of the radio frequency band to be used for the provision of other electronic communications services, such as those specifically dedicated to mobile access to broadband internet. That frequency is in the process of being prepared for auction.

The smooth completion of the switchover to DVB-T created the possibility of further development of a new generation of electronic communications that signify the development of the level of basic infrastructure needed to achieve national GDP growth and to increase competitiveness. Available frequencies also allow for the provision of terrestrial digital radio broadcasting in the bands released by the 12th television channel. The switch over has not caused significant difficulties for either television broadcasters or citizens of the Czech Republic.

- *Závěrečná zpráva Národní koordinační skupiny pro digitální vysílání v České republice o dokončení přechodu na digitální televizní vysílání*
(Final report of the National Coordination Group for Digital Broadcasting in the Czech Republic to complete its transition to digital television broadcasts)
<http://merlin.obs.coe.int/redirect.php?id=16235>

IRIS 2012-8/15

Ireland

Digital Switchover of Terrestrial Television Complete

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At 10:00 am on 24 October 2012 Ireland's analogue television signal was switched off. Analogue technology had been used to transmit and receive television signals in Ireland since television broadcasting started in 1962. This completes Ireland's digital switchover from analogue to digital television services and meets the European Union target of 2012 for analogue switch-off.

The switchover was coordinated with the digital switchover in Northern Ireland. A Memorandum of Understanding (MOU) was signed between the Irish Minister for Communications, Energy and Natural Resources and the United Kingdom's Secretary of State for Culture, Media and Sport. Under the terms of the Memorandum the widespread availability of RTÉ services and TG4 in Northern Ireland will be facilitated on a free-to-air basis and BBC services will be available in Ireland on a paid-for basis.

- Department of Communications, Energy and Natural Resources, Digital Switchover website
<http://merlin.obs.coe.int/redirect.php?id=16190>
- Department of Communications, Energy and Natural Resources, Memorandum of Understanding between the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland regarding the Digital Switchover and the provision of television services in Northern Ireland and Ireland (1 February 2010)
<http://merlin.obs.coe.int/redirect.php?id=16191>

IRIS 2013-1/27

Greece

Digital Transition in Motion

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The most important switch off of analogue television signal is to be held in Attica region next July (6 July 2012) according to a ministerial decision of 20 March 2012. This operation is expected to enhance the legislative level that has been ceased since the publication of the first co-ministerial decision on the digital switchover (see IRIS 2008-9/20).

In the last three months significant progress, marked by two legislative initiatives, can be observed at the institutional level. Firstly, in a provision voted in February by the Greek Parliament a timetable related to different stages of the digital switchover operation (digital licensing procedure, date of definitive switch off: 30 June 2013) is established. All television stations that have no licence but are considered to be legally functioning up to now will continue to enjoy the same legal status only on the condition of participating in this future tender. This provision could be considered as the official response to the latest decision of the Plenary Session of the Συμβούλιο της Επικρατείας (the Council of State – Supreme Administrative Court of Greece) that had declared unconstitutional two legislative provisions permitting all regional television stations, which participated in the 1998 tender, to function even after an indefinite time after the publication of this tender (see IRIS 2011-1/34).

The second provision is a new version of Article 13 of Act 3592/2007 related to digital broadcasting that has been voted in 6 April 2012 by Greek Parliament and incorporated in Article 80 para. 1 element 6 of Act 4070/2012 on electronic communications. The separation of content providers and multiplex (e. g. technical) operators is being officially established, the former being licensed by the audiovisual regulatory authority (Εθνικό Συμβούλιο Ραδιοτηλεόρασης, National Council of Radio and Television), the latter using digital frequencies to be allocated under auctions conducted by the telecommunications regulatory authority (Εθνική Επιτροπή Τηλεπικοινωνιών και Ταχυδρομείων, Hellenic Communications and Post Commission). The public broadcaster ERT S. A. is excepted from licensing tender and has been allocated by ministerial decision its own frequencies.

- ΚΥΑ 13971/365/20.3.2012 “Οριστική παύση ορισμένων αναλογικών τηλεοπτικών εκπομπών από το κέντρο ο εκπομπής Υμηττού” (ΦΕΚ Β’ 862/20.3.2012)(Ministerial Decision of 20 March 2012 on the switch-off of analogue television signal in Attica, Official Journal B 862 of 20 March 2012)
- Νόμος 4038/2012 “Επείγουσες ρυθμίσεις που αφορούν την εφαρμογή του μεσοπρόθεσμου πλαισίου δημοσιονομικής στρατηγικής 2012–2015” (ΦΕΚ Α’ 14/2.2.2012).(Law 4038/2012, Official Journal A 14 of 2 February 2012)
- Νόμος 4070/2012 “Ρυθμίσεις Ηλεκτρονικών Επικοινωνιών, Μεταφορών, Δημοσίων Έργων και άλλες διατάξεις” (ΦΕΚ Α’ 82/10.4.2012).(Act 4070/2012 on electronic communications (Official Journal A 82 of 10 April 2012))

IRIS 2012-5/26

II. Reviewing the Results

Bulgaria

Judicial Review of the Public Digital Multiplex Completed

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On 16 January 2012 the Supreme Administrative Court rejected the appeal of DVBT (a group of seven companies led by Insat Electronics that support the networks of television Pro.bg and radio Express, Darik and FM+) against the choice of the Latvian company Hannu Pro to build up a so-called public multiplex (see IRIS 2010-8/16). The public multiplex will distribute the programmes of BNT and BNR from October 2013 (see IRIS 2009-7/5).

DVBT ranked second in the competition conducted by the Communications Regulation Commission with a score of 0.3 point lower than Hannu Pro. According to the company's appeal, pressure has been exerted on the working group's members in order to manipulate the assessments in favour of Hannu Pro. The company has previously been granted three more multiplexes in Bulgaria. On 8 December 2011, during the court meeting, the appeal by DVBT was supported by the prosecutor on that case. He said that the choice of Hannu Pro was unlawful and contrary to EU Directives that encourage competition in the media market.

The Supreme Administrative Court rejected making a request for a preliminary ruling to the European Court of Justice because the answer comes clear and unambiguously from a decision of the

Court of Justice in a similar case: C-380/05 (Centro Europa 7 Srl v. Ministero delle Comunicazioni e Autorita per le garanzie nelle comunicazioni and Direzione generale per le concessioni e le autorizzazioni del Ministero delle Comunicazioni, see IRIS 2008-7/25).

