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# Montenegro Media Sector Inquiry with Recommendations for Harmonisation with the Council of Europe and European Union standards

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## Executive summary

The Montenegro Media Sector Inquiry aims to contribute to the development and implementation of a media policy promoting and enabling freedom of expression and media freedom in Montenegro. Its key ambition is to provide Montenegro with concrete and useful support in launching the National Action Plan on the AVMS Policy, outlining actions needed for a thorough review of the existing media instruments and practices in the context of the European Integration Process of which Montenegro is a part.

The inquiry revealed a weak and polarised media market with a high degree of state intervention and political parallelism, an inconsistent legal and institutional framework with obstacles to regulators' full independence and effectiveness, fragmented self-regulation, risks related to journalists' integrity and safety, as well as deviations from the principles of freedom of expression online.

In the very last days of 2017, in the concluding phase of this report,<sup>1</sup> it was announced that the Parliament had dismissed one of the most active members of the RTCG Council and replaced him by a well-known ex-functionary of the ruling party. This dismissal followed a series of early terminations of mandates not only of the RTCG Council Members, but also of an AEM Council Member. Given their extent and the fashion in which they are implemented, these moves represent a serious questioning of independence both of the national public service media company and the national regulatory authority.

In order to ensure an improvement of media policies, legislation and practices for the benefit of the citizens of Montenegro, a strong commitment of the State authorities to the EU acquis and the Council of Europe standards is required. Instead of deteriorating the already achieved level of harmonisation and hitting new lows in practices towards the media and governing bodies, the country should speed up and facilitate the reforms in a coordinated and responsible way.

Sustained efforts are needed to improve legal coherence, predictability and safety, strengthen implementation and enforcement of legislation, increase transparency of media funding and ownership, ensure conditions for the full transformation of the RTCG into a public service media company, and actively assert and bolster freedom of expression and of the media.

## Project background

The Inquiry was suggested by the European Commission (EC) and was carried out through the Council of Europe (CoE) and the European Union (EU) joint programme "Reinforcing Judicial Expertise on Freedom of Expression and the Media in South-East Europe (JUFREX)" from August 2017 until January 2018. The overall objective of JUFREX, a three-year regional project, implemented in Albania, Bosnia and Herzegovina, Montenegro, Serbia, "the Former Yugoslav Republic of Macedonia", and Kosovo\*,<sup>2</sup> is to promote freedom of expression and freedom of the media in line with the Council of Europe standards.

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<sup>1</sup> The cut-off date of the report is the last working day of 2017, that is 29 December 2017.

<sup>2</sup> This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

For the purpose of the inquiry, the CoE has established a team of international experts, selected via public tender in July 2017, with a mandate to conduct and complete the media sector inquiry by the end of January 2018.

The expert team was composed of Tanja Kerševan Smokvina (team coordinator and editor of the report), Jean-François Furnémont, Marc Janssen, Dunja Mijatović, Jelena Surčulija Milojević, and Snežana Trpevska (in alphabetical order).

Their contribution is based on qualitative and quantitative evidence and provides a comprehensive forward-looking assessment of the main areas and issues of the media sector in Montenegro, that is the market, legal and institutional framework, public service media (PSM), digital intermediaries, state aid and help schemes, media ownership and concentration, journalism, self-regulation, media literacy and copyright.

## Findings and proposals

A non-exhaustive summary of key findings of the inquiry, highlighting how the legislation impacting the media sector should evolve and how the responsible institutions should address the biggest challenges in the selected areas, is provided below. For an overview of key recommendations, addressing different groups of stakeholders, the reader is referred to the Recommendations at the end of the report.

### MARKET

The small and hardly sustainable Montenegrin media market, especially for such a high number of media as present in Montenegro, is affected by a tough competition from the neighbouring countries and by a harsh polarisation of media along the line of “alignment” with the government or the opposition. This polarisation is resulting in rather hostile relationships not only between the pro-opposition media and the state authorities, but also between the market players from different parts of the (political) spectrum and is preventing possibilities of stepping together for common goals.

One of the most critical elements contributing to constant worsening of the situation, confirmed also by declining media sustainability index scores (Bojović 2017), is the opaque public funding of media.

Any ex-ante limitations of the number of media outlets in the market, as suggested by a part of the market players, would be unjustifiable in terms of freedom of expression and would hamper the development of potential innovative businesses. What appears more problematic is that, once these players are on the market and are clearly not profitable, the state *ex-post* puts in place several formal or informal systems which allow some of these media to artificially survive, such as writing off the debt they owe to various state bodies and state owned companies or be unjustifiably generous with them in terms of state advertising or other public support schemes.

There is a multiple and cumulative evidence that these funding mechanisms are used to support “pro-government media”. This is a highly destabilizing factor, threatening not only the market players, but also undermining the principal role of the media as well as the citizens’ trust in them.

Recommendations:

1. All kind of State aid to media, including the so-called state advertising, should be made transparent and rigorously objective. Also, writing off the debts of the industry towards the

state (taxes, fees) or state owned companies (the costs of services of the Radio difuzni centar – RDC) is a short term solution that does not constitute nor consolidate a coherent, ambitious and strategic media policy.

2. The provision of access to the electronic communications networks, electronic communications infrastructure and associated facilities by an operator should be guaranteed under the same conditions to all entities requiring the aforementioned services.
3. All necessary steps, including legislative and practical, to ensure transparency of ownership of all media outlets and proper implementation of competition rules, should be taken.
4. All the relevant kinds of media concentration should be taken into account, in order to take into consideration cross-ownership across the whole media industry.
5. Since media concentration should be regulated also in terms of the influence of the owners on editorial policies, legislative mechanisms should be adopted in order to secure editorial independence of newsrooms and legal protection of journalists when modifications of ownership and/or of editorial policy occur.
6. Public authorities, with the help of international partners, should set a programme to help bolster domestic audiovisual production, including both funding and training components.
7. Public authorities should assess the possibility of devising and implementing a consensually agreed system of audience ratings.
8. The private media should be strongly encouraged to engage in a dialogue with the national trade union, which has been working for a long time on a branch collective agreement; a draft has been ready for a year now and the employers have not taken any further action or reaction.
9. The journalists' labour and employment rights should be respected and properly implemented by the industry.

## LAW

The legal framework governing media in Montenegro is prescriptive, but with limited possibilities of enforcement. It is composed of a few key pieces of sectorial law and numerous other legal acts interfering with them. The sectorial law underwent a series of updating exercises with a view of harmonisation with the EU acquis, but there are still areas which were not correctly transposed (regulation of commercial communications) or are entirely missing (regulation of non-linear audiovisual media services).

Many important factors affecting the Montenegro's media market can be linked to laws and policies without a substantive connection with media policy or are a result of a poor implementation of otherwise appropriate legal solutions. The most critical area is the direct and indirect state funding of media which lacks the transparency and fair application of State aid rules. Also, other laws (for example the law regulating salaries in the public sector or anti-corruption legislation) are being used as an attempt to legitimise political interference in the work of the regulators and the media.

Recommendations:

10. A thorough, coherent and coordinated review of all the sectorial laws and laws governing or affecting the media sector for its alignment with the EU acquis and CoE standards in media regulation is needed.
11. The media law review should follow an action plan with clear, measurable objectives and assigned responsibilities.

12. When revisiting the media and related law, the legislator should bear in mind the proportionality of regulation, as well as practical implications for implementation, monitoring and enforcement.
13. The outdated, dysfunctional and conflicting legal instruments should be abandoned to make room for a less prescriptive, more flexible and targeted, risk- and evidence-based regulation.
14. Fragmentary and ad-hoc legal solutions should be avoided in favour of comprehensive approaches, supported by impact analysis, preventing unwanted consequences in the market, as well as legal uncertainties and conflicts of law.
15. Legal solutions interfering in the existing regulation that functions well, including the solutions deteriorating the existing safeguards of the independence of regulators and or public service media, should be avoided.

## INSTITUTIONS

There are a high number of institutions involved in media policy and regulation, however, due to the absence of a clear-cut division of responsibilities between authorities and effective enforcement, many issues fall between the legal and regulatory gaps. The lack of the political will to define and implement a clear media policy and also to correctly implement the existing legal safeguards enable a wide space for ad hoc and partial solutions, to the detriment of a coherent media policy. The inadequately conceived solutions are difficult to put into practice and are often harmfully affecting, weakening or disabling the existing solutions.

Recommendations:

16. There should be a co-ordinating body with an overall and overarching responsibility for media policy on the Government level. This responsibility should be placed on the line ministry for the issues related to media, which should take a more prominent and pro-active role in creating and advocating a coherent media policy, including monitoring its implementation and effects, for the benefit of all stakeholders and citizens.
17. A clear division of responsibilities and powers among different institutions should be set, avoiding duplication and sharing of responsibilities (as in the case of the Inspection Administration and the NRAs, that is EKIP and AEM).

## REGULATION

The Agency for Electronic Media (AEM), defined by the law as an independent regulatory body for audiovisual media services, acts in an extremely challenging environment. The AEM's ability to exercise its remit is limited not only due to the inconsistencies of the law, but also due to the lack of effective sanctioning instruments and inspection prerogatives. Also, there is a serious overlap of competencies between self-regulation and statutory regulation of audiovisual media. On one hand, the rather broad regulatory competencies of the AEM with regard to the journalistic professional standards create the possibility of excessive regulatory meddling in the work of journalists which should be supervised only by self-regulation, while on the other hand, the decision of the one self-regulatory organisation to deal with protection of minors and hate speech in electronic media as well, is blurring the responsibility for these two areas that are covered by the AVMSD and would be therefore better placed either within the sole remit of the audiovisual regulator, or, alternatively, redesigned into a co-regulatory system, provided that the regulator retains strong and effective backstop powers.



The Agency for Electronic Communications and Postal Services (EKIP) faces similar challenges as the AEM with regard to its ability for effective enforcement of the law governing electronic communications. Yet, in cases related to the use of online services during the last Parliament Elections (2016), they resorted to general, disproportionate and not sufficiently justified blocking measures, which were executed by the main country's operators without them challenging this order. The perceptible ease of their execution indicates the fragility of the freedom of expression online and is an unfortunate precedent for potentially more intervention of this kind in the future.

Recommendations:

18. During the media law reform, a special emphasis and attention should be given to the safeguards of the AEM independence, to prevent their deterioration.
19. For effective enforcement of AVMS regulation, the sanctioning system should be amended in order to allow for a more flexible, gradual, and proportionate response to infringements.
20. The regulator should be given back the inspection prerogatives and the possibility to impose adequate and proportionate fines for all the breaches that can be unequivocally established and do not require judicial consideration (for example all the violations of the standards set by the AVMSD and other objectively measurable issues).
21. Under no circumstances, these fines should be applicable to the journalistic professional standards, which should be dealt with exclusively through rigorous self-regulation.
22. Any content restriction should be prescribed by law, justified, proportionate and necessary in a democratic society.
23. In issues within the domain of journalism ethics, a large remit of the regulatory authority should be prevented. The professional standards should be within the remit of self-regulation of the media professionals and the room for a regulatory intervention that could be potentially detrimental to the freedom of expression clearly limited.
24. All the issues currently covered by the Rulebook on programme standards in electronic media, adopted by the AEM, should be geared toward self-regulation, except those derived from the AVMS Directive, which sets out a workable framework regarding hate speech and protection of minors and implies state responsibility for its implementation.
25. Online content restrictions, irrespective of whether requested by the state organs/regulators or initiated by intermediaries themselves, should be performed in the least restrictive way, and there should be effective remedies providing prompt and impartial redress for users, content providers and other affected parties.
26. The management and use of limited resources in electronic communications should be based on principles of objectivity, transparency, non-discrimination and proportionality, ensuring the predictability of business environment and level-playing field for business operators

## SELF-REGULATION

The main shortfall in self-regulation is the lack of a single body competent for all media, instead of the current fragmented alternatives. This does not allow the public to get a clear awareness about the competent body to complain to in case of alleged violations of journalism ethics, which results in serious doubts among the stakeholders about the effectiveness of self-regulation. The setup of a single self-regulatory scheme appears impossible as long as the polarisation between the "pro-government" and "pro-opposition" media outlets persists.

#### Recommendations:

27. Efforts should be put in raising the awareness about the various self-regulatory schemes in the areas where justified and aligned with the public policy objectives, with the support of the parties involved in the functioning of those schemes.
28. A wider adoption and successful functioning of self-regulatory frameworks (and/or development of co-regulatory mechanisms) should be encouraged through legislation supporting statutory recognition of self-regulation or other incentives for participating in self-regulation (and/or establishing a legal basis for co-regulation with a clear division of roles between the industry and the regulator, as well as effective monitoring and enforcement measures).
29. Turning the existing media self-regulation into a compulsory system should be avoided.
30. The scope of self-regulation by the industry should be clearly delineated from the scope of statutory regulation.
31. Effective oversight and compliance mechanisms, together with redress mechanisms, should be encouraged.
32. Funding of the functioning of self-regulation should be ensured via a transparent, possibly mixed scheme, combining an industry fee with public funds, and allowing independent implementation of self-regulation.

#### PUBLIC SERVICE MEDIA

RTCG's transition from a state media to a public service media is considered to be incomplete. The appointment process of the Council members ultimately resting in the hands of Parliament and the easiness of dismissals of individual members or the Council as a whole, indicates that the whole management structure, including the Editorial Board, is usually strongly tied and connected to political interests. Worth attention are also the local public broadcasters. Being funded mostly by municipalities, they, as well, are often described as the voice of local politicians in power.

#### Recommendations:

33. RTCG should continue its efforts to evolve into a public service media company, accountable first and foremost to the Montenegro public and actively advocating and implementing the professional journalistic and quality standards, as well as standards stemming from the AVMSD.
34. RTCG should continue with organisation restructuring and modernisation of business processes to keep up with social, cultural, technological and business change.
35. RTCG should set an example in promotion of the European AV works, including the works of independent producers, and should strengthen production of its own or commissioned original content, addressing different social groups.
36. The funding should guarantee predictability and transparency for the RTCG and local PSMs and should not be used as a means of pressure, reward or subordination.
37. Apart from financial mechanisms, legal safeguards should be set up in order to guarantee the editorial independence of the local public service broadcasters.

#### JOURNALISM

The violence against journalists is a very worrying trend and shall be put high on the priority list of policymakers, legislator, judiciary and industry. The unresolved violent attacks on some journalists have

shaken the profession in the last years, but there are also reports of undue and intrusive pressures from media management and from politicians, exercised in the newsrooms on a daily basis.

Despite the decriminalisation of defamation, which was a positive development, there are indications that in some instances the judicial branch does not provide for independent judicial review of defamation cases, and is deemed to be under the influence of political and other power structures.

Another legal aspect relevant for journalists, but also for citizens, is related to the right to access information, which is not correctly implemented in practice – despite being safeguarded by the Constitution. Remedies can be found in court proceedings, but these take long and are not practical for the work of journalists.

Recommendations:

38. The Government should secure a safe and enabling environment for journalists to perform their job.
39. The Government should vigorously, openly and promptly condemn and process any threat to the safety of journalists.
40. The efforts to implement the Montenegrin Journalists' Code of Ethics by the industry should be continued, preferably with the support of the relevant international organisations (EU, Council of Europe, OSCE Representative on Freedom of the Media and UNESCO).
41. The Government should provide full support to effective and efficient work of the Commission for investigation of crimes against journalists, as well as the full transparency of the work of the Commission.
42. There should be trainings ensured for the Prosecution office of Montenegro in relation to crimes committed via social networks, as well as those related to technical and legal aspects of safety of journalists.
43. Full transparency of the work of the Government and public administration bodies should be provided, respecting the citizen's right to information.
44. The defamation cases should be properly dealt with and should not be used to silence media. Related to that, the Prosecution office of Montenegro should guarantee adequate, accurate and timely information safeguarding the necessary transparency on cases of investigation against journalists.
45. The industry should safeguard journalists against interference in their work and any kind of pressures, guarantee them healthy and secure working conditions, invest in their skills and knowledge, and promote implementation of the Code of Ethics and professionalism in journalism.
46. The media professionals and journalists of Montenegro should seek to overcome political divisions in favour of the common goals of their profession, such as higher levels of professionalism, media pluralism, healthy working environment and best possible conditions for media freedoms.

## MEDIA LITERACY

There are no laws regulating media literacy in Montenegro, nor are there any institutions entrusted with responsibilities to promote media literacy, coordinate the necessary activities or report on the levels of media literacy among citizens. The concept is primarily associated with media education for development of critical and creative knowledge and skills for understanding complex ideas, identification of misinformation and manipulation, and creating opinion based on impartial and reliable

information in the media, but there is no single or widely accepted definition of media literacy in Montenegro.

Recommendations:

47. The concept of media literacy, aligned with the EU policy framework, should be enshrined in the legislation governing media.
48. The Government should develop a national policy for promotion of media literacy across all segments of society for building the capacities for active, critical and creative use of media and raising the awareness of viewers and listeners regarding their media rights and safe use of media services.
49. The policy framework should be based on a multi-stakeholder approach, encouraging, among others, initiatives stemming from the industry itself.
50. The AEM should be given the responsibility and the staff to monitoring the media and information literacy developments and to coordinate the activities aimed at research and promotion of media literacy, in strong partnership with the relevant ministries.
51. The Government of Montenegro should secure a long-term funding scheme for the activities advancing media and information literacy.

## Introduction

This section clarifies the purpose and scope of the Montenegro Media sector Inquiry, explains the text organisation, presents the structure of the report and outlines the methods used.

### Purpose

The aim of the inquiry is to provide a comprehensive analysis of the media sector in Montenegro and expertise for articulation and adoption of the National Action Plan on the AVMS Policy and other policies relevant for the media sector in the context of the Montenegro's European Integration Process.

Taking into account not only the current characteristics, but also emerging disruptive developments, the study delineates options for improving the future performance of both institutional and industry stakeholders, and offers a guide for setting and implementing national media policies and creating a detailed and substantial action plan under negotiating Chapters 10 (Information society and media), 23 (Judiciary and fundamental rights) and 24 (Justice, freedom and security) – with also input for Chapters 5 (Public Procurement), 7 (Intellectual property law), 8 (Competition Law) and 28 (Consumer and health protection).

### Scope

The general focus of the inquiry is on the assessment of the market, legal and institutional framework, while specific attention is dedicated to issues related to the public service media, digital intermediaries, State aid schemes, transparency of media ownership, journalism, self-regulation, media literacy and copyright governance. In all the listed areas the role of the institutional, industry and other important stakeholders is analysed together with the existing legal solutions and regulatory practices, and by taking into account the possible future disruptions.

The analysis is accompanied by recommendations which seek to offer a strong foundation for:

- better harmonisation of the legislative framework related to media with the Council of Europe and EU standards,
- effective, evidence-based and impartial regulation and self-regulation with better enforcement of compliance with the law and professional standards,
- independent, professional and sustainable public service media,
- transparent and level-playing market grounds for all private and public actors,
- transparency of media ownership and prevention of negative implications of media concentration,
- fair and transparent system of public subsidies for media,
- professional integrity and safety for journalists,
- a roadmap for fostering the critical understanding and ability to interact with media,

- addressing of illegal online content with safeguards of freedom of expression,
- effective copyright protection.

## Organisation

The inquiry report is divided into ten sections organised from general to specific, from macro-circumstances related to market conditions (Chapter 1) and legal-institutional specifics (Chapter 2) down to individual segments or issues (discussed in the eight thematic chapters from Chapter 3 to Chapter 10). Some of the thematic chapters focus on specific stakeholders, such as public service media, digital intermediaries, journalists, and discuss the impact and consequences of the legal framework (both the key media law and other law, such as public procurement, labour law, access to information, copyright etc.), market specifics institutional interventions and their own practices on their operational reality, governance, performance, and safety. Others cover different dimensions of media activity, finances, ownership, governance or related areas (such as self-regulation, concentration, subsidy schemes, copyright, and media literacy) – and discuss the impact and consequences of the relevant legal acts (state-aid law, protection of competition, copyright and intellectual property law – IPR), as well as market specifics, institutional interventions and stakeholders’ practices in these segments.

The report is designed with a view to avoid duplication and overlapping. Given the intertwining of topics and numerous aspects that are equally relevant for the different sectors discussed, the duplication however cannot be entirely precluded. The cross-areas, relevant for different groups of subjects, such as state aid, transparency of ownership, self-regulation and journalism, are referred to in different chapters, but the main analysis is done in corresponding thematic chapters (Chapters 5, 6, 7 and 8). Without prejudice to specifics of different kinds of media, the study does not make a distinction between media based on their modes of distribution. The media as understood by this study is a technologically neutral term. The focus of the Chapter 4 is strictly on the Internet intermediaries and online media Platforms with regard to their possible interference with third party content or services (blocking, filtering and take-down, either for commercial or state interests) and not on aspects related to their potential role of providers of media content over which they retain editorial responsibility. These are covered in other Chapters – in Chapters 2 and 8.

Each chapter ends with a Policy brief, summarising the main recommendations for policy action derived from the analysis.

## Structure

The inquiry report is structured as follows:

- Introduction: sets out the purpose, scope and methodology of the media sector inquiry.
- Chapter I: Market overview and assessment, authored by Marc Janssen, assesses the current condition of the Montenegrin media market and its segments, explains the market context and the present challenges and opportunities.
- Chapter II: Legal and institutional framework, authored by Jelena Surčulija Milojević, Tanja Kerševan Smokvina, and Snežana Trpevska, with contributions from the other team members, provides an analytical overview of the laws and institutions related to media.

- Chapter III: Public Service Media, authored by Marc Janssen and Snežana Trpevska, reviews the issues related to the Montenegrin public service media, with focus on the nation-wide public media company RTCG, its governance, funding and autonomy, as well as its ability to service the citizens with regard to the likely trends and developments.
- Chapter IV: Internet intermediaries and online media platforms, authored by Tanja Kerševan Smokvina and Jelena Surčulija Milojević, investigates the cases of blocking and takedown of third party online content and services and offers guidelines for protection of freedom of expression in the online environment.
- Chapter V: Support schemes and state aid, authored by Jean-François Furnémont, examines the financial instruments supporting media against the guidelines on the correct application of state aid. It compares the information from the state public procurement evidence, analyses made by the NGOs and input from the industry and gives a special emphasis to the state advertising.
- Chapter VI: Transparency of media ownership and media concentration, authored by Jean-François Furnémont, discusses the media ownership structure and transparency and suggest the approach towards prevention of negative implications of media concentration.
- Chapter VII: Journalism – professional integrity and safety, authored by Dunja Mijatović, looks into the impact of policy framework, market and labour conditions, as well as political situation on professional integrity and safety of journalists in Montenegro. A special attention is dedicated to the Commission for investigating cases against journalists, with recommended activities.
- Chapter VIII: Self-regulation of the media, authored by Jean-François Furnémont and Dunja Mijatović, reviews the existing self-regulation mechanisms and provides proposals in relation to the remit of the involved institutions and platforms, delineation of their competencies and suggestions regarding enforcement and sustainability.
- Chapter IX: Media literacy, authored by Snežana Trpevska, assesses the issues related to media literacy in Montenegro, maps the relevant stakeholders and their responsibilities and offers a draft roadmap for fostering the critical understanding and ability to interact with media.
- Chapter X: Copyright, authored Jelena Surčulija Milojević, provides an analysis of legal framework and implementation of the copyright and neighbouring rights protection in relation to media.
- Conclusions: at the end of the report all the main findings and recommendations are listed in a trimmed version with the ambition to make it clear who has to do what, and where relevant also how. The recommendations are structured by groups of stakeholders who shall take the responsibility and necessary action for their implementation.
- Appendices: contain the list of abbreviations used in the report, the short bios of the authors, the project's roadmap, the list of interviewees during the assessment visit, the questionnaire used during the assessment visit, and the table complementing the Chapter 2 with a basic institutional mapping analysis.

## Methodology

The inquiry combines ex-post evaluation and ex-ante impact assessment of the policies and practices affecting the Montenegrin media sector, based on legal and documentary analysis of primary and secondary information gathered with field and desk research. The triangulation (Denzin 1970, Olsen 2004) of methods and data sources allowed the experts to identify critical aspects of the examined areas more accurately and provided for a greater reliability of findings.

The field research was carried out by interviewing parliamentary, governmental, non-governmental and regulatory representatives, as well as industry and international stakeholders, and partly by the on the spot observation – of the premises of the RTCG and AEM, during the week of September 11-15, 2017 and on September 20, 2017, in Podgorica.

The interviews were semi-structured individual or group interviews, on the basis of – but not limited to – a set of questions defining the areas to be explored. For each chapter, the experts prepared a set of model questions in advance and the JUFREX team distributed them to stakeholders both in Montenegrin and English together with the invitation to participation. The complete list of questions the stakeholders received is provided as an appendix, and so is the list of the representatives of the stakeholders which participated in the interviews.

The documentary and legal analysis was performed on legal acts and background information provided by the JUFREX team. The initial reading list was prepared by the Council of Europe, European delegation in Montenegro and the Ministry of European Affairs of Montenegro, and was later complemented by additional acts requested by the experts or added on their own. The details of the reviewed acts are provided in the literature references at the end of the report.

The logistic, administrative and communication support was provided by the JUFREX team in cooperation with the Ministry of European Affairs of Montenegro.



## Ch. I: Market overview and assessment

This chapter assesses the current condition of the Montenegrin media market and its segments, describes the market context, the present challenges and opportunities, and provides a brief overview of services and products on the market, market shares, funding, and impact of cross-border services.

### Context and environment

Many of the difficulties experienced by Montenegrin media (and expanded on in this and the following chapters) are similar to those typical of a small country and/or a developing economy. With its 625.000 inhabitants, Montenegro is a small market, which typically presents challenges when it comes to raising advertising revenues and state funding at a level sufficient to cover the fixed costs of running a media company and to ensure the healthy operation of the media, print or audiovisual, public or private. Like many small territories, it is also bordered by larger countries, which share a similar culture or accessible languages but make use of larger operating budgets, creating a tough and sometimes unbalanced competition for domestic media.

But Montenegro is also a recently independent country in transition, progressively establishing the legal and political bases for new practices and healthy functioning of a democracy. As such, the understanding and implementation of an autonomous media sector, of a free press, of fair competition and of independent media regulation are still maturing. If the Democratic Party of Socialists (DPS) has been in power since the introduction of multiparty democracy in 1990, there are several opposition parties and segments of the press do not shy away from criticizing government policy.

The media sector in Montenegro is characterised by its fragmentation and its stark polarisation. There is a relatively high number of media outlets (considering again the size of the market), multiple institutions representing journalists, multiple state agencies or departments involved in media policy, multiple self-regulatory bodies and ombudsmen, and also multiple laws and regulations which unfortunately are not always consonant and coherent, as is detailed in the next chapter.

There is also a pervasive and somewhat candid culture of politicisation of the media. The sector is divided between pro-government media and those aligned with factions of the opposition or at least keen to be critical with the actions of the government. Contrary to similar de facto situations in other countries, the media in Montenegro do not pretend to be objective and do not hide their particular affiliation. This often leads to conceptions of pluralism and journalistic ethos which are at odds from Western perceptions. According to some of the stakeholders interviewed, for instance, the public service media should support the government policy goals, since the government does effectively represent the views of the majority of the population.

This polarisation is not only structuring the media landscape, it is also making it acrimonious and adversarial. The relationship between public authorities and some of the media is bitter and aggressive, and the competition between media outlets themselves is made of resentment and suspicion. The AEM, the media regulation authority, is most often caught in the middle.

Violence against journalists and media groups, as well as the opacity of (and discrimination in, as is detailed in chapter 5) the various public funding schemes for private media, have exacerbated these tensions over the last few years, making it exceedingly difficult for public authorities to engage in

constructive talks with the sector as a whole and for self-regulation initiatives to be successfully implemented.

The situation, overall, does not appear to improve. As indicated in the table below, the Montenegro's media sustainability index scores have all worsened in the last five years.

**Table 1: Montenegro in Media Sustainability Index 2017**

	MSI score 2012 (max 4)	MSI score 2017 (max 4)
Free speech	2.65	2.18
Professional journalism	2.26	1.75
Plurality of news sources	2.68	2.25
Business management	2.06	1.80
Supporting institutions	2.35	2.20

Source: Bojović, 2017

The current situation can be described as critical. In their relatively recent reports on Montenegro, the World Association of Newspapers and News Publishers and the Center for International Media Assistance (Vujosevic and Vuckovic 2015) talked about a “systematic erosion of media freedoms.” In this contextualisation it is useful to point out critical elements which will be developed later in this report: the lack of transparency and objective procedures when it comes to public financing of the media is highly problematic. Funding mechanisms should not be used to support, bolster and advantage those media which are aligned with the government, and exclude, sometimes to the point of economic jeopardy, those whose editorial policy is to voice their opposition. This is a highly destabilizing dynamic in a market which must already face critical challenges brought forth by its small size and the neighbouring competition.

While some of the authorities stress the lack of ethics, standards and professionalism of the journalists, others point at the undue and intrusive pressures from management and politicians that are exercised daily on those working in the news. The unresolved violent attacks on some journalists that have shaken the profession these last years are an additional factor of acrimony and suspicion between the various parties. And part of the blame is assigned to international institutions and the European Union as well. This disappointment is not prevalent or unqualified in the wider media sector. Many believe that the most impactful factors of change do come from political pressure and reports prepared by or for the European Union, and that the discussions surrounding Montenegro's accession to the EU provide a valuable window for progress and improvement.

## Access and offer

The people of Montenegro have access to a significant number of national media,<sup>3</sup> relative to the small size of the country:

- 4 daily newspapers,
- 3 weekly magazines,
- 30 monthly magazines,

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<sup>3</sup> Figures shared by the regulator AEM during the assessment interview with expert team.

- 57 radio stations,
- 18 television stations.

Of those 18 TV stations, 4 are significant: the public broadcaster, two channels with foreign ownership (with their base in Serbia, and owners from Serbia and Greece), and two national channels (one of which, Vijesti, has benefitted from large investments from American supporters):

- RTCG, the national public broadcaster, with three TV channels;
- TV Vijesti owned by Televizija Vijesti;
- TV Pink Montenegro owned by the Pink M Company, part of the Serbian Pink Media Group;
- TV Prva owned by AST, part of the Greek Antenna Group.

The landscape has shrunk since the early days of democratisation in the 1990s. Many new initiatives have not managed to stay afloat and have gone bankrupt. Producing content, whether audiovisual or in print, is indeed costly and requires skills in media management which take time to acquire. The competition from Serbian media has also had an impact on the make-up of the landscape in Montenegro: local editions of Serbian newspapers and local versions of Serbian TV channels have easily found their way in Montenegrin households alongside regular Serbian media, since the language is common and the means and experience in Belgrade have helped delivering competitive content. This has led to a decrease in domestic content available.

**Table 2: Supply of audiovisual services, including foreign channels**

	Free + Pay DTT	Cable	Satellite	IPTV
	RDC	M:tel	Total TV	Crnogorski Telekom
<b>TV Channels</b>				
Adult		12	4	9
Children	1	17	14	12
Film		31	14	12
Film and TV fiction		3	8	4
Cultural/ educational		3		2
Documentary	1	18	9	6
Entertainment	6	36	32	24
TV Fiction/ Series		9	9	3
Generalist	6	30	25	20
Home shopping				
News/ Business	2	19	6	4
International linguistic and cultural		8		1
Lifestyle/ leisure/ health/ travel	1	8	2	6
Regional/ local channel		8		9
Music		31	3	14
Sport	1	14	18	7
Window				
Other/ not identified		1	2	3
<b>Total</b>	<b>18</b>	<b>248</b>	<b>146</b>	<b>136</b>

On-demand audiovisual services				
TVOD				
SVOD				1
Catch-up TV platform <sup>(1)</sup>				
Other <sup>(2)</sup>				1
Total				2

Source: European Audiovisual Observatory 2016

(1) A service provided by the packagers providing catch-up programming of several channels.

(2) Includes advertising-financed and free on-demand audiovisual services.

Online media has developed rapidly and energetically over the last few years, offering news and entertainment items, as well as opportunities to post user generated content and personal comments. The main online news media are mostly connected to established print media, attracting a larger and younger audience. The web portal Vijesti ([www.vijesti.me](http://www.vijesti.me)) for instance, operates within the same company as the daily Vijesti, and Café del Montenegro (CdM - [www.cdm.me](http://www.cdm.me)) belongs to the same group as Pobjeda.

The way Montenegrins access their media has seen important changes in the last few years. Today, more than 95% of households pay a subscription to access TV channels, through satellite, cable or IPTV (these platforms have roughly a third of the market each) according to the AEM Market Report from October 2016. There were only two thirds of them five years ago. Montenegrin households pay on average around €10 a month for the TV package (AEM 2016).

Specific attention should be given to the situation in the regions outside Podgorica. If the media is indeed an important factor in giving citizens access to information, culture and entertainment, it is important to take into account the disparities frequently witnessed between a capital and the less populated and less affluent regions. There are a number of generally poorly funded local TV and radio stations,<sup>4</sup> but there are hardly any local newspapers or print media in Montenegro and the national media have few local correspondents. For private and public media both, content is usually produced in the capital.

Moreover, if the access figures are broken down by region, it is striking to note that, in the poorer Northern region, 40% of the households do not have a subscription to satellite, cable or IPTV and only receive free-to-air channels (AEM 2016), giving them less choice.

## Economic health and dynamics

There is little information, objective data and rigorous market research on the media sector of Montenegro. There are no official circulation figures and the audience ratings that are published are often criticised (not always in good faith) for their methodological weaknesses. Accurate data are difficult to come by, but some figures can be considered as reasonable estimates:

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<sup>4</sup> These local stations are generally deemed heavily politicised, funded solely as they are by local municipalities. Journalists have often short term contracts, are paid low salaries and sometimes not paid for months.

- Newspaper circulation estimates for 2016: Dan (circulation: 8,500); Vijesti (circulation 3,300); Pobjeda (circulation 3,000); Dnevne Novine (circulation: 2,800, private); Informer<sup>5</sup> (circulation 1,700, private).<sup>6</sup>
- TV ratings estimates for 2016: TV Pink Montenegro has 23.5%, the first public channel TVCG1 has 12.8%, TV Vijesti has 11.9% and TV Prva has 10.5% (European Audiovisual Observatory 2016).<sup>7</sup>

It is generally agreed however that the annual private advertising market is of about €10 million. This is a small sum, to be shared and fought for by the various domestic media including by public service media. In comparison, the figures for neighbouring Kosovo and Macedonia are respectively 18 and 30 million.<sup>8</sup>

The public service media is allowed to sell advertising and they raise around 1.5 million euro each year. This thus leaves little money overall to be split among all the private media outlets. Many broadcasters the experts interviewed, and some political figures as well, shared the opinion that there were too many broadcasters on the Montenegrin market, more than the market itself can absorb. The channels which are deemed superfluous vary, of course, with the person interviewed. But some more impartial observers agree that some media outlets are kept alive only thanks to the largesse of the government, which is alleged to direct state advertising and subsidies to struggling media groups that are sympathetic to their views and policies.

Like other countries in the Balkans, Montenegro is not often an advertising market on its own: for an increasing number of important brands, it is a part of a larger territory within which an advertising strategy is deployed and advertising money is spent. Many of these decisions and transactions thus take place in Belgrade, not Podgorica. Likewise, digital advertising is mostly done through Facebook and Google, bypassing local websites or agencies. Finally, many brands in Montenegro want to spend their advertising money partly on pan-national sports channels, rather than primarily on domestic generalist channels. What is left of the €10 million in advertising for the Montenegro media (all media sectors included) is thus even less and cannot, indeed, sustain their long-term operations.

Little economic data is available to give a more precise assessment of the market's health and trends. Media groups tend not to fulfil the legal requirements to report their marketing revenues to the tax authorities. Recent studies have concluded that, in 2013 and 2014, only one out of the five national TV stations has posted a profit (Vuković 2016). Indeed, a recent exposé of a Greek businessman of the tourism industry who has heavily invested in Montenegrin media, gave worrying details about the poor state of the media sector and the little prospects of a return on his money, alleging hence that the investment in these pro-government media were only made to buy favours from the political authorities (Perović Korać 2016).<sup>9</sup>

According to some public estimates, “annual turnover on the Montenegrin market of AVM commercial services is between €5.5 and 6 million. Of this amount, the radio broadcasters accounted for less than €1 million, and the TV stations about €5 million” (Ružić 2017).

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<sup>5</sup> The Montenegrin edition of Informer ceased to exist in 2017.

<sup>6</sup> Figures shared by Direct Media during assessment interview with expert team.

<sup>7</sup> Unfortunately, there are no ratings estimates available for Atlas TV which is according to various sources (including European Audiovisual Observatory, 2016), the the main players in the national television market in Montenegro.

<sup>8</sup> Figures shared by Direct Media during assessment interview with expert team.

<sup>9</sup> More details on <http://mediaobservatory.net/investigative-journalism/interests-greek-businessman-petros-stathis-montenegrin-media-invest-media>

Some are calling for the AEM to take action and regulate more forcefully the economics of the media sector; some are also demanding that the regulatory authority put a stop to the airing on Serbian TV of adverts targeting Montenegro. In both respects, the AEM does not have the remit or the jurisdiction to intervene (as detailed further in chapter 5). The AEM used to manage a fund of public money (levied through a tax on car radios) aimed at commercial radio broadcasters and public local radios, but that fund has stopped its operation.

In a rare instance of cordiality and collegiality, the three main private TV stations have met to discuss these issues and advocate together for corrective measures: a fee from cable operators, prohibition of advertising on the public service media, and an increase from 9 to 12 hourly minutes of advertising. The government has not yet made its position known on these proposals.

The socio-economic situation of journalists is problematic too in Montenegro and it has proven difficult for the profession to organise efficiently. There are now two professional associations, the second having been created a year ago in order to compensate for the perceived lack of activities and accomplishments of the historical one. There is one national trade union for journalists in the private sector and two within the RTCG, the public service media, instituted along ideological lines. There is little coordination between these actors, but they generally agree of the pressing issues at stake: labour laws do not effectively recognise the specificities of the profession of journalist, journalists work under a lot of pressure (political and economic) from their employers, their salaries are low, and their security is often endangered. The social situation of journalists has worsened to the point, they claim, that a second job is often needed to make ends meet. The national trade union had been working for a long time on a branch collective agreement, but the draft has been ready for a year now and the employers have not taken any further action or reaction.

Representatives of journalists are also aligned in their great reticence to institute any system of press cards and accreditation for professional journalists. They claim to fear abuse from those who will be invested with the task of recognising professional journalists, they can't see what objective criteria could be used and they are rather satisfied with the current system, where the media editors themselves decide who is and is not a journalist. They recognise the difficulty to fight for and obtain rights for a profession without clear standards and a poor reputation, but argue that training and education in journalism is still too poor for establishing a system which could, too easily, arbitrarily exclude people from the profession.