Competitions have been conducted for six multiplexes so far (see IRIS 2011-4/12). The first two of them have been won by the Slovak company Towercom and the remaining four by Hannu Pro. According to some publications in the Bulgarian media both companies are directly or indirectly connected to the owner of the Corporate Commercial Bank, which is participating in the purchase of NURTS (a network for analogue television broadcasting).

- Решение № 772 от 16.01.2012 г. на Върховния административен съд, Петчленен състав, II колегия (Decision № 772 of the Supreme Administrative Court, five-member jury, II College, 16 January 2012)
<http://merlin.obs.coe.int/redirect.php?id=15654>

IRIS 2012-3/11

Spain

Supreme Court Cancels all DTT Licences Awarded for Valencia in 2006

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On 18 July 2012, the Spanish Supreme Court declared null and void all local allocations of Digital Terrestrial Television (DTT) granted at the beginning of 2006 by the *Generalitat Valenciana* (Valencian regional government). The Court found that the Generalitat had lacked objectivity and impartiality in the allocation process.

The plaintiff at the action is Tele Elx, the first local television that had broadcast in the Valencian Community. In first instance, the *Tribunal Superior de Justicia de Valencia* (Valencian High Court) rejected its complaint, whereas the Supreme Court has upheld its arguments.

The Supreme Court reminds that Article 88 of the Royal Legislative Decree No. 2/2000 imposes an obligation on the licensing panel to evaluate the candidates' offers according to the criteria laid down in the tenders. However, this function was outsourced by the licensing panel to a private company.

The Court considers possible the use of external advice but this cannot mean that the assessment of applicants would be systematically made by an external company. Otherwise the licensing panel would not fulfill its role in the assessment of the different bids.

According to the Court, a private entity may have an undisputed technical competence to assess applicants, but lacks objectivity and impartiality to do so. The situation would have been different if, from the assessment made by the private consultant, the licensing panel would have shaded, modulated or corrected these criteria, i.e., the ex-ante evaluation would have been sufficient, based on the knowledge and expertise of the private consultant.

The Supreme Court believes that the private consultant only assumed the numerical score on the basis of which it granted the licences. The Court concludes that the appellant *Télé Elx* could not know why its tender had not been selected, even though Article 88 of the *Texto Refundido de la Ley de Contratos de las Administraciones Públicas* (Public Administrations Contracts

Act) requires that an explanation should be given for the reasons for agreeing or refusing the grant of a licence.

- *Sentencia del Tribunal Supremo, Sala de lo Contencioso-Administrativo, Sección séptima, Recurso Núm.: 5128/2008, 18 de Julio de 2012* (Judgment of the Supreme Court of 18 July 2012) <http://merlin.obs.coe.int/redirect.php?id=16183>

IRIS 2012-10/11

III. Following Up on Related Matters

Spain

New Plan to Promote DTT and Technological Innovation

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On 24 August 2012 the Council of Ministers approved a plan, entitled *Plan de Impulso de la TDT y de la Innovación Tecnológica* (Promotion Plan for DTT and technological innovation), which aims to support high definition television and 4G mobile broadband services but which will also affect DTT services.

Since the switch-off of analogue terrestrial television took place in April 2010 in Spain (see IRIS 2010-6/24), it was decided that the frequencies to be released, best known as the digital dividend, would be mainly dedicated to the provision of 4G services. Nevertheless, the allocation of television services to band 470-790 MHz (channels 21 to 60), in order to free up subband 790-862 MHz (channels 61 to 69) for other uses by 1 January 2015 (see IRIS 2010-6/25), has been a matter of negotiation between the government and national commercial broadcasters. The reason was that, in a context of an economic crisis, whereas the government was interested in taking advantage of those new telecommunication services that are supposed to be helpful in boosting the economy, national commercial broadcasters requested financial support for the switch to different frequencies.

The Spanish government and broadcasters, gathered around the commercial TV association UTECA (Unión de Televisiones Comerciales Asociadas), have finally reached an agreement which is, in fact, at the heart of the approved plan. Although the text has not yet been released to the public, the Council of Ministers has announced that the digital dividend will be cleared by January 2014 and that high-definition DTT services will be strengthened at the same time as the number of DTT frequencies available will be reduced.

Following this recent agreement, a new DTT technical plan is therefore set to be approved soon. The new allocation map for DTT services would be as follows: national commercial broadcasters will share capacity across five multiplexes instead of six, as was originally planned; the national public service broadcaster, RTVE, will reduce its capacity from two multiplexes to one; and it is expected that regional public service broadcasters will do the same. As a consequence of this reduction in their DTT capacity, national commercial broadcasters will offer four standard-definition and one high-definition services.

National commercial broadcasters that were in place when the current DTT frequency plan was decided (Antena 3, Telecinco, La Sexta, Cuatro, Net TV and Veo TV) have now gone through a concentration process. While Telecinco and Cuatro had merged by the end of 2010

(see IRIS 2011-1/25), the Council of Ministers authorized the acquisition of La Sexta by Antena 3 (see IRIS 2012-8/21) during the meeting; it also approved the above-mentioned Plan to promote DTT.

- *Referencia del Consejo de Ministros de 24 de agosto de 2012* (Council of Ministers meeting of 24 August 2012)
<http://merlin.obs.coe.int/redirect.php?id=16087>

IRIS 2012-9/19

France

Conseil d'Etat Confirms Numbering of New DTV Channels

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On 3 July 2012, the audiovisual regulatory authority (*Conseil Supérieur de l'Audiovisuel* – CSA) authorised six new free-view high definition (HD) channels on terrestrially-broadcast digital television (HD1, L'Equipe TV, 6 ter, Tvou la Télédiversité, RMC Découverte, Chérie HD). On 24 July 2012, in the presence of representatives of the channels, the authority drew lots for allocating numbers to these six new channels, which are to start broadcasting on 12 December 2012. The new numbering is the result of firstly the allocation of the logical numbers 1 to 29 to the national television services previously broadcast in analog mode and to the unencrypted services broadcast terrestrially in digital mode, which were previously numbered 1 to 19. Local television services broadcast terrestrially, which were previously numbered 20 to 29, have now been allocated the numbers 30 to 39. However, a number of organisations, representing about forty local channels, referred the CSA's decision to shift the numbers allocated to them up by ten in order to leave room for the six new channels to the Conseil d'Etat under the urgent procedure. The applicants called for the suspension of enforcement of the CSA's deliberation, on the grounds that it was a serious and immediate infringement of the interests of the other local free-view channels and of the interest of viewers, by changing the logical number – a fundamental feature of channel identification – particularly when there were other solutions for numbering the new channels. They also argued that no text gave the CSA the right to revoke a decision attributing a logical number, and that the deliberation at issue disregarded the principles of equality of treatment, non-discrimination, and free competition.