## Legal and regulatory interventions

The media law in Montenegro is generally deemed to be “aligned with international standards”, inspired as it is by the AVMS Directive. The regulatory body, the AEM, is thought as being independent (but suffers from attempts of regulatory capture and some political interference) and its staff enjoys a good international reputation. As the subsequent chapters of this report will analyse and argue, however, the legal and regulatory framework in Montenegro is complex, makeshift and at times opaque.

Public authorities seem to lack a clear, coherent and comprehensive vision of media public policy and, along with many actors in the media sector itself, work on assumptions and understandings that seem weak or misguided. It has been said in interviews, for instance, that the Montenegro media law was “copied from Germany”, a country which is too dissimilar to Montenegro. That argument seems to ignore the fact that Germany's media law is very much a variation of the AVMS Directive, which is in effect in the 28 countries of the European Union and in many neighbouring states, of various sizes and

very different markets. It has also been argued that the drafts for a journalistic ethics code worked on in Montenegro are copied from those in countries where democracy is long established. This argument too indicates a lack of clear understanding of the nature of such codes, since the fundamental principles of journalistic ethics are internationally recognised by the professionals and do not and should not fluctuate depending on the context.

Many important aspects of media policy find their legal basis and rules in various other laws having no link whatsoever with media policy, and all relevant legal dispositions do not always match in purpose and implementation. Critical issues such as state aid and state advertising lack the necessary transparency (more detail in Chapter 5 of this report). Administration and oversight of many important issues are unclear and scattered ministries, agencies, departments and divisions (discussed in Chapter 2 of this report). The AEM thus finds itself with the difficult task of having to regulate a fragile market with an imperfect legal framework. Their most critical challenge to effectively regulate the Montenegrin media sector is its lack of sanctioning and inspection prerogatives.

## Implications for the public

A small, economically fragile market, polarised and fragmented, with limited advertising resources and opaque public aid: the Montenegro media sector faces many challenges. While the subsequent chapters of this report will investigate with greater depths the nature and scope of these challenges, and offer suggestions and recommendations to help the growth and sustainability of the sector, it is important to assess the implications for the Montenegrin public.

A free and dynamic media sector is crucial in a democracy not merely as a theoretical principle, but in practice, in the everyday lives of the citizens, because the media is the principal source of information (national and international), exchange of ideas, culture, and entertainment. National media outlets are also essential to the domestic cultural ecosystem: a country needs a vibrant media sector in order to showcase and help its local talents in music, film, sports, literature, academia, theatre, etc.

The small budgets with which Montenegrin television channels operate makes it difficult to invest in their own production. Buying programmes elsewhere is always cheaper. And indeed, the commercial channels broadcast hardly any fiction, entertainment or cultural programmes made in Montenegro. Turkish soaps and Serbian fiction are very popular. Some deals can be made with Serbian partners (such as including one Montenegrin contestants in talent shows, for instance), but generally speaking, the people of Montenegro have very few opportunities to watch their domestic talents perform on commercial televisions (which garner almost half of the audience). It is thus all upon the shoulders of the public service broadcaster, and it has to do so with very limited budgets too.

Most of the in-house production on television is news related. But given the high polarisation of the media sector, the information and debates which are offered to the public are often deemed one-sided. Some channels are making attempts at broadcasting talk-shows where the various political factions are represented, and these initiatives seem to meet with some success. Other channels try to produce educational or informational programmes subsidised and commissioned by public institutions, programmes which could thus not be considered particularly objective.<sup>10</sup>

Foreign channels are thus very popular. And, similarly to other small countries in Europe, channels coming from neighbouring countries which share a language and a culture are popular. In Montenegro,

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<sup>10</sup> It should be noted that the EU itself commissions and pays for programmes reporting on EU activities and accomplishments.

Serbian and Croatian public service broadcasters do really well, as do commercial channels from these countries and Balkans-wide thematic channels. All in all, foreign channels garner more than 40% of audience ratings every day. Since the very vast majority of Montenegrins access television through packages sold by satellite, cable or IPTV platforms, the choice available is indeed very large.

If the Montenegrin media sector needs support to adjust and coordinate its laws, to make public advertising and aid more transparent, to bolster its regulatory agency, and to stimulate its public service broadcaster, consideration should also be given to the ways local production can be enhanced and supported, if we wish the public to have access to programmes and news which reflect the reality and diversity of their own country.

## Policy brief

Most of the issues addressed in this section will be investigated more thoroughly in the subsequent chapters. These will thus present relevant and pointed recommendations on major aspects of the media sector. There are still some questions, more specific to general market dynamics, which call for suggestions and recommendations at this stage of the report:

- Innovative public initiatives should be considered to help sustain and develop healthier and more independent local media. The creation of an association of local and regional TV and radio stations could be encouraged; this grouping could then become the partner and beneficiary of actions tailored to their needs. Training sessions, strategy and intelligence briefings, collaborations and synergies could prove very useful. In addition, every policy initiative or international cooperation project should be screened for its implications and needed adjustments to benefit, directly or indirectly, local and regional media.
- The government should consider with care the possibilities of removing advertising from the public service media, *if and only if* solutions can be found to financially compensate the loss in revenues.
- Political authorities should also take the time to carefully consider and assess the policy proposals made by the main private TV stations: a fee from cable operators, the end of advertising on the public service media, and an increase from 9 to 12 hourly minutes of advertising. The last measure does not imply budgetary constraints and would align Montenegrin media with European practices.
- In reciprocity, however, the management of the most important private media should be strongly encouraged to engage in dialogue with the national trade union, which has been working for a long time on a branch collective agreement; a draft has been ready for a year now and the employers have not taken any further action or reaction.
- Public authorities should assess the possibility of devising and implementing a consensually agreed system of audience ratings. It is a delicate issue, since these systems are traditionally set up through private initiative, with no intervention of the government or regulator, but some exceptions exist, and these exceptions should be studied closely.<sup>11</sup>
- Public authorities should encourage and structure a sector-wide round table on the issue of press cards and/or accreditations. Journalists are extremely wary. An in-depth critical

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<sup>11</sup> Tunisia and Macedonia, for instance, have been working on the issue for a few years now and could be studied as examples.



assessment of the advantages, disadvantages and logistics of such systems in other European countries could help move the question forward.

- Public authorities, with the help of international partners, should set an ambitious yet realistic programme to help bolster domestic audiovisual production, through, for instance, training sessions for independent producers (active and aspiring) to create and produce TV formats and programmes.

## Ch. II: Legal and institutional framework

This chapter provides an analytical overview of the relevant laws governing the media with comments on the key legal acts and evaluation of position, remit and power of the national regulatory authority responsible for electronic media.

### Harmonisation: a step forward, two back

The reform of Media law in Montenegro has been ongoing for almost 15 years. It has started with the adoption of Media Law and Broadcasting Law in 2002, when the primary aim was harmonisation with the Council of Europe standards, so that the country could become a Council of Europe member state. The Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter ECHR) was signed by Montenegro on April 4, 2005 and ratified on April 14, 2009.<sup>12</sup> The Broadcasting Agency of Montenegro (now the Agency for Electronic Media) was established on 25 March 2003 and modelled as an independent national regulatory authority. The Law on Electronic Media, adopted in 2010, was designed with the intention to harmonise the Montenegrin law with the Audiovisual Media Services Directive (AVMSD). The process of harmonisation with EU *acquis communautaire* continued with the adoption of the Law on Electronic Communications in 2013, transposing the EU regulatory framework for electronic communications of 2009.

The early media reforms were recognised by many as a sign of willingness for democratic transition. They indicated a step towards guaranteeing freedom of expression and freedom of media in Montenegro in line with international standards. These signs, however, did not materialize in practice. Instead of leading to a sound legal and institutional framework, their poor implementation resulted in a media environment not conducive to media freedom. In the absence of a clear media policy, the issues in media are being addressed as per their position on the current agenda of the political establishment, as a rule by ad hoc, partial, poorly conceived solutions. Interviewing different stakeholders for the purpose of this study, the experts learned that these quick fixes are often done without prior evaluation of the situation and without examining whether the source of the problem was a legal provision or just its implementation.

### Legislation: overview and suggestions

The main legal acts governing the media in Montenegro are the Media Law and the Law on Electronic Media. Other important pieces of law affecting the media sector and the rights of the citizens as regards the exercise of freedom of expression and their rights in relation to media are in particular the Law on Electric Communications, the Criminal Code and the Copyright Law.

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<sup>12</sup> Entered into force on 1<sup>st</sup> August 2009.

## The Media Law

The Media law was adopted in 2002 and has been amended several times since then. Although with still some good solutions, it is outdated and requires an overall update to reflect the new media reality.

Recommended changes:

- A new definition of media shall be introduced to refer unequivocally to online media as well.
- If decided to address the responsibility of online media in relation to the third party content such as comments and other user generated content (UGC), the regulatory framework should be in line with the Council of Europe and European Union standards and case law (Delfi AS vs. Estonia and MTE-Index v. Hungary) (CoE 2017a, ECtHR 2015, ECtHR 2016).
- The right of reply and right of correction in Chapter VI should be extended in line with the CoE Recommendation Rec (2004) 16 of the Committee of Ministers to member states on the right of reply in the new media environment (Committee of Ministers of the CoE 2004).

## The Law on Electronic Media

The Law on Electronic Media (Parliament of Montenegro 2016c) was adopted in 2010, replacing the Law on Broadcasting from 2002 (Parliament of the Republic of Montenegro 2002). The Law on Electronic Media was amended four times – two times in 2011, once in 2013 and once in 2016. The changes resulted, among others, in the abrogation of inspection powers and weakening of the enforcement powers of the AEM. The main suggestion as regards the national regulatory authority is empowering the AEM for effective supervision and enforcement of compliance of the AVMS providers with the law by re-introduction of inspection powers and the gradual system of sanctions, including fines. This proposal is explained below, together with other suggestions, which range from the necessary harmonisation with the EU acquis to the application of (self-)regulation with regard to journalistic standards.

Recommended changes:

- Non-linear AVMS: The Electronic Media Law is inspired by the European Audiovisual Media Services Directive (EC 2016b), but does not transpose it entirely and correctly. The notion of AVMS on demand is wrongly interpreted (Article 7 Para 8) and attributed to the activity of transmission of AVM services performed by the operators of distribution platforms, such as CATV, SAT TV and IPTV operators. The notion of non-linear AVMS and the obligations related to them are completely missing. Most of the regulation related to the so-called “AVMS on-demand” can stay if the right terms are introduced. One of the exceptions is the provision of Art. 139 Para 2 (indent 4) which is inconsistent with the AVMSD and its principle of freedom of reception. The general suggestion to the Montenegrin lawmakers is to harmonise the Law on Electronic Media with the AVMSD, bearing in mind also the expected changes and novelties of the AVMSD which is currently in the process of revision. The new directive is expected to be adopted by mid 2018.
- Commercial Communications: The provisions governing teleshopping (Art. 89) skipped to introduce the special regime envisaged by the AVMSD for placing teleshopping windows in television schedules. Also, the provision (Art. 93) limiting the proportion of advertising spots in programmes of commercial broadcasters within a given clock hour to 15% (9 minutes) is more restrictive than the AVMSD, which does not contribute to equal conditions for TV broadcasters

in a market heavily targeted by the TV services from other countries with less limited advertising quotas. Both issues create practical problems in scheduling commercial communications in TV services and weaken the position of the Montenegrin providers on the market (especially with regard to a significant presence of non-domestic TV services covered by more favourable regimes), so it is recommended to align them with the standards of the AVMSD and practices in the EU. Also, the provisions regulating advertising and other commercial communications that were inspired by (transposed from) the AVMSD are word for word the same for the radio services as well. The scope of the AVMSD is limited to audiovisual media services, namely television and television-like services, linear and non-linear, and thus does not cover the radio services. It is recommended that the regulation of advertising in radio services is designed in a way adapted to the specific public interest in the radio services and to the situation on the radio market. As these are not rosy, unnecessarily restrictive regime, limiting the already limited chances of radios to obtain funds from the market, is not recommended.

- Media ownership: The provisions governing the transparency of ownership and illegal concentration prevention rules (Chapter VIII; Art. 129-135) shall be amended as suggested in the Chapter 6 of this study (Transparency of media ownership and media concentration).
- Supervision and enforcement: The possibility of exercise of legal competences of the regulator AEM, including the supervision and enforcement, is limited if it has no competences to impose a complete set of measures, including warnings, fines, suspension and revocation of licences. A large scale of various types of sanctions ensures gradualness, proportionality and effectiveness. Since the AEM as an independent regulatory authority is entrusted with deciding on the most severe sanctions, such as revocation of licences for the provision of AVMS, it makes no sense depriving it of the competence to impose milder ones, including the fines. The Chapter IX should therefore be amended in a way allowing imposition of a range of sanctions to all providers of AVMS. The law should clearly set out the competences of the AEM to exert supervision through the authorised person in compliance with the law governing inspection supervision (Article 138). The AEM competencies in Articles 140-142 and 146 should be extended to administrative financial fines, as measures between the issue of warning and revocation of the licence (Articles 140-142) instead of (or in parallel to) misdemeanour offences in Article 146. The administrative financial fines should have several levels, depending on the level of the breach of the law.
- Journalistic standards: In cases stipulated by Article 56 Para 4, the AEM remit – as regards monitoring the compliance of AVMS providers with the law and sanctioning – should here be limited, as this is an area that should be left to mechanisms of self-regulation, better equipped and more legitimate to deal with journalistic ethical and professional standards. If placed in the remit of the statutory regulation it can be used for censorship. Namely, pursuant to Article 56 (4) of the Electronic Media Law, “radio or television broadcasts shall meet the following requirements: 1) events shall be realistically shown, and difference of approaches and opinions shall be adequately present; 2) news shall truly and accurately present facts and events, shall be impartial and professionally accurate; 3) opinions and comments shall be separated and their source or author recognizable; 4) impartiality shall be encouraged, respecting the difference of opinion on political or economic matters.” In application of this provision of the Electronic Media Law, the AEM has adopted a Rulebook on program standards in electronic media. This rulebook deals with several concepts which are the heart of the activity of any self-regulatory body for journalism ethics.
- AEM Council: The provision on collective dismissal of the Council members of the on the ground of non-compliance with the Law (Article 38), should be revised in order to prevent misuse for

political pressure on the regulator. Dismissal should only be possible in limited circumstances, namely physical or mental incapacity, regular non-attendance, insolvency or bankruptcy, conviction of a serious criminal offence, or clearly breaking the rules of appointment. The current provisions of the Article 34 allow excessively broad discretion and should be narrowed in order to prevent the chances for unjustified early dismissal of the AEM Council members. On the other hand, there should be a cooling period for political officials envisaged, before becoming eligible to the AEM Council (Article 17).

- Co- and Self-regulation: The provisions of the Article 53 should be elaborated and aligned with the Principles for better self- and co-regulation (European Commission 2013). Worth considering introduction of incentive-based systems with a clear delineation between the self- and statutory regulation, such as the one of Netherlands or Belgium. These two EU member states have managed to positively promote effective co- and self-regulation by providing strong incentives such as falling under statutory regulation (Netherlands) or not benefiting from any kind of direct or indirect economic state support (Belgium) when not joining the self-regulatory scheme. Both systems also leave backstop powers in the hands of the regulator in case of failure of self-regulation. The delineation of the remit and power of the self-regulatory and the regulatory body should in any case remain clear and strong.
- Copyright: Article 83 of the Law on Electronic Media (Parliament of Montenegro 2016c) overlaps with Article 170 of the Copyright Law (Parliament of Montenegro 2016b), which is discussed in detail in Chapter 10 of this study (Copyright and intellectual property rights). The Law on Electronic Media should be the sole law to introduce the AEM competences and should in this regard only refer to the Copyright Law.

## Law on RTCG

The Law on Electronic Media (Parliament of Montenegro 2016c) regulates the establishment and obligations of all audiovisual media services (AVM services) and defines in detail the general and programme-related obligations of all radio and television broadcasting services.

### Establishment of PSM

Article 70 of the Law differentiates between three types of broadcasters: commercial broadcaster, non-for-profit broadcaster and public broadcaster. Article 73 stipulates that a public broadcaster may be established at national level, as well as at regional and local level, with an obligation to provide good quality reception for a minimum percentage (85% at national and local level and 80% at regional level) of the population living on the respective territory.

The same article provides that, while a national public broadcaster can be established by the state, as an abstract entity, the regional and local public broadcasters can be established by local municipalities. Accordingly, Article 75 provides that a national public broadcaster shall be established by law, while a regional or local broadcaster by a decision of the respective municipal councils. Although the Law defines local municipalities as founders of local or regional public broadcasters, it does not explicitly mention that the public broadcasters' councils exercise the founders' rights on their behalf. Next, the same article determines that local municipalities may establish only one local public broadcaster or be co-founder of only one regional public broadcaster. If a local municipality is a co-founder of a regional public broadcaster, it may not at the same time be a founder of a local public broadcaster.

The Law on Radio and Television of Montenegro National Public Broadcaster (Parliament of Montenegro 2016d) defines that the mission of a national public broadcaster is performed by the public enterprise Radio and Television of Montenegro (Articles 2 and 3). The Law explicitly stipulates that founder of the public enterprise Radio and Television of Montenegro is “the state”, but also puts emphasis on its institutional autonomy with the provision stated in Article 3 Para 5, that “...the RTCG Council shall exercise the Founder’s rights, on behalf of the State”. The amendments to the Electronic Media Law which entered into force on 1st September 2017 introduced a positive obligation for the Government and local municipalities to define mutual duties and responsibilities with the public broadcasters in a separate Contract (Article 76-a). According to the law the Contract defines the programme services which the public broadcaster is obliged to provide and sets the funding level necessary for the provision of these services (Article 76-b).

Recommended change:

- **Influence of the founder:** The very fact that local municipalities may be founders or co-founders of local or regional public broadcasters does not adequately prevent political influence over their editorial policy. As in the case with the national public broadcaster, the Law does not explicitly state which body performs founders’ rights. The Law on Electronic Media should be amended, in order to provide sufficient guarantees for the institutional autonomy of regional and local public broadcasters.

#### Supervisory and managing bodies

Article 77 of the Electronic Media Law (Parliament of Montenegro 2016c) provides that all public broadcasters are governed by ‘councils’, which according to Article 78 Para 1 ‘...shall represent the interests of citizens of Montenegro or the local self-government unit(s) ...’. Independence of these supervisory bodies (from any state authority and from the broadcasters) is generally guaranteed (Article 78 Para 2), without providing detailed rules on the conflict of interests and on the composition, manner of appointment and responsibilities of these bodies. These and other issues are to be defined in the so-called ‘memorandums of association’ (Article 77 Para 2), foundation acts adopted by municipal councils. Nothing is mentioned in the Law about how these bodies represent the interests of the citizens, in terms of keeping regular connections or public hearings with their constituencies or how the members of the PSB councils monitor and determine how the issues of public interests are presented in the programme output of the respective public broadcasters.

The Law on Radio and Television of Montenegro National Public Broadcaster (Parliament of Montenegro 2016d) provides detailed rules on the RTGC Council as its main governing body which has responsibilities for both monitoring programming policy and for supervision of financial operations. The Law defines: its status (Article 21), composition (Articles 24 and 25), manner of appointment and dismissal (Articles 27-30 and 33-39), conflict of interest and independence (Articles 21, 26), duties and responsibilities (Article 22) as well as other issues. The Council is composed of 9 members and is designed as a body of experts (Article 25) nominated by authorized nominators representing different Montenegrin institutions and social groups.

The institutional autonomy of the RTCG is additionally strengthened by the provisions of Article 31 which defines that the RTCG Council members shall perform their duties independently and shall be protected from any kind of influence, including from the influence of their authorized nominators. However, a matter of grave concern is the possibility for collective dismissal of its members on several grounds (Article 47).

The main duties and responsibilities of the RTCG Council, in terms of programming policy of the national public broadcasters are defined in the Article 22: adopts the internal (self-regulatory) documents concerning the RTCG programming and professional standards; adopts other internal programme documents; gives its consent to the Contract signed between the RTCG and the Government; monitors the implementation of the obligations stemming from the Contract; decides upon violations of the programming principles set out in the law and in the internal self-regulatory documents and propose appropriate measures to the respective managers.

Recommended changes:

- Collective dismissal: While the dismissal of individual members is acceptable when they do not fulfil their duties and responsibility, the provision on collective dismissal on the ground of non-compliance with the Law (Article 47, Law on RTCG), might be misused as a “legally justified instrument” for political pressure over the national public broadcaster.
- Early dismissal: Dismissal should only be possible in limited circumstances, namely physical or mental incapacity, regular non-attendance, insolvency or bankruptcy, conviction of a serious criminal offence, or clearly breaking the rules of appointment. The current provisions of the Article 42 of the Law on RTCG (and related provisions) allow excessively broad discretion and should be narrowed in order to prevent the chances for unjustified early dismissal of the RTCG Council members.
- Cooling period: There should be a cooling period for political officials envisaged, before getting the eligibility of being appointed to the RTCG Council (Article 26, Law on RTCG).
- Citizens’ interests: Although the main supervisory bodies of the PSB’s in general are defined to represent the interests of the citizens, the law does not provide more details about how these bodies should function in order to reflect the interests of the citizens living in their respective communities. Also, there are no detailed rules defined in the Law – in this case the Law on Electronic Media, about the composition, manner of appointment and duties and responsibilities of the councils of public broadcasters at regional and local level. The Article 78 of the Law on Electronic Media should be amended accordingly.

#### Public Service Remit

The Law on Electronic Media defines in general terms the remit of all public service broadcasters in Montenegro (Article 74), as a requirement for universality (programmes for all groups), genre diversity, programme quality, and cultural obligations. Articles 76-a, 76-b and 76-c define that the public service obligations referred to in Article 74 (as well as the amount of funds and sources for their financing), shall be determined in a contract signed between the Government and the national public broadcaster, that is the local self-government unit and the local public broadcaster. The contract should determine the type and scope of all services provided by the public broadcaster and will define the programme content aimed at promoting science, education and culture, information for the persons with hearing and sight impairment, as well as programmes in the languages of national minorities. (Article 76-a, Para 4 and 7).

The Law further defines the remit of the RTCG, by repeating some of the public service obligations determined in Article 74 of the Law on Electronic Media or adding obligations related to: its social cohesive role (Article 9, Para 1, item 1), preserving political pluralism (Article 9, paragraph 1, item 3), preserving cultural pluralism (Article 9, Para 1, item 7), promotion of human rights and freedoms and democratic values (Article 9, Para 1, items 8, 9, 10), etc. Next, Article 4 determines the number and type of programme services to be produced by the RTCG on diverse platforms (Article 4), while articles 9-a, 9-

b and 9-c almost repeat the provisions of the Law on Electronic Media about the contract to be signed between the Government and RTCG.

Recommended action:

- Overlap of remits: The current legislation provides grounds for establishment of public broadcasting services at different levels: national, regional and local, and via two systems: within the remit of the national public broadcaster RTCG and through the option given to local self-government. While this can be justifiably maintained for the sake of media pluralism and diversity at the regional and local level, it seems that two systems of public broadcasting at three different levels are difficult to sustain in such a small market. It is therefore recommended that the legislator considers the option of reducing this overlap, by taking into consideration the sustainability of services.

#### Transparency, accountability and public's Influence

The Law on Electronic Media has no provision either about the transparency of the public broadcasters or about the public's or citizens' influence over their work and editorial policy. The only provision is the one defining the public broadcasters' councils as bodies that "...represent the interests of citizens of Montenegro, or the local self-government unit(s) on whose territory their radio and/or television programme is broadcasted" (Article 78).

The Law on Radio and Television of Montenegro National Pubic Broadcaster contains provisions that explicitly emphasize that the national public broadcaster is accountable to the public (Article 12) and states that accountability shall be exercised through:

- the procedure for appointing the members of the RTCG Council;
- the RTCG Council public work;
- the RTCG Council's responsibilities to represent and protect the citizens' interests;
- RTCG obligation to inform the public by publishing print or electronic copy of its Operation Bulletin; RTCG obligation to establish and implement a procedure for handling complaints from viewers and listeners.

In addition, Article 23 obliges the RTCG Council to make transparent the key documents relevant for the RTCG operation: annual report for its work with emphasize on the fulfilment of programme standards and legal obligation; annual financial report with detailed explanation on the expenditure of the funds received from the Budget; auditor's report on its financial operations. Paragraph 2 of the same article obliges the RTCG Council to publish on its Web site the Contract signed with the Government, the annual agenda and the financial plan for its implementation. The Article 76-a paragraph 2 of the Law on Electronic Media also provides that prior to the conclusion of the contracts, the public broadcasters are obliged to prepare a proposal for programme obligations for the contract period and to conduct public hearings on its proposal.

Recommended changes:

- Obligations for transparency and accountability: are regulated in detail for the RTCG. However, the public's influence on the national PSB programming policy is not sufficiently elaborated in the Law. There should be new provisions introduced, obliging the RTCG Council or other internal bodies to keep regular contacts or debates with the civil society sector about the fulfilment of the citizens' interests.



- Compliance with the Contract: The law should also make clear who is responsible for supervision over the performance of the Contract.

#### Funding framework

Article 76 of the Law on Electronic Media defines that the public broadcasters are funded from the Budget of Montenegro, or from the budgets of local self-government units, as well as from other sources in accordance with the law and the foundation acts of the public broadcasters. The new provisions were designed primarily to implement the EU acquis on the state aid rules. However, in addition to that, these provisions introduced new obligations for the Government and the local self-government units to provide appropriate and stable funding for the public broadcasters in Montenegro. Namely, Article 76-a stipulates that the contract shall be concluded for a period of three years, while according to the Article 76-b the contract will determine the funds for the public services to be provided by the public broadcaster.

Recommended action:

- Founders' duties: The introduction of a positive obligation for the Government and local municipalities to define mutual duties and responsibilities with the public broadcasters in a specific Contract can be considered as a step forward in securing independent and sustainable functioning of all the public services in Montenegro and should be adequately implemented.

#### The Law on Electronic Communications

The Law on Electronic Communications, adopted in 2008 and reviewed in 2013, replaced the Law on Telecommunications from 2000. The regulatory authority in charge of telecommunications, the Agency of Electronic Communications and Postal Services, now the EKIP, was established in 2001. For the purpose of this analysis, the Law on Electronic Communications is looked at exclusively from the freedom of expression perspective. The assessment of compliance with the EU regulatory framework for electronic communications or with the rules relevant to competition in the electronic communications market is out of the scope of this study. As appears from the analysis presented in Chapter 4 of this study (Internet intermediaries and online media platforms), there is a need to introduce clear rules and procedures regarding blocking, filtering and takedown of online content and services, especially related to the role and competencies of EKIP and obligations of operators.

#### The Criminal Code

The Criminal Code (Parliament of Montenegro 2017a) was adopted in 2003 and has had many changes since then, in 2004, 2006, 2008, 2010, 2011, 2013, 2015 and 2017. One of the most important amendments from the perspective of this study was its harmonisation with the CoE Recommendation 1814 (2007) towards decriminalisation of defamation (PACE 2007), when two criminal offences, insult and defamation, were deleted.

However, there are still several provisions referring to the work of journalists, editors-in-chief and media, directly or indirectly, that should be carefully examined. These provisions prescribe the restrictions to freedom of expression and impose criminal sanctions over journalists, publishers, printers, editors-in-chief or media.

According to the statistical data for 2014, 2015 and 2016, requested by the experts from the Prosecution office, there was one conviction against an editor of a daily press in relation to Articles 28, 30 and 77 of the Criminal Code of Montenegro (Parliament of Montenegro 2017a) in that period of time. The judgement was based on the established criminal act of “injuring the reputation of nations, national minorities and other minority ethnical groups” (Article 199) of the Criminal Code of Montenegro. In relation to this act, two indictments were filed and three cases were discarded during the mentioned period. Also, during the mentioned period, three indictments were filed for the criminal offense of violation of the reputation of Montenegro referred to in Article 198 of the Criminal Code of Montenegro.

These provisions should be looked at from the European Union and Council of Europe human rights standards point of view. At the same time, the existing restrictions and sanctions should be assessed via the tripartite test implemented by the European Court on Human Rights: if there is a criminal offence related to media prescribed by the law, is there a legitimate aim for such an offence to be within the Criminal Code and are those restrictions and prescribed sanctions necessary in a democratic society. The ECHR case law should be taken into consideration when measuring the fulfilment of parts of the law with the Council of Europe Standards and EU *acquis communautaire*.

Recommended changes:

- Liability of media professionals: The Articles 28,<sup>13</sup> 29<sup>14</sup> and 30<sup>15</sup> refer to liability for criminal offences committed through media, introducing the liability of editor-in-chief (Article 28), publisher, printer and producer (Article 29). The special liability of persons from Articles 28 and 29 should be implemented, in accordance with Article 30, only if persons named in Articles 28 and 29 could not be considered criminal offenders in accordance with general provisions of this Code. Authors consider these three provisions as threatening freedom of expression and therefore suggest the Montenegrin authorities to consider their revocation.
- Judgement publication: The clear criteria for choosing of the media in which the judgment shall be published should be introduced into Article 77. According to this Article, the court may order the publishing of a judgment in media, in cases where the criminal offence is committed through media, or it endangers life or health of people. The costs of the publication shall be borne by the convicted person (Para 1). Also, the publishing of a judgment could be obligatory for certain decisions, in which case the court decides in which media, and whether in summary or in its full (Para 2). The judgment shall be published no longer than thirty days of the date of the final decision (Para 3).
- Information about private/family life: Criminal offences against honour and reputation are still part of the Criminal Code (Articles 197-200), although Articles 195 (insult) and 196 (defamation) were deleted. However, the dissemination of Information about private and family life (Article 197) has remained part of the Criminal Code. It regulates the dissemination of information about private and family life. When disclosure or dissemination of information about other person’s personal or family life potentially harms that person’s honour or reputation, the

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<sup>13</sup> Article 28 the editor-in-chief, or a person replacing him/her at the time of publication of information, shall be held liable for criminal offence committed through media, in situations when: (1) the author remains unknown, until the end of the main hearing before a first instance court, (2) the author did not give consent for the information published, (3) the factual or legal obstacles to prosecuting the author have existed at the time when the information was published. An editor-in-chief or a person replacing her/him shall not be held liable when for justified reasons he/she had no knowledge of the circumstances referred to in Para. 1, subparagraphs 1 through 3 hereof.

<sup>14</sup> Article 29 prescribes the liability of a Publisher, Printer and Producer, when requirements referred to in Article 28 are met.

<sup>15</sup> Article 30 prescribes the liability of persons from Articles 28 and 29.

prescribed punishment is fine, ranging from €3,000 to €10,000. When this offence is executed through the media or at a public gathering, the fine is ranging from €5,000 to €14,000. There is a risk that this Article is interpreted as a defamation, in which case it should be deleted, in line with the CoE Recommendation 1814 (2007) Towards decriminalisation of defamation (PACE 2007). Therefore, the authors suggest the Montenegrin authorities its repeal.

- Felonies committed via media: Criminal offences within Article 281a, Para 3 and 398, Para 2 are felonies, when done via media. Therefore, their penalty is higher than for the regular criminal offence. The authors propose to examine prescribed sentences in accordance with the Council of Europe, ECHR and EU standards and best practice, so that unnecessary sanctions are not imposed on media in Montenegro.
- Protection against discrimination, hate speech and incitement to hatred: Article 370 stipulates that “anyone who publicly encourages to violence or hatred towards the group or group member related to race, skin colour, religion, the origin, state or national affiliation, will be punished by imprisonment for a term of six months to five years”. Sexual orientation and disabilities are not explicitly included in the list of protections. The protection against discrimination, hate speech and incitement to hatred should be offered to larger segments of the Montenegrin population. It should be extended according to the disposition of the Charter of fundamental rights of the European Union, Chapter III, Article 21 on non-discrimination: sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age and sexual orientation.

### Institutions: gaps, overlaps and capture

The institutional framework for media and information policies and regulation in Montenegro is characterised by a number of bodies with sometimes overlapping remits and without clearly drawn areas of responsibility. There are issues and areas which seem to be outside the power of any of the institutions, either because of the absence of their commitment or due to the legal gaps, resulting from constant ad-hoc and partial changes and amendments of the laws governing media sector or – which is often the case – of other law interfering with the sectorial law. Since the legal framework is composed of ill-fitting, frequently amended pieces of law, and its enforcement is difficult or impossible, the compliance of the industry with the applicable law and regulations is low and the public interest objectives are jeopardised.

For an overview of remits and responsibilities of the relevant institutions, directly or indirectly involved in media regulation, an institutional mapping table is provided below. It indicates the relationships among the institutions, their responsibility and accountability, and points briefly to the main issues of concern.

**Table 3: List of bodies with statutory responsibilities in the media sector**

	Body	Type (T) Accountability (A)	Appointment	Law	Responsibility (R) Issues of concern (IC)
1	Parliament	T: legislative A: voters	Parliamentary elections	Constitution, 2007, 2013	R: Legislative competence IC: hearings related to AEM
2	Parliament Committee for political system, judiciary and administration	T: legislative A: voters	Parliament	Parliamentary Rules of Procedure, 2013, Art. 40	R: The line Parliamentary Committee IC: the placement of authority over the media in the portfolio concerning the political system, justice and administration
3	Parliament Committee for education, science, culture and sport	T: legislative A: voters	Parliament	Parliamentary Rules of Procedure, 2013, Art. 47	R: Limited IC: the line Parliamentary Committee for the field of culture and thus the main parliamentary interlocutor of the Ministry of Culture, but without responsibility for media
	Parliament Administrative Committee	T: legislative A: voters	Parliament	Parliamentary Rules of Procedure, 2013, Art. 47	R: Appointments / Dismissals of members of the AEM Council, the EKIP Council and the RTCG Council IC: can initiate an early, premature termination of the term of office of Members of both NRAs councils and RTCG governing body bypassing the sectorial law
4	Parliament Committee for human rights and freedoms	T: legislative A: voters	Parliament	Parliamentary Rules of Procedure, 2013, Art. 44	R: Limited IC: more engagement in issues related to media required
5	Parliament Committee for gender equality	T: political body A: voters	Parliament	Parliamentary Rules of Procedure, 2013, Art. 45	R: Limited
6	Government	T: executive A: Parliament	Parliament upon the President's Proposal	Constitution, 2007, 2013	R: policymaking in areas directly or indirectly linked to media sector IC: impact of systemic, non-sectorial laws
7	Ministry of Culture, Directorate for Media (MoC)	T: executive A: Parliament	Government	Decree on Organisation and Functioning of Public Administration 2012	R: policymaking in issues related to media; competent authority for managing the Media Record; monitoring of the compliance with the Media Law IC: lack of coordination and

					proactivity in policymaking
8	Ministry of Economy, Directorate for Electronic Communications, Postal Services and Radio Spectrum (MoE)	T: executive A: Parliament	Government	Decree on Organisation and Functioning of Public Administration 2012	R: policymaking in issues relating to the radio spectrum and electronic communications
9	Ministry of Economy, Directorate for Development of National Brand and Consumer Protection (MoE)	T: executive A: Parliament	Government	Decree on Organisation and Functioning of Public Administration 2012	R: policymaking in consumer protection
	Ministry of Public Administration (MoPA)	T: executive A: Parliament	Government	Decree on Organisation and Functioning of Public Administration 2012	R: policymaking in issues related to information society
10	Ministry of Finance, State Aid Unit	T: executive A: Parliament	Government	Decree on Organisation and Functioning of Public Administration 2012	R: policymaking in issues related to state aid
11	Ministry of Education (MoEd)	T: executive A: Parliament	Government	Decree on Organisation and Functioning of Public Administration 2012	R: policymaking related to media literacy
12	Ministry of European Affairs	T: executive A: Parliament	Government	Decree on Organisation and Functioning of Public Administration 2012	R: coordination of EU integration process, including the negotiating Chapters related to media
13	Ministry of Interior (Mol)	T: executive A: Parliament	Government	Decree on Organisation and Functioning of Public Administration 2012	R: limited; managing the registry of NGOs

14	Ministry of Justice (MoJ)	T: executive A: Parliament	Government	Decree on Organisation and Functioning of Public Administration 2012	R: limited; strategy for execution of criminal sanctions (2017-2021); Strategy for the Reform of the Judiciary 2014-2018
15	Prosecution Office	T: justice A: prosecutorial independence	Parliament	Law on State Prosecution	R: prosecution IC: transparency on cases against journalists and other cases related to media
16	Commission for investigation of attacks on journalism	A: Government	Government		R: investigation of attacks and murders of journalists IC: effectiveness of investigations, long pending cases
17	Unit for protection for computer and safety incidents on Internet (CRIT)	T: executive A: Government (MoPA)	Government	Law on Information Security; Administrative Agreement between Government of Montenegro and ITU	R: incidents handling, awareness, training and education
18	Public Procurement Administration (PPA)	T: executive A: Government (MoF)	Government	Law on Public Procurement 2017	R: monitoring the implementation of public procurement system; public procurement evidence IC: full transparency of the state /public funding
19	Intellectual Property Office (IPO)	T: executive A: Government (MoF)	Government	Law on Copyright and Related Rights 2016	R: copyright IC: delineation of responsibilities, co-operation
20	Administration for Inspection Affairs (AIA)	T: executive A: Government	Government appoints the Director and Deputies	Decree on Organisation and Functioning of Public Administration 2012	R: inspection, misdemeanour procedures, fines IC: overlap of 'professional' (EKIP) and inspection control (AIA); lack of responsibility for media issues within AIA, while AEM lacks power to file misdemeanour charges
21	Agency for Protection of Competition (APoC)	T: regulatory A: public	Government appoints the Director and Deputy	Law on Protection of Competition 2012	R: protection of competition
22	Agency for Prevention of Corruption (ASK)	T: regulatory A: public	Parliament appoints the ASK Council, which appoints	Law on Prevention of Corruption 2014, 2016	R: responsible for assessing the compliance of public officials with the law during the exercise of public office

			the ASK Director		IC: its decisions can serve as a justification of early dismissal of public officials in regulatory bodies
23	Agency for Electronic Media (AEM)	T: regulator A: Parliament	1. Parliament appoints the 5-member AEM Council upon proposals of the statutory authorised nominators  2. The AEM Council appoints the AEM Chairman from its Members and the AEM Director.	Electronic Media Law	R: national regulatory authority for electronic media IC: lack of effective enforcement mechanisms; broad and rather untypical remit of AEM in the issues related to journalistic professional standards (still without effective enforcement powers) overlapping with the scope of work of the Self-regulatory body and Ombudsmen; systemic rules affecting the AEM independence
24	EKIP	T: regulator A: public	1. Parliament appoints the Chairman and the other 4 members of the EKIP Council upon proposals of the Administration Body of the Parliament according to public announcement  2. The EKIP Council appoints the EKIP Executive Director.	Electronic Communications Law 2013	R: national regulatory authority for electronic communications and postal services IC: division of powers with the Inspection Administration, systemic rules affecting the EKIP independence; application of law for blocking online services
25	RTCG Council	T: PSM governing A: public	Parliament upon proposals of the statutory authorised nominators	RTCG Law 2008, 2012, 2016	R: main governing and supervision body, responsible for programme policy IC: systemic rules affecting the RTCG independence; lack of clarity regarding the responsibility for supervision of implementation of the Contract between the RTCG and Government

## The national regulatory authority

In this section the position, remit and power of the national regulatory authority responsible for electronic media, the Agency for Electronic Media (AEM) is evaluated. The main focus is on the regulator's autonomy and ability to exercise its remit.

Delegation of responsibilities for implementation of clear and proportionate legislative mechanisms to an independent regulatory body removes governments from the potential political interference. This principle was introduced by the Committee of Ministers in Recommendation 23(2000) (Committee of Ministers of the CoE 2000) wherein Member States of the Council of Europe were asked to guarantee genuine independence for their broadcasting regulatory authorities. It is expected that the concept of independent regulator will be enshrined and strengthened in the upcoming revised AVMSD. The legislative proposal amending the Directive (COM(2016) 287 final) (EC 2016b), presented in May 2016 and reaching the general approach in May 2017, suggested rather detailed guidelines for the regulators' legal and functional independence from the industry and government, transparent and accountable operation and sufficient powers. According to the European Parliament (EP) recent briefing, it is expected that the independence of audiovisual regulators will be strengthened by ensuring that they are legally distinct and functionally independent from the industry and government, they operate in a transparent and accountable manner which is set out in law and have sufficient powers (EP 2017). The latter is currently not the case in Montenegro. The EP further clarifies that the proposal also specifies the remit of such regulators, namely media pluralism, cultural diversity, consumer protection, internal market and the promotion of fair competition. An important highlight is also that a right of appeal for viewers must be provided, applying across all AVMS providers, including VSPs (EP 2017).

The Electronic Media Law already provides a set of typical safeguards of independence of AEM, ranging from independent source of funding, autonomous decision-making, rules for preventing conflict of interest, legally defined means of appointment and dismissal of council members, etc. If assessed only from the perspective of the sectorial law, the independence of the regulator therefore seems to be guaranteed to a satisfactory degree. However, and this seems to be the case also in some other areas of this analysis, the channel for intervention threatening the institution's independence is created by systemic law (for example Law on Salaries in the Public Sector, limiting the ability of the AEM to create its own salary policy and thus affecting its competitiveness in the labour market and weakening its regulatory capacity) or other law enforcement or regulatory bodies (for example Anti-Corruption Agency, initiating the procedures for early dismissals of a Member of the AEM Council ; as well as the reported Parliament Committees' calls to the control hearings in the Parliament, resulting in instructions of the Parliamentarians to the AEM on the desired treatment of certain broadcasters).

The regulator manages its recruitment policy independently and the size of its staff has been stable over the years. The institution can rely on a 20-people staff, which is according to the representatives of the regulator not enough. They attribute the reason of being understaffed to the fact that they are lodged in too small and inappropriate premises.<sup>16</sup>

The regulator is financed exclusively by an industry fee, what is considered a good practice in terms of financial independence of the regulator. However, the share of the collected fees from the broadcasters is relatively low (around 30%). According to the industry, the fee is too high, as there are also other fees they have to pay to the state or public institutions (for example the rather high costs of distribution services of the RDC), claiming that these costs impose a heavy burden on their businesses. The AEM, on

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<sup>16</sup> This assessment was provided by the representatives of the AEM at the meeting with the expert team on 11 September 2017.



the other hand, relies mostly to the fees collected from the cable services providers where the degree of adherence to the fee provisions is much higher (around 80 %). The regulator denies the allegations of biased application of the delayed payment regime. It admits, though, the deliberate refraining from withdrawals of licences due to non-payment, since this would have resulted in closing down a significant number of electronic media.

This hesitation appears expected, but at the same time, together with other interventions of the state and public institutions, it contributes to the imbalances on the market. It can also encourage further abandonment of fee-paying, even among the so far reliable payers, and the sustainability and financial independence of the regulator can thus be at stake.

There is also a risk of political interference directed towards the AEM decision-making organs. The highest decision-making body is the Council of AEM, which appoints the Director of the AEM, its second organ. Currently the Council is being affected by the early termination of the mandate of one Member, due to the alleged conflict of interest, initiated by the Parliament of Montenegro upon the decision of the Agency for Prevention of Corruption, immediately after the assessment visit of the experts engaged in the Montenegro Media Sector Inquiry in September 2017. Even before, the Council experienced situations where it had to operate with reduced capacity for several months.

As in many other examined areas, here as well, the normative part is more or less aligned with the European standards – the problems are created at the level of implementation. Nevertheless, there is a room for improvement of the legal safeguards of independence as well, as showed in the Legislation part of this chapter (above).

The AEM has deployed initiatives to guarantee its own transparency, to be more visible to the general public (whose interests it has to serve), to display accountability, to react to accusations and acrimony from a fractious sector, and to manage the occasional overflow of politically-motivated complaints it receives (especially during tense political periods or electoral campaigns). Also, their inter-institutional cooperation seems good, especially with the regulator of electronic communications EKIP. Recently, they also signed a collaboration memorandum with the Competition Authority. Likewise, they have good cooperation with the international organisations present in Montenegro.

The AEM's most critical challenge to effectively regulate the Montenegrin media sector is its lack of sanctioning and inspection prerogatives. In 2008, inspections of technical facilities and infrastructures of the media were transferred away from the regulator to the Inspector General. Coordination and exchange of information has not been smooth and efficient since then. And more critically, in 2010, the AEM lost its power to impose fines to media service providers which had been found in breach of the media law and regulations. All it could sanction them with is either a warning or revocation of the license, the two extremes (one innocuous, the other too drastic) on the usual spectrum of sanctions for regulatory agencies. This has, in many aspects of its mission, rendered the AEM toothless and has made its already complex mission even more difficult.

There is no convincing justification for dividing the supervision and enforcement over the audiovisual services and electronic communications in two parts: that is the supervision in the responsibility of the regulators, and the inspection which can be done only by inspectors under the centralised Inspection Administration. In the case of electronic communications, the inspectors have the power and no means, and the EKIP the means and no power. Since all the technical equipment for monitoring and the necessary skills are at the EKIP, the monitoring engineers of EKIP work together with the responsible inspector of the Inspection administration in cases of violations of the electronic communications regulations. As far as the audiovisual media are concerned, there is no inspector within the Inspection

Administration responsible for this group of services, which indicates a clear legal gap preventing the inspection and application of fines.

Another often neglected issue is the AEM's ability to regulate the media that operate in the languages of minorities that are not being spoken or understood by the AEM staff. Just like the media need to build the capacity of newsroom to reflect and represent the whole community, so does the regulator in a multi ethnic and multi lingual country need to build its staff capacity to be able to regulate all the media equally, without creating biases in terms of attention and treatment of majority language media or minority languages media.

## Policy brief

In addition to the proposals for the respective laws, detailed in this chapter, there are a few general guidelines that can lead to a more coherent legislation, aligned with the European standards, as well as a better organised, transparent and effective institutional framework:

- To avoid legal uncertainty and conflicts of laws, the legislator should refrain from partial and ad-hoc legal solutions in favour of comprehensive approaches, as well as solutions interfering in the existing regulation that functions well, including the solutions deteriorating the existing safeguards of the independence of regulators and or public service media.
- There should be a single co-ordinating body with an overall and overarching responsibility for media policy on the governmental level. This responsibility could be placed on the Ministry of Culture, the line ministry for the issues related to media, which should take a more prominent and pro-active role in creating and advocating a coherent media policy for the benefit of all stakeholders and the citizens.
- A clear division of responsibilities and powers among different institutions should be set, avoiding duplication and sharing of responsibilities (e.g. as in case of the Inspection Administration and NRA's).
- The powers granted to public authorities and the scope of their discretion should be clearly defined, and there should be effective enforcement mechanisms available.
- A special emphasis and attention shall be given to the safeguards of the AEM independence, to prevent their deterioration.
- The regulator shall be given back the inspection prerogatives and the possibility to impose fines for all the breaches that can be unequivocally established and do not require the judicial consideration (e.g. all the violations of the standards set by the AVMSD and other objectively measurable issues).
- Sanctions prescribed for media services providers for non-compliance with law shall be adequate and proportionate (for example fines up to a certain amount or up to a certain percentage of the turnover). Infringements of the provisions stemming from the AVMSD and other simple, measurable cases shall be left to regulatory discretion.
- Under no circumstances, these fines shall be applicable to the journalistic professional standards, which shall be dealt with exclusively within the self-regulation.

- The parts of the Criminal Code impacting or referring to the work of journalists, editors-in-chief and media, directly or indirectly, should be reviewed in order to prevent the risks they pose to the exercise of media freedom and freedom of expression.
- Wider adoption and successful functioning of self-regulatory frameworks (and/or development of co-regulatory mechanisms) should be encouraged through legislation supporting statutory recognition of self-regulation or other incentives for participating in self-regulation (and/or establishing legal basis for co-regulation).

## Ch. III: Public Service Media

This chapter analyses the issues related to the public service media in Montenegro with focus on the national public service media company the Radio Television of Montenegro (Radio i Televizija Crne Gore, RTCG).

### Publicly funded media in Montenegro

The RTCG was established as a public service broadcaster in 2002, formalizing its transition from a state media to a publicly funded media servicing the people of Montenegro. As such, it has since then faced the usual challenges that other such institutions have had to overcome in new democracies.

- It had to reduce, reorganise, and motivate a large workforce which had been operating under very different circumstances and ethos.
- It had to secure means of state funding which need to be stable and sufficient not to jeopardize its editorial and managerial autonomy.
- It had to adjust its relationship with political authorities, both in government and parliament, to establish and consolidate its independence.
- It had to develop and produce content that meets the standards of public service, while attracting and engaging its audience, without letting advertising imperatives drag down the quality and ambitions of its programming.
- And it had to transform while adapting to rapid, and expensive, technological and sociological evolution.

Most reports from observers and institutions have had to conclude that RTCG has not yet been able to successfully meet these challenges. This chapter will delve into each of these questions, addressing, when relevant, their relevance for the local public broadcasters. Montenegro does indeed count 14 local public radio stations throughout the country and three local TV/Radio public media, all funded by their local municipalities.

### Organisation and governance

There are two key administrative authorities which effectively run RTCG: the Director-General and the Council.

The Council has 9 members and has significant prerogatives. The law gives it the power and duty, to appoint and recall the Director-General, to oversee important aspects of organisation, budgetary matters, programming and human resources. The criteria for the selection of Council members are determined by Article 25 of Law on Public Broadcasting Services of Montenegro. A member of the Council shall be an esteemed expert in the field of journalism, law, economics, technical sciences, sociology or marketing, residing in Montenegro, and with a university degree as a minimum. Membership candidates for the Council are proposed by:

- universities in Montenegro,
- the Montenegrin Academy of Sciences and Arts and *Matica crnogorska*,
- non-governmental organisations in the field of culture,
- the Montenegro Chamber of Commerce and Employers' Association,
- a non-governmental organisation in the field of media,
- NGOs in the field of human rights, national, and gender equality, the right to protection of the environment, consumer protection, and rights of persons with disabilities, (two nominees)
- trade unions represented in the Social Council,
- and the Montenegrin Olympic Committee.

There are incompatibilities listed in the Law, to avoid conflicts of interest and the members are expected to be and act independent from any political interference. They are formally appointed by Parliament, however, and as such, these decisions usually reflect the prevailing political balance.

The organisation structure is similar to many used in other PSM but the recruitment procedures are in cascade: the General Director appoints a director for radio and one for television, and these appoint the heads of the various units below them. This mechanism tends to reinforce the perceptions and reality of factionalism within the RTCG. If and when a political party effectively holds a majority of the Council (as such was the case for the ruling party until recently), all appointments are directed towards individuals aligned with that party. This should be at least counterbalance by external and independent oversight and regulation. Yet, the management of RTCG is only accountable to the Council when it comes to reporting on the fulfilment of its obligations. This in-house regulatory scheme is not unique in Europe (German PSBs are not regulated by the Landers' media authority for instance) but they are still a minority. In the United Kingdom, for instance, oversight powers have been recently transferred from the BBC Trust to OFCOM. Such similar move should be considered in Montenegro.

RTCG has been trying to manage the costs and efficiency of its operation ever since it was formally established. In 2003, it had on its payroll over 1.000 fulltime employees and 200 part-time. Both within Montenegro and for international experts, these figures were unreasonably high for the size of the country and for the budget it functioned with: two-thirds of the income was spent on wages and labour costs and all estimates pointed a staff of no more than 700 people to function normally (Ružić 2017). The Council has since then endeavoured to reduce the number of employees which has now reached around 750.<sup>17</sup> The management is hopeful that, as time passes, this number could still decrease and that older employees (allegedly resistant to change and reform) will be replaced by younger people, more in tune with today's media dynamics and spirit.

Finally, everyday operations are sometimes complicated by procedures which can grind the workflow. The RTCG, as a publicly funded body, is indeed subject to many laws and rules applied to the civil service (on salaries, on procurements, on tenders, etc.) which are not adapted to the running of a modern media organisation. This same applies for local PSMs, with similar obstructing consequences.

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<sup>17</sup> This is the figure communicated during the interviews with the RTCG Council. Other figures are mentioned in Ružić (ibid.) who mentions 705 employees.

## Funding

The funding of the RTCG has long been a contentious issue. The PSM has long argued that it cannot properly operate with the budget that is allocated to them, whereas commercial media outlets have decried the amounts given to a PSM which is also allowed to dip into the already weak advertising market. Experts and observers have pushed for mechanisms of funding which could offer predictability and transparency for the RTCG and could not potentially be used as a means of pressure, reward or subordination.

Progress was made when the contribution of the state was established by Article 16 of the law on Public Broadcasting Services at 1.2% of the state budget, but given the economic situation of the country and the instability induced by the global financial crisis, this solution has not proven satisfactory for those involved (Ružić 2017)<sup>18</sup> and RTCG has faced major financial problems over the years. In October 2014, the Government took over the RTCG debt of €2.4 million, while in April 2015, the account of the national public service broadcaster was blocked because of the debt towards the Radio Broadcasting Centre (Ružić 2017).

**Table 3: Income of the PSB in Montenegro (in €)**

Year	Budget from the State	Budget via the Ministry of Culture	Advertising	Other income	Revenues from equipment donations	Total
2012	7.152.428	200.000	1.516.847	467.420	189.153	9.525.848
2013	7.198.449	200.000	1.416.932	466.580	186.368	9.468.329
2014	7.767.440	290.000	1.534.752	837.369	186.020	10.615.581
2015	12.700.000	150.000	1.141.136	555.051	183.896	14.730.083
2016	14.211.000 <sup>19</sup>	0	1.500.000	350.000	180.000	16.241.000

Source: Financial reports of RTCG for 2012, 2013, 2014, 2015 and financial plan for 2016

The recent changes to the legal framework of public service media now promises RTCG 0.3% of Montenegro's GDP. If this mechanism is effectively implemented, this could, according to its Council, raise the state contribution to about €18 million. In the Law on State Budget for 2018 it is also foreseen that RTCG will receive €6 million for the digitalisation process. Additional €2.15 million are planned to be allocated to RTCG for the digitalisation of the programme archives.

The RTCG has drafted its Proposal for programme obligations according to the pre-determined funding limits, that is the expected amount of funding for the upcoming three years. There has been no comprehensive analysis conducted, before these limits were determined in the Law, about the extent to which the RTCG fulfils its legally set obligations and the needs for future programme production in order to fully accomplish and extend its public service obligations on the new online platforms. If such an analysis is conducted by the RTCG in near future (which is highly recommended) it may happen that the development of the public broadcaster is constrained by the pre-determined amount of funding.

<sup>18</sup> Interviews conducted with the management team by Ružić 2017.

<sup>19</sup> This figure includes €3 million for digitalisation costs.

Therefore, securing a good funding framework in the Law is only a first precondition to achieve a sustainable operation and efficient accomplishment of PSBs programme obligations. The PSBs themselves should also undertake internal steps for upgrading their organisational, technological, programme and production resources. For that purpose, they should undertake urgent steps and measures to carry out a successful transformation process. It seems that the actual management of RTCG is aware and prepared for the upcoming complex obligations,<sup>20</sup> but this commitment is yet to be fulfilled in practice by conducting internal analysis and adopting strategic documents and action plans. Such commitment was clearly expressed in the interviews with the RTCG management team,<sup>21</sup> but also through publicly given statements:

*“We are already quite late [... with the reform process...] in both organisational and operational aspects, and especially in terms of technical and technological development. The Contract envisages new projects, digitalisation. There are many employees in the RTCG and their age structure is not good.”<sup>22</sup>*

The local public broadcasting services in Montenegro have to follow a similar procedure as the RTCG before concluding contracts with the local municipalities as their funders. To secure the autonomy of the local self-government, the amount of funding for the operation of local PSBs should not be determined in the Law, but there is a need to introduce a provision in the Law on Electronic Media which would oblige the local municipalities to determine a minimum percentage in the acts of establishment (memorandums of association) for the public service obligations delivered by local public broadcasters. The acts of establishment have not been harmonised yet with the new provisions of the Law on Electronic Media and only few local PSBs have started working on their Proposals for programme obligations. Some of them are in a very difficult financial situation due to the unpaid debts to the Department of Public Revenues of Montenegro. Namely, due to the unsecure funding from the local municipal budgets, most of the local PSBs could not pay the contributions for the gross salaries of their employees.

## Autonomy and independence

RTCG’s transition from a state media to a public service media is generally deemed not to be complete. The appointment process of the Council members ultimately resting in the hands of Parliament, the whole management structure is usually strongly tied and connected to political interests. Editorial interference as well as self-censorship is widely acknowledged and criticised.

The manner of appointment of members of the PSBs councils defined in the legal framework provides guarantees for their independence which are worded according to usual, international standards. However, in the last three years political parties attempted to influence this procedure, either through nominating members that are “politically” close to their interests or through blocking the appointment of those who are not affiliated to their party.<sup>23</sup> For example, as explained by the representatives of the

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<sup>20</sup> According to the discussion in the TV show Replika of the RTCG, where the director of the TVCG Vladan Mićunović, Ana Nenezić from the Centre for Civic Education and the Director General of the Directorate for Media in the Ministry of Culture Željko Rutović talked about the draft Contract on provision of public services between the RTCG and the Government (RCTG 2017c).

<sup>21</sup> Meeting of the CoE experts with the RTCG management team held on September 13<sup>th</sup> 2017.

<sup>22</sup> Statement given by Vladan Micunovic, Director of TVCG, in the TV show “Replika” aired on November 6th 2017 (RCTG 2017c).

<sup>23</sup> This position was stated by the RTCG representatives during the meeting with the CoE experts, held on Sept. 13<sup>th</sup> 2017.

RTCG, the respective parliamentary committee in 2014, during the procedure for electing the members of the present RTCG Council, introduced additional criteria (which do not exist in the Law) in order to eliminate the appointment of particular members nominated by the CSOs.<sup>24</sup>

In many interviews the experts had with members of the media sector as well as of civil society, resentment and criticisms have often been levelled at RTCG political coverage. For instance, the interviewees argue, when the ruling party held a majority of the Council seats, the impact of such dominance was felt in the selection of news items discussed and people interviewed, as well as in the tone and perspective adopted. The RTCG was generally deemed actively pro-government.

The Centre for Civic Education, a very active NGO in Montenegro, has used quantitative data to test these claims. In an analysis of three years of news programming on the television and radio stations of RTCG (2013, 2014, and 2015), it found that the overwhelming majority of guests on RTCG's news shows came from the ruling Democratic Party of Socialists (DPS) and public institutions. The situation was similarly skewed with regard to the representation of some of the most prominent but critically-oriented NGOs (Nikočević 2016).

RTCG's emancipation from the ruling political establishment has thus proven difficult. But the current situation is unprecedented and could prove an interesting test of the maturity of the system. The political turmoil of 2016 had led to a provisional government where the ruling party and the opposition had to share power to an extent not seen before. Among the demands made by the opposition were changes in the managing structure of the RTCG and more leeway to appoint Council members not closely aligned with the dominant party. The result was a make-up of the RTCG Council which was, for the first time, controlled by the traditional opposition. This new Council promptly appointed a Director General, who in turn, has filled many important positions with individuals with a different political pedigree.

The current management team, together with the members of the RTCG Council, has expressed strong commitment to keep distance from all political parties and state institutions and to serve only the interests of the citizens.<sup>25</sup> They also stated that "at present, politicians do not call neither the journalists nor the management team of the public broadcaster" (ibid.). However, due to the political influence exerted over the years, it is still very difficult to transform the internal organisational culture.

RTCG now also claims to have news and political debates that are more open, objective and balanced, but is facing accusations of supporting dissident voices. The current government has indeed drastically changed their perspective on RTCG. A high-ranking government official interviewed did acknowledge and regret that the opposition steered the majority of the Council, causing, in his eyes, deterioration of professionalism. Regarding the ongoing work on the Charter for the PSM, he expressed reservations regarding the necessity of such a document, since "everything needed is already in the law."<sup>26</sup>

According to the opinion of some members of the parliamentary committees, the level of institutional autonomy of the national public broadcaster in Montenegro is currently even "too high" and its editorial policy is under the influence of the opposition political parties: "the political majority in the Parliament has not so far complained about the public broadcaster... but, although considered as 'independent' it is

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<sup>24</sup> This information was given by the RTCG representatives during the meeting with the CoE experts held on Sept. 13<sup>th</sup> 2017.

<sup>25</sup> This commitment was emphasised by the RTCG Director General Andrijana Kadija, during the meeting held between the CoE experts and RTCG representatives on September 13<sup>th</sup> 2017.

<sup>26</sup> These observations were provided to the CoE experts by Advisor to the Prime Minister and Head of the Public Relations Service Srđan Kusovac, in their meeting on September 12<sup>th</sup> 2017.



actually oppositional”.<sup>27</sup> Representatives of the Parliament also stated that the role of the public broadcaster is “to reflect the electoral will of the society... to follow the strategic interests of the State and to fulfil the needs of the State’s policy... however the public broadcaster makes serious obstructions in that regard.”<sup>28</sup> The parliamentarians also argued that, currently, “there is no other institution which is so overly protected... there are even no mechanisms to dismiss a member of the RTCG Council.”<sup>29</sup> In addition, they also challenged the appointment of some of the members of the RTCG Council because “they were not even competent for that position, or they received support from ‘fictitious’ CSOs.”

Upon the procedure started by the Administrative Board of the Parliament, the Agency for Prevention of Corruption on 3 October 2017 made a decision that three members of the RTCG Council and a member of the AEM Council violated the provisions of the Law on Prevention of Conflict of Interest (Agency for Prevention of Corruption 2017).” The Agency concluded that other four members of the RTCG Council violated the provisions of the Law on Prevention of Corruption because they had not submitted the reports on their incomes and properties within the specified deadline. One of the three members of the RTCG Council resigned from that position (RCTG 2017e), while the Parliament, on its session on 23 November 2017 dismissed another member of the RTCG Council, for violating the Article 26 paragraph 1, item 5 of the Law on RTCG National Public Broadcaster.

More than a hundred CSOs signed a letter addressed to the Parliament Administrative Committee stating that there is no conflict of interest in the case of Goran Djurović, the third member of the RTCG Council (RCTG 2017d). The Director General of the European Broadcasting Union (EBU) Noel Curran, in his letter to the Parliament, expressed serious concerns about the initiated procedures of dismissal of members of the RTCG Council and warned that this may “block the work of that body and prevent the positive development of the public broadcaster of Montenegro.” (RCTG 2017a; EBU 2017). Nevertheless, the Administrative Committee discharged Djurović on 29 December 2017, just a few days after removing Darko M. Ivanović from the position of Member of the AEM Council.

Another form of serious ‘indirect’ pressure on the PSBs institutional autonomy is the Law on Salaries in the Public Sector (Parliament of the Republic of Montenegro 2016). The RTCG representatives described the provisions of this Law as “a pressure on the autonomy of the public broadcasters.” (SEENPM 2017a). According to this Law, employees of the public broadcasting services (but also of the AEM, as highlighted in the previous chapter) are treated as civil servants and the PSBs managements are obliged each month to submit to the Ministry of Finance a list of paid salaries. According to the RTCG representatives, this Law prevents the management team to conduct an appropriate personnel policy as part of their plans for overall transformation.<sup>30</sup> For example, Article 17 of this Law explicitly regulate the level of salaries, overtime compensation and other rewards above the basic salaries in the public broadcasters, while Article 21 stipulates that the right to additional rewards and compensations above the basic salary of the employees in the public broadcasters “is determined by a decision of the authorised body in these legal entities, with the approval of the Government and upon a received opinion of the Ministry of Finance.” Other provisions of this Law (articles 10, 23, 24, 25 and 45) also impose excessive restrictions for the work of the public broadcasters in Montenegro.

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<sup>27</sup> These perceptions were presented to the CoE experts by the parliamentarian Andrija Nikolic, during the meeting with the representatives of the Committee on political system, judiciary and administration and the Committee on education, science, culture and sport, held on September 12<sup>th</sup> 2017.

<sup>28</sup> Ibid.

<sup>29</sup> The statement is given by the parliamentarian Radule Novovic, during the meeting with the representatives of the Committee on political system, judiciary and administration and the Committee on education, science, culture and sport, held on September 12<sup>th</sup> 2017.

<sup>30</sup> Meeting between the RTCG representatives and CoE experts held on September 13<sup>th</sup> 2017.

In addition, according to the Law on Labour (Parliament of the Republic of Montenegro 2012), a collective agreement is to be signed between the Government and the RTCG, as a precondition for payment of the salaries to the RTCG employees. On its session held on November 27th, the RTCG Council analysed the results for RTCG operation in the first nine months and concluded that the salaries could not be paid if the Government does not sign the agreement. The RTCG Director General emphasised that the transformation process is actually blocked because the management cannot complete the initiated procedure for employing new staff (RCTG 2017f).

In the end of November 2017, the Ministry of European Affairs, with the consent of the European Commission, published the Non-paper of the European Commission on the state of play in Chapters 233 and 24 (EC 2017), which contains comprehensive information regarding the process of accession of Montenegro to the EU in 2017. In the part related to freedom of expression it is emphasised that “the RTCG management and its governing bodies need to be shielded from undue influence and political pressure”. Also, the document states that “editorial independence and professionalism standards need to be further enhanced” in the RTCG.

It is impossible to tell, at the time of the writing, what will be the outcome of having the RTCG managed and controlled by people with no allegiance to the government, but there are clear signs that the ambitions and projects of the PSM are facing resistance and obstruction by some people in a position to do so. The recent procedures leading to early dismissals of the RTCG Council Members, could have significant implications for the RTCG management, and are not conducive to the institutional stability needed to face the challenges of its necessary evolution.

It is difficult to make a rigorous analysis of the autonomy and independence enjoyed by local PSBs, as the subject is not usually covered by the existing literature and would necessitate a longer study mission in the various municipalities. Nonetheless, in all the interviews conducted, observers have tended to note the high dependency of the local PSBs on the local political authorities: these local media are generally characterised as highly politicised and aligned with the ruling party. Even if they do have some obligations of accountability, including the drafting of an annual report, these obligations are rarely effectively enforced.

## Content: universality and diversity

The principle of ‘universality’ is essential for the public broadcasting services and it is usually assessed in terms of two aspects: universality of access and universality of content. Universality of access refers to technical, social and content aspects (CoE 2007). It means that the RTCG services should be technically available to all individuals and should be able to cater for different interests and tastes of social groups. Available information from the regulator indicate that RTCG services are technically accessible to the audience in Montenegro, but there are no publicly available audience research data to answer whether the various programmes broadcasted on those services reach (are viewed by) significant proportion of the audience.<sup>31</sup>

The second aspect of universality is the requirement for programme diversity (or universality of content), which is defined in the Law on Electronic Media and the Law on Radio and Television Montenegro National Public Broadcaster with regard to all dimensions: the genres of programmes

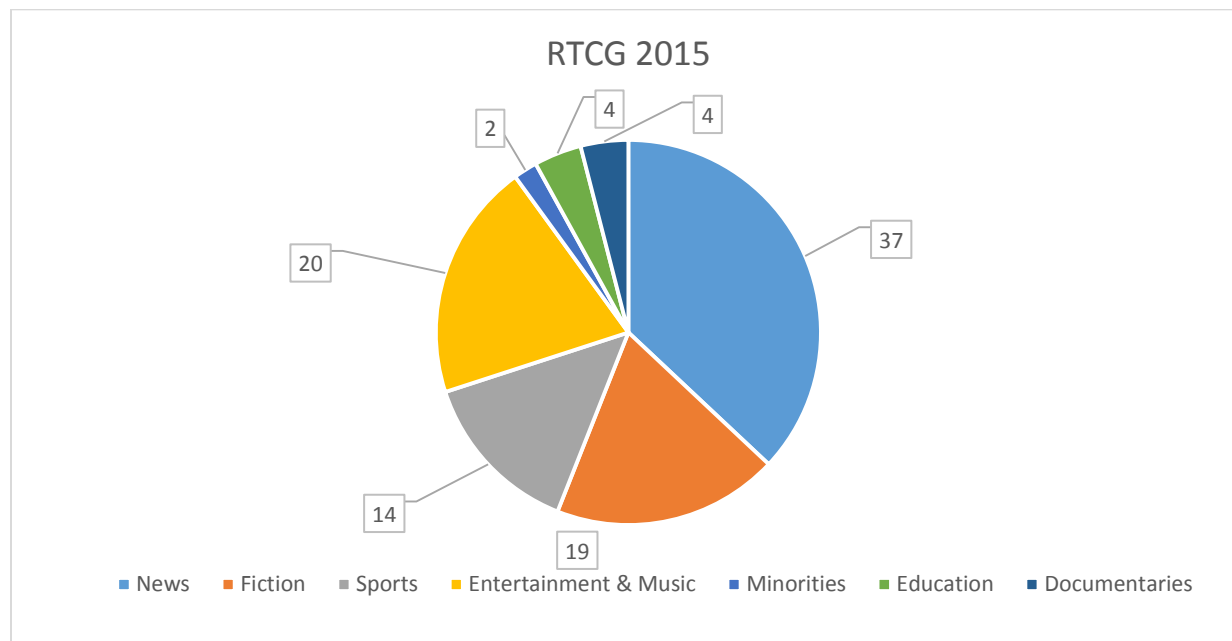
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<sup>31</sup> Audience measurement system does exist in Montenegro, as a joint venture between Telecom and advertising agency Direct Media, but the data are not publicly available.

offered, the audiences targeted, and the subjects discussed. Like all PSMs, RTCG has obligations to use its public funding to produce and broadcast programmes aimed at a large audience, as well as serving the needs and reflecting the realities of specific segments of the population.

The data available for programming tend to tell a different story. Below is the proportion of programmes by genre for the year 2015 (Nikočević 2016).

**Figure 1: Proportion of RTCG programmes by genre for 2015**



Source: Nikočević 2016, 19

This breakdown regularly leads to criticism of RTCG’s editorial policy by many observers and representatives of minorities or cultural sectors. But the PSM has also attracted negative feedback for the nature of the entertainment programmes it airs. Reality shows with dubious values and questionable behaviour, or foreign soaps of low quality are usually cited as examples of a PSM which tries to emulate the worst of commercial broadcasting in order to increase its audience ratings.

RTCG finds itself in a negative dynamic that is familiar to many PSM with small budgets: in order to stay attractive and competitive with its audience (and hence to stay relevant), it often splurges important sums into the buying of sports rights or entertainment shows designed to attract audiences. This, however, leaves little money to produce or commission shows made in their own country and reflecting the national reality and cultural life. RTCG declares producing 60% of its programmes in house and setting aside 130.000 for coproduction with independent producers through a tender mechanism: the editorial board sets up priorities, which have to be approved by the Council before being made into public calls. The projects received are judged by an internal commission. They also work with Eurimages and with other PSM in neighbouring countries.

It should be noted that the representatives of ethnic minorities have expressed so far certain dissatisfaction with the amount of time allocated for programmes in languages of those communities. In 2013, the RTCG Commission on the programmes in Albanian language and in languages of other ethnic minorities issued a comprehensive Analysis on the legal framework at European and national level and the implementation of the legally guaranteed rights of ethnic minorities in Montenegro in the field of

freedom of expression and media. Most of the positions and recommendations of the Advisory Committee on the implementation of the Framework Convention for the Protection of National Minorities in Montenegro are also presented in the analysis. A few conclusions relevant for this analysis were emphasised in this analysis: there is a low level of information on the cultural life, events and issues of concern of the national minorities; the programmes in other languages are not available to the wider public due to language barriers; the respective RTCG departments for programmes in other languages lack sufficient human, technical and other resources etc. The RTCG representatives stated that although some improvements have been made since 2013, there is still willingness and commitment to work further on these issues.

## RTCG and its audience, citizens

The RTCG Council and the management team have identified certain improvements in audience perceptions about the quality of their informative programmes with the audience survey conducted in 2017 (RCTG 2017b). For example, in 2017 the RTCG overall programme output was perceived as:

- distinctive by 28,2% of the audience (25,7% in 2016);
- modern TV station by 17,5% of the audience (9,1% in 2016);
- entertaining by 20,5% of the audience (9,4% in 2016);
- constantly improving by 24,3% of the audience (17,6% in 2016);
- opening relevant topics of interests by 33,6% of the audience (31,3% in 2016).

However, the RTCG informative programme is still perceived by significant percentage of the audience as politically influenced: 24,7% in 2017 (comparing to 30,5% in 2016). Also, only 16,9% of the audience agreed that RTCG reports about topics which are not reported by other TV stations (14,1% in 2016). Similarly, RTCG was perceived as politically neutral only by 12,5% of the audience (13,1% in 2016).

One form of interaction with the citizens practiced by the RTCG Council so far have been debates or discussions organised at local level, either with the CSOs which nominated the members of the Council or with citizens from different regions and municipalities. In the first half of 2017 several debates were organised in cooperation with the local municipalities. In brief, in the Report from these debates the following citizens' concerns were expressed about the RTCG programme functions: the activities of the CSOs from North Montenegro are not presented in the programme; RTCG does not pay sufficient attention to some issues of concern for the citizens (unemployment, marginalised groups, culture and heritage in the North region, sports and cultural events at local level etc.).

In order to examine the audience perceptions and preferences about various programme genres, the RTCG Council has so far commissioned several audience surveys. The newest audience survey, conducted during the summer 2017 for the specific needs of the RTCG, examined audience perceptions about the quality of news and current-affairs programmes (political neutrality, relevance of the news), overall quality of RTCG programming (distinctiveness, genre diversity), modernisation and improvement, programme preferences and frequency of viewing etc. (RCTG 2017b).

So far, the RTCG Council has not adopted an internal document with a specific obligation to keep regular contacts with the citizens. The public debate about the Proposal for programme obligations which will be incorporated in the Contract with the Government went without much interest of the citizens at local level, mostly because the document was quite abstract and general. There is an initiative to include such

an obligation in the RTCG Statute – each year to organise public debate about the content of the draft Plan for programme and production for the next year and to organise more focused debate on specific topics of interest for various citizens' groups.

Within the RTCG Council, a separate Commission is established to review complaints from the viewers and listeners about the programme content. In the course of 2016, 39 complaints were sent to the Commission which upon their review forwarded appropriate recommendations to the RTCG Council. The Commission and the Council accepted all 39 complaints: 28 were related to the content of the primetime TV news programme DN2, 7 to the content of various current-affair programmes, 2 to the content of the Web portal, 1 to the RTCG satellite programme service and 1 to the morning programme.

The sessions of the RTCG Council are open for the public and summarised information and minutes are regularly published on the RTCG Web site. The citizens can comment on the information published on the web site. There are certain rules for publishing the comments which are not restrictive. Only more explicit forms of hate speech or discriminatory statements are filtered and removed from the comments

## The future of PSM in Montenegro

The digitisation of terrestrial transmission and other communication networks for distribution of TV services has been already completed in Montenegro. The two TV programme services of the RTCG are distributed through all available distribution platforms in Montenegro: through the First digital terrestrial network (MUX 1) which partly operates as free-to-air platform and covers the whole territory of Montenegro; but also through cable, IPTV and satellite communication networks which operate as platforms with conditional access. The programme services of the three local public TV stations - TV Budva, TV Pljevlja and TV Nikšić, are distributed through the local digital terrestrial networks (MUX BD L1, NK-PZ L1, and MUX PV L1), which also partly operate as free-to-air platforms. According to the data provided by the AEM (AEM 2017a), most of the households in Montenegro (around 88%) are connected to a platform with conditional access, while only about 12% of the households, mostly on the North, receive the services of the public broadcasters through free-to-air terrestrial television.

The digitalisation of the studios and production equipment of the public broadcasting services has not been completed within the planned digitalisation scenario due to the difficult financial situation and lack of funding of all public broadcasters. So far, only the Desk of the RTCG was digitalised. As previously stated, the Government already made a decision to allocate €17,6 million for digital equipment and additional €6 million for digitalisation of the programme archives. In 2017, the RTCG has already undertaken some activities for digitalisation of the most necessary equipment, but the public tender failed. The tender procedure was repeated in the autumn and it is expected that the RTCG will provide the equipment and start the digitalisation in the beginning of 2018.

The RTCG has developed several internal plans for digitalisation of the current resources, but has not adopted a strategic document with long-term objectives in terms of technological development and plans for developing a portfolio of new services, both generalist and specialised or tailored for specific audiences. The prevailing opinion is to resolve primarily the current situation and to digitalise the existing programme services and later to work on a long-term strategy. In the context of new technologies and internet, universality of access is no longer reduced to provision of terrestrial services, but also as programme offer present on online platforms. It is obvious that the RTCG has made

advanced steps in that regard: its website is regularly updated with latest information,<sup>32</sup> but news and information are also disseminated through social networks.<sup>33</sup>

Generally speaking, RTCG finds itself in a peculiar and unique situation: long the media associated with state interests, it is now being pushed forward by a Director-General and a Council not aligned with the ruling party. The RTCG authorities in interview display broad and ambitious intentions of reform, even if they stress their willingness to advance with caution, as not to disrupt the system and create intractable resistance or opposition. These intentions, however, are not fully translated into a clear strategic plan and the Council expresses its wish to receive guidance and support from European colleagues.

## Policy brief

RTCG have expressed needs and ambitions which show a willingness to move their operations forward, but which will entail significant investments as well as important changes in mind-set and operations:

- Joint reflections and brainstorming on programme strategy with other PSMs.
- An integrated newsroom (TV, radio and web)
- Training programmes within an in-house training centre
- Clear plan of action to attract a younger audience
- Upgrade of production capacities (studios, editing, ...)