In its order of 23 October 2012, the Conseil d'Etat recalled that the provisions of Article 30-1 of the Act of 30 September 1986 gave the CSA the power to authorise the use of broadcasting resources for television services, including the organisation of broadcasting these services by laying down the rules for the logical numbering of the channels – and therefore also the power to change them. Consequently, the claims based on the disputed deliberation, which is in the form of regulations, would have no legal foundation, and could not give rise to “serious doubt as to its legality”, which is a prerequisite for the administrative courts under the urgent procedure ordering the suspension of performance of an administrative decision. Similarly, the Conseil d'Etat found that preparatory investigation of the case did not show that the deliberation of the CSA, which must also ensure the uniform nature of the numbering of the services, had disregarded the principles of equality and non-discrimination, or the principle of free competition. Nor were any of the other arguments raised against the disputed deliberation able to create a serious doubt as to its legality. Thus, and without even needing to pronounce on the conditions of urgency, the administrative judge found that the applicants had no grounds for requesting the suspension of the decision at issue.

The applicants said that they were “consternated” by the order, which “encouraged them to pursue their action on the merits of the case”. For its part, the CSA issued a communiqué confirming

“the commencement of the broadcasting of these six new channels on 12 December 2012 and their gradual extension to the whole of mainland France”.

- *Conseil d'Etat (ord. réf.), 23 octobre 2012 - Association Bocal et a.* (Conseil d'Etat (order under the urgent procedure), 23 October 2012 - the association Bocal et al.)
- *Communiqué du CSA, Calendrier de déploiement des nouvelles chaînes HD de la TNT, 25 octobre 2012*(CSA communiqué. Schedule for deployment of the new HD channels on DTV, 25 October 2012) <http://merlin.obs.coe.int/redirect.php?id=16157>

IRIS 2012-10/12

Portugal

Deadline for DTT Subsidies' Applications Extended until the End of the Year

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The Portuguese National Communications Authority (ANACOM) has announced the extension of the application period concerning the subsidy programmes for DTT (Digital Terrestrial Television) decoders. Following this decision, applications can be submitted until 31 December 2012 to PT Comunicações, the global telecommunications operator leader in Portugal.

There are two types of support programmes available, one for the installation of the reception system of DTH (Direct to Home) and the other for DTT kit reimbursement.

On the one hand, reimbursements are of EUR 47 for anyone living in places where satellite is accessible, regardless of the individuals' economic situation. This program is available until 2023, although the reimbursement value might change. People who purchase the satellite TV kit can benefit from this refund by either ordering the kit within five days (paying EUR 30 on delivery of the satellite) or by purchasing the kit immediately (paying EUR 77 and being refunded EUR 47 later).

On the other hand, support programmes for the installation of the DTH reception system are limited to EUR 61 but are available to everyone having access to the satellite signal, independently of individuals' economic situation. Pensioners whose monthly income is less than EUR 500 and people with at least 60% disability benefit from a subsidy of 50% (up to a maximum amount of EUR 22) to buy a DTT or DTH decoder. Citizens aged 65 or older, retired people or pensioners having a monthly income of up to EUR 500, referenced by the Portuguese Institute of Social Security, can also benefit from an extra subsidy of EUR 61 to adapt, redirect or reinstall the new DTT or satellite reception antenna.

These support programmes were initially established until the end of June 2012 but because the intent was to cover the largest number of beneficiaries, the deadline was first extended to 31 August 2012, and with the recent decision of ANACOM until the end of 2012.

- *TDI - Prazo para pedido de subsídios prorrogado até 31.12.2012* (Decision of the Portuguese National Communications Authority (ANACOM), 13 August 2012) <http://merlin.obs.coe.int/redirect.php?id=16098>

IRIS 2012-9/35

Legal Aspects of Digital Switchover: State of Play in South-East Europe

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At a time of increasing popularity of connected devices, in which a growing proportion of the population does not care anymore via which content distribution platform or device it receives media content and data, but is rather interested in variety of content, quality of services and features of devices, the contrasts between those countries with advanced and those with less developed information supply systems are more evident than ever before. In South-East Europe¹ large differences can be witnessed in a relatively small, although politically and economically very diverse territory. Regardless of the rather different levels of digitisation between the countries in this area, the terrestrial broadcasting platform remains one of the most important television delivery platforms across the region.

I. Cross-border co-operation

1. Speeding up the digital switchover in an unevenly developed region

The mere fact that the radio waves that are used to transmit television or other electronic communications services surpass national borders requires co-operation between neighbouring states. International co-operation in the management of the frequency spectrum is already well established. For decades, it has been carried out according to standardised protocols under the auspices of the International Telecommunications Union. The European Convention on Transfrontier Television and the Audiovisual Media Services Directive, on the other hand, provide mechanisms for collaboration on content-related issues. However, in order to create opportunities for more widespread use and better utilisation of advanced broadcasting and ICT services in a multi-country region, co-operation with a larger scope is needed.

In 2009, a group of broadcasting regulators from countries around the Adriatic Sea started to discuss possibilities for the harmonisation of activities related to the digital switchover and the development of a regional proposal for optimal use of the freed frequency spectrum for the new ICT broadband services. At that time, most countries from the region had already taken some steps

1) For the purpose of this article the term South-East Europe (abbreviated SEE) refers to the territory covered by the South-East Europe Transnational Cooperation Programme, in which 16 countries participate: Austria, Slovenia, Croatia, Bosnia and Herzegovina, Serbia, Montenegro, "the former Yugoslav Republic of Macedonia", Albania, Greece, Bulgaria, Romania, Moldova, bordering areas of Ukraine, Slovakia, Hungary and south-eastern regions of Italy.

towards transition to digital terrestrial television, at least through policy making or adaptation of laws. However, only a few of them had implemented these acts and policies in practice. The regulators believed that a joint development of tools, facilitating their work and contributing to more harmonised approaches, could lead to a faster deployment and better accessibility of services in the region. Therefore they conceived the project SEE Digi.TV and applied for funds from the South East Europe Transnational Cooperation Programme.² The latter is an instrument within the framework of the EU's regional policy's territorial co-operation objective, which supports projects that aim to improve the competitiveness of South-East Europe and to contribute to the integration of the non-EU member states. The idea of the SEE Digi.TV project matched the SEE programme's priority axis of improving accessibility and developing strategies to tackle the digital divide, and the project was approved by the programme authorities as one of 26 projects that succeeded in obtaining funding on the second call for proposals, completed at the very end of 2010.