International support and guidance for RTCG should be devised in such a way as to maximise the benefits for the PSM as well as for actors of the sector at large:

- Cooperation, collaboration and synergies between PSMs from across the Balkans should be encouraged. Their needs are often similar and synergies are possible. Actions plans, strategies, and reforms could be elaborated and mapped out together and investments could be shared; collective training programmes could be more cost effective and can foster collegiality and partnership.
- Any investment in material financed by international cooperation should be used to spread knowledge and stimulate professionalisation of other segments of the media sector in Montenegro. If RTCG, for instance, receives help to set up a training centre, some of the resulting training activities should be open to journalists and staff of local public broadcasters. Likewise, any upgraded production facilities should be made available to Montenegrin independent producers, who often lack such infrastructure.

RTCG will need to move forward in its ongoing and difficult transition from state media to public service media. It must become pluralistic and balanced in its management practices, its operating philosophies and its editorial policies; the same objectives should be pursued for local PSMs:

- The composition of their Councils should be truly pluralistic and reflect the diversity of opinions and philosophies of Montenegro or local municipalities in case of local PSMs.
- Appointments to high level positions of management should rest on objective and open procedures, allowing neutral experts to weigh in on the merits of candidates.

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<sup>32</sup> See more at: <http://www.rtcg.me/vijesti.html>

<sup>33</sup> See at: <https://www.facebook.com/PortalRTCG/> or [https://twitter.com/MMC\\_RTCG](https://twitter.com/MMC_RTCG)

- While the Council should stay responsible for oversight of day to day operations and for setting priorities and reforms, RTCG and local PSMs should be accountable to and regulated by the independent media authority.
- The funding should guarantee predictability and transparency for the RTCG and local PSMs and should not be used as a means of pressure, reward or subordination.
- All safeguards of the newsroom's independence should be put in place and effectively implemented.

In the very last days of 2017, in the concluding phase of the present report, it was announced that the DPS majority in Parliament had dismissed one of the most active and influential member of the RTCG Council, Mr. Goran Djurović. He was replaced summarily and, some argue,<sup>34</sup> illegally by a party official, Mr. Slobodan Pajović. According to the critics, given RTCG's recent emancipation from the government and the ruling party, these moves cannot be interpreted in any other way than as a deliberate and forceful takeover of the public service media and an aggressive questioning of its independence. While the relationship between public service media and political authorities is always complex and has led, in many European countries, to temporary crises and dubious actions, the actions of the Montenegrin authorities gravely cast doubt on their credibility when they assure their international partners of a sincere wish and efforts for the democratization of the media and of the country itself.

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<sup>34</sup> Reporters without Borders were among those that condemned "the way Montenegro's ruling Democratic Party of Socialists (DPS) is seizing control of the supervisory council of the state-owned TV broadcaster, RTCG, threatening its independence" (RSF 2017). The actions of the authorities were criticised by South East European Network for Professionalization of Media (SEENMP 2017b) and Regional Platform for advocating media freedom and journalists' safety (SCMG 2017).

## Ch. IV: Internet intermediaries and online media platforms

This chapter investigates the safeguards for freedom of expression online, their legal bases and implementation, and related practices of responsible institutions and digital intermediaries. A special attention is dedicated to cases of blocking of messaging applications ordered by the NRA for electronic communications on the day of Parliamentary elections in 2016.<sup>35</sup>

### Governance of freedom of expression online

In Montenegro, as in many other countries, the Internet is not governed within a single area of law, but addressed by different legal acts, on various levels, namely the Constitution of Montenegro, Media Law, Electronic Media Law, Electronic Communications Law, E-Commerce Law, Criminal Code. The same is true for institutional framework. There is a number of institutions within the state administration and among the national regulatory authorities with competencies in internet governance. Additionally, there are self-regulatory bodies and NGOs active in the field.

### Applicable law

The Council of Europe Conventions with implications to the internet traffic that have been transposed to the Montenegrin national law via the laws on their ratifications apply directly, such as the ECHR, the Convention on the Prevention of Terrorism (CoE 2005), the Convention on Cybercrime (with its Additional Protocol) (CoE 2001), the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CoE 2012), the Convention for the Protection of individuals with regard to Automatic Processing of Personal data (with its Additional Protocol) (CoE 1981), and the Convention on Access to Official Documents (CoE 2009). Namely, the Constitution of Montenegro (Parliament of Montenegro 2007) stipulates that “ratified and published international contracts and generally accepted rules of international law are part of the internal legal framework and have the primacy over the national legislation and are implemented directly when regulating differently from national laws” (Art. 9). The international documents that are signed and ratified by Montenegro can thus override the existing national legislation. The right to freedom of expression is a constitutionally protected right. It can be restricted only when superseded by the “right of others to dignity, honour and reputation, as well as if the moral and security of Montenegro.” Among other areas relevant for this Chapter, the Constitution addresses discrimination, hate speech and religious freedoms, and prohibits “the encouraging or inducing hatred or intolerance on any grounds” (Article 7) and any “direct or indirect discrimination on any basis” (Article 8).

The Criminal Code (Parliament of Montenegro 2017a) prescribes a set of criminal offences that are either directly or indirectly related to illegal content on the Internet, such as criminal offences against sexual freedoms. The first criminal act relevant for this inquiry is against “anyone who sells or displays to a child or by public displaying or in some other way makes available text, pictures, audio-visual or other

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<sup>35</sup> This Chapter is partly informed by the comparative study on Filtering, blocking and take-down of illegal content on the Internet, commissioned by the CoE to the Swiss Institute of Comparative Law (CoE 2015), especially by the Country Report on Montenegro contributed by Jelena Surčulija Milojević (2015), one of the co-authors of the Chapter 4 of the present inquiry.



objects of pornographic content or displays to it a pornographic show, shall be punished by a fine or an imprisonment sentence not exceeding six months” (Article 211, paragraph 1). The imprisonment sentence of six months to five years is envisaged for “anyone who uses a child to produce pictures, audio-visual or other objects of pornographic nature or for a pornographic show” (Article 211, paragraph 3). And finally, “anyone who sells, shows, publicly exhibits or in electronic or some other way makes available pictures, audio-visual or other objects of pornographic character resulting from acts referred to in Paragraph 2 of this Article shall be punished by a maximum sentence not exceeding two years” (ibid.) and the objects used for the commission of this criminal act shall be confiscated and destroyed (Article 211, paragraph 4).

Another relevant group of criminal acts are those against the Constitutional order and security of Montenegro. The criminal act on causing national, race and religious hatred stipulates that “anyone who publicly encourages to violence or hatred towards the group or group member related to race, skin colour, religion, the origin, state or national affiliation, will be punished by imprisonment for a term of six months to five years” (Article 370).

The same punishment is envisaged for anyone who “publicly approves, denies existence or significantly decreases the heaviness of genocide, crime against humanity and war crimes against group or group member set based on the race, skin colour, religion, the origin or state or national affiliation” if it can cause violence or hatred towards a group or group member, if such criminal acts are legally decided by judgment in effect of either Montenegrin or international criminal court. The introduction of the adverb ‘publicly’ allowed the interpretation that this criminal offence referred to the Internet, as well. The same is true for the criminal act of associating for unconstitutional activities (Article 372), where the law allows the interpretation including the option of associating via the Internet. Similarly, the criminal act of preparing acts against the constitutional order and security (Article 373) can also be executed in the online world.

The criminal act of racial and other discrimination stipulates that “anyone who, on grounds of a difference in race, skin colour, nationality, ethnical origin, or some other personal characteristic violates fundamental human rights and freedoms guaranteed by generally recognised principles of the international law and international treaties ratified by Montenegro, shall be punished by imprisonment for a term of six months to five years” (Article 443, paragraph 1). The spreading of “ideas about the superiority of one race over another, or promotes racial hatred, or instigate racial discrimination” (ibid.) can be punished by imprisonment for a term of three months to three years.

As regards the copyright, the Criminal Code specifies the legal offence for unlawful circumvention of the protection measures intended to prevent violation of copyright and related rights and information on rights for “anyone who produces, imports, puts into circulation, sells, leases, advertises with the aim to sell or to lease or who keeps for commercial purposes the devices or instruments intended mainly or predominantly to remove, circumvent or evade technological measures intended to prevent violation of copyright and related right or who uses such devices or instruments with the aim to violate copyright and related right” (Article 235, paragraph 1). The punishment for such an offence is a fine or an imprisonment sentence for a term of up to three years, while “the instruments of commission of criminal offence and the instruments which were used or intended for commission of the criminal offence /.../ shall be seized, while the instruments of commission of criminal offence shall be destroyed” (Article 235, paragraph 2).

The old Electronic Communications Law (Parliament of Montenegro 2008), guaranteed legal safeguards to the right to access the Internet. It stipulated that “everyone has a right to use the public electronic communications services, under known conditions and prices, and if there is technical availability” (Article 102). With the new law in 2013 the citizens retained the right to access the Internet, however

not in a form of a human right, but rather resulting in a commercial contract: “the user of public communications services has a right to access the public electronic communications network, eight days after it requested it, if there is technical possibility” (Article 147 the Law on Electronic Communications, (Parliament of Montenegro 2017b)). The law stipulates that user is entitled to the unobstructed use of publicly available electronic communications services of declared quality, availability and safety, at publicly available prices (ib.).

The law grants operators the competencies to warn or temporarily block the user’s account in case there is evidence that the user sent spam or in case of abuse of the e-mail account (Article 179). If the user continues to abuse the electronic mail, the operator can permanently delete the user’s e-email account and revoke the contract. If the electronic mail is abused by the third person, the user is liable only if the user avoids operator’s warnings to use the protection (ibid.). The EKIP is in charge of prescribing conditions to prevent and repress the misuse and frauds related to electronic mail services (ibid.).

Since the E-Commerce Directive 2000/31/EC has been transposed to the Montenegrin national order (by the Law on Electronic Commerce (Parliament of the Republic of Montenegro 2004)), the providers of the information services are not held liable for caching or hosting the illegal content if they remove or block the access to data as soon as they find out about their alleged illegality or about the removing/blocking order of a court or an authorised state authority (Articles 19-21).

## Responsible institutions

At the institutional level, the Agency for Electronic Communications and Postal Services of Montenegro (EKIP) is in charge of protecting interests of users and solving disputes on the electronic communications market and monitoring operators, as stipulated by the Article 11 of the Law on Electronic Communications (Parliament of Montenegro 2017b). As there is no universal monitoring obligation, nobody is in charge of monitoring the Internet content in Montenegro. There are bodies entrusted with some remit regarding the legal compliance of content online, however they do not monitor the Internet systematically.

The Police Directorate of Montenegro, Forensic Centre, monitors the implementation of the Criminal Code. The AEM monitors the compliance of the electronic media services providers with the Electronic Media Law and is in charge of implementing the regulation referring to the electronic publications (Parliament of Montenegro 2016c). According to the Law on Electronic Media (Parliament of Montenegro 2016c) the electronic publications are “editorially shaped web pages and/or portals containing electronic versions of print media and/or information from the media in a way accessible to a wider public regardless of their scope” (Article 8, paragraph 1, point 19). The AEM grants licences for digital or analogue terrestrial, cable, Internet or satellite transmission of audiovisual media services” (Article 98, paragraph 1). The Internet webcasting is explicitly excluded from the licencing regime and no authorisation is required (Article 98, paragraph 2). In case of fraud or misuse from the scope of the Electronic Communications Law (Parliament of Montenegro 2017b), the operator has the obligation that, upon the request of the Agency for Electronic Communications and Postal services (EKIP) or on its own initiative – in that case with the EKIP’s approval – blocks the access to certain numbers and services (Article 145).

The state-level central authority for reporting cyber incidents – the National Montenegrin Computer Incident Response Team (CIRT), coordinates the activities for lowering the risk of computer incidents as responses to such incidents in case they occur. The CIRT assists the state institutions and critical

infrastructure and is dedicated to awareness raising and education on how to recognise the cyber threats and cybercrime. Also, CIRT has established cooperation with the private sector and international partners.

### Takedown procedure

The procedure for removing the illegal Internet content is based on the notice and takedown approach. The reporting of illegal content is done via the website and the CIRT aims to respond to it within 24 hours. Depending on the type of content and its location, the report on the incident can be forwarded to the Police Directorate, Internet Providers, website administrators, international partners or other interested parties. In the case of a potential criminal offense, the case is referred to the Police Directorate, which further examines the case and submits a criminal complaint in accordance with the law.

If the content is not unlawful, but identified as not appropriate and potentially damaging for children, a notification to the administrator of the website is submitted, with a request to assess the published material against the protection of minors' standards. In case the material is recognised as a disturbing content that violates the physical or psychological integrity of children or other person(s), the next step is to determine the location where the material is placed. If the reported material comes from a hosting service or server located in Montenegro or is created by an Internet user from a user account provided by an ISP in Montenegro, the identity of the ISP with the client's order is being established. The CIRT informs the Ministry of Interior, the department in charge, via a special e-mail address and the ISP is expected to remove the content from its server. In case of emergency, the CIRT informs the Ministry directly and immediately so that the Ministry can investigate the case and press criminal charges further on, in accordance with the law.

The Ombudsman's report on abuse of children on the Internet (Ombudsman 2013) outlined that the reporting of abuse of children using information-communications technologies is rare and often provided just orally. The Ombudsman stressed that in Montenegro there are neither "efficient mechanisms to report, discover, protect, punish nor institution in charge of implementation, support and help" for such cases (Ombudsman 2013). According to the Ombudsman, the establishment of a unique database on all cases of online abuse of children would enable better monitoring, as well as better data flow between various institutions (Ombudsman 2013).

There are two options for dealing with online content that represents a criminal offence. In first case, the prosecutor reacts ex officio in accordance with the obligation to undertake measures to direct the police, which is obliged to inform the public prosecutor before any activity they may undertake, except in case of emergency (Article 44 of the Law on Criminal Procedure, Parliament of Montenegro 2009). For criminal acts that are not prosecuted ex officio, but upon private complaint (for example some criminal acts against intellectual property and the criminal act of insult), the takedown procedure has to take place within three months since the private prosecutor has found out about the criminal act and the perpetrator (Article 51, paragraph 1, *ibid.*).

## Prevention of hate speech online

According to the findings of the Media Council for Self-Regulation (MCSR) that can be drawn from their quarterly reports on the work of Montenegrin media from 2012-2015,<sup>36</sup> including the Internet portals of media outlets that were subject to their monitoring, there seems to be a lot of concern around hate speech or insulting comments, published on media portals.

The MCSR invites media to prevent such a speech instead of reacting once the illegal comments are already published.<sup>37</sup> Despite the fact that the Code of Journalists of Montenegro (OSCE 2015) does not explicitly mention online journalism, bearing in mind that it deals with ethical standards of journalists' profession, the Media Council has taken the stance that the ethical rules apply also to portals and readers' comments, as the comments sections represent an interaction between media and readers, and are often a place where freedom of expression is abused (OSCE 2015). The position of the MCSR is that online portals participating in the public debate must take care about the consequences of a public word that can threaten one's life, destroy families, and even the public debate itself. The MCSR supports the recommendation of the former Vijesti Ombudsman "to disable comments on news from the so-called black chronicles" (OSCE 2015).

This position resonates with the motivation of the European Court of Human Rights (ECtHR) ruling in the *Delfi vs. Estonia* case (ECtHR 2015),<sup>38</sup> according to which the prevention of clearly unlawful comments from being published in the comments section is justified and proportionate restriction of a news portal's right to freedom of expression.

## Blocking messenger applications

During the parliamentary elections in Montenegro on 16 October 2016 the EKIP ordered electronic communications operators to temporarily prevent the use of VOIP and messenger applications, that is WhatsApp and Viber. The regulator reasoned the intervention by referring to the Paragraph 1 of the Article 178 of the Electronic Communications Law, justifying it with the intention to keep users from receiving unwanted communication or spam. The expert team of the Montenegro media sector inquiry reviewed three consecutive letters linked to the temporary ban of the VOIP and Messenger Apps, acquired from the EKIP during the assessment visit in Podgorica. The letters were signed by the EKIP Executive Director Zoran Sekulić and addressed to the three main Montenegrin operators Crnogorski Telekom, M:Tel and Telenor (specifying also the names of the executives of the three operators).

The first letter, from 13 September 2016, informed the operators about the reported cases of the unsolicited commercial communication and invited them to prevent it, by "undertaking the adequate measures for prevention of unsolicited communication in accordance with the law," but without specifying these measures. In the second letter dated 13 October 2016 the Agency warned the three operators on the possibility of fraud and asked them to take necessary measures in order to prevent potential unsolicited communication. The third letter dated 16 October 2016 (the Election day)

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<sup>36</sup>There are 15 regular reports for the period of 2012-2015 published on the MCSR website. According to the explanation acquired from the MCSR Chair Mr. Ranko Vujović, the Council ceased with reporting when the subsidising of their activity finished and they remained without funding.

<sup>37</sup>For example, Report No 15. Covering the period 01.12.2014 – 15.02.2015 (Media Council for Self-regulation 2015).

<sup>38</sup>It should however take into account also the subsequent ECtHR decisions which highlighted some other aspects, e.g. *MTE-Index v. Hungary* (ECtHR 2016).

requested from the three operators to block the possibility of communication via Viber, WhatsApp and similar services, until the EKIP does not suspend this ban by a special order. It is important to notice here that while referring to direct advertising without the prior consent of the subscribers and quoting again the Article 178, Para. 1 of the Electronic Communications Law, the EKIP's letter is requesting a general ban of "Viber, WhatsApp and similar services," that is to all the users and not just to the affected users. Namely, the spam was only delivered to users with their telephone number published in a publicly accessible phone book. The last letter was issued the same day as the third letter dated 16 October 2016 and was asking the three operators to re-enable the utilisation of the banned applications as of 7:30 pm. Neither of the letters contains a legal instruction on remedy. The text is simple and brief, in a form of a letter, and without typical elements of a legally binding decision (firm legal basis, the imposed measure, the motivation and the instruction on remedy).

According to Filip Stojanovski (2016) who published an article on this ban on the Global Voices Advocacy, the blackout of messaging apps was a leading topic in social media conversations about the election among the local users. He noted that the EKIP had not published any information about its decision on its website, whilst the local operator Telenor sent a string of tweets attributing the switch off of "the applications Viber, WhatsApp and the like" to the EKIP's blocking order and announcing that the possibility for use of these services would be turned off until the regulator determined the end of the ban with a special notice (Stojanovski 2016).

## Safeguarding freedom of expression online

The heated situation on the election day in the atmosphere of the anticipated coup d'état indicates the reasons behind the ban could be security concerns. In cases at the intersection of security issues and fundamental rights it is difficult to draw unanimous conclusions; there is always a possibility of divergent views. However, without going into details on the real reasons behind the ban of the messenger apps which the experts did not have the chance or mandate to explore and verify, the authors estimate that the measure was not proportionate and convincingly reasoned. The apparent ease of its execution and readiness of the operators to follow it<sup>39</sup> demonstrate the fragility of the legal safeguards of the open internet and the freedom of expression online and can pave the way to more intervention of this kind in the future.

It is worth recalling that in the case of the ban of the Russian online services and social Media on the territory of Ukraine, the Secretary General of the Council of Europe Thorbjorn Jagland, stated that "blocking of social networks, search engines, mail services and news websites goes against our common understanding of freedom of expression and freedom of the media" (CoE 2017c), and similarly did the EU delegation in Kyiv expressed the concern that blocking of social networks in Ukraine could adversely affect freedom of expression (Interfax 2016). Whilst recognising that the protection of national security is the prerogative of the Ukrainian authorities, the representatives of the EU stressed that the arguments regarding the national information security were insufficient and requested further explanations, including on the temporary nature of sanctions. The repeated blocking of access to WhatsApp, Facebook, Twitter, YouTube, Skype, and Instagram throughout Turkey also evoked a lot of criticism from the international community, and so did the occasional blockings of opposition online media in Azerbaijan. Blocking is also an issue in Russia and many other countries, including EU Member

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<sup>39</sup> According to the information gathered by the expert team they followed it without objection and there was no court case initiated.

States introducing internet blocking as part of measures to counter terrorism (for example Poland and France). In his recent statement, the CoE Commissioner for Human Rights Nils Muižnieks (2017) stressed that the systems used for blocking suffer from a number of deficiencies<sup>40</sup> and is a clear interference with the right to freedom of expression, guaranteed by Article 10 of the ECHR.

In case of Montenegro, the Reporters without Borders (Reporters Sans Frontières, RSF) condemned the temporary shut-down of the messenger apps, with the head of the RSF's European Union-Balkans desk Pauline Adès-Mével noting: "Blocking applications of this kind in a democratic country on a national election day amounts to a violation of free speech and is liable to foster suspicion that the authorities are interfering in the electoral process" (RSF 2016). The RSF highlighted that Montenegro ranked 106th out of 180 countries in RSF's 2016 World Press Freedom Index (RSF 2016). The OSCE Office for Democratic Institutions and Human Rights (ODIHR) issued a statement on 17 October 2016 in which they stated that "the blocking of access to Viber and WhatsApp services on Election Day by the Agency of Electronic Communications caused concern." (OSCE 2016). The Council of Europe Parliamentary Assembly Election Observation Mission brought this ODIHR statement in their Press Release (PACE 2016).

## Policy brief

The authors would like to recommend the Montenegrin authorities and the electronic communications operators to refrain from general, disproportionate and not sufficiently justified measures which represent a threat to fundamental rights and freedoms. It is worth bearing in mind also that such measures are not really effective, as web users can use different tools to evade the blocks. The solution might be blocking the numbers that send spam messages, on the initiative of the user and in cooperation with WhatsApp and Viber Providers. That is the best practice that operators should implement themselves, without any state interference. Instead of limiting the access to the internet services, the state authorities should engage in a constant, inclusive and transparent dialogue with relevant stakeholders with the aim of ensuring a balance between the public interest, the interests of the users, the industry and other affected parties. Montenegro as the Council of Europe member state has the obligation to secure the fundamental rights and freedoms, as enshrined in the ECHR and interpreted by the ECtHR, to everyone within its jurisdiction, both offline and online. Access to the Internet is a precondition for the exercise of Convention rights and freedoms online.

As regards the responsibilities of the industry enabling the online services, that is digital intermediaries, their interference with the free and open flow of information should be also based on clear and transparent policies, limited to specific legitimate and legal purposes, and developed in an open, participatory way. All content restrictions, be it requested by the state organs and regulators or initiated by intermediaries themselves must be performed in the least restrictive way, and there should be effective remedies providing prompt and impartial redress for users, content providers and other affected parties. Besides, both the state and the relevant industry stakeholders should engage in development and promotion of media and information literacy in all demographic groups, with focus on the awareness of users of their rights and freedoms in the digital environment, including information about complaints mechanisms and remedies.

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<sup>40</sup>For example they are likely to produce false positives and false negatives; appeal processes may be little known or non-existent, especially if the decision on what to block or not block is left to private entities; blocking measures are easy to bypass; in relation to child pornography, blocking fails to address the actual issue: the abuse of the children in question (Muižnieks 2017).

## Ch. V: Support schemes and state aid

This chapter critically assesses the financial instruments supporting media, comparing the information from the state public procurement evidence, analyses made by the NGOs and input from the industry, and provides with guidelines on the correct application of State aid. A special emphasis is put on state advertising.

### Direct and indirect support to media

If print and audiovisual media are now operating throughout Europe in a liberalised business environment, different types of public support schemes to commercial media are implemented by the State. Besides, if the monopoly of public service media has been abandoned, public service media itself remain a powerful actor in most media markets, benefiting from various types of State support.

A review of the various existing support schemes in Montenegro leads us to divide this chapter in three sections. The first section addresses the issue of the schemes which can be considered as State Aid, especially regarding public service media. The second section details what are the existing support schemes to commercial media, how they function and how they could be enhanced. It also addresses some issues related to the development of a more sustainable environment for audiovisual production. The specific situation in Montenegro in terms of indirect support to the media, which is the importance of State advertising (and the concerns raised by several stakeholders in terms of transparency of such support and of discrimination in the allocation between market players) commands to deal with this specific issue in a third and separate section.

### State aid

There is no specific legal framework for State aid to media in Montenegro. Irrespective of the sector concerned, all the measures which are supposed to fall under State aid rules are governed by the Law on State Aid Control, according to which “State aid shall mean expenditures, reduced revenues or reducing assets of the State or municipality that distort or may distort free competition in the market and that may affect the trade between Montenegro and the European Community or a member state of the Central European Free Trade Agreement (CEFTA) by conferring a more favourable market position on certain economic entities, products or services.” In application of this law, a Rulebook of list of State aid rules has transposed in the Montenegrin legal framework the various sectorial applicable rules.

### Structural State aid schemes

The above mentioned State aid rules, which are pure translations of the EU regulatory framework, include the relevant provisions applicable to public service media, that is the Communication from the Commission on the application of State aid rules to public service broadcasting.

In order to make it compliant with State aid rules, the Law on Radio and Television of Montenegro National Public Broadcaster (Parliament of Montenegro 2016d) has been amended in 2016. Pursuant to

article 9a of the Law, a three-year agreement has to be concluded between the RTCG and the Government. The purpose of this agreement is to prescribe the programme-related obligations of the RTCG and the amount of funding RTCG will be granted yearly in order to fulfil these obligations.

Article 9a §6 details that “the amount of funds intended for delivering the public services set out in the Agreement must not exceed net costs that are required for delivering such services, taking into account other direct and indirect income resulting from the services delivering. During calculating the net costs of the public services delivering, taken into account shall be the net proceeds from all commercial audiovisual services related to the services concerned.” Article 9b adds that “the Agreement shall set out the method of financing the public services delivered by the RTCG, per years and sources, accompanied by the account of costs per years and types; the powers and responsibilities of the RTCG’s authorities relative to the management of all funds projected for the Agreement performance; and reporting about the Agreement performance” (§2) and that “the Agreement’s provisions setting out the financing in terms of paragraph 2 above must be in compliance with the State aid rules relating to the public broadcasting services” (§3). Article 9c provides a procedure in case of introduction of new services on the market by the RTCG, and article 15a forbids cross-subsidisation and provides for reimbursement to the State of any public funds which is misused in this regard as well as any overcompensation that exceeds 10% of the public funding. Finally, article 16a obliges RTCG to keep separate accounting for public service and commercial activities.

Such an agreement was supposed to enter into force on 1 September 2017. However, at the date of conclusion of the present report (29 December 2017), no agreement was concluded yet. The expert team is therefore not in capacity to assess its compliance with EU State aid rules, and even more so to assess any flaws in terms of enforcement. However, the expert team would like to draw the attention of the Montenegrin authorities about one potential flaw in terms of enforcement, which is the competence of the public bodies potentially involved in the respect of the new provisions of the Law. The experts’ understanding is that, considering the legal framework regarding State aid in Montenegro, all the enforcement competencies lie exclusively in the hands of the State Aid Control Commission. However, the Communication from the Commission on the application of State aid rules to public service broadcasting, which is duly transposed in domestic law by the Law on Radio and Television of Montenegro National Public Broadcaster, contains specific provisions which require specific competencies and especially a deep understanding of the functioning of the audiovisual market in general and of public service media in particular. Therefore, without an involvement of the AEM in such enforcement, the risk is high that the regulatory framework for State aid to public service media might not be properly enforced.

State aid is also provided by some municipalities to local public broadcasters (at present 14 radios (AEM n.d.-a) and 3 televisions (AEM n.d.-b)). According to the Centre for Civic Education (2017), these aids amounted to €2.8 million in 2016. Although no as frequent as funding of a national public broadcaster (which is present in all European countries except in Luxembourg), public funding of local broadcasters is a relatively frequent practice in Europe, for example in Belgium, France and Germany. But it should be made in a transparent manner and avoid unfair competition with private players and, according to the Centre for Civic Education, it is rarely the case. In their last report on the issue, the Centre reports that “it was impossible to obtain annual financial reports based on the analysis of official webpages of public broadcasters, except in the case of RTV Pljevlja. In contrary to numerous recommendations contained in every previous report of CCE, these reports still remain hidden from the public. Financing from public funds, or on the basis of tax payers’ money, for local public broadcasters must be subjected to strict rules of transparency and tangible criteria of expenditure of tax payers’ money” (Centre for Civic Education 2017).



Pursuant to article 10 of the Law on State Aid Control, the Commission shall “submit to the Government and the Parliament of Montenegro an annual report on granted state aids until 30 June of the current year for the previous year.” The information available at the date of conclusion of the present report does not allow the expert team to assess if this obligation currently contributes to effective control of the aforementioned State aid to national and local public service media. The only official information provided regarding support to public service media was related to support (€150,000 in 2015) to “co-financing of legally determined programme content” and to funding of the costs incurred (€228,500 in 2015) for the distribution of the services of RTCG by the Broadcast Centre (RDC), the public institution which manages the terrestrial electronic communication networks used by public and private broadcasters to distribute their services (digital terrestrial television – DTT).<sup>41</sup>

### Occasional State aids

State aid to private broadcasters is also present in Montenegro. This support consists in occasionally writing off the debts which are owned by the broadcasters to the RDC.

The latest decision in this regard is a decision of the Government of Montenegro of 2 March 2017 to write off debts of broadcasters for an amount of €1.847.189, which represents 36 monthly invoices to 53 broadcasters (13 local public radios, 3 local public televisions, 31 commercial radios and 6 commercial televisions) (Government of Montenegro 2017). This support is expected to continue in the coming years, for a total amount of €1,597,052 for the years 2017-2021.<sup>42</sup>

### Support to audiovisual production

The only support scheme foreseen by the Electronic Media Law (Parliament of Montenegro 2016c) (articles 136 and 137) was a fund aimed at fostering media pluralism and diversity. The potential beneficiaries were the commercial media and the funding was supposed to come from a share of games of chance revenues in the amount and in the manner laid down by a separate law governing games of chance (Parliament of Montenegro 2017c). Another fund was set up by the Law on Road Traffic Safety (Parliament of Montenegro 2014) (article 270a paragraph 3). This fund was aimed at improving the scope, the structure and the diversity of the in-house production of commercial radio broadcasters and was managed by the AEM. However, there have been changes of the Law on Games of Chances in June 2017 which affect the support scheme as of 31 December 2017, and in March 2017 the Constitutional Court declared unconstitutional the provisions of the Law on Traffic Safety in Montenegro which stipulated that owners of cars with built in radio receiver were obliged to pay €2 directed to the fund for support of radio broadcasters. Since both sources of financing were abolished, there is currently no functioning support scheme for the commercial electronic media in Montenegro.

### Fostering media pluralism fund

The fund was meant to foster the production of programmes of public interest, which were detailed in article 136 of the Law as programmes covering the following issues: “1) members of minority nations

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<sup>41</sup> Information provided to the expert team by the Ministry of Finance.

<sup>42</sup> Information provided to the expert team by the Ministry of Culture.

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

The three criteria for awarding the funds were detailed in article 137 of the Law: “1) complexity of programme production (professional standards adhered to, author and editor creativity, meeting the technical requirement, use of human and technical resources); 2) the programme importance with a view of attaining the goals detailed in article 136; 3) programme economy and durability.”

This support scheme was not managed by the AEM, but by the Commission for Allocation of Part of Revenue from Games of Chance set up in application of the Law on Games of Chance and which operated within the Ministry of Finance. Half of the members of this Commission were representatives of the Government and the other half were representatives of NGOs appointed by the Government upon the proposal of the Ministry of Finance. These revenues amounted to €8.3 million in 2014 and €9.3 million in 2015. Pursuant to the Law on Games of Chance, the funds were meant to support numerous public interest activities such as social protection, humanitarian activities, problems and needs of persons with disabilities, culture and technical culture, non-institutionalised education of children and youth, fight against drugs and other addictions. But pursuant to the Directive on criteria to determine user and way to distribute part of games of chance income, only 10% of the funds had to be “distributed for plans and programmes of media pluralism”.

According to the AEM, the vast majority of these 10% were allocated to NGOs and only 10% of these 10% (around 1% of the available revenues) to the media outlets. The expert team has not been provided by the Government with details either about the beneficiaries of these funds in the media sector or about the types of programmes related to media pluralism which have been funded. According to the (Centre for Civic Education 2016), numerous irregularities were established in the allocation of the funds by the Commission for Allocation of Part of Revenues from Games of Chance, but without reaction from the Government, which according to them demonstrated unwillingness to improve its work and thus affecting the operation of entire NGO sector (Centre for Civic Education 2016).

### Commercial radio broadcasters support fund

Another fund was set up pursuant to article 270a paragraph 3 of the Law on Road Traffic Safety (Parliament of Montenegro 2014), which imposed a tax of €2 on radio receivers in motor vehicles. This fund was aimed at improving the scope, the structure and the diversity of the in-house production of commercial radio broadcasters and was managed by the AEM. For this purpose, the AEM adopted on 19 May 2015 a Rulebook on allocation of money from the Agency’s fund for support to commercial radio broadcasters. Pursuant to this rulebook, the allocation of funds shall be divided between:

- annual grants for stimulation of the share of in-house production in the overall programming structure
- programming grants for increasing the scope, structure and diversity of contents dedicated to the following thematic fields of public interest:
  - cultural diversity and preservation of tradition;

- development of civil society and volunteerism;
- national minorities in Montenegro;
- science, arts and education;
- children and youth;
- environmental protection and sustainable development;
- health, health culture and healthy lifestyle;
- protection of rights and dignity of minorities and fight against discrimination, stereotypes and prejudice;
- social integration of vulnerable social groups (people with disabilities, intellectual impairments, visual impairments, unemployed people, elderly people, single parents, victims of family violence, drug addicts);
- European integration of Montenegro;
- consumer protection;
- fight against corruption and organised crime;
- fight against addiction.

The allocation of the funds was decided every six months by the AEM following a public call. The rules set a detailed procedure meant to ensure that the selection is conducted in an objective, measurable and non-discriminatory manner. There was also a procedure envisaged to verify that the funds which were granted were indeed spent in an appropriate manner by imposing reporting obligations on the beneficiaries via the delivery of an interim and final report and with the possibility to terminate the funding contract or to impose refunding in case of misuse of the funds. Since the adoption of the rulebook, four calls were organised by the AEM (two in 2015 and two in 2016), allowing the distribution of a total of €510,000 (€130,000 on 10 July 2015, €130,000 on 2 December 2015, €100,000 on 24 June 2016 and €150,000 on 26 September 2016) to commercial radio broadcasters according to the following breakdown (AEM 2017a):

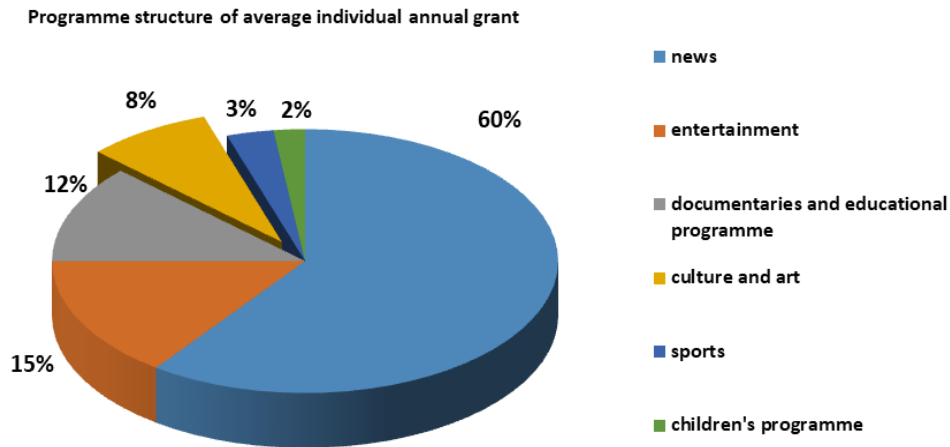
**Table 4: AEM subsidies to commercial radio 2015-16**

No.	Provider	Service	Amount (in €)
1.	Antena M d.o.o.	Radio Antena M	122,132
2.	NGO Društvo za ravnopravnost i toleranciju – AI	Radio Cool	80,384
3.	Media International Corporation d.o.o.	Radio DRS	60,799
4.	My Name d.o.o.	Radio Titograd	28,000
5.	Ok! air broadcasting d.o.o.	Novi Elmag Radio	25,485
6.	Radio Zeta d.o.o.	Radio Zeta	23,020
7.	Šrauba d.o.o.	Radio Jadran	19,724
8.	Gresa trade d.o.o.	Radio Elita	19,585
9.	NGO Đakomo Adriatic	Radio Adriatic	18,442
10.	Maxko d.o.o.	Radio Skala	17,374
11.	Mir & Teuta d.o.o.	Radio Teuta	13,403
12.	Talas Bihora d.o.o.	Radio Petnjica	10,983
13.	NGO Udruženje Roma Crne Gore	Romski radio	10,978
14.	M.D. Company d.o.o.	Radio D+	9,950
15.	Radio Televizija Atlas d.o.o.	Radio Atlas	9,050
16.	NGO SAFRA	Radio Krš	7,660
17.	Adnan d.o.o.	Radio Glas Plava	7,523
18.	Radio Mojkovac d.o.o.	Radio Mojkovac	6,254
19.	NGO Skadar Lake	Radio Skadar Lake	6,029

20.	Green room d.o.o.	Agro radio	5,660
21.	Jumedia Mont d.o.o.	Radio D	4,667
22.	NGO Plus 123	Radio Plus	1,948
23.	Eurogum d.o.o.	Radio Star FM	951

Source: AEM 2016

**Figure 2: Type of radio programmes subsidised**



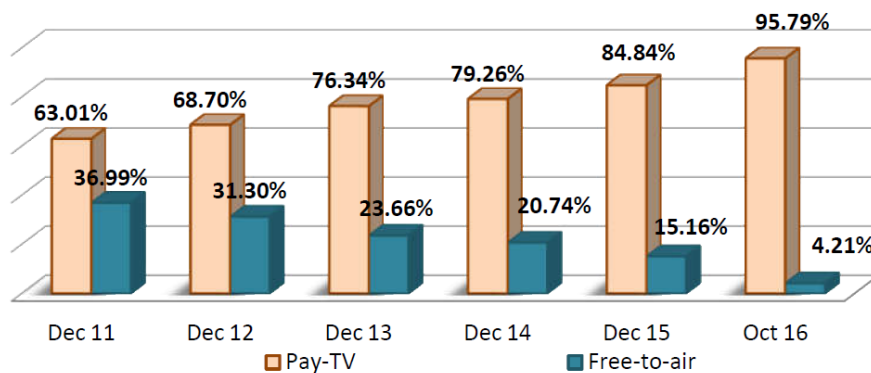
Source: AEM 2016

Following an appeal lodged by the Socialist People's Party (SPP), this tax was abolished by a ruling of the Constitutional Court in December 2016, applied since March 2017. The Government has not manifested any intention to remedy to the alleged unconstitutionality of the measure or to set up another support scheme of a similar kind.

### Relationship between broadcasters and distributors

A growing source of concern in terms of funding of the broadcasting industry is that the distribution market is currently evolving from a dominance of the terrestrial platform to a marginalisation of this platform to the benefit of the wired platforms (cable and IPTV). This evolution has been very rapid and significant in the past years, provoking a significant shift in the use of the various available distribution platforms (AEM 2016).

Figure 3: Distribution platforms market shares 2011-16



Graph 3: Comparison of the total number of households with free-to-air TV, and conditional access platforms

Source: AEM 2016

The concern with such a situation is that the revenues spent by the subscribers to these wired platforms do not benefit to the broadcasters: the distributors currently get the content for free from the broadcasters in the B to B market, and then monetise it from their subscribers in the B to C market. Such a situation is highly harmful in terms of investment in audiovisual production. Policy initiatives could be considered in order to remedy to it. In several European countries and especially on small markets, the main broadcasters receive significant distribution revenues from cable and IPTV operators.

### Regulation of foreign broadcasters

Regarding the growing market share of wired platforms to the detriment of the terrestrial platform, it is worth highlighting that this has led to the availability of numerous foreign broadcasters for the citizens of Montenegro. These broadcasters naturally compete for the same eyeballs, and some of them try to monetise this audience by inserting advertising windows in the broadcast feed which is distributed by the wired platforms in Montenegro.

Some domestic broadcasters have blamed the AEM (which would have “allowed” this practice) or asked the AEM to remedy to this practice (by forbidding it or by imposing on those broadcasters the same obligations as those imposed on domestic broadcasters). It should be stressed that regardless of the harm it causes to the revenues of Montenegrin broadcasters, this practice cannot be and should not be regulated by the AEM or by any other public body, since this would be against the commitments of Montenegro as a party to the European Convention on Transfrontier Television, as well against article 5 of the Electronic Media Law which rightfully transposes the Convention by stating that “Montenegro shall ensure freedom of reception and retransmission of audiovisual media services from EU Member States and other European countries signatories to the European Convention on Transfrontier Television.”

It is true that in certain cases, a State may restrict the freedom of reception and retransmission in accordance with international treaties, but targeting the audience in another country with advertising (or programming) windows cannot be one of these cases, as long as these windows are duly regulated in the country of origin.

## Regulation of commercial communications

Pursuant to article 93 of the Electronic Media Law, the proportion of advertising spots in programmes of commercial broadcasters within a given clock hour shall not exceed 15% (nine minutes) and the proportion of advertising and teleshopping spots shall not exceed 20% (twelve minutes).

The latter is a transposition of the AVMS, while the former is not. One of the ways to contribute to higher investments by broadcasters in audiovisual production could be to ease their way to monetise their content on the advertising market and therefore to abolish the nine-minute rule and, in general, align the rules regarding commercial communication with those of the AVMS Directive.

## Promotion of independent production

As detailed in other chapters, the RTCG is a very powerful actor on the audiovisual market, especially in economic terms. However, there is currently no obligation for the RTCG to commission audiovisual works to independent production companies. Without such an obligation, it would be practically impossible to ensure the development of a sustainable business environment for independent production companies. In other countries such as in the United Kingdom or in the Dutch-Speaking Community of Belgium, empowering the public broadcasting with a string mission to partner with independent production has been very successful for the whole audiovisual industry, leading to the creation of numerous independent production companies, which themselves contributed to the well-being of the broadcasters by providing them quality production. The existence of such an obligation would contribute to the development of independent production companies, from which the private broadcasters could also benefit.

Considering the time it takes to create such a virtuous circle, these obligations could be made progressive, giving the time both to RTCG and to the sector of independent production to adapt to the new opportunities.

## State advertising

Numerous stakeholders have pointed the fact that State advertising is not managed in transparent manner and that the allocation of this advertising discriminates between media outlets.

The Public Procurement Administration provides access to a fair amount of information about the launch (and the attribution) of public tenders (the list of tenders is available at <http://portal.ujn.gov.me/delta2015/>). For 2016, the official information provided by this administration regarding State advertising in media outlets is that a total amount of €1,760,709 have been granted to media outlets, according to the following allocation:

- Print media (€318,942):
  - Pobjeda: €207,676
  - Dnevne Novine: €40,681
  - Dan: €14,828
  - Vijesti: €7,332
  - Other print media: €48,423

- Television and other electronic media (€321,528):
  - Arhimed: €116,731
  - RTCG: €35,826
  - InfoBiro Montenegro: €25,732
  - Antena M: €14,174
  - TV Vijesti: €13,877
  - Press Clipping: €7,587
  - Portal Analitika: €4,565
  - Pink TV: €1,985
  - Atlas TV: €1,011
- Promotional, production, and marketing activities (€1,120,238).

These data illustrate the significant difference of treatment between media outlets. Moreover, several shortfalls have been mentioned by several stakeholders, based either on their own research and collection of data or their own experience as a candidate for a contract:

- Some contracts are awarded to advertising companies, which then allocate the budget to their clients (different media players), but the data about these clients is not made public. From the information gathered by the Centre for Civic Education (2017), this now represents almost half the whole amount of State advertising. In those cases, the media outlet which is the beneficiary is therefore not made public.
- Under certain circumstances (such as a limited amount of euros) public bodies have the opportunity to conclude a direct agreement or to use a negotiated procedure without a call for tender instead of publishing a contract notice. It appears that some contracts are artificially divided in smaller contracts in order to stay below the thresholds imposed by the Law on Public Procurement and therefore avoid a tender procedure and rather use a negotiated procedure or conclude a direct agreement. However, it should be noticed that such a practice is forbidden by the Law on Public Procurement and can be sanctioned by a fine between €2,000 and €20,000. The question of effective enforcement of this provision of the Law remains open.
- Contract notices are formulated in such a way that certain media outlets cannot reasonably compete. For example, it has been reported by some media outlets that one of conditions to be awarded a contract of State advertising is also to publish editorial content about the activities of the advertiser, which would of course be against journalism ethics and editorial independence of the media.
- Decision-making processes in awarding contracts for State advertising sometimes lack fairness. For example, it has been reported by some media outlets that one of the formal conditions to compete in a tender was to provide a description of the editorial policy of the newspaper, and that newspapers which did not mention in the description of their editorial policy that they were publishing obituaries were excluded from the competition on this basis.

From the information gathered during the field visit and from the researches made by Montenegrin NGO's, State advertising represents a very significant component of the whole advertising market, and probably more than the amounts provided above: at least €2 million, for a whole advertising market estimated between €10 and €11 million. If the amounts are not important for television, as seen in the detailed amounts above, they represent more significant revenues for print media (and especially for the daily press) as well as for some other electronic media.

According to the Centre for Civic Education (2017), these amounts are higher than those provided by the Public Procurement Administration. From the data it collected from 253 of the 334 of the public sector bodies consulted (76% of the bodies consulted, the 24% other refusing to provide data despite their obligation to do so pursuant to the Law on Free Access to Information), the amount of State advertising was €2.2 million in 2016, and this amount is probably much higher since very significant public sector bodies did not provide the information to the researchers.

Most importantly, the research shows 1) a lack of correlation between the audience of the various media and the amount of advertising they receive (which tends to show that public money is not spent to attain the eyeballs of the consumer but rather to reach other purposes) and 2) a significant privilege for the media usually described (including often by themselves) as favouring the government to the detriment of the media usually described as being critical of the action of the government (or at least having the ambition to hold it accountable for its policy).

### Towards transparent funding of media

The fact that some newspapers receive important amount of State advertising while other receive almost none is a concern in terms of fair competition on the market. Several stakeholders revealed that they do not receive State advertising even when they propose to publish this advertising free of charge, which raises serious concern in terms of transparency and non-discriminatory allocation of public funds. Indeed, the European Commission stressed in its 2015 Report that “there are concerns about the transparency and non-discrimination of the media in state advertising. Some major private media outlets are at risk of closure due to high tax debts. The precarious economic situation of journalists leaves the door open for editorial interference and possible self-censorship. The fact that many media outlets are not financially sustainable detracts from the quality of reporting and professionalism in the media” (EC 2015). The 2016 Report reiterates that “concerns about transparency and non-discrimination in state advertising persist” and invites Montenegro to “ensure transparency and non-discrimination in state advertising in the media, including through adequate legislative solutions” (EC 2016a).

The misuse of state advertising by governmental bodies or other public companies is highly problematic not only for a fair competition in the media sector but also and above all for media pluralism and media freedom. As summarised by the Centre for Media Pluralism and Media Freedom, “studies on media financing in Montenegro produced by civil society organisations reveal potential clientelistic relations between the media and the Montenegrin government. In such liaison, the Government is believed to channel money and create favourable business environment for certain media outlets, which then in turn represent ruling party in positive light, and often run campaigns affirmative of the ruling party’s political interests.” (Vuković 2016). Such practices “are practically suspending the freedom of press, developing clientelism, and promoting private media that are friendly towards ruling structures, or at least do not pose a threat to holders of political and economic power” (IREX 2017).

Regarding support schemes to audiovisual production, a comprehensive approach regarding the most appropriate ways to contribute to a sustainable environment for the audiovisual production in its broad sense (public and private broadcasters, national and regional ones, commercial on non-profit ones, independent production companies of various size...) is needed. The fact that the two existing funds have not been created by media laws but by isolated provisions in with completely different purposes (Law on Games of Chance (Parliament of Montenegro 2017c) and Law on Road Traffic Safety (Parliament of Montenegro 2014)) is an illustration of the fact that such a comprehensive approach is lacking, and



the vast majority stakeholders regret the lack of involvement of the Ministry of Culture in contributing to shape a comprehensive, transparent and accountable media policy.

## Policy brief

As far as State advertising is concerned, the issue is well documented and the problem has persisted for years. This calls for a legislative action with a view to ensure not only full transparency but first and foremost impartiality in the allocation of such advertising to all print, audiovisual and electronic media by all state bodies (both at the national and local level) as well as by institutions and companies owned wholly or partly by the State, including those that perform industrial and commercial activities.

The proposals made by the Centre for Civic Educations, and especially their proposed amendments to the Media Law, the Law on Public Procurement and the Law on State Aid, as suggested in their annual report on Equal Chances for all Media in Montenegro (Centre for Civic Education 2017), constitute a good basis on which a legislative process on this matter could be initiated, alongside a proper enforcement of the legislation regarding free access to information.

State aid to private broadcasters should be made transparent and should be geared towards sustainable players. Writing off debts does not make an audiovisual policy, especially when it is done with no consultation of interested parties and especially with no consultation of the media regulatory authority and other authorities involved in shaping audiovisual policy.

Considering the economic fragility of most of the broadcasters, traditional policy tools such as quotas of own-production or quotas of broadcasting of domestic works does not appear as the most appropriate ways forward as long as a virtuous circle in terms on production of Montenegrin audiovisual works is not present.

Moreover, imposing heavier obligations on broadcasters distributed via DTT should be avoided, due to the increasing market share of wired operators and therefore the possibility for broadcasters to avoid such obligations by being distributed exclusively via wired networks. A first and more appropriate step toward the creation of such a virtuous circle appears to lie in the creation of obligations for public service media (and incentives for private broadcasters) to invest in such productions, especially via commissioning to independent production companies. In all cases, any initiative meant to support audiovisual production should be safeguarded against any governmental intervention and therefore managed by an independent and professional body. It should also be the result of a broad consultation of interested parties in order to identify the most appropriate policy and to reflect general rather than specific interests.

Public support should also be geared towards market research. The economic fragility of most of media outlets leads them to think about their short or medium-term survival and does not give them the leeway to invest in longer terms strategies, which cannot be fed without relevant market research. The lack of data, especially regarding the expectations of the public and a better match between the supply and the demand in terms of media, does not contribute to the development of sound business plans, does not favour investment and therefore harms all the efforts towards more sustainability of the media industry. It is true that in the long run the burden of financing such research should bear on the industry itself, but considering the current fragility of most market players, public support in this regard will better contribute to create the aforementioned virtuous circle than investing public money in State advertising or writing off debts. Such a public support to market research could be managed for example by the AEM.

## Ch. VI: Transparency of media ownership and media concentration

This chapter provides a review of the media ownership governance in Montenegro with recommendations on transparency and prevention of negative implications of media concentration.

### Media ownership in media policy debates

Transparency of media ownership is an issue which is sometimes underestimated by media policy makers, and this can have serious adverse not only on the efficiency of media policies themselves, but on the overall functioning of a democratic society. As it has been stressed by the Parliamentary Assembly of the Council of Europe in a resolution on increasing transparency of media ownership, “media ownership transparency is necessary to enable members of the public to form an opinion on the value of the information, ideas and opinions disseminated by the media” (PACE 2015).

Hopefully, this issue has been more widely debated in recent years, thanks to initiatives either coming from civil society such as the NGO Access Info Europe (at <https://www.access-info.org/media-ownership-transparency>) or from international organisations such as the European Union and the Council of Europe. The European Commission organised in 2014 a seminar meant to exchange of practices in the field of transparency of media ownership (EC 2014b) and the current revision process of the AVMS contains a proposal from the Council of Ministers according to which a new article would provide that “Member States may adopt legislative measures providing that [...] audiovisual media service providers under their jurisdiction make accessible information concerning their ownership structure, including the beneficial owners, as well as information related to politically exposed persons who own media service providers, provided that such measures respect the essence of the fundamental rights and freedoms concerned and are necessary and proportionate in a democratic society to safeguard an objective of general interest” (Council of the EU 2017). At the level of the Council of Europe, the Steering Committee on Media and Information Society of the Council of Europe (CDMSI) has set up in 2016 a Committee of experts on Media Pluralism and Transparency of Media Ownership (MSI-MED) whose task is to analyse best practices in Council of Europe member States with regard to policies and other measures ensuring a pluralist media landscape and transparency of media ownership and to prepare standard-setting proposals on media pluralism and transparency of media ownership. The MSI-MED has prepared a draft recommendation on media pluralism and transparency of media ownership which is currently under consultation and should be adopted by the Council of Ministers in early 2018.

Transparency of media ownership is also the first step towards an effective implementation of media concentration rules, which remain fully relevant even in our era of abundance of content often available anytime, anywhere and on any device. As stressed by the MSI-MED in its draft recommendation, “as new actors enter the evolving online market, the ensuing competitive pressures and a shift in advertising revenues towards the internet have contributed to an increase in media consolidation and convergence. Single or a few media owners or groups acquire positions of considerable power where they can separately or jointly set the agenda of public debate and significantly influence or shape public opinion, reproducing the same content across all platforms on which they are present. Convergence trends also lead to cost-cutting, job losses in journalism and media sectors, and the risk of financial dependencies for journalists and the media. These developments may cause a reduction in diversity of news and content generally and ultimately impoverish public debate” (CoE 2017b).

## Transparency of media ownership in Montenegro

Transparency of media ownership remains difficult to implement throughout Europe. In its aforementioned resolution, the Parliamentary Assembly “notes with concern that media outlets are frequently owned and controlled in a non-transparent manner, either because of a lack of transparency obligations under domestic law in member States or through non-transparent legal constructions of indirect or hidden ownership, which is often linked to political affiliations or economic or religious interests, or to the foreign political propaganda interests of the true owner of a media outlet.”

Such a flaw is also partly present in Montenegro. Pursuant to article 129 of the Electronic Media Law:

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

*(2) An AVM service provider is obliged, by 31 December of the current year, to provide to AEM the data on: 1) own ownership stake in other legal entities providing AVM services; 2) more than 10% share held by its owners in other legal entities providing AVM services.*

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

*(4) Data on share and stake holders up to 1% of capital value shall be published collectively.”*

The AEM goes even beyond this obligation and, besides publishing the appropriate information in the Official Gazette, also ensures an easier way for the general public to have access to this information by providing it on its website. This is a welcome initiative which contributes to a greater transparency of the sector, to the benefit of a larger public. However, it appears from the field visit and from research that there is a gap between the official information provided and the real ownership of several media outlets. Several stakeholders have expressed the view that the real owners are not the one identified in the official information, but are other persons which are usually well known.

The AEM also recognises this problem of hidden ownership and rightly explains it by the fact that pursuant to article 129 of the Law, the control of the ownership is made only at the first level (the name of the natural or legal person who as shares or part bigger than 1% of capital value of AVMS provider) and that in order to identify the real owners, it should have to powers to investigate ownership of media outlets until the final beneficiary owner, as it is the case in other legislative frameworks in Europe.

## Media concentration in Montenegro

Policy challenges in terms of media concentration differ if they are addressed from the legal, democratic or economic sides. From a legal point of view, media concentration appears as regulated in theory but missing its goal in practice.

Under the rules of the 2003 Media Law, the regulatory framework was precarious. A first concern came from the fact that the Media Law did not prevent media concentration, but only media monopolies.

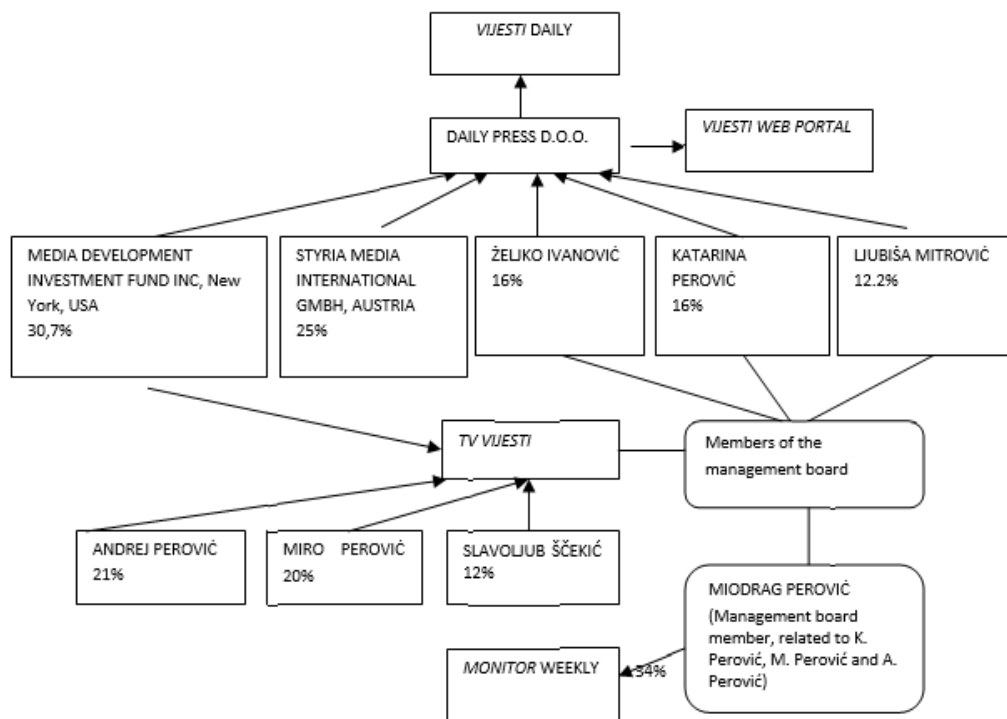
Pursuant to article 5 of the Media Law, “a monopoly shall not be allowed in performing media activities.” Another shortfall of the Law was the definition of media activities, which lacked clarity regarding the new media services which have mushroomed on the market in the recent years: pursuant to article 6 of the Media Law, “media shall be defined as either a press, radio and television, news agency services, teletext or some other form of editorially formulated programming published periodically by means of the transmission of voice, sound or picture in a manner accessible to the public.” The expressions “some other form”, “editorially formulated programming” and “periodically” can lead either to restricted or broad interpretations, which does not give a clear view on which activities are indeed covered by media concentration rules (and, by extension, by transparency of ownership rules).

These shortfalls are however mostly solved by the 2011 Electronic Media Law (Parliament of Montenegro 2011). The article 131 of the Law details the situations in which it should be considered that there is media concentration (while not providing what are the regulatory consequences of such concentration) and articles 132 and 133 detail the situations in which there is “unlawful media concentration”. These provisions are, from a legal point of view, properly enforced by the AEM, as shown by its decisions regarding the links between the daily Dan and the local radios Radio D (AEM 2013b) and Radio D Plus (AEM 2013c) as well as by its decision regarding the links between the daily Vijesti and TV Vijesti (AEM 2013a).

But in practice, they are:

- Either missing their goal: for example, the ownership structure of Vijesti TV and Vijesti daily are compliant with the Law, but is known by all the actors that ownership remains in the hands of a group of persons with joint interests (Brkić 2015).

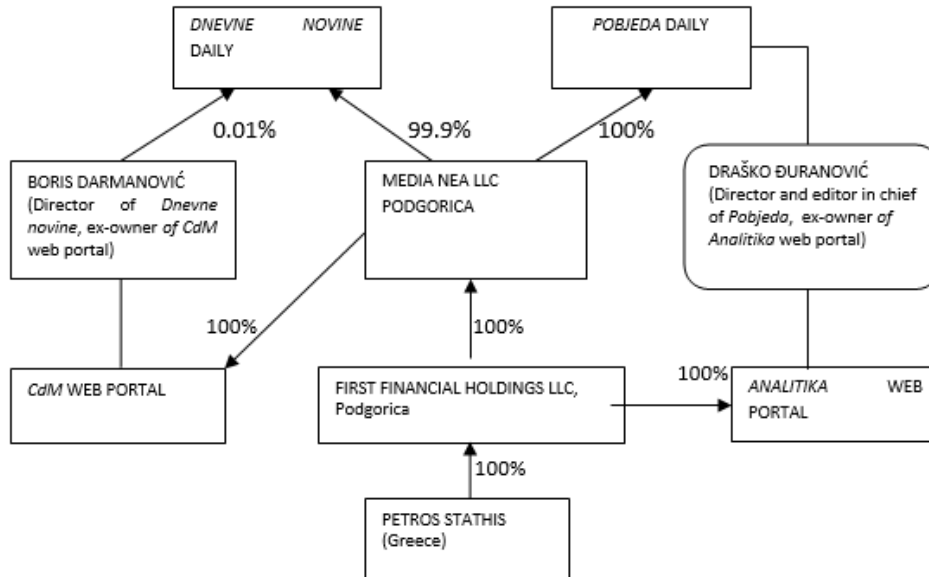
Figure 4: Ownership structure of Vijesti



Source: Central Registry of Commercial Entities of the Tax Administration (CRPS). Data were collected in September 2015.

- Or not providing for a thorough picture in terms of creation of powerful media groups on the media market as a whole (including the now quite popular web portals), as shown for example by the creation of a group of several newspapers (including two of the main ones) and news portals (also including two of the main ones) in the hands of another group of persons with joint interests (Brkić 2015).

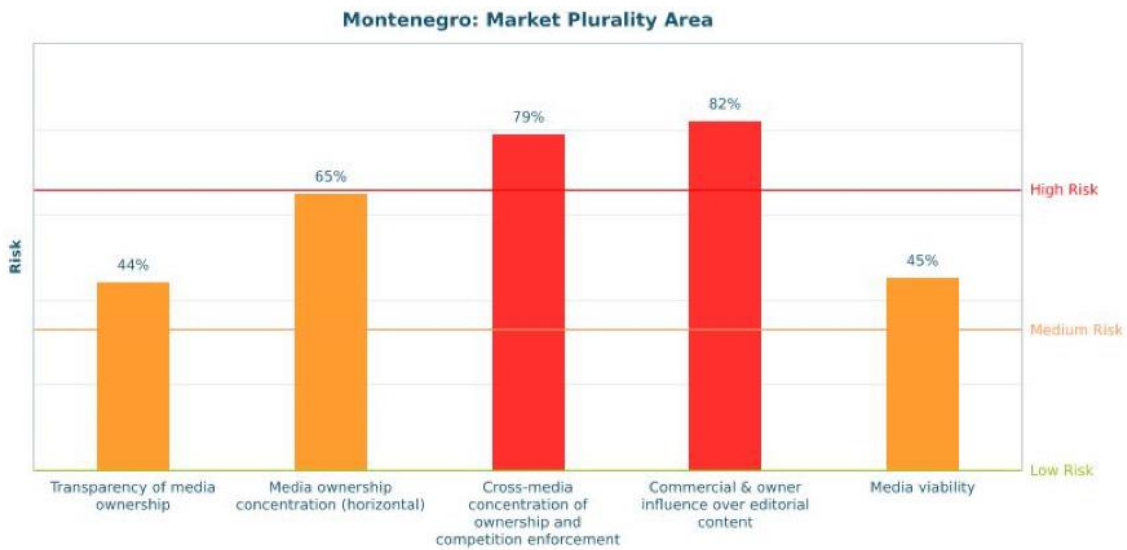
Figure 5: Exemplary news conglomerate



Source: Central Registry of Commercial Entities of the Tax Administration (CRPS). Data were collected in September 2015.

These situations are among the elements which explain, that, in terms of the democratic aspect of the issue, cross-media concentration of ownership has been identified as a high risk in Montenegro.

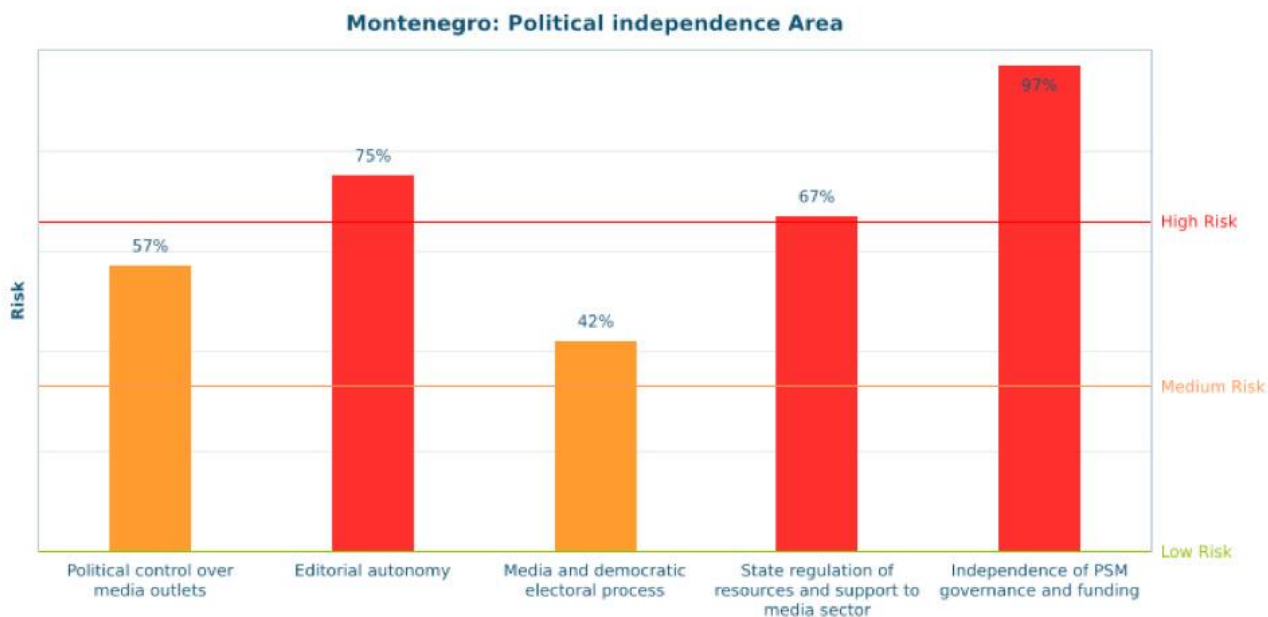
Figure 6: Market plurality risks



Source: Centre for Media Pluralism and Media Freedom, 2016

However, beyond the potential risks in terms of high levels of concentration (which can potentially lead to welcome economies of scale, especially in a small and economically fragile media industry), what matters more is what the owners do or don't do with their ownership. One of the purposes of the "Market Plurality Indicators" established by the Centre of Media Pluralism and Media Freedom is "to evaluate the viability of the media market under examination as well as whether and if so, to what extent commercial forces, including media owners and advertisers, influence editorial decision-making." And in this regard, according to the Centre for Media Pluralism and Media Freedom, the risk is the highest in Montenegro, which is not surprising considering the level of political polarisation in the media sphere. According to the Centre (and this has been confirmed by the field visit of the expert team), "there are no mechanisms granting social protection to journalists in the case of changes of ownership or editorial line. Moreover, there are no regulatory safeguards, including self-regulatory instruments, which seek to ensure that decisions regarding appointments and dismissals of editors-in-chief are not influenced by commercial interests." And when it comes to the "Political Independence Indicators", the level of identified risk is even higher.

Figure 7: Political independence risks



Source: Centre for Media Pluralism and Media Freedom, 2016

From the third point of view which is the economic side, the situation in terms of media concentration is to be considered differently. For a market of 660.000 inhabitants (which makes around 220.000 households), the amount of media outlets is relatively high: 4 daily newspapers, a national public service media providing 2 television and 2 radio channels, 14 local public service radios, 36 private radios, 3 local public service televisions, 14 private televisions including three with a national terrestrial coverage, 25 registered web portals (according to the register of the AEM)<sup>43</sup> and probably another 25 active but not registered (IREX 2017). And all this is without even mentioning all the available Serbian media which also compete, if not on the advertising market, at least for the reading, listening and viewing time of the public. Even if according to several stakeholders the content of most of these media is of poor quality,

<sup>43</sup> The list of media services licensed by or registered to the AEM is available at: [http://www.ardcg.org/index.php?option=com\\_sobi2&Itemid=84](http://www.ardcg.org/index.php?option=com_sobi2&Itemid=84)

such a large amount of media outlets does provide for the expression of a plurality (even if biased) of voices.

What is striking is the economic fragility of most of these outlets, who would not survive without benefiting from the various supports from the State (and especially State advertising, see Chapter 5) and from the fact that they belong to companies who are also active in other sectors of the economy and can “afford” the losses of the media branch of their economic group. Most of the stakeholders met during the field visit, and especially the market players themselves, have expressed the opinion that there are too many players on the media market, and explained this situation by the fact that these players are not driven by the economic sustainability of their activity but by other purposes such as influence on political decision-making processes. Indeed, it appears impossible to have profitable media when an advertising market which is estimated between €10 and 11 million (all media sectors included) has to be divided between so many players and that the public service media also takes a significant share of this market. In the audiovisual sector, most of the stakeholders met during the field visit estimated that the amount of advertising spent in television was between €4.5 and 5 million and most of them also agreed that in order to operate a single television channel in a sustainable way, at least €2.5 million of revenues were necessary. Even if approximate, these amounts illustrate well the blatant gap between the resources the market can provide to the broadcasters and the amount of broadcasters who remain active on this market.

This diagnostic cannot however be interpreted as a call to limit *ex-ante* the access to the market by some kind of public intervention. Some players blame the AEM for having delivered too many licences that the market can afford, but these criticisms are unfounded, at least for two reasons. The first one is that the AEM’s duty is not to regulate the economic balance on the market. Its main duty is to allow freedom of communication and, to this end, to issue licences to the companies who believe that they have a chance to be successful on the market and who, when applying for a licence, can reasonably expect to do so. The AEM’s duty cannot be to replace the analysis of these companies regarding their potential chances of success and to prevent them to try to launch a business. The second reason is that all over Europe audiovisual market are characterised by a form of abundance of the offer, in an increasingly international and multiplatform environment.

The view of the expert team is that any *ex-ante* limitations in terms of “sustainable licences” to be delivered by the AEM would not only harm the development of potential innovative businesses, but would be unjustifiable in terms of freedom of expression. What appears more problematic is, once these players are on the market and clearly appear as being non profitable, to *ex-post* put in place several formal or informal systems which allow them to artificially survive, such as writing off the debt they owe to various State bodies or be unjustifiably generous with them in terms of State advertising or other public support schemes (on these issues, see also chapter 5).

Finally, as far as media pluralism and media concentration are concerned, the specific issue of local broadcasting should be highlighted. Currently, local broadcasters are exclusively public broadcasters, who benefit from a *de facto* monopoly. Their economic position is weak, being funded mostly by municipalities. Their editorial independence is often presented as under political pressure, these local broadcasters being often described as the voice of local politicians, who abuse of their importance in terms of funding to weight on editorial policies.

## Policy brief

The Electronic Media Law (Parliament of Montenegro 2016c) should be amended in order to allow the AEM to ensure transparency of media ownership to the final beneficiary owners.

The Electronic Media Law should also be amended in order to allow the AEM to ensure that media concentration does not lead to the creation of media groups whose dominance could harm pluralism and diversity. It is even more important considering the aforementioned risks in terms of political independence indicators.

It is not the duty of the expert team to suggest the thresholds which should be applied and they cannot be simply copied from other legislations as they can vary from one country to another depending on the domestic circumstances. When defining the rules and criteria in this domain, what appears indispensable considering the Montenegrin context is that the legal framework does not limit itself to taking into consideration vertical and/or horizontal media concentration but also diagonal concentration in order to take into consideration cross-ownership across the whole media industry (therefore including radio, television, print and online media). What appears also important is:

- to use reliable criteria (for example, the lack of trust in audience measurement disqualifies the criterion of audience share);
- to use appropriate criteria (for example, limiting geographical concentration is probably pointless in such a small market);
- to address the issue of pluralism in terms of content, considering the risks in terms of political control of media outlets and in terms of editorial autonomy of the newsrooms.

As media concentration should be regulated not only in terms of ownership but also in terms of influence of the owners on editorial policies, legislative mechanisms should be adopted in order to secure editorial independence of newsrooms and legal protection of journalists when modifications of ownership and/or of editorial policy occur. A special attention should be given also to the current model of financing of local public broadcasters. It creates a high risk of political interference in editorial policies, therefore legislative and financial mechanisms should be set up in order to guarantee their editorial independence.



## Ch. VII: Journalism – professional integrity and safety

This chapter discusses the impact of policy framework, market and labour conditions, as well as the influence of political situation on professional integrity and safety of journalists in Montenegro. A special attention is dedicated to the Commission for investigating cases against journalists, with recommended activities.

### To the core: integrity and safety

Since this Chapter deals with journalism in Montenegro from the perspective of professional integrity and safety of journalists, and in that respect, it is always good to retrospect on the core issues discussed here, like what is journalism, to begin with? American Press Institute states that it is the activity of gathering, assessing, creating, and presenting news and information. It is also the product of these activities. As it goes: “it can be distinguished from other activities and products by certain identifiable characteristics and practices. These elements not only separate journalism from other forms of communication, they are what make it indispensable to democratic societies. History reveals that the more democratic a society, the more news and information it tends to have.” (American Press Institute n.d).

### The concept of professional integrity

Professional integrity of journalists comprises, among other things, principles of ethics and good practices in journalist’s work and activities. These usually come in a form of codes of practices and codes of ethics, which are historically and contemporarily present, and all have some basic common features and elements, such as principles of accuracy, objectivity, impartiality, fairness, etc. Schools of journalisms include curricula based on these principles, but it is their practical application that is particularly important today, especially from the perspective of open journalism and other modern trends that on-line world brought onto the global media scene.

Many international documents refer to journalistic ethics and professional standards, like the 1993’s Council of Europe Parliamentary Assembly’s Resolution 1003 on the Ethics of Journalism (CoE 1993b), which reiterates the aforementioned principles. For the purpose of this document, it is important to stress that they are all based on the fundamental premise of human rights, in particular the right to freedom of expression. They normally reiterate that journalists have legal rights, but also obligations, and that, professional standards and ethics come from the obligation of journalists towards the public. In that respect, and in relation to the core issue related to the right to freedom of expression, it is vital to stress the importance of the case law of the European Court of Human Rights, which reiterated numerous times that journalists and media, including Internet, have an instrumental importance for enhancing public debate, which have considerable potential for high levels of individual and group participation in society. Also, this Court reiterated that media have a role of “public watchdog..., monitoring the activities of governmental authorities vigilantly and publicizing any wrongdoing on their part”. In light of the important democratic functions which journalists and the media can fulfil, the case law of the Court tends to acknowledge an enhanced level of freedom of expression for journalists and other media actors as opposed to ordinary individuals (McGonagle 2013).

Journalism plays a huge part in people's lives. In that respect, journalists should at all times be aware that they are instrumental in public's exercising of right to information, as it is only if journalists perform their job adequately, public can create an objective picture of reality by means of accurate and comprehensive information. This is important to point out, as it directly verifies the journalist's great social responsibilities. Of course, by doing their job, journalists, as individuals, enjoy the benefits of this universally accepted human right, but, by doing so, they directly warrant the same right of public at large. The same goes for journalists and media enabling public to express themselves freely through various media. By doing their jobs professionally, journalists and the media can provide leadership about what constitutes ethical freedom of expression.

### The concept of safety of journalists

No person can do their job or perform their duties to the fullest extent if they are not safe. This is also true for journalists. Violence, harassment and intimidation directed against journalists represent an attack on democracy itself. They do not only give rise to fear and insecurity among journalists, but among the members of the whole society and have the effect of stifling freedom of the media and freedom of expression, depriving people of the ability to make informed decisions about issues that affect their lives.

Attacks on journalists which are not followed by serious investigations and sanctions against perpetrators lead to a pattern of impunity which has a severe impact far beyond any particular case. It is, in all reality, a systemic failure of the functions of government and the rule of law, on which the safety and rights of everyone depends. That is why it is imperative to investigate attacks on journalists and bring perpetrators to justice, since impunity represents a double injustice. This is especially true in cases related to attacks against journalists, who are trying to perform their important work to provide citizens with the information they need to make the best possible decisions about their lives, their communities, their societies, and their governments.

It leads to a loss of public confidence and encourages more criminal acts. Physical attacks and threats of violence or harm against journalists and members of their family, as well as threat of criminal charges which may lead to a prison sentence has been in the increase globally, with such cases also being present in Montenegro. They represent an extreme form of censorship. They also lead to self-censorship of the media, for fear of journalist's own or their family's safety, which also restricts freedom of expression in the society.

Many international organisations take place in global initiatives related to safety of journalism, impunity and similar, including Council of Europe, EU, OSCE, etc. For example, the United Nations, launched an Inter-Agency Action Plan on the Safety of Journalists and the Issue of Impunity, as has been shown that most of attacks on journalists happen in areas where there is no armed conflict and they are predominantly related to journalist's work on crime, political matters and corruption. In 2015, UN General Assembly adopted a Resolution on the Safety of journalists and the issue of impunity. The Resolution proclaims 2 November as the International Day to End Impunity for Crimes against Journalists, and proposed a range of actions to enable States to fulfil their existing obligations and to advance the goals of the UN Action Plan. In September of 2016, UN Human Rights Council adopted resolution regarding the safety of journalists, which calls on the member states to end impunity for attacks on journalists and to maintain, in law and in practice, a safe and enabling environment for journalists to perform their work without interference.

This issue has been on the agenda of Council of Europe as well. In January 2017, the Parliamentary Assembly of the Council of Europe (PACE) adopted a Resolution and Recommendation on attacks against journalists and media freedom in Europe, which is one of latest texts related to this issue, following the adoption of a Report on “Attacks against journalists and media freedom in Europe” by the PACE Committee on Culture, Science, Education and Media in December of 2016.