2. Co-operation of regulators via the SEE Digi.TV project

The project, managed by the lead partner APEK, the Slovenian Post and Electronic Communications Agency, connects 13 regular partners, one associated strategic partner and one observer from 10 countries: Italy, Austria, Hungary, Slovenia, Croatia, Bosnia and Herzegovina, Serbia, Montenegro, "the former Yugoslav Republic of Macedonia" and Albania. Most partners are regulators for either electronic media or electronic communications, a few are converged authorities responsible for both areas, and the remaining partners are representing other stakeholders in the digital switchover.³ The activities of the partners from the EU member states are co-funded by the European Regional Development Fund (ERDF), while those of the non-EU members are financed through the Instrument for Pre-accession Assistance (IPA).

In January 2011, when the project was officially launched, three countries from the project area, namely Austria, Croatia and Slovenia, had already switched off their analogue terrestrial transmitters. They were followed by Italy, which completed the switch-off in mid 2012. Other partners are progressing at different speeds, with only Bosnia and Herzegovina and Montenegro not even having started digital transmissions. They, however, also contributed to the creation and implementation of various project documents. The transfer of knowledge takes place in both directions, from EU member states to non-EU member states and vice versa. For instance, the partners from the EU candidate country Croatia share with others their experience with a successful switchover and deployment of advanced services. The project consortium also follows developments in Serbia, which recently introduced the improved transmission standard DVB-T2, and in "the former Yugoslav Republic of Macedonia" that has accumulated several years of experience with pay television services on digital terrestrial platform.

The project's activities under the umbrella of the SEE Programme will end in April 2013 and most of the envisaged activities have already been accomplished, resulting so far in 12 joint documents (e.g. analyses, guidelines, education plans, model laws, awareness measurement tools, receiver specifications, conformance tests),⁴ as well as numerous national surveys, published and presented to policy makers and other stakeholders. Before the April 2013 deadline, all the remaining joint papers will be published and the ongoing national studies will be finished. The partners will continue to stimulate public debate with the help of national workshops and at the final international conference in Budapest. As one of the main achievements of the project, co-operation among the regulatory bodies from the region will continue in one way or another after the end of the project.

2) For more information on the South-East Europe Programme see the programme website at: www.southeast-europe.net/en/ (accessed on 3 January 2013).

3) The consortium is composed of APEK, Sintesio, Informest, RTR, IVSZ, HAKOM, AEM Hr, CRA, RBA, AEM Me, EKIP, SRDF and NCRT, plus the associated strategic partner AGCOM and the observer NMHH. For more details see the project website: www.see-digi.tv/partnership/all-partners/ (accessed on 28 December 2012).

4) The documents are published in the section Deliverables of the SEE Digi.TV project website: www.see-digi.tv/documentation/, while other material, such as country-specific surveys, presentations from the conferences, brochures and leaflets can be found in the News and events section: www.see-digi.tv/newsevents/ or in Communication material section: www.see-digi.tv/communication-material/ (all accessed on 28 December 2012).

II. Analysis of the legal frameworks for digital switchover

1. A study within the SEE Digi.TV project work package dedicated to legal aspects

The purpose of the study, originally published on 30 November 2011,⁵ was to provide a comparative analysis of the legal frameworks related to transition from analogue to digital television broadcasting in the 10 countries from the project area (listed above). Because the legal frameworks regulating the switchover in the respective countries were not aligned, and because the participating countries found themselves in significantly different situations due to the disparate levels of digitalisation in the project area, the goal of the analysis was to provide a solid factual background for the elaboration of regional guidelines⁶ that would facilitate the development of the national legal frameworks in the SEE countries and thereby contribute to the successful implementation and harmonisation of activities in the field of digital broadcasting. It was also hoped that such guidelines could help to reduce the digital divide in the region.

The study was commissioned by APEK and carried out by Dr Klemen Podobnik, Dr Ana Vlahek and Dr Matija Damjan from the Institute for Comparative Law at the Faculty of Law, University of Ljubljana.⁷ The project partners provided them with lists and details of relevant legal acts, milestones in the switchover process and identification of roles of the most important stakeholders in their countries. For the purpose of this IRIS *plus* Zoom section only the findings and recommendations part of the study in a revised and updated version is reproduced.

2. General findings

The analysis has shown that conditions concerning the transition from analogue to digital terrestrial television broadcasting vary considerably from country to country across the SEE region. Activities related to the digital switchover have taken place, at least to a certain extent, in all of the countries included in this study, regardless of whether or not a suitable legal framework exists. The characteristics of national legal frameworks regulating the digital switchover also differ significantly in the region. Some countries have adopted specific digital broadcasting laws (e.g. Slovenia, Hungary, Montenegro); others have amended the existing legislation on electronic communications and mass media (e.g. Italy, Croatia, Bosnia and Herzegovina) or have not adopted any specific digital broadcasting legislation at all (e.g. "the former Yugoslav Republic of Macedonia"). The legislation may be very comprehensive and detailed (as the Hungarian law), or may lay down just the general rules for the switchover and leave the implementation details to the regulatory authority (e.g. the Albanian law).

3. Planning the digital switchover

As digitalisation brings significant changes in broadcasting, the process should be planned carefully and in a transparent manner with the co-operation of all actors concerned by the digital switchover. The first step in the process is usually the adoption of a digitalisation strategy that sets out the legal changes needed to allow and encourage digitalisation, and addresses the most important practical details of the process. The latter entails especially:

- defining the stakeholders' roles and relations, as well as technical and geographical details of the networks;
- setting the switch-off date and duration of the simulcasting period;
- determining the most important broadcast standards; and
- providing a more or less detailed action scheme or plan for the switchover.

5) For the whole study see the project's website: www.see-digi.tv/shared_files/wp3/wp3a1.pdf, accessed on 27 December 2012.

6) The Guidelines can be downloaded from the following link: www.see-digi.tv/shared_files/wp3/regional_guidelines_on_how_to_improve_legal_framework_r1_1.pdf, accessed on 27 December 2012.

7) More information on the Institute is available at: www.ipp-pf.si/introduction, accessed on 27 December 2012.

The strategies are normally adopted by parliaments or governments, and this applies also to the countries from the SEE Digi.TV project area.