Montenegro is an active member of Council of Europe’s bodies and this report urges its’ governing bodies to actively engage in furthering the efforts to combat attacks against journalists on international level. The role of the government in the issue of safety of journalists is crucial. It is the responsibility of the government to secure safe environment for journalists to do their job. The Government should do it vigorously, openly and directly, publicly refuting all and any attempts of jeopardizing safety of journalists.

### State of play in Montenegro

The state of journalism in Montenegro is, as this study shows and as many other reports on media freedoms indicate, not on a desired level of pluralism and professionalism, it is characterised by strong polarisation, predominantly political in nature. Media are divided, pressures exerted on them are numerous and come from various sources. Additionally, there are media outlets which are registered elsewhere (primarily in Serbia) and operate on Montenegro market, which, according to many accounts “intensifies political polarisation and internal competition in an already restricted market” (ECPMF 2017).

Problems in the media sector are usually highly politically influenced which often results in low level of professionalism. Attacks against journalists are not rare, including one tragic murder.

Economic and financial difficulties of all market branches in Montenegro are inevitably reflected onto the media market and represent a very serious drawback in its unimpeded functioning. This is then resulting in financial dependency of media outlets, which translate to additional pressures faced by media, thus creating a vicious circle.

Results of such a situation are detrimental to freedom of expression and are witnessed by all members of the society. Political and financial pressures, little or no transparency, journalists’ fear about their job and sometimes even about their life, weak and divided system of self-regulation all lead to self-censorship, division within the industry and highly polarised sector.

### Legal aspects

In addition to the political, economic and social realities, one must observe the notions regarding the legal provisions relating to media, as the laws guaranteeing the right of journalists and others to access official information are an essential aspect of the creation of a safe and enabling environment for journalists. In Montenegro, media freedoms of the press are part of the Constitution (Parliament of Montenegro 2007), and different laws, such as Law on media, Law on obligations (related to defamation), etc. In that respect, a general observation regarding the relevant media-related laws in Montenegro is that they represent solid basis, but their implementation and practical aspects of their applications is problematic, sporadic and fully dependent on political and public officials’ will and interpretation. However, there is always a room for further improvements, most notably in relation to a

need for more precision and transparency in certain areas, such as in the allocations of public funds and possibly in defining the mechanisms for financing self-regulation of media.

An important issue related to media freedoms is connected to decriminalisation of defamation and insult which has been in place since 2011. This is certainly a positive aspect of media freedoms legal guarantees, however, the defamation cases are still numerous. Reports indicate that in some instances judicial branch of government does not provide for independent judicial review of such cases, and is deemed to be under the influence of political and other powers.

In addition, Article 197 of the Criminal Code (Parliament of Montenegro 2017a) still foresees crime of exposing personal and family circumstances that can harm one's dignity, which is, in experts' opinion, another form of defamation and should be relinquished.

Another legislative intervention of interest for this report is related to the right to access information, which is stipulated by the Montenegro Constitution (Parliament of Montenegro 2007) and subsequently adopted Freedom of information law from 2005. The ability of private citizens and news media to access official information with a minimum of restrictions is a normal expectation in a democracy. The major problem with this is not the legislation, but its practical implementation, as is often the case in the region. Remedies can be found in court proceedings, taking too long to be practical for the work of journalists.

It should be particularly highlighted that good legal solutions are just one step in establishment of climate which enables the right to freedom of expression to flourish, as it is only adequate implementation of the legal framework that provides for the fullest extent of enjoyment of the right to freedom of expression.

### Safety of journalists

Special attention in this chapter is dedicated to attacks and crimes against journalists in relation to performance of their duties. Attacks on journalists, including the tragic event of murder of journalist Duško Jovanović, who was killed on 28 May 2004, are an unacceptable practice. As reports of relevant bodies in Montenegro state, there are unfortunately a significant number of cases related to threats against media workers and/or their property.

These attacks are directed against both individuals and media outlets, and often include severe beatings, death threats, and even usage of explosive devices against the journalists and their property. Some reported cases involved public officials and representatives of law enforcement agencies.

Proper investigations, due judicial proceedings and sentences in such cases seem to be present, if somewhat sporadic.

The expert team received information from the Prosecution office of Montenegro regarding the cases dealt with in relation to attacks on journalists, including a tragic murder of Duško Jovanović, editor in chief of Dani. According to the information received, out of 33 registered cases, for the period from 2004 to present, the situation is as follows:

- 14 cases have been resolved
- 2 have been dismissed by prosecution
- 1 has been stopped due to the fact that defendant died during the proceedings
- 4 are or have been dealt with by private suit

- 4 cases are pending
- 6 cases in which the perpetrators are still unknown

Out of the resolved cases, 13 have resulted in sentencing perpetrators to jail or by financially fining them or by issuing a sentence of probation period, while there is also 1 case in which defended was not found guilty.

The information received did not include exact jail time for perpetrators, but out of those received, jail time ranged from 3 months to one year. Also, the information as to the duration of probation period or the level of financial fines was not provided for.

In relation to the cases that are still unsolved, the main issue that has been reported by the Prosecution office is that perpetrators are still unidentified.

It should be noted that one person has been prosecuted and convicted and received a jail sentence in case of Mr. Jovanović's murder, but due to the fact that other perpetrators have not yet been identified, this case is still open.

Also, some cases featuring the same journalist have been dealt with by several accounts, like in the case of attack of a female journalist, which has been dealt with from the perspective of endangering of journalist with verbal threats, followed by endangering of journalist by verbal threats over the phone (for which there was no evidence), violent behaviour ending with endangering of journalist via another journalist.

One interesting case also deals with threats that a journalist received via Facebook social network, for which the perpetrator received a jail sentence.

It is obvious that there are visible efforts by the Prosecution office of Montenegro to address the attacks against journalists. However, in order to effectively address the atmosphere of impunity, there is a need for much more concerted efforts to help Montenegro institutions to deal with attacks against journalists in a more effective and substantial manner. In that light, it is highly recommended to continue and enhance engagement of the European Commission, Council of Europe, OSCE Representative on freedom of the media, OSCE Mission to Montenegro, UNESCO and other international organisations with the Montenegro institutions, namely the Government, including the Commission for investigating attacks on journalists in Montenegro, Prosecution office and civil society and law enforcement agencies in order to provide support, both politically and financially, in addressing investigations against the journalists and ending impunity.

It is also worth noting the case of an attack on Tufik Softić, a journalist of the daily newspaper Vijesti and the weekly Monitor. According to media reports, an explosive device was activated in front of Softić's house. This is not the first time the journalist has been targeted: in November 2007, Softić also was the victim of a brutal attack near his home. On October 20, 2017, the Court in Podgorica issued a decision allocating non-pecuniary damages to this reporter due to insufficient investigation into what is treated as a murder attempt. The Court notes that Softić's rights stemming from the Constitution of Montenegro and ECHR have been violated. This is indeed the first time that any judicial body in Montenegro issued such a decision and it should be emphasised as an important precedent and significant contribution to practice and case-law related to attacks on journalists.

The Commission for investigating attacks on journalists in Montenegro was established in 2012. The Commission includes relevant state institutions and stakeholders, but, reportedly, there are problems in some members being more agile in the work of this Commission as opposed to others. Some reports state that there are obstructions in the work of the Commission, while according to others, these are

just unjustified allegations. However, it seems that the Commission is de facto divided in two blocks, one representing media community and NGOs, and the other representing state institutions responsible for resolving the cases.

## Proposals to the industry and government

Recommendations in this field are difficult to divide and allocate to different stakeholders as the issues discussed are very much interconnected and correlated. Still, in order to put forward as structured set of proposals as possible, recommendations provided for the media industry and journalists are followed by recommended course of actions for the governing bodies of Montenegro.

### Media industry and journalists

The existing polarisation and division among the industry itself speaks volumes in relation to state of play of journalism. This should not be the case. Media professionals should be united in their efforts to raise levels of professionalism for the better of the entire industry. They should be apolitical, non-profit and should consist of as many media professionals as possible to achieve media pluralism and healthy media environment. Personal differences and egos should be abolished in concerted efforts to professionalise the sector and secure best possible conditions for media freedoms. Benefits of existence of sustainable and effective media associations are well known. They preserve independence of the media and protect it from partisan government interference.

In this respect, it is important to encourage constructive local initiatives which are leading to confidence building in such a polarised environment, such as efforts done under the auspices of OSCE Representative on freedom of the media and CoE in drafting and adopting the Montenegrin Journalists' Code of Ethics by the industry itself, that led to visible results, namely adoption of the Code, signing of Memorandum of Understanding of parties involved and declared efforts in promoting the Code.

The following list of attributes and traits is a recommended check-list that journalists and representatives of media industry should consider at all times. It offers a chance for serious introspection, prior to engagement in such a profession, especially in today's volatile grounds and current trends on a global level. A journalist or any individual involved in the work and activities of media industry should know that it takes courage, vigilance and boldness and that journalists actually are the voice of the voiceless, that they are a public watch-dog, that their job is to hold those in power accountable and that, ultimately, they are an important instrument of human experience and diversity and cultural richness.

- I. Professional journalism should always respect and support universal values of diversity and multiculturalism.

This includes respect for peace, humanism, human rights, freedoms and liberties, democratic processes and values. The ethical commitment to the universal values of humanism calls for the journalist to abstain from any justification for, or incitement to, wars of aggression and the arms race, and all other forms of violence, hatred or discrimination, as well as other great evils which afflict humanity, such as poverty, malnutrition and diseases. By so doing, the journalist can help eliminate ignorance and

misunderstanding among peoples, make nationals of a country sensitive to the needs and desires of others, ensure respect for the rights and dignity of all, all peoples and all individuals without distinction of race, sex, language, nationality, religion or other conviction.

This is especially important in the context of the tragic events in the Balkans at the end of last century. Unfortunately, the Balkan region is a prime example of such practices. Ethnic intolerance, as the epilogue of cleverly devised propaganda in the media, resulted in practically general support to the ferocious wars. The state media supported war campaigns, with a whole arsenal of unfair media coverage at their disposal and a vocabulary dominated by hate speech. Sensationalism, propaganda, insistence on one's own ethnic purity, prejudice, justification of pretentious political goals, was to become an introduction to the expansion of the authorities' territorial and political ambitions. In addition, the specific historic experience served as justification for the most varied political combinations, usually in simplified versions of journalistic interpretations. History became an argument for accusing the opponents, justification for military and political aspirations, as well as a source of permanent hostility through constant reminiscence on the past and on past historic clashes. Thus, the entire public was almost systematically being prepared for imminent clashes, through constant intimidation based on inherited national and religious intolerances. In support of these theses, there are many studies and researches treating the role of media in the ex-Yugoslav conflict that undoubtedly indicated that media, while serving the regime, greatly helped in production of wars and hatred.

## II. Journalists should employ human attributes of compassion or sympathy in their work.

This means that journalists should not harm others, an individual or a group or humanity as such. In this respect, power of words and especially images and their impact on general public should always be borne in journalist's minds. In all circumstances, journalists should show compassion and sensitivity for those that potentially can be affected by reporting, be it minors, elderly or particular individuals or groups of people. In that respect, it is the balance between information and potential harm that is important, since journalism does not mean that one can be arrogant or intrusive. In each society, and in particular in transitional ones such as Montenegro, the professionalisation of journalism is a tool for democratisation.

## III. Utter and complete dedication to objectivity, non-bias and impartiality should be the core value of journalist.

Journalists should report the facts, and they should do it conscientiously in their proper context, pointing out their essential connections and without causing distortions. This is not to be confused with a belief, which might be accepted as truth. In addition, the principle of accuracy means that journalism should present all relevant facts and let the public know that these have been checked or double-checked if necessary. Long-established tasks of verification of information, use of original source and its identification to public at all times are not burdensome, but important integral parts of creation of news. Also, accuracy requires from journalists to always provide the context, without undue speed, misrepresentations, oversimplifications or summarisations, not to mention deliberate distortion of facts or context. This means providing for voice of views that are repugnant, as it is at the core of the right to freedom of expression, as the ECtHR established long ago.

#### IV. Journalist profession should be accountable and transparent

Ethical journalism means taking responsibility for one's work and explaining one's decisions to the public. This means that journalist profession should be accountable and transparent, just as it seeks public officials, governments and others in power to be the same. In that respect, greatest ally journalists have is the public. They should encourage a civil dialogue with the public about journalistic practices, coverage and news content and be really quick in responding to questions about accuracy and fairness. In addition, when making mistakes, journalists should acknowledge them and correct them prominently. In a nutshell, journalists should abide by the same high standards they expect of others. It is only when acting in accordance with high professional standards that journalists can make a difference in their society.

#### V. Journalists should hold up to highest standards of integrity

The profession's integrity means that journalists should possess the quality of being honest and having strong moral principles, as well as honesty, rectitude, good character, right-mindedness, decency, fairness, scrupulousness, sincerity, truthfulness and trustworthiness. This also means that journalists have the right to refuse to engage in activities which contravene their convictions. Surely, when considering national circumstances of Montenegro, it can be argued that it is impossible to apply such principles as the realities around oneself are totally opposed and do not allow for their exercise. Still, if the profession itself decided to raise itself from all the realities, if the profession decides to defend itself by jointly abiding by all ethical and other norms and standards, things can start to change. As long as there are finger-pointing between journalist's profession, as long as there are political polarisations of media, professional journalists cannot strive, principles cannot be applied while, at the same time, interests and influences thrive and prosper and terrible state of democracy is translated across society like metastases.

Important aspect to consider is the use of the right to access information. It is indeed a tool often used by journalists, in which they encounter many problems. It should not be forgotten that this right is not only the right of journalists, but the entire population. Also, journalists must recognise that legal access to information differs from ethical justification to publish certain information. By using it and, more importantly, by reporting on breaches of relevant provisions and deviations from this right, as is often the case in Montenegro, journalists promote this right and let the public know of their rights.

#### VI. Journalists should always respect the right of reply

The professional standard that should not be overlooked has to do with the right of reply, which is also part of legal and sub-legislative framework of Montenegro, for those who feel grievances against certain reporting. In fact, as indicated earlier, the right to freedom of expression includes both provision and reception of information, and it entails the responsibilities especially related to the protection of the rights and interests of others. Reporting that exceeds the needs of public regarding the reception of information and the public interest, can enter the protected area of rights of others, which leads to breaches of these rights and interests of natural or legal persons. In such circumstances, right of reply is legal remedy and adequate mean of protecting from information which include inaccurate information regarding a certain natural or legal person, including these related to breach of privacy or even an attack on that person's dignity. Right of reply is extremely important for a healthy relation between the media and the public. It is one of the basic principles of the right to freedom of expression, which should at all



times be employed by the media. Importance of protection mechanisms of individuals or organisations via right of reply is significant, since, besides protection of interested persons, it builds credibility of media and the public's trust in them.

#### VII. Journalists should hold highest respect for the right to privacy

An integral part of the professional standards of the journalists is respect for the right of the individual to privacy, in conformity with provisions of international and national law concerning protection of the rights and the reputation of others. Right to privacy is a basic human right, enshrined in Article 8. of ECHR, but also part of legal framework of Montenegro. Every person has the right to privacy and invasion into privacy is allowed only in cases where there is a proven public interest. This is especially true for minors and persons who do not hold public offices and are normally not exposed in media. In that respect, it has been long established that politicians and other persons regularly exposed to the public must have a higher threshold of tolerance. They must accept much wider limits of acceptable criticisms, since, as opposed to a private person, politicians seek media attention / coverage and are widely and regularly present in media. In that respect, professional journalists weigh the consequences of publishing personal information, especially when not dealing with public personas. When deliberating on issues which deal with right to privacy, it is crucially important for journalists to abide by professional standards, since the power of the media is enormous, and it should be used in a manner which satisfies the public interest. This is especially important in informing about court proceedings, especially in relation to information on minors and victims involved in criminal proceedings, where a balance related to presumption of innocence and right of suspected individual to a fair trial and public's right to know is to be considered.

#### VIII. Journalists have a right to refuse disclosure of their sources of information

The principle which is not to be forgotten has to do with journalist's right to refuse the disclosure of their sources of information. This is a legal principle which is first and foremost guarded by the industry itself. Many interests, particularly political, dislike this legal provision and will try everything to get a hold on sources of information, particularly in relation to corruption, abuse of power and similar. It is therefore imperative that the profession itself does not give up this right. The first guardian of sources of information is the journalist. If journalists identify their sources, it does not only affect their work or the identified individual or a group, it affects the entire society, as the climate of mistrust and reluctance to provide information to media will inevitably follow. That is why it is important to guard it against all pressures.

#### IX. Journalists should be particularly careful against any form of bribery

Principle of professional integrity is also visible in cases of utter refusal of any form of bribe or the promotion of any private interest contrary to the general welfare. Such methods are widespread in many countries, including Montenegro, following the old mantra of "stick and carrot" approach. Such "carrots" are to be refused from the start. Professional journalists refuse gifts, favours, fees, free travel and special treatment, and they avoid political or other outside activities that may compromise professional integrity or impartiality, or may damage credibility. This also includes refusal to promote the interest of sponsors and any or particular advertiser (public or private and legal or natural person) who wishes to promote their products, services, etc. in a manner which exceeds established rules

related to commercial communications, as they are prescribed also in Montenegro. Also, journalists should always be wary of sources offering information for favours or money, and, in principle, should not be paying for news. Such practices do not only corrupt the journalist's profession, but deceive the public at large and can lead to unwarranted market conditions which do not follow the rules of competition. Once a journalist is bribed, public trust in his or her actions is irreparably ruined.

#### X. Journalists should be independent

Independence means independence from any influence which steers clear of the aforementioned principles, be it from political, corporate, cultural or otherwise interests. This means that journalists should avoid conflicts of interest, or, if they are unavoidable, they should be clearly identified to the reader/listener/viewer. This is related to understanding of media's watchdog role in society. These positive connotations of the term make media independence an attractive idea for both those who assess the functioning of the media and for media organisations themselves to gain credibility. Despite many opposing views, and especially despite the challenging circumstances in which media and journalists operate in Montenegro, strive to independence should be a primary task of the profession.

These are generally accepted ethical principles which in fact protect the professional integrity of journalism. These are all parts of the agreement that the media in general have with the public, as the right to freedom of expression does not only stipulates the rights, it stipulates the obligation on the part of the media to maintain the highest ethical standards at all times and under all circumstances. By doing their work, journalists and media professionals dutifully respect the needs of citizens for useful, timely and relevant information and, by their own actions, they defend the principles of freedom of media and the right to fair comments and critical journalism. This is especially important in the context of Montenegro and many other countries, like the countries of the region of former Yugoslavia, where the tendencies of governing structures are to undermine the right to freedom of expression and (much more) use the media to proliferate populist's statements which win the elections, maintain the atmosphere of ethnic, cultural and political intolerance for their own personal and political.

#### XI. Journalists should maintain personal stamina

Personal stamina, as another core value of true journalism professionals can directly be seen by utter refusal to succumb to any form of pressure by any party, wishing to alter the line of journalistic reporting due to their various interests. This is not easy to do. It becomes even more difficult in societies such as Montenegro, in which, like in many others, journalists face many difficulties in the efforts to do their job professionally. These include economic pressures; very bad working conditions of journalists, political influences, but it also include the general climate in society, which does not value the importance of the right to freedom of expression in terms of real and tangible dedication to freedom of expression's realms, in all its forms and in all that it encompasses. This can be seen in many other areas of social realities in Montenegro. Journalism alone cannot fix this, as it entails much larger issues and difficulties faced by transitional societies.

## Governing bodies and legislation

As for recommendations directed towards the governing bodies of Montenegro, they refer partly to legal norms, and, more importantly, to practices used by public officials, due to their instrumental role for safeguarding the right to freedom of expression.

Montenegro is not unique as regards the attacks on, and, tragically, even murders of journalists. On a global scale, an increasingly urgent issue related to safety of journalists has been reiterated, since the number of violent attacks against journalists has significantly grown, including murders, attacks leading to serious injuries and cases of intimidation.

In that respect, and taking into account all the relevant information provided to the CoE experts, a number of recommendations related to the work of the Commission established to investigate the crimes against journalists is highlighted, stressing the importance of the existence and efficient work of such a body within the context of actions related to development and sustainability of safety of journalists. An honest commitment of all its members to the work of the Commission and to building of mutual trust is necessary, coupled with recommendations related to Commission's composition and mandate. Above all, full transparency of the work of the Commission is imperative.

It should be reiterated that the right to freedom of expression is not an absolute right. The international treaties which stipulate this right also prescribe its possible derogations. In that respect, the case-law of the ECtHR is an invaluable source. It should always be kept in mind that the right to freedom of expression is regarded by this Court as one of the most fundamental rights instrumental for functioning democracies and that every "formality", "condition", "restriction" or "penalty" imposed in this sphere must be proportionate to the legitimate aim pursued. It has been long established by this Court that the term right to freedom of expression "constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. It is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population, as these are, as the Court stated on many occasions, the demands of pluralism, tolerance and broadmindedness without which there is no democratic society.

Montenegro must ensure that national laws, administrative and judicial systems protect and promote freedom of expression and safeguard the lives and professional rights of journalists. Continued efforts in terms of bilateral or multilateral cooperation, training projects for the judiciary,<sup>44</sup> the media and other stakeholders is highly recommended. Laws pertaining to media freedoms must be clear and precise.

By adhering to respect the confidentiality of journalists' sources as a basic condition for press freedom, governing bodies recognise that an order of source disclosure cannot be compatible with the media's right to report unless it is justified by an overriding requirement in the public interest.

Full transparency of information that is deemed to be of public interest is recommended. Principles of open government require assurance of the free flow of information. The ability of journalists and others to gather and use official information is essential for press freedom; the media must be enabled to carry out their work of informing societies on matters of public interest. As a rule, state authorities should place government information of public interest in the public domain and make every effort to ensure

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<sup>44</sup> Under the JUFREX, in cooperation with the Centre for training in judiciary and state prosecution of Montenegro 200 judges and prosecutors will be trained on freedom of expression and freedom of the media (2017-2018). Also, 100 lawyers will undertake the same training.

easy, prompt, effective and practical access to such information. The administration of freedom of information laws should be independent, transparent and avoid unreasonable delays and costs.

Ensuring transparency of ownership of media outlets and proper competition rules to prevent over-concentration of ownership, market distortions and increased risks of undue pressures on editors and journalists is an additional pre-requisite of creating and maintaining the environment in which democracy can flourish.

By upholding journalists' employment rights, including the right to organise and join trade unions, which can protect them from arbitrary dismissal and undue pressures, the governing bodies clearly state that the right to freedom of expression is respected.

In this respect, legal and practical insurance of independence of the judiciary is essential, to protect the rights of free media and ensure that those responsible for attacks on journalists are brought to justice. This also means that regulation and supervision of law-enforcement agencies, including police and the prison service, with effective oversight and complaints procedures is provided for. Legal provisions should be clear on the judiciary being independent of governmental authority and of any political, commercial or other outside influence. Police forces, other law-enforcement agencies and prison services should be subject to independent systems of oversight, with transparent internal discipline and public complaint procedures. Law enforcement personnel, members of the judiciary including judges, investigators, prosecutors and lawyers should be legally obliged to receive a high level of training regarding their obligations under international human rights law and international humanitarian law and how to ensure effective fulfilment of obligations concerning particular areas of risk for journalists, such as violence and intimidation, serious abuses of state authority, as well as protests and public events.

In this respect, it is strongly recommended that this issue is followed up and full transparency is ensured.

State security and anti-terrorism laws must be carefully defined and limited in time and scope; their drafting and application should take due account of the fundamental right to freedom of opinion and expression. Government of Montenegro should continuously and directly adhere to supporting mechanisms that provide for the protection of journalists from violence and intimidation, such as ensuring continued, transparent and effective work of the Commission for investigating crimes against journalists.

This means that restrictions to freedom of expression must be provided by law, necessary to protect an interest recognised under international law, and proportionate. They should also be easily accessible to the public and capable of being challenged. Legislation covering state secrecy, national security, treason and public order should contain clear safeguards for freedom of expression and so assist in creating a safe and enabling environment for journalists and their work. Such laws should take full and transparent account of commitments related to freedom of expression; they should be subject to independent judicial as well as public scrutiny; and individuals can have genuine recourse to appeal in cases when they believe their rights have been infringed. Only exceptional cases of legal restrictions should be in place, such as, for example, in relation to legal provisions related to freedom of information, open nature of Internet and similar.

Defamation legislations, and in particular practices in implementing it, as seen in Montenegro (but also in many other countries) is often a direct enemy of right to freedom in that it is relatively easy to sue for defamation and relatively difficult to defend from such allegations. Defamation cases can inhibit journalists from speaking freely about important issues, which is yet another proof that they have a "chilling effect" on freedom of expression because it is easy to sue for defamation. High damages awarded to the plaintiffs, as well as the fact that the courts have not yet implemented the practice in

which the public figures have to have a higher threshold of criticism, can lead to self-censorship among journalists, as the media they work for do not have resources to fight legal battles.

It is also strongly recommended to seriously and without delay consider the remaining provisions of the Criminal Code of Montenegro that might interfere with the right to freedom of expression, such as mockery of Montenegrin or foreign states' symbols, mockery of the nation or national minorities or disclosure of personal and family information that may harm one's dignity or at least to make a full review of the cases related to these offences, as they easily can be misused.

In that respect, it is recommended to always use support and cooperation tools any times there are notions pertaining to amendments and/or introduction of new laws related to media, for example, via cooperation with the Council of Europe or other international organisations.

### Call for commitment

In today's society, the expansion of media options makes it hard for any individual to claim they are not informed. If the media is to function properly in Montenegro today, there must be commitments to reforms both on the part of government as well as media professional themselves so that it can be efficient. The case for media reform is based on the fact that media perform essential political, social, economic, and cultural functions in modern democracies. In such societies, media are the principal source of political information and access to public debate, and the key to an informed, participating, self-governing citizenry. Democracy requires a media system that provides people with a wide range of opinion and analysis and debate on important issues, reflects the diversity of citizens, and promotes public accountability of those that are in power and their influences. In short, the media in a democracy must foster diversity and critical thinking, and ensure accountability.

Journalists and media organisations in Montenegro should at all times strive to maintain high professional standards. The government and all other levels of authority should abstain from exercising any form of control over media, especially from attempts to close down media organisations. Montenegro authorities should ensure that the rules governing media freedoms and other matters are based on respect of right to freedom of expression and handled impartially.

Legal guarantees of media freedoms are empty words on paper and declarative phrases unless their implementation is not vigorous, robust and honest. Investigations related to crimes against journalists must be conducted promptly, independently and efficiently; the authorities should take proper care to take due account of any evidence of a link with the journalist's professional activities. No one in Montenegro should be punished or imprisoned for expressing an opinion or disseminating information, unless they are found to have committed another serious offence.

In order to make real progress and remedy serious shortcomings, Montenegro government should acknowledge the dangers faced by journalists because of their work and counteract them with determination. There should be an effective 'early warning and rapid response mechanism' for which they should be responsible in co-operation with journalists and civil society. Such mechanisms should include special protection programmes to provide swift and effective protection for journalists and media professionals who face risks to their safety on account of their work, particularly those who report on sensitive issues such as corruption and organised crime. This is especially recommended in relation to the work of the Commission for investigation of crimes against journalists.

Government of Montenegro has an obligation to protect the physical safety of those who are threatened, and take account of the fact that journalists are among the groups in society which are most

vulnerable to the risk of attacks because of their activities. Criminal investigations in relation to attacks on journalists should be prompt and effective. The system of impunity should be replaced by swift legal procedures leading to bringing to justice those responsible for such acts. In that context, governing bodies of Montenegro should abide by 2011 Guidelines on eradicating impunity issued by the Committee of Ministers of the Council of Europe (CoE 2011) which set out norms and standards for effective, timely and independent investigations.

Especially important in the context of Montenegro, during election and times of social unrest and major events, when journalists have been exposed to heightened risks, laws and regulations must be upheld guaranteeing the freedom of the media to scrutinise all aspects of the process. Governing bodies of Montenegro should be reminded that freedom of expression applies on the Internet as it does in all means of communication, as cutting off access to the Internet for whole populations or segments of the public, or stopping access to social networking media or certain applications is not justifiable.

It is reiterated that decriminalisation of defamation is a step forward, however, the number of defamation cases and the damages decided by the courts, the court practice that still holds special protection for public figures, as well as the remnants of defamation found in article 197 of the Criminal Code, indicate that the defamation legislation, no matter how well drafted, can still be misused in order to impose sort of self-censorship.

The task for Montenegro government of creating safe conditions for free and independent media calls, broadly, for governmental authorities to undertake actions in a consistent way, in line with the European Convention on Human Rights and international norms and standards. Government should practice self-restraint and ensure a minimum of political interference in the media. Further, government should enact proactive safeguards for the workings of free and independent media. Last, but certainly not least, Montenegro government should observe the principles and standards agreed within international organisations it is a member of, including legal standards developed by the ECtHR and international human rights conventions and treaties.

Continuous appropriate training of police officers, prosecutors, lawyers and judges is recommended to provide necessary skills to implement best European practices in this field. Police and governmental authorities should be aware that journalists are especially vulnerable to malicious physical attacks on account of their work. They should be prepared to take steps to provide protection in cases when there is a substantial or imminent fear of assault or harm.

Not in direct relation to the work of journalists, but still highly important in a transitional society such as Montenegro, is the area of work of non-governmental organisations. They can be an excellent source of independent information to the media. Organisations that deal with independent election monitoring, reports on media freedoms etc. are very important and a co-operation between them and the media is very important. Also, such organisations, on national and international level, help to protect the safety and security of journalists by monitoring cases of violence against the media and other serious infringements of freedom of expression, protecting journalists against wrongful prosecutions, and seeking to ensure that crimes against journalists are properly investigated. Their continued efforts and work should be ensured.

Montenegro, as the member of number international organisations, like Council of Europe, OSCE, etc. should abide by agreed principles and commitments in the field of freedom of expression and media freedom. These are based on the conviction that freedom of expression is a fundamental human right and a basic component of a democratic society; and that free, independent and pluralistic media are essential to a free and open society and to accountable systems of government. Montenegro governing

bodies should be committed to ensuring that these principles are implemented and upheld, through effective concerted action and in full co-operation with international organisations it is a member of.

Society which deems itself democratic or strives to achieve democratic principles should maintain the premise that the right to freedom of expression must be guaranteed and may be subject only to narrowly drawn restrictions which are necessary to protect legitimate interests, including reputations. Right to freedom of expression and the free flow of information, including free and open debate regarding matters of public interest, even when this involves criticism of individuals, are of crucial importance in a democratic society, for the personal development, dignity and fulfilment of every individual, as well as for the progress and welfare of society, and the enjoyment of other human rights and fundamental freedoms.

## Policy brief

Most recommendations presented in this chapter depend on many factors, including financial aspect, which is a characteristic of the entire market, not just the media industry. However, some tangible results, as listed above, can be achieved, with the desired support of the Government and relevant international organisations. In that respect, it is of a paramount importance that any financial support from the State is legally, but more importantly in practice, clear from any political and/or any other pressure.

Policy action of the Montenegrin state authorities shall ensure the following:

1. In legislative reforms, Montenegro Government should at all times abide by the principles of guaranteeing freedom of opinion, freedom of expression and media freedoms. In that respect, relevant international organisations should always be consulted.
2. Full reinforcement and support to effective and efficient work of the Commission for investigation of crimes against journalists.
3. Full transparency of the work of the aforementioned Commission.
4. Continued cooperation with the Council of Europe or other relevant international organisations and strong commitment to bilateral or multilateral cooperation in the field of media freedoms, including training projects for the judiciary, the media and other stakeholders.
5. Support for training for Prosecution office of Montenegro in relation to crimes committed via social networks, by ensuring full avoidance of any suppressions of internationally recognised right to freedom of expression, including on-line.
6. Development and implementation of training projects related to technical and legal aspects of safety of journalists for the Prosecution office of Montenegro, including the issues related to forensics, which are deemed lacking in general and thus reflect the cases of violence against journalists.
7. Adequate, accurate and prompt information related to investigations against journalists should be ensured to the public by the Prosecution office of Montenegro, guaranteeing the necessary transparency on the cases against journalists.
8. Full transparency of the work of the Government and public administration bodies, respecting the citizen's right to information.
9. All necessary efforts, including legislative and practical, to ensure transparency of ownership of media outlets and proper implementation of competition rules.
10. Proper implementation of journalists' employment rights.
11. Legal and practical insurance of independence of the judiciary.

12. Defamation cases are properly dealt with and are not used to silence media.

Specifically, recommendations as to the improvement of journalistic professional integrity include, but are not limited to:

13. Continuation of efforts in relation to implementation of Montenegrin Journalists' Code of Ethics by the industry itself preferably with the support of EU, Council of Europe, OSCE Representative on Freedom of the Media and UNESCO.
14. Recognizing economic hardship that media is facing globally, particularly in the countries in transition, there is a need to find a mechanism that would ensure sustainable, long-term financing of self-regulation, even in terms of partial contributions from the budget, which would be perceived as an encouragement and recognition of the importance of self-regulation by the State, in addition to financial participation of the industry itself, even if symbolic, with full insurance of its independence and implementation of projects aimed at reinforcing professional standards of journalism in cooperation with relevant international organisations.



## Ch. VIII: Self-regulation of the media

This chapter reviews the existing self-regulation mechanisms and provides proposals in relation to the remit of the involved institutions and platforms, delineation of their competencies and suggestions regarding enforcement and sustainability.

### Self-regulation in CoE and EU policy documents

For the purpose of this report, self-regulation will be understood, according to the European Union Interinstitutional agreement on better law-making adopted in 2003 by the European Parliament (EP and Council & Commission 2003), the Council and the Commission, as “the possibility for economic operators, the social partners, non-governmental organisations or associations to adopt amongst themselves and for themselves common guidelines (particularly codes of practice or sectoral agreements)”.

This definition appears even more relevant in the framework of this report since, in the audiovisual sector, the Audiovisual Media Services Directive adopted in 2007 (EP and the Council 2007) refers to a relatively similar definition, providing that “self-regulation constitutes a type of voluntary initiative which enables economic operators, social partners, non-governmental organisations or associations to adopt common guidelines amongst themselves and for themselves”.<sup>45</sup>

Self-regulation is regularly promoted by the European Union as well as by the Council of Europe. At the European Union level, the Interinstitutional agreement on better law-making insisted on the importance of the use of alternative methods of regulation: the three institutions recalled “the Community's obligation to legislate only where it is necessary, in accordance with the Protocol on the application of the principles of subsidiarity and proportionality. They recognise the need to use, in suitable cases or where the Treaty does not specifically require, the use of a legal instrument, alternative regulation mechanisms”.

In application of this agreement, the European Commission adopted in 2011 its Communication on a renewed EU strategy 2011-14 for Corporate Social Responsibility (EC 2011). One of the commitments of the strategy was to contribute to improve self- and co-regulation processes, considering the fact that “when such processes are designed in an appropriate way they can earn stakeholder support and be an effective means of ensuring responsible business conduct”. The Commission therefore intended to “launch a process with enterprises and other stakeholders to develop a code of good practice for self- and co-regulation exercises, which should improve the effectiveness of the corporate responsibility process”.

This process led to the adoption in 2013 of the Principles for better self- and co-regulation (EC 2013). This initiative was meant to “help actors involved in self- and co-regulation to do better and get better

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<sup>45</sup> On the contrary, traditional statutory regulation is stipulated by primary and secondary legislation, created, adopted and implemented within the power of a State. This form of governance, also being called top-down or State regulation, is deterministic, static, and takes more time to change and adapt to new media realities and challenges.

Co-regulation is a combination of self-regulation and statutory regulation. Referred to also as a socially shared regulation or regulated self-regulation, it assumes cooperation between industry and regulator(s). In accordance with the legal framework, the regulation is entrusted to the industry but the regulator retains backstop powers to intervene in case the system is not functioning.

recognition, respect, and credibility for their efforts” and to “help to ensure that self- and co-regulation exercises achieve their intended societal, environmental and governance goals more effectively and more efficiently”.

More specifically in the audiovisual sector, the Audiovisual Media Services Directive (EP and the Council 2010) provides in its Article 4.7 that "Member States shall encourage co-regulation and/or self-regulatory regimes at national level in the fields coordinated by this Directive to the extent permitted by their legal systems. These regimes shall be such that they are broadly accepted by the main stakeholders in the Member States concerned and provide for effective enforcement".

It should also be highlighted that the European Commission also encourages candidate countries to make steps in this direction: in its Guidelines for EU support to media freedom and media integrity in enlargement countries (EC 2014a), DG Enlargement invites editors and media owners to adhere “to clearly (and publicly) defined editorial and ethical codes” and considers that “there should be effective mechanisms in place to deal honestly and transparently with readers/viewers complaints”.

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

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

This support to alternative methods of regulation has also been extended to the new media environment. At the Conference of Ministers responsible for Media and New Communication Services in 2009, the resolution Towards a new notion of media was adopted in which the Ministers considered that “as for traditional media, self-regulation should be a key element for ensuring compliance with standards while respecting editorial independence; where necessary, self-regulation can be supported or underpinned by co-regulation. As a form of interference, regulation should be subject to the limits and conditions established by the European Convention on Human Rights and the relevant case law of the ECtHR and meet the tests elaborated by the latter. Media or media-like regulatory or accountability mechanisms, whether self- or co-regulatory or, if necessary, state driven, must be effective, transparent, independent and accountable. The Council of Europe should explore how to improve the functioning of those mechanisms, in particular how to improve the access to those mechanisms for persons or groups who consider that their rights have been breached by media or media-like service providers”.

Finally, at the Conference of Ministers responsible for Media and Information Society in 2013, in a resolution on Preserving the essential role of media in the digital age (CoE - Conference of Ministers responsible for Media and Information Society 2013), one of the conclusions of the Ministers was that they consider it important to further consolidate effective media self-regulation as a prerequisite for media freedom and independence of the media; regulation, including its milder form of co-regulation, or ‘regulated’ self-regulation, should comply with the requirements set out in Article 10 of the ECHR and

the standards that stem from the relevant case law of the ECtHR. The Ministers therefore invited the Council of Europe to “promote truly independent media in Europe based on effective self-regulation”.

### Scattered and overlapping approaches in Montenegro

In Montenegro, there are a number of professional journalistic associations, self-regulatory mechanisms and other types of self-regulation, which may be seen as a result of political tensions that have arguably divided the media landscape.

At present, there are two associations of journalists: the largest and “legacy-carrying” one (the Association of Journalists of Montenegro) and a smaller and more recent one, which was created in 2016 (the Association of Professional Journalists of Montenegro) with, according to the way it presents itself, a more “activist” purpose, especially regarding the legal support to provide to journalists facing professional difficulties or threats and regarding the need to raise professional standards in a profession the reputation of which among the public has degraded in the past years.