The need for adequate preparation of digitalisation has been pointed out by the European Commission and by international organisations, such as the Council of Europe and the European Broadcasting Union. Recommendation Rec (2003)9 of the Council of Europe's Committee of Ministers⁸ provides that states should draw up a well-defined strategy that would ensure a carefully thought-out transition from analogue to digital broadcasting. Such a strategy "should seek to promote co-operation between operators, complementarities between platforms, the interoperability of decoders, the availability of a wide variety of content, including free-to-air radio and television services, and the widest exploitation of the unique opportunities which digital technology can offer following the necessary reallocation of frequencies."

The analysis has shown that all included countries have followed these recommendations and practices of EU member states. The fact that all countries from the region adopted detailed national strategies for the switchover from analogue to digital broadcasting could be considered as an instance of a good practice. If the transition is planned well ahead and the process is transparent and predictable, legal certainty for all players in the digitalisation process, including companies and consumers, is much higher.

However, the analysis of switchover strategies has also shown that such documents often turn out to be rather abstract and somewhat remote from the specific problems that need to be concretely addressed in each country. Whereas they may elaborate on the advantages of digital over analogue broadcasting, discuss various technical aspects of digital broadcasting in general, present the overview of European Union legislation and policy initiatives in the field of digital switchover, together with experience of individual member states, etc., they typically lack operative content adapted to the specific economic and technical conditions in the broadcasting market of a given country. For example, they do not detail the concrete tasks of particular national authorities in the digital switchover process and the time schedules for the completion of such tasks in order to finalise the switchover by a certain date.

A part of the problem may also stem from the fact that digital switchover strategies are typically prepared by independent regulatory authorities, while the adoption and especially the implementation of the strategies (through adopting the necessary legislative and administrative measures) is the task of the relevant government ministries. The latter may prioritise goals that are politically desirable, rather than what is technically and financially feasible. In order to avoid that less relevant short-term interests and needs drive the digital switchover process, the relevant strategy could be secured by new legislation adopted by parliament (rather than administrative decisions or presidential decrees). In Serbia, for example, the switchover is mainly regulated in a by-law adopted by the competent minister upon a proposal by the regulatory authority, which does not guarantee the same level of legal certainty to the players in the switchover process as rules laid down in legislation adopted by parliament. In "the former Yugoslav Republic of Macedonia", to mention another example where the implementation process is challenging, the government has rejected the first strategy prepared by the regulatory agency, and the regulator is currently drafting another proposal. It is also often left to the government to provide the additional funding that the public service broadcasters need to digitise their broadcasting services. The lack of such funding may delay the switchover, since public service broadcasters usually play an important role in the digital switchover whereas private broadcasters (especially in smaller countries) are reluctant to invest in a technology that is not effectively supported by the state.

8) The text of the Recommendation Rec(2003)9 of the Committee of Ministers to member states on measures to promote the democratic and social contribution of digital broadcasting (adopted by the Committee of Ministers on 28 May 2003 at the 840th meeting of the Ministers' Deputies) is available at: <https://wcd.coe.int/ViewDoc.jsp?id=38043&Site=CM>
For an overview of all Recommendations of the Council of Europe's Committee of Ministers, see "Freedom of Expression and the Media: Standard-setting by the Council of Europe (I) Committee of Ministers", Susanne Nikoltchev & Tarlach McGonagle (Eds), European Audiovisual Observatory, Strasbourg 2011, available at: www.obs.coe.int/oea_publ/legal/ebook_committeeministers-coe.pdf.en

Most strategies of the countries from the project area do include a target date for analogue switch-off, however, the setting of such dates often seems to be motivated by political purposes rather than being founded on fact-based estimates. As a result, target dates for the digital switchover seem unrealistic and in many cases cannot be met. The data collected from the various countries also indicates little co-ordination of the switchover plans between the countries in the region, which leads to the situation that not all advantages of digital broadcasting can be achieved, given that full benefits would only be possible once all countries in the region have completed the analogue switch-off.

It is important not to switch off analogue terrestrial transmitters until there is a near universal penetration of digital terrestrial broadcasting. A switch-off date should be revised if a danger of excluding a part of the population arises. In the region, a few countries have postponed the date of the analogue switch-off. It should be noted, that such delays are not specific only to the countries in the SEE region, since many central and western European countries have also faced delays in the analogue switch-off, although several years earlier.

Missing the deadline initially set in the switchover strategy is not critical in itself. It is important, however, that the planning of the transition to digital broadcasting takes into account technical and economic changes that may require postponing the switch-off. Rather than simply ignoring the deadlines originally set in the switchover strategy, the strategies should be amended accordingly and adapted to the new circumstances. For this reason, switch-off dates should be flexible enough to respond to delays in the expected progress. A mechanism for monitoring the progress of the digital environment is also recommended.

In order to be more concrete and better adapted to the specifics of the respective country, the digital broadcasting strategies (including the relevant legislation and executive regulation, if necessary) should be updated at regular intervals to take into account the challenges encountered in the digitalisation process thus far, based on the input and experience of all stakeholders. For example, Austria, which first adopted its digitalisation concept in 2003, upgraded the document accordingly in 2007 and in 2011. Similarly, Slovenia's switchover strategy of 2006 was updated in 2009.

4. The role of stakeholders

The Council of Europe's Recommendation (2003)9 states that digital broadcasting strategies should be drawn up "in consultation with the various industries involved and the public". Therefore, it is advisable to draft the legislative framework and strategy for digital broadcasting under the constant scrutiny of the public. In order to put the digitalisation plan beyond suspicion of being a partisan political document, all concerned parties, including private broadcasters, public broadcasters and regulators, should be involved in its preparation. Prior to its adoption, the drafts must be open to criticism by the general public, civil society organisations and professionals. Even if it is not very likely that the general public will contribute substantially in a debate that is rather demanding in terms of the technical specifics and societal aspects of this complex process, representatives of the industry, consumer associations and other particularly interested parties, as non-governmental organisations and academia, might provide valuable insights concerning the broadcasting content aspects, technical specifications, infrastructure matters, affordability of equipment etc.

In all countries included in this study, various stakeholders in the digital switchover had the possibility to present their views and comment on the draft switchover strategy at some stage of the planning process. However, public participation in the planning of the digital switchover should not remain a one-time event. Consultation with the stakeholders is not sufficient if it occurs only in the phase of preparation of the digital switchover strategy. Typically, at that time most stakeholders have not yet gathered enough experience with digital broadcasting to foresee all issues that may be relevant to them. Therefore, it is advisable that permanent mechanisms for participation of stakeholders in planning and supervision of the digital switchover be put in place. A special body may be formed, bringing together the representatives of public authorities, regulatory authorities, broadcasters, and operators, in order to monitor the execution of the digital switchover process and

assist in making further policy decisions. Such a body can also have an important role in spreading information and fuelling the public discussion of the issues of digital switchover that are relevant to the consumers. This body should work very closely with the independent regulator. The “Digital Platform Austria” appears to be a good example of such a special participatory working group for digital switchover.

5. Allocation and use of broadcasting spectrum resources

Even in countries where no specific legislation governing digital broadcasting exists, the right to use radio frequencies for broadcasting digital signals may be granted under the general legislation on electronic communications and spectrum management. However, given the differences between frequency use for analogue and digital broadcasting, it might be better to avoid such an approach. Whereas in analogue television, available frequencies were each allocated to individual broadcasters, in digital terrestrial television broadcasting, multiple channels and additional services may be bundled by a single multiplex operator and transmitted using a shared frequency. A single broadcaster typically does not produce a number of channels sufficient to fill the entire multiplex capacity, especially in standard definition and in systems with advanced coding standards. The operators include in the multiplex stream channels produced by different broadcasters. Therefore, allocation of frequency rights to network operators should be subject to specific rules, separate from the traditional rules for allocation of frequencies for analogue broadcasting.

In Europe, different approaches have been adopted for allocating digital capacity (the radio spectrum). The capacity is allocated to one or more network operators, to multiplex operators or directly to media services providers. All SEE countries included in this study have followed the model of allocating frequency rights to network and/or multiplex operators, which are often, but not necessarily, the same entity, thus acting as managers of the network facilities and administrators of the multiplex capacity at the same time. In several instances, the broadcasters in some SEE countries (e.g. in Serbia, “the former Yugoslav Republic of Macedonia”, Albania, and Bosnia and Herzegovina) started broadcasting in digital format without having obtained any of the required authorisations or frequency rights. The problem is particularly present in Albania. Thus, a specific issue that the legislators in such countries could consider is to eventually legalise the operation of such networks (e.g. by setting out specific conditions under which frequency rights and multiplex licences may be granted to incumbent operators, while ensuring that the international agreements are met).

A somewhat different problem regarding frequency use concerns Italy, where in several cases licences for radio frequencies though issued by the competent authorities seem not to respect the internationally co-ordinated frequency plans contained in the relevant international agreements, such as Geneva 1984 and 2006. Apparently, Italy has allowed the operation of channels on all available frequencies regardless of whether or not it had the necessary rights under the international legal framework. Hence frequencies allocated to the neighbouring countries have been occupied. If not addressed timely and efficiently, this situation might seriously affect the digital switchover process in Italy’s neighbouring countries and the future of the terrestrial platform as an important platform for free-to-air access to diverse and pluralistic audiovisual media services. Furthermore, it might negatively impact the efficient release and use of the digital dividend for bridging the digital divide in the region.

6. Selection of network and multiplex operators

The role of network and multiplex operators differs significantly from the role of traditional analogue broadcasters, since network and multiplex operators provide the service on which several broadcasters depend. Therefore, specific legislation should regulate the selection and role of multiplex operators, separating it clearly from the role of content providers. Most SEE countries have entrusted the main powers for the selection of network and multiplex operators to national regulatory authorities and have given them the responsibility to determine the number of multiplexes and to manage public tenders for the selection of operators. In some countries, however, special

rules apply for public service broadcasters, allowing them to obtain the right to operate a multiplex *ex lege*, without a public tender. This exception reflects their special public interest role and can be used as a means of speeding up the switchover process. This solution is unlikely to be extended to the operation of multiplexes intended mainly for broadcasting of commercial services given that these services do not cater specifically to the public interest.

In allocating digital capacity for broadcasting, public tenders that take the form of “beauty contest procedures” are widely adopted as opposed to auctions, which are used more commonly when allocating spectrum for telecommunications. Under a beauty contest, also called comparative selection, applicants present their proposals for which they want to obtain licences on the basis of the criteria set out in the conditions for a licensing bid. A beauty contest allows the allocation of licences based on detailed plans submitted by applicants. In contrast, the essential feature of an auction is that licences are awarded to those that bid the highest price. In most of the SEE countries the policy documents foresee that also in the future, network/multiplex licences should be awarded on the basis of a public tender. In Italy, however, the intention to allocate frequencies for new multiplexes by “beauty contests” has been criticised. The critics believe that the government would have been able to generate significantly higher licence fees through an auction process.

Some countries seem to lack a market-based approach in the selection of network/multiplex operators. In Serbia, for example, the legal framework did not provide general procedures for granting the right to operate a multiplex; instead the legislator gave the task of setting up and operating a multiplex to a newly established public enterprise, which operates the existing technical broadcasting and transmission infrastructure. While such approach may be pragmatic, justified by the need to speed up the transition to digital broadcasting, it might need to be replaced in the long term by an open tender procedure, through which private entities may compete for the right to operate a multiplex. In the case of Serbia, the law on electronic communications envisages the possibility for new operators to enter the market, once the digital switchover is completed.

A noticeable weakness of several laws regulating the procedure for the selection of network and multiplex operators is that the rules are rather abstract and leave too much discretion to the regulatory authorities in defining the selection criteria. Given that the main criteria for the selection of multiplex operators in a tender procedure reflect the basic policy choices, they should be determined by the digital switchover strategy and stipulated by the law to ensure that the allocation and assignment of radio frequencies are based on objective, transparent, non-discriminatory and proportionate criteria. Laying down the basic criteria in legislation also ensures that the main political choices are made by the parliament and thus helps avert subsequent political interference in the activities of the regulatory authority concerning the digital switchover.

7. Selection of content/service providers

One of the key principles in digital broadcasting is that licences for the transmission facility (the platform) and for the content should be kept separate. Programming licences for digital broadcasting are generally granted under a procedure similar to that applied to analogue broadcasting. The Council of Europe adopted Recommendation Rec (2000)23,⁹ according to which the basic conditions and criteria governing the granting and renewal of broadcasting licences should be clearly defined in the law. The regulations governing the broadcasting licensing procedure should be clear and precise and should be applied in an open, transparent and impartial manner.