There are also two self-regulatory bodies: the Media Council for Self-Regulation and the Self-Regulatory Council for Local Press (which deals only with local print media). Finally, three print media outlets (Dan, Monitor and Vijesti) that hold an important market share, have not joined the aforementioned self-regulatory bodies, but instead have recently established their own internal ombudsperson (one for the daily Dan and a joint one for the daily Vijesti and the weekly Monitor). The main reasons for the development of such a scattered self-regulatory landscape in Montenegro are difficult to assess, since it is a contentious issue within the journalistic community itself. Discussions took place between 2010 and 2012 with the ambition to extend the self-regulatory system to the whole sector as was the case since 2003. However, representatives of self-regulatory bodies, who held very different positions as to reasons of unsuccessful outcome of extension of self-regulation to the entire sector, claim that an agreement could not be reached due to different views on professional standards, while the representatives of the media who have created their own ombudsperson explain the failure by political reasons and especially by the polarisation between the media that support the government and the media critical to the government. This clearly shows that there are strong opposing sides within the journalist community, which supports to a certain extent the arguments that political and social realities of Montenegro have penetrated the profession’s realms.

An additional element of complexity lies in the fact that journalism ethics is not only dealt with by self-regulation but also by statutory regulation. Pursuant to article 56 (4) of the Electronic Media Law, “radio or television broadcasts shall meet the following requirements: 1) events shall be realistically shown, and difference of approaches and opinions shall be adequately present; 2) news shall truly and accurately present facts and events, shall be impartial and professionally accurate; 3) opinions and comments shall be separated and their source or author recognizable; 4) impartiality shall be encouraged, respecting the difference of opinion on political or economic matters.” In application of this provision of the Electronic Media Law, the AEM has adopted a Rulebook on programme standards in electronic media. This rulebook deals with several concepts which are the heart of the activity of any self-regulatory body for journalism ethics.

Considering the widely spread recognition of their quality and completeness, the aforementioned principles for better self- and co-regulation, which were adopted by the European Commission in 2013 with the involvement of a wide range of stakeholders, constitutes a good basis on which to assess the

effectiveness of a self-regulatory system. Such an assessment is divided between issues related to the conception of the system and issues related to its implementation.

In terms of conception, it is obvious that the regulatory environment in Montenegro in terms of compliance of journalists with professional standards has been shaped by isolated regulatory or (sector-based or media-based) self-regulatory initiatives rather than by a comprehensive view on how an effective system could work. The participation of all actors is not secured, and no multi-stakeholders approach (for example by involving civil society organisations) is present. Also, some elements gathered during the field activities lead the expert team to have doubts about the real commitment of several media to the success of the self-regulatory systems: representatives of some significant media seen not even to be aware of the membership of their company to the Media Council for Self-Regulation. Finally, the overlap between self-regulation and statutory regulation has not been avoided, at least in theory (in practice, the AEM restrains from being interventionist regarding the enforcement of its rulebook on programme standards).

### Lack of cooperation, financing and evaluation

Since the formation of the aforementioned bodies in 2012, self-regulation is indeed present but this scattered landscape is probably not understandable for the general public. Therefore, the complaint mechanism is rarely used, thus the powers of self-regulatory bodies and of the ombudspersons are not exercised to their fullest extent. Moreover, these schemes are not monitored and evaluated, and articulation between self-regulation and statutory regulation is not ensured, even via informal discussions. Publicly available data about their functioning is lacking and is often coming from NGO's doing their own monitoring, such as Human Rights Action. Additionally, the Self-Regulatory Council for the Local Press has not received any complaint since its creation in 2012.

A properly functioning self-regulatory system could also work not only by dealing with complaints but by doing its own monitoring and making its own recommendations in order to raise the level of journalistic standards. However, and this is the main shortfall in terms of correct implementation, these bodies lack resources to do so. The members of the Self-Regulatory Council for the Local Press do not pay any membership fee. The Media Council for Self-Regulation set up a monitoring after its creation in 2012 but quickly abandoned it due to a lack of resources: in theory, each of the 19 members shall pay a yearly membership fee of €600, but in practice none of the members pay their contribution.

Despite that, some activities in this field, which pertain to positive developments surrounding media self-regulation and professional standards, raising the levels of trust, professionalisation and collaboration of the industry are to be noted. In particular, in November of 2014, a working group was established, with the support of the Council of Europe and the OSCE Office of the Representative on Freedom of the Media, composed of media professionals (representatives of the Media Council for Self-Regulation, the dailies Vijesti and Dan, and the weekly Monitor). This working group has revised the Code of Ethics for Journalists, harmonizing it with the accepted international practices. The working group met regularly for a year and has prepared a draft Code of Ethics, which was open for public discussion from 6 July to 1 September of 2015.

Around that time, the European Parliament adopted a resolution on the 2015 report on Montenegro, in which it reiterates the importance of media freedom and pluralism, as well as freedom of expression in the broader sense, as one of the core EU values and a cornerstone of any democracy. The Parliament remained concerned about the freedom of the media in Montenegro, encouraged progress to be made

in the field of freedom of expression and decisions to be aligned with ECtHR case law on freedom of expression. The Parliament also highlighted the importance of self-regulation of media outlets, in addition to welcoming the efforts made in the information society and technology sector.

The new Montenegrin Journalists' Code of Ethics (OSCE 2015) was adopted in Vienna on 25 November 2015 at a roundtable discussion organised by the Office of the OSCE Representative on Freedom of the Media. Members of the working group also agreed to hold a follow-up roundtable discussion in Podgorica, and to continue to meet and work further on related issues. Following the agreed activities, on 14 June 2016, another meeting of the working group was held, with the aid of the Council of Europe and the OSCE Representative on Freedom of the Media, to discuss public promotion of the Code amongst journalists and civil society. Additionally, an important step also took place on this occasion in terms of signing the Memorandum of Understanding detailed below.

The Code sets new rules for online commenting, privacy issues, reporting on children, conflict of interest, transparency, plagiarism and reporting from political rallies. According to the Code, online media should define their internal rules regarding the comments of third parties with the aim of avoiding illegal and unethical content but with full respect for freedom of expression. The media must act in good faith even when they make strong criticism, the document reads. Although journalistic freedom covers "possible exaggeration or provocations", slander is not acceptable, nor is the usage of terms that are not justified for the purpose of reporting or that do not serve the public interest.

Offensive speech, the Code explains, refers to gratuitous personal attacks and cannot be protected by appealing to the right to freedom of expression. The new rules also oblige the media to respect the sources of content. This means that reporters may not use someone else's content, ideas or photographs without the crediting the authors and sources.

The adoption of this Code made a significant step forward in much desired confidence building as it is an important tool to safeguard editorial independence, promote professional standards of journalism, and ensure increased credibility as well as solidarity among the media community.

The Code, however, makes no reference on the decision-making process regarding its enforcement, which has been at the core of misunderstandings among the members of the working group. That is why the text of the signed Memorandum of Understanding foresees the coordination of the enforcement of the adopted Code, and in particular, foresees that the Secretariat of the Media Council for Self-Regulation will refer the suggestion to this body's managing board in terms of amending its Statute. In particular, the amendment to the Statute is in relation to inclusion of provisions which stipulate referral of any complaints regarding Dan, Monitor, and Vijesti to their respective Ombudspersons for further adjudication. Further, this Memorandum of Understanding commits Dan, Monitor, and Vijesti to work together with the Media Council for Self-Regulation on joint promotion of the Code, and their participation in joint capacity building activities. However, the implementation of this commitment remains questionable. The Memorandum finally commits all the parties involved to continue co-operation and dialogue aimed at streamlined and effective implementation of the Code.

In July 2017, the Media Council for Self-Regulation adopted several amendments to its Statute. One of the main developments is the decision that in the future and in application of the Memorandum of Understanding, this self-regulatory body will deal with issues exclusively related to their own members.

The recent developments effectively fulfil the terms and conditions of the Memorandum of Understanding and are an important step towards reconciling the media in Montenegro. A firm commitment in joint promotion of the Code, capacity building or other important issues that would lead to effective implementation of agreed principles has since then remained challenging issues, but while some probably inevitable disagreements will continue to arise between the various actors involved in

self-regulation, they have several times demonstrated their willingness to cooperate, including on awareness issues, which is a positive development. While it would be desirable to further widen and strengthen the platform of self-regulation by encompassing all print media outlets and electronic publications, this interim solution is a positive development in terms of clear jurisdiction of the various existing schemes, now avoiding that the Media Council for Self-Regulation deals with complaints related to media outlets which are not among its members.

### Implementation, delineation, promotion

Self-regulation is an important tool to safeguard editorial freedom, promote quality and ensure credibility of media outlets and reputation of journalists. It is also a vital mechanism for reducing the influence of the State on media to a minimum.

Self-regulatory body mediates between unsatisfied media consumers and the media, it supervises the application of codes of ethics, it improves professional standards in the media, it protects public from unprofessional and manipulative journalistic reporting, but it also protects media from political, economic or any other pressures that jeopardize their freedom. Normally, there should be a wide and all-encompassing acceptance on the part of media professionals pertaining to effective functioning of self-regulation.

There is one particularity related to Montenegrin situation which is that the Media Council for Self-Regulation encompasses the electronic media as well. While the self-regulation in electronic media is not unknown, the Montenegrin case stands out as there are indications that their involvement in the self-regulation in this field is directed to weakening the remit of the AEM, and could be seen as an attempt to avoid efficient regulation of electronic media in line with the AVMS Directive that sets out clear rules on professional standards including hate speech, protection of minors etc.

Contrary to statutory regulation, which can impose administrative sanctions against the media outlets it regulates, self-regulation is to function on the principles of industry's self-inspection. It is precisely this lack of sanctions that has been identified as lacking in efficiency and efficacy of self-regulatory bodies. Sometimes perhaps the most difficult thing is to introspect one's actions and objectively judge them against previously agreed self-imposed norms but that is precisely what the core business of media self-regulatory body is. It is a body comprising media professionals, who willingly (even eagerly) discuss among themselves the norms of professional journalism and reporting, discuss the complaints against their own members and reach objective, impartial and non-bias decisions in cases of deviations from the established standards.

The written texts in the form of press codes, or, as is the case of Journalists' Code of Ethics in Montenegro, are best drawn from existing European standards of journalistic practice. Their purpose is to establish the foundation of a system of self-regulation and to appeal to morals of media professionals in accepting to abide by it. This can be tricky. Appeals to morals include appeals to holding or manifesting high principles for proper conduct. The cases in Montenegro and for that matter, elsewhere, show strong derivation from these principles, be it for the reasons of the fact that the past years have witnessed their fair share of crises, be it wars and conflicts, terrorist attacks, natural and man-made disasters. In times of crises, with numerous media outlets on different platforms, it is often the case that biased, untrue and unreliable information, including "propaganda" and hate speech may spread within minutes. It can also do with today's consumption of news media in an unprecedented way. The overall impression of today's state of play is that the role of traditional media and journalism

has been undermined and levels of trust are decreasing. In Montenegro, it most definitely has to do with social and political realities, coupled with the aforementioned global occurrences.

Still and perhaps exactly because of such conditions, remedies are to be found in increased levels of professionalism, dealt with in more detail in the previous Chapter. Here, it is reiterated and strongly recommended that media professionals in Montenegro, aided by the representatives of the international community, continue their activities as referred to earlier. Should such attempts be neglected, all of the efforts put into strengthening the profession will remain just some letters on paper.

The main shortfall in terms of conception of self-regulation is the lack of a single body which would be competent for all print media and electronic publications. This does not allow the public to have a clear awareness about the competent body to complain to in case of alleged violations of journalism ethics, which results in serious doubts among the stakeholders about the efficient functioning of self-regulation: during the field visit, the vast majority of the stakeholders (including journalists themselves) considered that self-regulation in Montenegro is “not functioning”.

While in theory a single body would be welcome and would be supported, also in theory, by most of the players involved in implementing self-regulation, in practice the setup of a single self-regulatory scheme appears as a goal impossible to achieve as long as the polarisation between the “pro-government” and “pro-opposition” media outlets persists. Against such a background, useful efforts could be driven towards awareness about the various self-regulatory schemes, with the support of the parties involved in the functioning of those schemes.

## Policy brief

Effective implementation of the already agreed principles and course of actions should be placed high on the agenda in the forthcoming period. Media outlets and their journalists should, at all times, have in mind that their first obligation is to serve the public interest, that they should be the first to maintain an independence from those they cover before also seeking it from government and everybody else, that they are a platform for public criticism and compromise and that they should maintain the positions of comprehensiveness and proportionality. In this regard, solving the weaknesses of the self-regulatory schemes, especially in terms of their sustainable funding, their effective and expert functioning and their regular and transparent accountability appear as the dominant issues.

Other European States have managed to positively promote effective self-regulation in areas as different as protection of minors (in the Netherlands) and journalism ethics (in Belgium) by providing strong incentives, such as falling under statutory regulation (in the Netherlands) or not benefiting from any kind of direct or indirect economic State support (in Belgium) when not joining the self-regulatory scheme. Both systems also leave backstop powers in the hands of the State in case of failure of self-regulation.

Finally, the overlap of competencies between self-regulation and statutory regulation of audiovisual media, even if rather frequent elsewhere in Europe, should be addressed by policy makers. The view of the expert team is that all the issues currently covered by the Rulebook on program standards in electronic media should be left to self-regulation, except those derived from the AVMS Directive.

## Ch. IX: Media literacy

This chapter is dedicated to the mapping of relevant stakeholders and their powers and responsibilities in relation to promotion of media literacy. It provides a draft roadmap for fostering the critical understanding and ability to interact with media.

### Introducing the subject

In 2007, in its Communication COM(2007) 833 (EC 2007), the European Commission called upon a harmonised European approach to media literacy in the digital environment and asked all countries to set up their national policy frameworks. In addition, the Communication asked all member states to measure the individual level of media literacy of their citizens. Accordingly, the concept of media literacy was introduced in the then adopted Audiovisual Media Services Directive. New candidate countries were also asked to align their national legislations with the new AVMS Directive and to develop an appropriate policy framework for media policy development.

This chapter is an attempt to evaluate the current policy initiatives in Montenegro in terms of media literacy and to identify whether and why these initiatives are hindered or have difficulties in their implementation. The Chapter is structured to provide insight into the following questions:<sup>46</sup> (1) How is the concept of media literacy defined in the EU policy framework? (2) Which policy initiatives are currently taking place in Montenegro within the public sector? (3) What capacity-building resources and which actors exist in the formal education system? (4) What is the role of other actors, outside the public and the educational system in promoting and developing media literacy? (5) What should be recommended as a Draft Roadmap for further development of media literacy in Montenegro?

The definition of media literacy developed in the EC policy documents does not refer only to the content disseminated through the traditional media (press, radio and TV), but also takes into consideration the content disseminated exclusively through online media (social networks, video sharing platforms). Thus, the concept of 'media' is here understood in its broadest sense, encompassing all types of content disseminated via all kind of media.

### EU policies and conceptualisations

Although there is no single, agreed definition of media literacy in the literature, there is a consensus around its core components. A very broad definition of media literacy is that it is "an individual's capacity to interpret autonomously and critically the flow, substance, value and consequence of media in all its forms" (Celot and Tornero 2009). However, media literacy is today viewed also as a key pre-requisite for the active participation of citizens in today's information society. Therefore, while describing broadly this concept, the European Commission incorporates also the ability of an individual

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<sup>46</sup> The structure of this chapter follows partly the Guidelines for a comparative analysis of media and information education policies in Europe, presented in the publication Public policies in media and information literacy in Europe : cross-country comparisons (Frau-Meigs et al. 2017).



not only to (1) access, (2) to have critical understanding of and (3) to interact with media, but also to (3) play active role in the democratic processes.<sup>47</sup>

A more developed definition of the European Commission, accepted by the members of its Media Literacy Expert Group (MLEG), defines media literacy as:

*„...the ability to access, analyse and evaluate the power of images, sounds and messages which we are now being confronted with on a daily basis and are an important part of our contemporary culture, as well as to communicate competently in media available on a personal basis. Media literacy relates to all media, including television and film, radio and recorded music, print media, the Internet and other new digital communication technologies.*

*The aim of media literacy is to increase awareness of the many forms of media messages encountered in our everyday lives. It should help citizens recognise how the media filter their perceptions and beliefs, shape popular culture and influence personal choices. It should empower them with critical thinking and creative problem-solving skills to make them judicious consumers and producers of information. Media education is part of the basic entitlement of every citizen, in every country in the world, to exercise freedom of expression and the right to information and it is instrumental in building and sustaining democracy.” (Celot and Tornero 2009).*

The European Charter of Media Literacy (EP and the Council 2010) contains a definition which goes beyond the four components and adds other aspects such as the behaviour of audience to avoid offensive or harmful content as well as the usage of media to practice citizens' rights:

1. use media technologies effectively to access, store, retrieve and share content to meet their individual and community needs and interests;
2. gain access to and make informed choices about a wide range of media forms and content from different cultural and institutional sources;
3. understand how and why media content is produced;
4. analyse critically the techniques, languages and conventions used by the media and the messages they convey;
5. use media creatively to express and communicate ideas, information and opinions;
6. identify and avoid or challenge media content and services that may be unsolicited, offensive or harmful; and
7. make effective use of media in the exercise of their democratic rights and civil responsibilities.

The European Commission has given particular impetus to media literacy since its inclusion in the Audiovisual Media Services Directive (EP and the Council 2010). Recital (47) of the Directive stresses the importance of media literacy especially with regard to the content of audiovisual media services, having into consideration their potential to have harmful effects on development of minors or on particular groups of citizens.

*“Media literacy’ refers to skills, knowledge and understanding that allow consumers to use media effectively and safely. Media-literate people are able to exercise informed choices, understand the nature of content and services and take advantage of the full range of opportunities offered by new communications technologies. They are better able to protect themselves and their families from harmful or offensive material. Therefore, the development of media literacy in all sections of society should be promoted and its progress followed closely.”*

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<sup>47</sup> See more details at: <https://ec.europa.eu/digital-single-market/media-literacy>

As a result of such policy development at EU level, media literacy is increasingly becoming one of the central obligations of media regulators in many national legal frameworks.

## Public sector policies and initiatives

In terms of the policy framework, it seems that Montenegro belongs to the group of European countries which are still at the first stage of implementation of media literacy through legal framework. There are no laws and no institutions established to promote media literacy, to coordinate the activities regarding media literacy or to report on the levels of media literacy among citizens. Also, there is no single or widely accepted definition of media literacy, although this concept is primarily associated with media education for development of “critical and creative knowledge and skills necessary for understanding of complex ideas, identification of misinformation and manipulation and creating opinion based on impartial and reliable information in the media.” (Regional conference of the regulatory authorities for media Skopje 2017).

Although there is no legal approach towards the framing of media literacy, still there have been several policy initiatives and strategic documents which have recognised the promotion of media and information literacy in future.

One initiative in that direction was the Project “Information and Media Literacy – Strategy and Education”, implemented by the National Library of Montenegro “Đurđe Crnojević” (The National Library of Montenegro "Đurđe Crnojević" 2015), with the support of the UNESCO Participation Program. The Project was implemented in cooperation with the Ministry of Culture, Ministry for Information Society and Telecommunications, Bureau for Education Services and NGO LIBRARY Plus. The main goal of the project was to initiate interdepartmental cooperation in the fields of culture, education and information society in order to start the process of developing a national strategy for media and information literacy which will be promoted through thematic workshops in schools and public libraries. A working group composed of representatives from the Ministry of Culture, Ministry of Education, Bureau for Education Services, Ministry for Information Society and Telecommunications and the National Library worked on a strategic document titled “Starting grounds for a Strategy for Dissemination of Information and Media Literacy through the Network of Libraries” (Đukanović et al. 2015). Also, workshops were organised to train educators who would further disseminate knowledge on media and information literacy. The National Library also translated and published UNESCO publications: MIL – Guidelines for Policy and Strategy (Grizzle et al. 2013), MIL Curriculum for Teachers (Wilson et al. 2011) and Introduction into Open Access (Kanjilal and Das 2015).

In February 2017, the AEM adopted a Programme for Media Policy Development in Montenegro in the next three years (AEM 2017b). The Programme contains general commitment of the regulator to work continuously on media literacy, with a particular focus on protection of minors from harmful content in the audiovisual media services. For that purpose, the regulator puts emphasis also on the wider societal context and plans to establish regular communication with all other relevant stakeholders in the society: state institutions, NGOs, educational institutions, associations of parents, international organisations, other regulatory authorities from the region and Europe etc. Four types of activities are planned to be undertaken: research studies on the individual levels of media literacy among different audience segments, production and dissemination of promotional video clips and other materials, organisation of various events, online promotions. In 2017 the Agency planned to conduct promotional activities for media literacy among the key target groups. So far, the Agency has not commissioned yet research studies on the individual levels of media literacy among children and adults.

Media and information literacy are explicitly recognised in the Youth Strategy 2017-2021 (Directorate for Youth and Sports and the Ministry of Education of Montenegro 2016) developed in an inclusive process which was coordinated by the Directorate for Youth and Sports and the Ministry of Education of Montenegro. Media and information literacies are mentioned as key competencies and preconditions for achieving the main vision of this strategic document: "...Montenegro to be a state in which young people are autonomous, involved in decision-making and implementation of public policies and have the possibility to work and be financially independent." (Directorate for Youth and Sports and the Ministry of Education of Montenegro 2016). The Strategy defines six key priorities (outcomes) regarding Montenegrin youth, among which of crucial importance for gaining competencies for media and information literacy is the priority B. – Young people have access to quality education. Media and Information Literacy are recognised as competencies that are part of the so-called 'functional literacy' which is defined as "...the ability of students to apply knowledge and skills, to effectively analyse, reason and communicate while solving problems in different situations." Media and Information Literacy are implicitly recognised in this document in the priority C. - Young people are active citizens, involved, motivated, proactive and participate in decision-making and community development processes, in creation of policies and their implementation.

## The educational system

Media literacy, as a separate elective course, was introduced for the first time in the educational system of Montenegro in 2006, in the second and third grade of the secondary schools (Bogojević 2009). The course was first pilot tested in the general high schools in Budva and Kotor, and then in April 2008, with the decision of the General Education Council introduced in the high schools across Montenegro. Teachers of language and literature, sociology, philosophy and psychology were recommended to teach the subject, after additional professional training. More than 40 teachers completed a two-day intensive training.

The curriculum foresees two classes weekly for the students who decide to take the course. The curriculum is divided into seven topics: media access to the text, media text as a construct, media language, perception, value and purpose of media texts, media ethics and politics. As the main teaching resource for the subject, the students could use the translation of the Medialitkit (Center for Media Literacy n.d.), published by a famous US-based publisher of educational materials.

Since its formal introduction in the general secondary schools, the interests of the students for taking the subject of Media Literacy constantly decreased: from 257 students in 2011/2012 to 170 students in 2014/2015 (Ružić 2016). And, according to the representatives of the Bureau for Education Services,<sup>48</sup> in the study year 2016/2017 only around 150 students have elected this course, while the total number of students in the secondary schools is around 10.000. National scholars argue that one of the reasons for the low students' interest about Media Literacy is the very fact that the subject is elective (Ružić 2016). In general, their assessment is that, although the initiative was very promising, it eventually failed to achieve the initially set goals – to improve the media literacy levels among the students in secondary education due to several reasons: the fact that the course is elective, the lack of quality trained teaching staff, lack of funding resources and equipment as well as the fact that vocational schools were not sufficiently interested to introduce this subject (Ružić 2016).

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<sup>48</sup> As explained to the expert team by Radoje Novovic, representative of the Bureau for Education Services, Podgorica, September 12<sup>th</sup> 2017.

Several topics related to media literacy are also incorporated in the curricula of the obligatory courses Montenegrin Language and Literature both in the primary and in the secondary education. These topics are introduced for the first time in 2004 and then revised in 2011 and in 2017. The curricula for the III and IV grade in the secondary education include also classes focused on analysis and deconstruction of media articles, texts and advertising messages. The Bureau for Education Services plans improve the content related to media literacy within the inter-subject areas.

Topics that are also related to the concept of media literacy are also thought within the subject Civic Education which is also elective subject in the general secondary schools (in all four grades) and also in the vocational secondary schools. This subject was introduced as a result of the cooperation with the NGO Pedagogic Center of Montenegro. It seems that many topics which are included in the curriculum can be aligned with the content of the curriculum of the subject Media Literacy (for example: usage of media to participate in the democratic society, human rights, biases and stereotypes, gender equality etc.). The Bureau for Education Services has also implemented extra-curricular activities aimed at raising the critical awareness among students about some types of media content (especially advertising) which may encourage the usage of drugs and psychoactive substances. Workshops were organised in the schools and teachers and pedagogy specialists were trained to work with students on these issues<sup>49</sup>.

### Training teachers

There are various programmes accredited by the Bureau for Education Services for additional training of the teachers in the primary and secondary education that teach subjects which contain topics related to various dimensions of media and information literacy. Some of the courses listed in the Catalogue for 2016/2017 (Government of Montenegro - Bureau for Education Services 2016) are the following ones:

- Media Literacy (elective subject Media Literacy)
- The Path of the Creator – How to create a text (Mother Language and Literature)
- PISA Project – Reading Literacy (Mother Language and Literature)
- Competencies for the 21st Century: Creative and Critical Thinking (English language)
- Teaching English through Digital Stories and Visual Presentations (English language)
- Hybrid learning and communication models in the online environment (Technology)
- Children and Internet - Advantages and Disadvantages (Technology)
- Blog, Twitter and Facebook in the Teaching (Technology)
- Edmodo – educational social network as a platform for learning (Technology)
- Internet and teaching: Yes or No (Technology)
- Implementation of ICT in Teaching Sociology (Technology)
- Learning by using multimedia tools (Technology)
- Safe communication with the media in a situation of crisis (Civic Education)
- Education for Human Rights (Inter-subject topic)

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<sup>49</sup> As explained to the expert team by Radoje Novovic, representative of the Bureau for Education Services, Podgorica, September 12<sup>th</sup> 2017.

- Usage of media to participate in the democratic society (Civic Education)
- Gender Inequality (Civic Education)
- Education for social justice: against bias and stereotypes (Civic Education)
- Development of Critical Thinking among Children (pre-school and early-school)
- Development of Critical Thinking (Reading and Writing for Critical Thinking)
- Information and Media Literacy – Key for Lifelong Learning (primary, secondary)

It is clear from these examples that the topics related to development of media and literacy skills and competencies are infused in the curricula of different subjects in the pre-school, primary and secondary education. Training courses are also developed and available for various teaching staff. However, a consistent analysis is missing on the level of achievement of these specific competencies across various subjects.

The Ministry of Education has also initiated development of a particular website titled “Skolski portal” (School Portal, [www.skolskiportal.edu.me](http://www.skolskiportal.edu.me)) intended primarily for teachers as a source of information and teaching materials. The Document Centre of the website contains a lot of useful links, handbooks and teaching materials for various subjects that are though in the primary and secondary schools. There I also a separate forum on the portal aimed for ICT coordinators of the schools, as well as a specific part designated for children safety on Internet.

### Access to information technologies

Access to information technologies is considered as a precondition for developing media literacy and therefore it is embedded in its definition as one of its basic components - the ability to *access* media content disseminated through various technologies. This is actually one of the points where the concepts of ‘media’ and ‘information’ literacy overlap.

Montenegro has achieved significant results in the field of E-education, which were already defined in the Strategy for information Society Development until 2016. All of the main units of the educational institutions, up to the university level, are provided with access to Internet connection (ADSL – 4Mbps or satellite internet – 8Mbps) and with minimum computer equipment (Government of Montenegro - Ministry for Information Society and Telecommunications 2016). The computer – student proportion in primary schools is 1:16, and 1:14 in the secondary schools. All the schools are equipped with a Microsoft software which enables blocking and filtering content inappropriate for students.

Around 20% of the teachers and the administrative staff have been encompassed with training courses designed for obtaining basic IT skills. In addition, 150 teachers (1.5 %) attended training in IT security. However, there is a lack digital materials for teaching and learning (didactic software, e-books, e-learning, etc.) (Government of Montenegro - Ministry for Information Society and Telecommunications 2016). The Ministry of Information Society and Telecommunications and Ministry of Education, in cooperation with the private company Telenor, implemented a three-year project aimed at training selected teams of students in the schools for Internet safety. These students later trained their classmates in digital safety on Internet.

The Strategy for development of the information society in Montenegro until 2020 detects apparent deficiency of the primary and secondary education for developing digital competencies among the students. This is a consequence of several factors: the late introduction of the information technology

subjects, the content of the respective curricula and the lack of educated staff for teaching IT-related courses.

### Media literacy as a key competency

In 2017, the Ministry of Education, Bureau for Education Services and UNICEF published a comprehensive study titled “Education for Life: Key 21st Century Competencies in Curricula in Montenegro” (Pešikan and Lalović 2017). The main goal of the study was to analyse the presence of Key 21st Century Competencies in primary, general secondary and pre-service teacher training curricula in Montenegro. The cross-sectional issues were analysed (KC21 in the curricula at each level of education covered), their vertical alignment and their joint planned actions to prepare children and young people for further education and work. Information literacy is explicitly stated in the list of competencies and it is separately listed from ‘ICT literacy’, while media literacy is implicitly recognised in the following key competences: ‘critical thinking’, ‘creativity & innovation’ and socio-emotional skills (social awareness and citizenship & social responsibility). The findings of the study indicate a serious gap in key educational documents (laws, policy papers), especially in terms of “essential competencies, such as: information literacy, ICT literacy, problem solving, responsible decision making, collaboration, creativity and responsibility for one’s health and the health of others, and developing healthy lifestyles.” (Pešikan and Lalović 2017). Among the most frequently occurring competencies are those that are implicitly related to media literacy: social awareness, social skills, learning to learn and critical thinking.

Thus, the Ministry of Education and Bureau for Education Services have plans to include competencies related to media and information literacy within the ‘key competencies for lifelong learning’ which are currently eight. The initiative at national level will be aligned with the proposal of the European Commission to update the 2006 Recommendation on Key Competences for Lifelong Learning (EC n.d.) and to add new competencies, such as literacy, citizenship, entrepreneurship and digital.

### NGOs’ role and activities

There are only few non-governmental organisations which have contributed to certain extent to development of media literacy in Montenegro.

The Pedagogical Centre of Montenegro is founded in 2000. One of its main goals is to work on the advancement of the educational system in Montenegro through various activities: organisation of vocational trainings for the teaching staff, publication of textbooks and other teaching materials, organisation of conferences, workshops, and other expert seminars. Some of their previous activities relevant for media literacy development were:

- Reading and Writing for Critical Thinking – 4-day training seminars for teachers from primary and secondary education in Montenegro (around 20 teachers were trained) (Pedagogical Center of Montenegro 2017);
- Peace Education Programme – workshops organised in cooperation with the Centre for Civic Education, the Bureau for Education Services also accredited the programme for teachers in the formal education system;
- Development of the Curriculum for the elective subject Civic Education for the secondary schools in Montenegro – in cooperation with the Bureau for Education Services.

The Centre for Civic Education was founded in 2002. Its main objectives correspond to development of media literacy competencies, especially in terms of: enhancement of citizens' education in the field of democracy and human rights, encouragement of citizens to actively participate in decision-making processes, informing and empowering young people for their personal development and social activism, and encouragement of citizens' initiatives. Some of their activities in the field of democracy and human rights are aimed also at increasing the level of awareness of the public about the professional standards in media reporting and their political, financial and editorial independence:

- Eroding Freedoms: Media and Soft-Censorship in Montenegro – focused on how the allocation of public funding in the media affects their editorial independence;
- The Pre-Election Lens of the Public Broadcaster – monitoring of the news programmes of the public broadcaster during the campaign for parliamentary elections in Montenegro;
- Equal Chances for All Media - examining the relationship between the state institutions and the media in Montenegro as reflected in the financial allocations of public funds to the media on various grounds.

Media Institute of Montenegro was founded in 2003. Its main mission is to increase the level of professional standards in journalism but also to conduct research studies related quality and standards in media reporting. Its research findings and publications are aimed at increasing the awareness about the various aspects of quality reporting and professional standards in the news and other content published either by traditional or online media:

- Online Hate Speech – focused on legislation and self-regulation of hate speech in the online media, as well as on the dissemination of different forms of hate speech;
- Media Ownership and its Impact on Media Independence and Pluralism – research study focused on various aspects of the relationship between ownership and editorial independence of the media in Montenegro.

#### Further development of MIL in Montenegro

So far, a coherent policy framework for development of media and information literacy (MIL) is lacking in Montenegro. The legal documents do not mention any reference related to media literacy and there is no authorised body to coordinate and supervise media literacy issues.

National policy makers have so far implemented different policy interventions and took several isolated and uncoordinated regulatory actions to tackle some of the challenges and opportunities of media and information literacy, such as: the “Programme for development of media literacy” of the AEM and the document “Starting grounds for a Strategy for Dissemination of Information and Media Literacy through the Network of Libraries” developed by an expert group composed of representatives from the National Library of Montenegro, Ministry of culture, Ministry of information society and telecommunications and Bureau for Educational Services of Montenegro. However, although very relevant, these initiatives were fragmented and insufficiently coordinated among each other. The studies and other activities undertaken so far in the field of education, demonstrate the awareness and strong commitment among education policy-makers to advance the educational system of Montenegro, especially in terms of incorporating the key competencies related to media and information literacy in the formal curricula at all levels. However, there is still a scarcity of teachers training, lack of media graduates teaching the subject and lack of funding resources and equipment in the schools. Additional problem is the status of the subject Media Literacy, which is now electoral subject in the general secondary education. All this



led to the low motivation of students to take the subject and to the apparent failure of promotion of the media literacy skills and competencies among students.

Having in mind the complex and converged technological development of communications, information technologies and audiovisual sector, a broader and coherent approach to policy development should be adopted to include both media and information literacy perspectives. For that purpose, media and information literacy should be understood as a 'governance process' that involves all stakeholders in the society and that is "collectively coordinated and implemented to shape its evolution" (Frau-Meigs et al. 2017).

## Policy brief

It is necessary to include the concept of media literacy in the existing legal framework. Most of the European countries which are at a more advanced stage of implementation of media and information literacy have included these concepts in their national communication or media acts. For example, it would be advisable to amend the Law on Electronic Media of Montenegro, in order to include:

- a clear definition of media literacy aligned with the EU policy framework;
- to nominate the respective body which would coordinate and supervise the media literacy issues (possibly the regulator AEM, as it is the case in UK, Ireland, Macedonia or other countries);
- to authorize the nominated body to develop a strategic document on media and information literacy in partnership with other respective state institutions and in cooperation with NGOs, academia and other relevant stakeholders;
- to authorize the nominated body to commission regular research (preferably at annual level) on the individual levels of media literacy among children and adults;
- to envisage a funding scheme for all these activities.

The media and information literacy initiatives should be aligned and continued in a coordinated manner. It is also necessary to include all relevant stakeholders, including the academia and the NGO sector. This will lead towards an exchange of knowledge and experiences in different areas, greater efficiency in the implementation of the existing activities and new ideas and initiatives for further development of media and information literacy. For that purpose, the following actions are recommended:

- the Government of Montenegro should strongly support the existing initiatives and projects and should secure a long-term funding scheme for research, promotion and other activities for advancing media and information literacy;
- the AEM should be given the leading role in coordinating and supervising the media and information literacy issues, in strong partnership with the Ministry of education, Bureau for Education Services, Ministry of Culture and Ministry of Information Society and Telecommunications;
- a coordinating multi-stakeholder body, established preferably at the AEM, should be composed of representatives from public institutions and all relevant stakeholders, such as academic institutions, NGOs, associations for protection of children, consumers' associations, providers of AVM services, relevant private companies etc.



Recommendations regarding incorporation of media literacy in the formal education system of Montenegro require complex analyses and efforts. Nevertheless, following the experiences of advanced countries, some actions might be recommended even at this stage:

- to continue aligning its educational policy with the European Commission initiative to broaden the list of the key competencies for lifelong learning, that is to include 'media literacy' as a key competence within the national policy framework;
- in cooperation with the AEM, to support the initiative for commissioning a first baseline research study on the individual levels of media literacy among children and adults and to align the education policy in terms of media literacy competencies with the results of this study;
- following the experiences of more advanced educational systems in other countries, to initiate a comprehensive analysis which would answer the question how to develop media literacy competencies in the primary and secondary education system in a consistent manner across various obligatory and elective subjects at all education levels; it is advisable to examine the possibility to include Media Literacy as obligatory subject for both general and vocational secondary schools;
- to encourage designing appropriate and more developed curricula for training the teachers who would teach the specific subject in media Literacy at both undergraduate and postgraduate levels (preferably at the existing HE institutions that offer communication, journalism or media studies);
- to continue developing specific types of additional vocational training for the teachers who teach other subjects that contain topics related to media and information literacy;
- to allocate appropriate funding for the training and for developing all types of necessary resources.

## Ch. X: Copyright and intellectual property rights

This chapter assesses the level of harmonisation of the copyright and neighbouring rights law with the CoE and EU standards and identifies the legal gaps and overlaps, preventing effective implementation of the copyright law in media.

### The specifics of the legal framework

The reform of copyright law sector in Montenegro has started in 2011, by adoption of the Law on Copyright and Related Rights, which was amended in 2016 (Parliament of Montenegro 2016c). A certain level of harmonisation of copyright law with Council of Europe and European Union standards exists, but further alignments are needed, in particular in audiovisual policy area. Also, the better understanding of competencies of all stakeholders should be improved, especially on the enforcement of existing legal framework. Finally, the cooperation between all institutions involved in creating copyright and intellectual rights policy or its implementation should be established in Montenegro.

The legal framework on copyright and related rights with respect to media and audiovisual services is fragmented through several Laws which, in this area, result in non-adequate enforcement mechanisms. The competencies of each institution should be clearly defined. State institutions should establish the cooperation mechanisms, among themselves, but also with the copyright holders, in line with EU Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society.

The Law on Electronic Media (Parliament of Montenegro 2016c) obliges the so-called on-demand AVMS providers<sup>50</sup> to respect copyright and related rights and imposes a duty on the AEM to keep the record of prior written approvals of the right holders. According to the Article 83 the “on-demand AVMS providers” have the following obligations: to obtain a prior written approval of the rights holder and submit it to the AEM; to distribute radio and/or television programme in compliance with the approval obtained; to perform distribution of encoded satellite programmes under prescribed conditions, etc. However, the Law on Electronic Media does not stipulate any other AEM’s competencies over the copyright and related rights, apart from keeping the record of the written approval of rights holders. The Law does not prescribe any penalty provision that the Agency could impose on an “on-demand AVMS provider,” in case of non-compliance with copyright and related rights.

The Copyright Law, adopted in 2011 and amended in 2016 (Parliament of Montenegro 2016a) on the other hand, envisages a number of responsibilities of the AEM in copyright protection. The Article 170, on issuance and revocation of authorisation to a broadcasting organisation, introduces the obligations for the AEM and broadcasters.