If licensed broadcasters cannot obtain access to transmission facilities they cannot reach the audience. Especially in the initial phases of digital switchover, no real market exists for transmission facilities, and broadcasters cannot choose between different multiplex operators. Thus, it is

9) Recommendation Rec(2000)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector (adopted by the Committee of Ministers on 20 December 2000 at the 735th meeting of the Ministers' Deputies). The text of the Recommendation is available at: <https://wcd.coe.int/ViewDoc.jsp?id=393649&Lang=en>

important that national regulators have a certain role in the selection of content providers for the multiplexes or that they are able to impose requirements on fair access to a network/multiplex in the operators' licences in order to protect pluralism and diversity and prevent concentration.

Two regulatory approaches emerge concerning the selection of channels for multiplexes: in a first group of countries (Slovenia, Croatia, Montenegro), the channels' line-up is the result of a selection made by the regulator through public procedures that are very similar to those used in the analogue environment and are typically based on a beauty contest model. In a second group of countries (Italy, Austria, Hungary, Albania), the multiplex/network operator may select the channels on its own. In this case, some limitations or constraints (e.g. must-carry, capacity reserved to special categories of broadcasters) are imposed on the multiplex operator in the operating licence in order to preserve public interest objectives. The conditions laid down either in legislation or in the operating licence limit the freedom of the operator to compose the multiplex and thus blur the distinction between the two models of selection mentioned.

In any case, the legislation typically guarantees the public broadcaster and other historical analogue broadcasting licensees the right to be included among the channels offered on the first multiplexes in operation. This may be achieved through must-carry rules laid down in the law (e.g. in Hungary) or imposed in the multiplex licence (e.g. in Austria). Such provisions permit a faster transition towards analogue switch-off and the freeing of additional broadcasting frequencies. In Italy, specific measures are in place to guarantee access to the platform for "independent channels", i.e. channels not owned by the broadcasters operating the multiplexes. Such measures aim at avoiding bottlenecks caused by vertical integration of network operators that have their own channels.

A specific problem concerning the selection of channels that appear in a certain multiplex has arisen in Slovenia. The digital switchover strategy foresaw that the first national multiplex (mux a), operated by the public broadcaster RTV Slovenia, should be reserved primarily for public service broadcasting. The second national multiplex (mux b), on the other hand, whose operator, Norkring, had been selected through a public tender, was to provide transmission services to the channels offered by commercial broadcasters. During the switchover, however, all services of the then existing broadcasters, the public and commercial ones, were transmitted via mux a, which was the first to start operating and to reach national coverage. Even after mux b started operating with a great delay, the commercial broadcasters kept transmitting their channels through mux a, due to more beneficial pricing offered and better coverage. Norkring believed this was a case of unfair competition by the public broadcaster. While Norkring's pricing was bound by strict licence conditions, RTV Slovenia was only required to keep separate accounting for the operation of the multiplex, and to charge a cost-based price. After Norkring lodged complaints, the competent ministry in 2011 proposed and the parliament in 2012 adopted an amendment to the Digital Broadcasting Act, preventing RTV Slovenia from transmitting commercial services through mux a. The amended regulation is in line with Article 5 of the EU Authorisation Directive,¹⁰ which allows exceptions to the requirement of open procedures for granting broadcasting frequency rights only where this is necessary to achieve a general interest objective as defined by member states in conformity with Community law.

8. Regulation of relations between broadcasters and multiplex operators

Digitalisation entails initial risks of concentration, since usually only few transmission facilities exist, due to their cost and complexity. It is therefore important to prevent that digitalisation cause or cement the dominance of the transmission facility owner or multiplex operator. Rules ensuring access to such facilities are crucial in order to preserve content diversity and pluralism, as well as

10) Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services, OJ of 24 April 2002, L 108/21.

other cultural and business related objectives. The EU Access Directive¹¹ stresses that all requests for access should be met in good faith on a commercial basis. The parties can determine conditions, but if there are significant differences in negotiating power, and when some companies rely on the infrastructure of others, there must be a regulatory framework and an independent regulator to ensure that the market works and different companies can compete even if the number of transmission facilities is limited. However, in a free market logic ensuring equitable access to the infrastructure for digital broadcasting should not be done by the direct setting of prices and other conditions for use of the network. Doing so would interfere excessively with the free market, and the usual benefits of a free market such as competitive prices and higher quality would be lost. The market should set prices and conditions and the regulator should step in only if the market fails.

For example, multiplex operators may be required by regulation to offer fair, transparent and non-discriminatory conditions. Network providers, as well as platform operators, may be required to publish a price list for the technical services offered to the content providers (and also scrambling of the signal, EPGs, and so on). When the network or platform operator is also a broadcaster, it could be required to keep separate accounting for its different activities.

Most SEE countries included in this study have adopted in their legislation rules on access to transmission facilities, modelled on the EU Access Directive. The legislation usually contains the general requirement that multiplex operators broadcast all digital channels and additional services under fair, equal and non-discriminatory conditions. It is recommended that more specific obligations of multiplex operators in relation to content providers should be detailed in conditions attached to the operating licence. The regulatory authority should be able to act to resolve disputes between multiplex operators and content providers. For example, in Slovenia, the regulator has carried out price controls with regard to the operator of the first multiplex and has required that it eliminate irregularities in the calculation of prices for digital broadcasting that were not in line with the requirements of the operating licence. In Serbia, the broadcast network was spun off from the public service broadcaster to form an independent public company tasked only with operating the broadcast network infrastructure. In situations like that of Serbia where the public service broadcaster is at the same time the only multiplex operator, this may be considered a good practice, since it removes the potential conflict of interests in the treatment of the public service channels (in Serbia the channels of RTS) and channels by commercial broadcasters.

9. Content obligations

During and after the digital switchover, which often results in access to a wider variety of television services, special attention is needed for content-related issues. In some countries, content obligations are contained in the general mass media legislation; in other cases, there are specific content-related provisions in the digital broadcasting laws.

The Convention on Transfrontier Television of the Council of Europe and the EU Audiovisual Media Services Directive recognised some general interest objectives related to audiovisual content. In the European Union, audiovisual media services should not contain any incitement to hatred based on race, sex, religion or nationality. Linear audiovisual media services should not offer content, which might seriously impair the physical, mental or moral development of minors. The availability of on-demand audiovisual media services, which might seriously impair minors, should be restricted and technically protected, so that such services are available to adults only. For the purpose of short news reports, any broadcaster has the right to access, on a fair, reasonable and non-discriminatory basis, events of interest to the public, which are transmitted on an exclusive basis. Broadcasters are not allowed to broadcast, on an exclusive basis, events of major importance for society if this were to deprive a substantial proportion of the public of a chance to follow them. Audiovisual commercial communications (advertising, sponsorship, product placement and teleshopping) should be readily

11) Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), OJ of 24 April 2002, L 108/7.

recognisable; subliminal and surreptitious techniques are not allowed; they should respect the human dignity and should not include/promote discrimination (e.g. based on sex, nationality, religion). Besides, broadcasters should protect minors; should not encourage behaviour harmful to health, safety or the environment; and should not promote tobacco or prescription medication. And last, but not least, audiovisual media services should promote production and access to European audiovisual works, to list only the most important requirements. The Convention on Transfrontier Television contains the bulk of these content requirements.

All SEE countries have ratified the Convention on Transfrontier Television and most of them, including the non-EU members, have transposed the content-regulating provisions of the AVMS Directive in their legislation, although not necessarily in the laws governing the switchover.

Another typical content focus can be noticed in country-specific requirements, according to which television channels providing content related to the respective country or its national culture and language (e.g. in Austria) are to be prioritised in the selection of channels for multiplexes. The choice of digital broadcasting content is also influenced by must-carry obligations concerning public broadcasters' programmes or other programmes of general interest. Recommendation (2003)9 of the Committee of Ministers of the Council of Europe suggests that must-carry obligations imposed by member states should be reasonable, meaning they should be proportionate and transparent in the light of clearly defined general interest objectives, and could, where appropriate, entail a provision for proportionate remuneration. Such must-carry obligations may include transmission of services specifically designed to enable access for disabled users.

10. Public interest provisions

Besides the public policy to protect pluralism and diversity of broadcasting content, already discussed above, there are some other aspects of public interest that should be taken into account during the switchover. Among them are the significant costs of the switchover. Even if the legislation in most SEE countries does not address in detail funding or co-financing models, the switchover strategies usually acknowledge that digitalisation represents a financial burden for broadcasters and viewers.

In relation to affordability of digital receivers, the readiness of viewers to purchase digital receivers may have to be stimulated by covering a part of the price and thus making equipment affordable. However, over time prices may be expected to fall and the availability of digital equipment to increase with the effect that general subsidies will lose relevance. Still, special attention should be paid to the financial means of the most vulnerable groups (pensioners, low-income households, persons with disabilities). From the audience viewpoint, it is essential to have clear, transparent and fair rules framing potential help schemes. It is likely that criteria used for providing social benefits in other contexts may not be appropriate. Economic support for the switchover should be structured so as to ensure that irregularities and violations of the rules on the prohibition of state aids will be avoided.¹²

An example of a support scheme laid down in legislation is the Italian law from 2006 that granted an income tax deduction to consumers who would purchase television sets with an integrated digital decoder during 2007. The income tax reduction was 20% of the price of the equipment (a maximum deduction of EUR 200 per decoder) with a total budget of EUR 40 million. The measure was notified to the EU Commission, which decided that the subsidies were in compliance with the EC Treaty state aid rules.¹³ In Hungary, the amendments to the digital broadcasting legislation provided that the financial gains of the digital switchover process (licensing fees) could be used for public

12) The guidelines for the framework for funding the digital switchover have been addressed in more detail in another project document, prepared by the Institute of Comparative Law for APEK, available at: www.see-digi.tv/shared_files/wp3/wp3a5.pdf, accessed on 5 January 2013.

13) For more details on the case see: http://europa.eu/rapid/press-release_IP-07-960_en.htm?locale=EN, accessed on 5 January 2013.

communications on the digital switchover process. Another example is the case of Croatia, where the government determined the criteria and standards for subsidising the payers of the public service broadcasting fee (only natural persons), when purchasing technology-neutral digital receivers. The right to a subsidy was exercised on the basis of a non-transferrable voucher in the amount of HRK 75.00 (EUR 10). State investments in digital broadcasting and transmitting equipment are another possibility to speed up the switchover and safeguard media pluralism, provided that distortion of market is avoided.

III. Conclusion

Due to the differences described, the study could neither provide general findings that would apply in the same way to all countries examined nor formulate recommendations that would be equally relevant for all countries in the region.¹⁴ Nevertheless, a few common conclusions could be derived. The experience, both positive and negative, of the early-adopter countries in the implementation of digital switchover should be taken into account by the late adopters. The process needs to be planned well in advance, in a transparent and inclusive way. The roles and tasks of the stakeholders should be clearly defined and policy papers and regulations need to be backed up by enforcement measures. Given that the SEE countries concerned are either EU member states or EU aspirants, they should follow the European Acquis Communautaire for electronic communications and audiovisual media services in their planning and implementation of the digital switchover. And last but not least, international agreements on radio spectrum should be taken into account.

14) For further elaboration of legal guidelines for the region see the project document, prepared by Francesco Canini and Francesco Sciacchitano for Informest, available at: www.see-digi.tv/shared_files/wp3/regional_guidelines_on_how_to_improve_legal_framework_r1_1.pdf, accessed on 5 January 2013.



OBSERVATOIRE EUROPÉEN DE L'AUDIOVISUEL
EUROPEAN AUDIOVISUAL OBSERVATORY
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Information services for the audiovisual sector

It is the task of the European Audiovisual Observatory to improve transparency in the audiovisual sector in Europe. It does this by collecting, processing and publishing up-to-date information about the various industries concerned.

The Observatory has adopted a pragmatic definition of the audiovisual sector in which it works. Its principal areas of interest are film, television, video/DVD, on-demand audiovisual media services and public policy on film and television. In these five areas, the Observatory provides information in the legal field as well as information about the markets and financing. As far as its geographical scope is concerned, the Observatory monitors, records and analyses developments in its member states. In addition, data on non-European countries is also made available when judged appropriate. The various stages involved in providing information include the systematic collection and processing of data as well as its final distribution to our users in the form of print publications, information on-line, databases and directories, and our contributions to conferences and workshops. The Observatory's work draws extensively on international and national information sources and their contributions of relevant information. The Observatory Information Network was established for this purpose. It is composed of partner organisations and institutions, professional information suppliers and selected correspondents. The Observatory's primary target groups are professionals working within the audiovisual sector: producers, distributors, exhibitors, broadcasters and other media service providers, international organisations in this field, decision-makers within the various public bodies responsible for the media, national and European legislators, journalists, researchers, lawyers, investors and consultants.

The European Audiovisual Observatory was established in December 1992 and is part of the Council of Europe thanks to its status as a "partial and enlarged agreement". Its offices are in Strasbourg, France. The Observatory's membership currently comprises 39 European States and the European Union, which is represented by the European Commission. Each member appoints one representative to its board, the Executive Council. An Executive Director heads the international Observatory team.

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European Audiovisual Observatory

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