There are several issues to address regarding this Article. First, the terminology should be harmonised with the Law on Electronic Media. Second, the Article 17, Paragraphs 2-4, introduces a new remit of the Agency, in the form of sanctions that the AEM should enforce over broadcasting organisations. Those are: warning, financial fines, temporary and permanent revocation of licence.

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<sup>50</sup> The on-demand AVMS providers as understood by the Montenegrin legislation represent the providers of pay-TV services, such as cable or satellite TV, as well as the IPTV providers, and therefore do not mean the non-linear audiovisual media services as understood by the AVMSD (e.g. VOD, catch-up TV).

Financial fines were divested from the Agency in 2010 with the adoption of the Law on Electronic Media (replacing the Broadcasting Law of 2002),<sup>51</sup> which means that the Agency cannot enforce such a sanction. The revocation of license, either for 30 days or permanently, is ineffective and unpopular measure that requires certain conditions to be simultaneously fulfilled in order to be justifiable: it has to be prescribed by the law, with the legitimate aim and necessary in a democratic society. That is the reason why the Article 170 of the Copyright Law (harmonised with the new AVMS and copyright and neighbouring rights *acquis communautaire*) should be part of the Law on Electronic Media. The authors would suggest to Montenegrin authorities that the sanctions over non-compliance with the copyright related to AVM services should be a part of the AEM's competencies within the Law on Electronic Media, while the Law on Copyright should only refer to it.

The Criminal Code (Parliament of Montenegro 2017a), adopted in 2003 and amended several times since then, regulates Criminal offences against Intellectual property in the Chapter XXI, Articles 233-238. The Council of Europe Convention on Cybercrime, CETS No. 185 regulates Offences related to infringements of copyright and related rights in its Chapter Two, Section 1, Title 4 in the following manner: The countries are obliged to “adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the infringement of copyright”, in accordance with the domestic legislation and the obligations undertaken “under the Paris Act of 24 July 1971 revising the Bern Convention for the Protection of Literary and Artistic Works, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Copyright Treaty, with the exception of any moral rights conferred by such conventions, where such acts are committed wilfully, on a commercial scale and by means of a computer system.” The Council of Europe Member States are also obliged to “adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the infringement of related rights, as defined under the law of that Party, pursuant to the obligations it has undertaken under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention), the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Performances and Phonograms Treaty, with the exception of any moral rights conferred by such conventions, where such acts are committed wilfully, on a commercial scale and by means of a computer system”.

Since the countries have a choice to reserve the right not to impose criminal liability in limited circumstances, provided that other effective remedies are available and that such reservation does not derogate from their international obligations, the authors suggest the institutions in charge of copyright and AVMS to assess the extent and prevalence of the unlawful activities related to AVMS and decide whether certain unlawful activities should fall under administrative, civil or criminal charges, in line with the CoE and EU legislative framework, summarised below (section International standards of this chapter).

## Division of powers and cooperation

The institutional framework for copyright in audiovisual sector is very diverse in Montenegro. There are several players in charge of it, but their remit is either not clearly defined by the law, like in the case of the jurisdiction over the AVM service providers, or not clearly divided between themselves, regarding who is in charge of which activity related to respect of copyright of AVM service providers.

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<sup>51</sup> In accordance with the Article 47, paragraph 1, Article 49 and Articles 117-120 of the Broadcasting Law (Parliament of the Republic of Montenegro 2002), the Agency had the possibility to impose the fine..

The Ministry of Interior and the State Prosecution Office in Montenegro are in charge of enforcing parts of the Criminal Code related to breaches of copyright and intellectual property rights in cases of criminal offense. Another relation is the one between the AEM and the Ministry of Culture, where the ministry is in charge of initiating and drafting the media-related laws, while the AEM is responsible for their enforcement in electronic media. Besides, the Intellectual Property Office and Directorate for Justice System at the Ministry of Justice are in charge of enforcing the Law on Copyright and Neighbouring Rights, which in some parts (as explained earlier) deals with the copyright related issues in audiovisual media sector and introduces obligations for the AEM that are conflicting with the Law on Electronic Media. Despite these ambiguities, the competent institutions – the Ministry of Culture, the AEM, the Intellectual Property Office and Directorate for Justice System, have not yet established the institutional cooperation on delineation of competencies and implementation of the legal framework on copyright and related rights.

Recommended actions:

- A possible solution is establishment of a working group, consisting of media and copyright experts, to address the problem between Law on Electronic Media and Copyright Law related to competencies of AEM and discuss the problems of copyright in media. The following institutions seem eligible to delegate their experts to this working group: the Ministry of Culture, AEM, the Intellectual Property Office, the Directorate for Justice System, Ministry of Justice; Ministry of Interior and State Prosecution Office Montenegro, as they all have major or minor competencies over the audiovisual and copyright sector. Other institution(s) that wish to join, even on ad-hoc basis, should be allowed to. In addition, the cable, satellite and Internet operators distributing audiovisual media services, public communications networks and audiovisual media service providers, together with RTCG representatives, could also have an interest to participate in the work of the group.
- It is recommended that the competent institutions firstly discuss the division of competencies among themselves, together with the enforcement powers in the audiovisual media sector.
- The Council of Europe Recommendation No. R (91) 14 on the legal protection of encrypted television services “recommends to the Governments of the Member States to take all necessary steps with a view to implementing” certain measures in order to fight against illicit access to encrypted television services. Here as well, the Member States decide themselves whether penal, administrative or civil law sanction should be enforced to an unlawful activity.<sup>52</sup> The abovementioned working group could be competent to propose the standpoint.
- Finally, the Council of Europe Recommendation No. R (88) 2 on measures to combat piracy in the field of copyright and neighbouring rights introduces the cooperation between authorities, as an important way to protect copyright and neighbouring rights. It, in particular, states the cooperation between the police and customs authorities, between the rights owners with police and customs authorities and finally between the Council of Europe and European Union Member States, thus the cooperation among these institutions should be established to deal with piracy.

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<sup>52</sup> Principle I and Principle II of the Council of Europe Recommendation (CoE 1991)

## International standards

The non-exclusive list of documents that should be taken into consideration in the process of further harmonisation with Council of Europe and European Union legal standards is the following:

- The Recommendation No. R (88) 2 on measures to combat piracy in the field of copyright and neighbouring rights (Committee of Ministers of the CoE 1989)
- The Recommendation No. R (91) 14 on the legal protection of encrypted television services (CoE 1991)
- The Recommendation No. R (94) 3 on the promotion of education and awareness in the area of copyright and neighbouring rights concerning creativity (Committee of Ministers of the CoE 1994)
- The Recommendation No. R (95) 1 on measures against sound and audiovisual piracy (Committee of Ministers of the CoE 1995)
- The Recommendation Rec (2001) 7 on measures to protect copyright and neighbouring rights and combat piracy, especially in the digital environment (Committee of Ministers of the CoE 2001)
- Council of Europe Convention on Cybercrime, CETS No. 185 (CoE 2001)
- The Declaration CM(2005)56 of the Committee of Ministers on human rights and the rule of law in the Information Society from 13 May 2005 (Committee of Ministers of the CoE 2005)
- The Council Directive 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (also known as "SatCab Directive") (CoE 1993a)
- Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (also known as "InfoSoc Directive") (EP and the Council 2001a)
- Directive 2006/115/EC on rental right and lending right and on certain rights related to copyright in the field of intellectual property ("Rental and Lending Directive"), 12 December 2006 (EP and the Council 2006)
- Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art (EP and the Council 2001b)
- Directive 2009/24/EC on the legal protection of computer programs ("Software Directive"), 23 April 2009 (EP and the Council 2009)
- Directive on the enforcement of intellectual property right ("IPRED"), 29 April 2004 (EP and the Council 2004)
- Directive on the legal protection of databases ("Database Directive"), 11 March 1996 (EP and the Council 1996)
- The Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011 amending Directive 2006/116/EC on the term of protection of copyright and certain related rights (EP and the Council 2011)

- The Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works (EP and the Council 2012)
- The Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market (CRM Directive) (EP and the Council 2014)
- The Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market (EP and the Council 2017b)
- Directive on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled (Directive implementing the Marrakech Treaty in the EU), 13 September 2017 (EP and the Council 2017a)
- Regulation on the cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled (Regulation implementing the Marrakech Treaty in the EU), 13 September 2017 (EP and the Council 2017c)
- Regulation on cross-border portability of online content services in the internal market (Portability Regulation), 14 June 2017 (EP and the Council 2017b)

## Policy brief

The analysis of the legislative framework shows there is no clear division of competencies related to copyright and related rights in Montenegro. Therefore, it is of utmost importance that, during the process of reviewing of the abovementioned laws, all institutions are involved. The overlapping of laws and competencies should be avoided. The understanding of each institution's jurisdiction to enforce certain law(s) should be fully achieved. All the institutions involved should strive to get the necessary training that would help them better understand various copyright and intellectual property issues related to audiovisual media services.

One of the most important topics of the legislation reform should be empowerment of the AEM for ensuring compliance with the copyright and related rights in the AVMS sector. Effective enforcement mechanisms, preferably a staggered system of fines, should be introduced. The sanctions over non-compliance with the copyright related to AVM services should be a part of the AEM's competencies granted by the Law on Electronic Media, while the Law on Copyright should only refer to it.

The process of harmonisation of the Law on Electronic Media and Copyright Law related to competencies of AEM should be inclusive. All the relevant stakeholders in Montenegro, such as cable, satellite and Internet operators distributing audiovisual media services, public communications networks and audiovisual media service providers, together with RTCG representatives, should be consulted.

As for the Montenegrin public service broadcaster RTCG, which experiences several copyright difficulties, the priority should be given to the following issues:

- The exchange of the documentary programme with neighbouring countries.

- The use of public service broadcaster's archives from countries of former Yugoslavia.
- Defining of the copyright holder of the produced programme: RTCG or employees. This issue could be solved by creation of a new employment contract.

As at the moment there is no professional association of photographers in Montenegro, and Association of journalists does not seem to deal with copyright issues, it is recommended that media professionals establish platforms promoting and advocating protection of their copyright rights.

## Recommendations

This report is being prepared at the time of rather unambiguous manifestations of further deterioration of standards applied to the most important institutions of the Montenegrin media sector, characterised by a small, but extremely divided media market, excessive and not always transparent involvement of the State, and toothless regulation and self-regulation. The recent political interference in the governance of the regulator and the national public service media company cast doubt on the country's credibility regarding its commitment to the EU acquis and the CoE standards.

Montenegro publicly declares its willingness for harmonisation and administrative completion of the accession requirements, however the country should at the same time work on genuine changes in order to effectively implement democratic standards in the media. This confirms once again the importance of the close international attention and support.

The Montenegro Media Sector Inquiry is providing both: attention in the form of a comprehensive analysis of the media market, legal and institutional framework; and support in the form of policy recommendations addressing the main issues, identified by the study.

Below there is a selection of directions and proposals that should be implemented by different stakeholders in a short- to mid-term perspective. Outlined in a trimmed version, they highlight the roles and responsibilities of the state, industry, profession and civil society organisations. Since a number of them suggest legal modifications, it is important to reiterate that good legal solutions are not sufficient in themselves; what is equally needed is their adequate and consistent implementation.

### LEGISLATOR

Issues of concern: ill-fitting law, ad-hoc, partial solutions, lack of coordination, deteriorating the accepted standards, inadequate compliance and enforcement mechanisms.

Recommendations:

1. Laws, regulations and policies applicable to media sector, regardless of their objective or scope of application, should be aligned with the EU acquis and compliant with the CoE standards.
2. The legislator should ensure that national laws protect and promote freedom of expression and safeguard the lives and professional rights of journalists.
3. State security and anti-terrorism laws should be carefully defined and limited in time and scope; their drafting and application should take due account of the fundamental right to freedom of opinion and expression.
4. To avoid legal uncertainty and conflicts of laws, the legislator should refrain from partial and ad-hoc legal solutions in favour of comprehensive approaches.
5. The legislator should avoid solutions interfering in the existing regulation that functions well, including the solutions deteriorating the existing safeguards of the independence of regulators and or public service media.
6. The legislator should pay attention to the impact of the envisaged legal solutions with regard to potential unbalance between the regulated and unregulated media outlets competing on the same market.
7. The legislator should clearly define the powers granted to public authorities and the scope of their discretion, and make sure there are effective enforcement mechanisms available.



8. The legislator should bear in mind that placing additional areas of responsibility on the Agency for Electronic Media (AEM) may result in an un-level playing field for media services, increasing regulatory burdens for electronic media, while leaving other type of media out of the scope.
9. Sanctions prescribed for media services providers for non-compliance with law should be proportionate. Infringements of the provisions stemming from the AVMSD and other simpler, measurable cases should be left to regulatory discretion.
10. The legislator should ensure legal predictability for the RTCG and local PSMs, including with regard to their public funding, which should guarantee their sustainability and should not be used as a means of pressure, reward or subordination.
11. Decisions of the Parliament bodies, including the decisions on appointments and dismissals of the members of decision-making bodies (such as the Councils of the AEM, EKIP and RTCG) should be substantiated and motivated with regard to the legal criteria (statement of reasons) and should have a legal remedy.
12. Since the Article 197 of the Criminal Code foresees a crime of exposing personal and family circumstances that can harm one's dignity, which is another form of defamation, it should be abandoned.
13. The legislator should extend protection against discrimination, hate speech and incitement to hatred to other segments of the Montenegrin population, segments who are protected in the European Union and most of the Council of Europe
14. Legislative amendments should be made to ensure a full transparency of ownership of media outlets and prevention of negative effects of media concentration.
15. Legislative mechanisms should be adopted in order to secure editorial independence of newsrooms and legal protection of journalists when modifications of ownership and/or of editorial policy occurs.
16. The legislator could encourage a wider recognition and successful functioning of self-regulatory frameworks (and/or development of co-regulatory mechanisms) through legislation supporting statutory recognition or other incentives for participating in self-regulation (and/or establishing legal basis for co-regulation).
17. The legislator should endorse the inclusion of the concept of media literacy in the existing legal framework.

## GOVERNMENT

Issues of concern: lack of overall responsibility and coordination, absence of impact assessment, undue partisan interference.

Recommendations:

18. An overall responsibility for media policy resulting in coordinated and responsible policymaking should be unequivocally granted to the adequate Ministry (preferably Ministry of Culture) which should guarantee a pro-active, outcome-oriented, evidence-based approach and avoid reactive, partial and ad-hoc solutions.
19. In policy and legal reforms, the Government should at all times abide by the principles of guaranteeing freedom of opinion, freedom of expression and media freedoms.
20. Montenegro should ensure that its administrative system promote freedom of expression and safeguards the lives and professional rights of journalists, and protects them from violence and intimidation.

21. The Government should ensure continued, transparent and effective work of the Commission for investigating crimes against journalists.
22. Full transparency of work of the government and public administration, respecting the citizen's right to information, should be ensured.
23. The authorities should place government information of public interest in the public domain and make every effort to ensure an easy, prompt, effective and practical access to such information, without unreasonable delays and costs.
24. The process of enacting legislation or regulations should be transparent and inclusive. The Government should regularly consult with all relevant stakeholders with a view to ensuring that an appropriate balance is struck between the public interest, the interests of the users, the industry and other affected parties.
25. There is a need for a mechanism that would ensure sustainable, long-term financing of self-regulation, for example by partial contributions from the budget, as an encouragement and recognition of the importance of self-regulation by the State, in addition to financial participation of the industry itself and without jeopardising the independence of the self-regulation system.
26. Any measure by State administration against the users' content should be prescribed by law and must allow judicial review.
27. The Government should make all necessary efforts to ensure transparency of ownership of media outlets and proper implementation of competition rules to prevent negative effects of concentration of ownership, market distortions and increased risks of undue pressures on editors and journalists.
28. The Government should uphold journalists' employment rights, including the right to organise and join trade unions, which can protect them from arbitrary dismissal and undue pressures.
29. The Government decisions should be substantiated and motivated with regard to the legal criteria (statement of reasons) and should include instruction on legal remedy.
30. The Government should follow closely the process of revision of the AVMSD.
31. The Government should engage in age-sensitive efforts to promote the media and information literacy and increase the familiarity of users with their rights and freedoms in the digital environment, including the familiarity with applicable complaints mechanisms and procedures.

## JUDICIARY

Under the JUFREX, in cooperation with the Centre for training in judiciary and state prosecution of Montenegro 200 judges and prosecutors will be trained on freedom of expression and freedom of the media (2017-2018). Also, 100 lawyers will undertake the same training.

Through the joint EU/CoE regional project iPROCEEDS, the CoE supports Montenegro in strengthening skills and capacities of its cybercrime and financial investigators, prosecutors, judges and representatives of Financial Intelligence Units in the search, seizure and confiscation of online crime proceeds and prevention of money laundering on the Internet (2016-2019).

Further capacity building activities and support are recommended.

Issues of concern: transparency, impartiality, priorities.

Recommendations:

32. Montenegro should ensure that its judicial system protects freedom of expression and safeguards the lives and professional rights of journalists.

33. The Prosecution office of Montenegro should ensure full avoidance of any suppressions of internationally recognised right to freedom of expression, including online.
34. The violence against journalists should be put high on the priority of the judiciary; a quick response shall be guaranteed, and there should be specialized, skilled prosecutors dealing with them.
35. Judiciary should be legally obliged to receive a high level training regarding their obligations under international human rights law and international humanitarian law and how to ensure effective fulfilment of obligations concerning particular areas of risk for journalists, such as violence and intimidation, serious abuses of state authority, as well as protests and public events.
36. Training programmes of judiciary should include information and knowledge in relation to crimes committed via social networks.
37. There should be systematic data collection on threats and attacks against journalists organised.
38. A full transparency of data and information from Prosecution office of Montenegro related to cases of investigation against journalists should also be ensured.

## REGULATOR (AEM)

Issues of concern: independent decision-making, enforcement of the AVMS law, legal gaps and overlaps, ambiguities in the scope of regulation and self-regulation

Recommendations:

39. The regulator should engage in developing and applying proactive, risk assessment and evidence based regulation.
40. The regulator should flag the attempts of political meddling in its work, including the cases of misuse of (non-sectorial) law for abiding the existing legal safeguards for the regulator's independence.
41. The regulator should continue to advocate a thorough update of the media legislation and participate in its review.
42. The regulator should continue to advocate the introduction of a more effective enforcement regime and participate in its creation.
43. The regulator should build the staff capacities for a proportionate and effective enforcement:
  - by recruiting additional employees directly involved in regulation (in order to improve the ratio between professional and support staff for the benefit of the former)
  - by continuous improvement of knowledge and skills to keep the pace with the industry's development
  - by recruiting new or educating the existing staff for regulation of media in all the official languages of Montenegro, especially those that are not being spoken or understood by the majority population (e.g. Albanian).
44. The scope of the AEM remit should be clearly delineated from the scope of issues better placed in self-regulation.
45. The regulator should support the efforts to develop effective, incentive based self-regulatory mechanisms as a complement to – and not a replacement or duplication of – the statutory regulation.
46. In case of co-regulation:

- the roles of the industry and the regulator, should be clearly defined
- effective oversight and compliance mechanisms, together with redress mechanisms, should be envisaged
- the regulator should retain effective backstop powers to intervene if necessary.

47. The regulator should continue with active cooperation with NRAs from the region, and within the international associations, and follow closely the process of revision of the AVMSD.

## PUBLIC SERVICE MEDIA

Issues of concern: financial and editorial independence, organization and staffing.

Recommendations:

48. RTCG should continue with efforts to evolve into a public service media company, accountable first and foremost to the Montenegro public.
49. RTCG should flag any attempt of interference with the exercise of its public service objectives.
50. RTCG should continue with organisation restructuring and modernisation of business processes, allowing the company to keep up with the social, cultural, technological and business change.
51. RTCG should actively assert the professional journalistic and quality standards.
52. RTCG should strengthen production of original content, addressing different social groups and allow for participation of independent producers.
53. RTCG should promote the European AV works and shall set an example in the implementation of standards protecting children from harmful content, and other provisions stemming from the AVMSD.

## INDUSTRY

Issues of concern: limited market, non-transparent public funding, fragmented self-regulation, pressures on the journalists, interference in third party content and services, non-level playing field.

Recommendations:

54. The industry should promote a level playing field in terms of access to services, infrastructure, markets and resources.
55. The industry should advocate a transparent application of State aid and state advertising.
56. The industry should commit to self-regulation and strive to make it effective.
57. The self-regulation pursued by the industry should include effective oversight and compliance mechanisms, as well as adequate and accessible redress opportunities.
58. The industry should safeguard journalists against interference in their work and any kind of pressures, guarantee them healthy and secure working conditions, invest in their skills and knowledge, and promote implementation of the Code of Ethics and professionalism in journalism.
59. The industry should engage in dialogue with the national trade union, which has been working for a long time on a branch collective agreement; a draft has been ready for a year now and the employers have not taken any further action or reaction.
60. The industry should seek to avoid actions that can have adverse effects on the effective exercise of rights by media users and should provide their services without discrimination.

61. The industry shall contribute to promotion of media and information literacy by supporting the existing programmes or through their own initiatives.

## JOURNALISTS

Issues of concern: professionalism, political polarisation within the industry, political and financial pressures, weak and divided system of self-regulation, (self-)censorship

Recommendations:

62. The media professionals and journalists of Montenegro should seek to overcome political divisions in favour of the common goals of their profession, such as higher levels of professionalism, media pluralism, healthy working environment and best possible conditions for media freedoms.
63. As the benefits of existence of sustainable and effective media associations are well known, the media professionals and journalists should unite in their efforts to create powerful professional associations, in order to preserve independence of the media and protect their profession from partisan government interference.
64. The media professionals and journalists should abide by the principles of human rights, public interest, while protecting the rights of the individual, development and maintenance of editorial responsibility, totally refrain from hate speech, discrimination and intolerance, as well as incitement to violence and crime.
65. Among the standards the media professionals and journalists should advocate, the principles of accuracy, objectivity and impartiality should be placed high. Also, the journalists should hold up to highest standards of integrity and should be particularly careful against any form of bribery.

## CIVIL SOCIETY

Issues of concern: sustainability, marginalisation.

Recommendations:

66. The civil society organisations shall remain a source of independent information to the media, such as independent election monitoring, reports on state advertising and other aspects related to media freedoms.
67. They shall continue advocating the safety and security of journalists by monitoring cases of violence against the media and other serious infringements of freedom of expression, protecting journalists against wrongful prosecutions, and seeking to ensure that crimes against journalists are properly investigated
68. They should make their findings visible and should look for national and international partnerships and funds that can help them sustain and develop their work.

## Appendices

The Appendices contain accompanying and technical information supporting the analysis or offering an insight into the execution of the inquiry.

### Appx.1: Abbreviations

This is a non-exhaustive list. It contains the most frequent and/or less known abbreviations used in the report.

AEM: Agency for Electronic Media

AV: audiovisual

AVMS(D): Audiovisual Media Services (Directive)

CEU: Council of the European Union

CoE: Council of Europe

CSO: civil society organisation

DTT: digital terrestrial television

EBU: European Broadcasting Union

EC: European Commission

ECHR: European Convention for the Protection of Human Rights and Fundamental Freedoms

ECtHR: European Court of Human Rights

ECTT: European Convention on Transfrontier Television

EUD: Delegation of the European Union to Montenegro

EKIP: Agency for Electronic Communications and Postal Services

EP: European Parliament

EPRA: European Platform of Regulatory Authorities

ERGA: European Regulators Group for Audiovisual Media Services

EU: European Union

IPR: intellectual property law

ISP: Internet service providers

ITU: International Telecommunication Union

JUFREX: Joint EU/CoE Programme “Reinforcing Judicial Expertise on Freedom of Expression and the Media in South-East Europe” (2016-2019)

MP(s): Member(s) of Parliament

MS(s): Member State(s)

NGO(s): non-government organisation(s)

NRA(s): National regulatory authority(ies)

ODIHR: OSCE Office for Democratic Institutions and Human Rights

OSCE: Organisation for security and cooperation in Europe

OTT: Over-the-top services

PACE: Parliamentary Assembly of the Council of Europe

PM: Prime Minister

PSB: public service broadcaster

PSM: public service media

RDC: Radio difuzni centar / Broadcasting Centre

RSPP: European Radio Spectrum Policy Programme

RTCG: Radiotelevizija Crne Gore, Radio-television of Montenegro, Public service broadcaster

ToR: Terms of reference

VSP: video-sharing platforms

UNESCO: The United Nations Educational, Scientific and Cultural Organization

## Appx.2: Author's bios

The authors are listed in the alphabetical order.

**JEAN-FRANÇOIS FURNÉMONT** is the Founding Partner of Wagner-Hatfield, an independent consultancy specialising in public affairs, policy, regulation and strategy, particularly active in the media sector and digital economy. Their clients include the Council of Europe, European Audiovisual Observatory, European Commission, European Parliament, The Francophonie, OSCE, Danish Ministry of Culture, International relations of the French speaking community in Belgium, European and African media and telecommunication authorities, NGOs and other organisations. Previously, he served as Deputy Director General (2000-2003) and as Director General (2003-2014) of the media regulatory authority CSA of the French-speaking Community in Belgium. In the Board of the European Platform of Regulatory Authorities EPRA he participated first as vice-Chairman (2008-2011) and later as elected Chairman (2011-2014). Former freelance journalist and former member of the Board of the Belgian public broadcaster RTBF, Jean-François Furnémont has authored a number of books and publications. He holds a University degree in Journalism and Communication Studies, a post-University degree in International Relations and European policy and an inter-University degree in Public Finances.

**MARC JANSSEN** is the Founding Partner of Wagner-Hatfield, an independent consultancy specialising in public affairs, policy, regulation and strategy. He has been a Teaching Fellow at UCLA, at the Center for American Politics and Public Policy in Washington, DC and at the University of Kent – Brussels School of International Studies. His professional experience includes the French department of the BBC World Service in London and the Democratic National Committee in Washington, DC. He was spokesperson and senior advisor to the Deputy Prime Minister of Belgium from 1994 to 1999. Member of the Board of the Belgian Public Radio and Television (RTBF) from 2004 to 2007, he was appointed, at the end of 2007, for a five-year term to the presidency of the CSA, the regulatory authority for television and radio in French-speaking Belgium. From 2011 to 2012, he was President of the REFRAM, the network of media authorities from 27 members of the Francophonie. He is now active in media policy drafting and implementation, capacity-building for public and private institutions, as well as research in media development, working in various countries of the EMEA region.

**TANJA KERŠEVAN SMOKVINA** is a media regulation expert with background in journalism and media research. Before founding MeGI – Media Governance Institute, an independent consultancy in media and communications, she spent 18 years in various senior positions in the Slovenian converged regulatory authority AKOS. In Slovenia, she used to be Member of the Expert Group for Law on RTV Slovenia and Media Law, appointed by the Minister of Culture, and Member of the Expert Group on Media Literacy. Internationally, she has worked with the Council of Europe, the European Audiovisual Observatory, OSCE, OSF and EU funds and instruments. In 2011-2013 she was Project Manager of the EU co-funded transnational cooperation project SEE Digi.TV for harmonisation of the digital switchover in the Adriatic region. In 2016 she chaired the ERGA Subgroup 3 developing the Digital European Toolkit for efficient and flexible regulation. In 2016-2017, she served as Member of the Committee of Experts on Internet Intermediaries (MSI-NET), a sub-committee of the CDMSI, and was appointed Member of the Committee of Experts on Artificial Intelligence (MSI-AUT) for the period of 2018-2019. She holds a PhD in Communication Studies from University of Ljubljana and teaches media related subjects at University of Maribor.



DUNJA MIJATOVIĆ served as the Representative on Freedom of the Media for the Organisation for Security and Co-operation in Europe in 2010-2017. Previously, she worked in the Communications Regulatory Agency of Bosnia and Herzegovina where she helped create a legal, regulatory and policy framework for media in the post-war society. She was also involved in establishing a self-regulatory Press Council and the first Free Media Helpline in South East Europe. In 2007 she was elected Chair of the European Platform of Regulatory Authorities (EPRA), the largest media regulators network. She chaired the Council of Europe's Group of Specialists on freedom of expression and information in times of crisis, during which the Committee of Ministers adopted a Declaration on the protection and promotion of investigative journalism and Guidelines on protecting freedom of expression and information in times of crisis. Overall, for more than two decades she has worked on human rights, media law and regulation and institution building in states in transition, including ways to deal with hate speech; among others, as a consultant on projects relating to media regulation and new technologies in Europe, North Africa and the Middle East. She holds a joint Master's degree in European Studies from the University of Bologna, the London School of Economics, the University of Sarajevo and Sussex University.

JELENA SURČULIJA MILOJEVIĆ is an Assistant Professor at the Faculty of Political Sciences, University of Belgrade. She holds a Ph.D. in Media Law from Faculty of Law, University of Belgrade, and LLM in Computer and Communications Law from Queen Mary, University of London. As an expert in Media, Telecommunications and Internet Law she has worked for Council of Europe, European Commission, Cullen International, BBC World Service Trust, UNICEF, OSCE, UNDP, GIPI/Internews and others, and was involved in drafting media and electronic communications legislation in Serbia and the region. As the Assistant Minister of Telecommunications of the Republic of Serbia, she was in charge of International Relations and European Integration. She was a Member of the Advisory Group and a Visiting Lecturer at the Programme in Comparative Media Law and Policy (PCMLP); Centre for Socio-Legal Studies (CSLS), University of Oxford, and a Lead Researcher in the OSI project "Mapping Digital Media: Serbia" (2011). Her publications include a book "European Legal Framework for Electronic Communications – basis for development of information society in Serbia" (2003) and "Freedom of Expression on the Internet" (Ed. 2010). She is one of the founders and a member of the International Media Lawyers Association (IMLA).

SNEŽANA TRPEVSKA is a Professor at the Institute of Communication Studies in Skopje. She also worked in the Broadcasting Council as the Head of Research and Strategic Development. As an expert in media law and media policy she was involved in developing media legislation and cooperated with the Council of Europe and European Commission. She has been working on different research projects related to freedom of expression and media pluralism, media concentration and broadcast regulation, audience preferences and attitudes, ethics in journalism etc. In 2014-2016, she was a member of the FP7 funded research project Informing Conflict Prevention, Response and Resolution. In 2013-2015 she was part of the EU IPA Project for enhancing the capacities of the regulatory authority for broadcasting in Macedonia, as Senior Expert on legal/regulatory matters on media. Since February 2016 she has been the Head Researcher of the Western Balkan's Regional Platform for Advocating Media Freedom and Journalists' Safety. She completed her MA in Communication Studies and defended her PhD (Thesis: Mixed Method Approach in Studying Television News) in Sociological Sciences at the Faculty of Philosophy in Skopje.

### Appx.3: Project roadmap

The project roadmap as envisaged by the Montenegro Media Sector Inquiry Terms of reference is provided below.

**Table 5: Montenegro Media Sector Inquiry Roadmap**

Timeline	Activities	Responsibility	Milestones Deadlines	Indicators Deliverables
July-August 2017	Preparation Literature review Data collection Logistics	-CoE JUFREX team -National coordinators -Team coordinator -Experts	-Identification of stakeholders, 22/08 -Outline of questions, 25/08 -Invitation letter with background information, 28/08	-Description of activities (draft methodology, structure of document, allocation of tasks, roadmap) -Instructions for the experts -Shared library -List of stakeholders -Questions for the interviews -Background documents -Agenda -Draft Terms of Reference Invitation letter
10 September 2017	Team coordination meeting	-Team of experts - CoE JUFREX team	Meeting on 10/09	Conclusions on - ToR - Scope of Chapters and overlaps. - Timeline - Style guide - Library management - Communication - Choreography of the Kick-off Meeting - Approach for the interviews - Final event. - Additional expert
11 September 2017	Kick-off	-CoE JUFREX team -Team of experts -National coordinators	Project opening meeting 11/09	-Execution of the meeting -Reports on the gained visibility (media coverage)
Mid Sept. 2017	Assessment -Interviews	-Team of experts -Local experts,	-1 <sup>st</sup> round of interviews 11-	-Interviews -Mission reports

	-Observation -Doc review	representatives of stakeholders	14/09 -2 <sup>nd</sup> round of interviews 20/09 -Outline of findings by 30/09	
2nd half Sept. – 1st half Oct. 2017	Project management -Identification of open issues -Readjustments	-Coordinator -Team of experts -CoE JUFREX	-Coordination – individual discussions, 29/09-04/10 -Finalisation of ToR by 06/10 -Team Skype briefing on 16/10	-Readjustment of the scope of the chapters -ToR -Order forms
Oct. – Nov. 2017	Analysis -Desk research -Targeted questionnaires -E-correspondence -Skype interviews -Drafting	-Team of experts	-Submission of draft chapters by 20/11	-Chapters from 1-10 -Final list of interviewees and contacts
November 2017	Editing Compiling Editing Formatting	- Team coordinator -Team of experts	Draft compiled report by 30/11	-1 <sup>st</sup> draft report
December 2017	Consultation -Review by the team -Clarifications -Adjustments	-Team coordinator -Team of experts -CoE JUFREX team	-Feedback from the team by 15/12 -Feedback from the CoE by 15/12	-Team members' comments -CoE JUFREX Comments
January 2018	Finalisation -Final text editing -Submission	-Team coordinator -Team of experts -CoE JUFREX team	-Corrections by 15/01 -Final feedback by the team and CoE JUFREX by 20/01 -Submission by 31/01	- Final report - Public presentation

## Appx.4: List of participants

A complete list of people with whom the experts interacted during the assessment visit, conducted from 11-14 September and on 20 September 2017 in Podgorica is provided below (listed in the order of meetings).

**Table 6: Participants of meetings during the assessment**

	Participant	Title / function	Institution / organisation / company
1	Patrick Schmelzer	International relations officer – Media and Public Affairs	EUD Montenegro
2	Aleksandar Andrija Pejović	Minister	Ministry of European Affairs, Montenegro
3	H.E. Ambassador Aivo Orav	Head of Delegation of the European Union to Montenegro	EUD Montenegro
4	Abaz Džafić	Director of the Agency	AEM, Agency for Electronic Media
5	Jadranka Vojvodić	Assistant Director and Head of the Sector for Legal and Economic Affairs	AEM, Agency for Electronic Media
6	Sunčica Bakić	Assistant Director and Head of Monitoring Sector	AEM, Agency for Electronic Media
7	Elvira Ceković	Head of PR and Common Affairs Sector	AEM, Agency for Electronic Media
8	Đorđe Vujnović	Advisor to the Director for international relations	AEM, Agency for Electronic Media
9	Marina Mugoša Lazarević	Advisor to the Director for Legal issues	AEM, Agency for Electronic Media
10	H.E Maryse Daviet	Ambassador, Head of mission in Montenegro	OSCE mission Montenegro
11	Samra Čampara	Media Programme Manager	OSCE mission Montenegro
12	Željko Aprcović	President of the Committee on Political system, judiciary and administration	Parliament of Montenegro
13	Andrija Nikolić	Member of the Committee on Political System and on Culture	Parliament of Montenegro
14	Radule Novović	President of the Committee on education, science, culture and sport	Parliament of Montenegro
15	Slavica Mirković	Secretary of the Committee on Political System, Judiciary and Administration	Parliament of Montenegro
16	Srđan Kusovac	Advisor to the Prime Minister, Head of the Public Relations Service	PM Cabinet
17	Željko Rutović	Director	Ministry of Culture / Directorate of Media

18	Marija Vlaović	Advisor	Ministry of Culture / Directorate of Media
19	Filip Obadović	Advisor	Ministry of Culture / Directorate of Media
20	Ratka Strugar	Director General for Electronic Communications, Postal Services and Radio - Spectrum	Ministry of Economy / Directorate for Electronic Communications, Postal Services and Radio - Spectrum
21	Ružica Mišković	Head of Department for International Cooperation and European Integration	Ministry of Public Administration
22	Nada Đurđić	Chief Inspector	Administration for Inspection Affairs / Department of the Protection of Market and Economy, Games of Chance and Public Procurement / The Sector for the Inspection of Electronic Communication, Postal Activity and Information Society Services
23	Mladen Koljenšić	Chief Inspector for electronic communications	Administration for Inspection Affairs / Department of the Protection of Market and Economy, Games of Chance and Public Procurement / The Sector for the Inspection of Electronic Communication, Postal Activity and Information Society Services
24	Ljiljana Pešalj	Deputy CEO, Legal Affairs Department	EKIP, Agency for Electronic Communications and Postal Services
25	Boris Jevrić	Deputy CEO, Radio Communications Department	EKIP, Agency for Electronic Communications and Postal Services
26	Dragan Markešić	Managing Director	Direct Media
27	Marijana Laković-Dražković	Director General, Directorate for Judiciary	Ministry of Justice
28	Tomica Knežević	Advisor, Directorate for Judiciary	Ministry of Justice
29	Anica Zindović	Advisor	Intellectual Property Office
30	Emina Mujević Kara	General Director for International Cooperation and EU funds	Ministry of Transport and Maritime Affairs, Directorate for International Cooperation and EU funds
31	Ana Rutović	Advisor	Intellectual Property Office
32	Radoje Novović	Head of Department for Research and Development of Educational System	Ministry of Education (Division or person in charge of media literacy)
33	Dužanka Popović	Advisor	Ministry of Education (Division or person in charge of media literacy)
34	Danijela Đilas	Advisor	Ministry of Education (Division or person in charge of media literacy)

35	Marina Matijević	Head of ICT Department	Ministry of Education (Division or person in charge of media literacy)
36	Milica Mićunović	Advisor	Ministry of Education (Division or person in charge of media literacy)
37	Goran Radenović	Director	Pink M TV
38	Maša Vučinić	Advisor	Ministry of Finance / State Aid Unit
39	Jovo Rabrenović	Director - General for National Brand and Consumer Protection	Ministry of Economy / Directorate for Development of National Brand and Consumer Protection
40	Jovana Tošković	Advisor	Agency for Protection of Competition
41	Boženka Nikolić	Head of Department for protection of competition / sectors of energy, construction, forestry, mining, tourism, traffic, agriculture and chemical products	Agency for Protection of Competition
42	Mersad Mujević	Director	Public procurement administration of Montenegro
43	Jakša Backović	Senior Police Inspector I Class	Ministry of Interior
44	Zoran Tomović	Chief Police Inspector	Ministry of Interior
45	Ljiljana Klikovac	Manager of the Basic State Prosecutor's Office - Podgorica	Prosecution Office
46	Ana Bošković	Basic State Prosecutor in Podgorica	Prosecution Office
47	Sanja Jovičević	Special State Prosecutor	Prosecution Office
48	Ružica Mišković	Head of Department for International Cooperation and European Integration	Ministry of Public Administration
49	Zorica Vujović	Advisor	CRIT, Protection for computer and safety incidents on Internet unit
50	Željko Ivanović	CEO	Daily press – Vijesti
51	Mihailo Jovović	Editor in chief	Daily press – Vijesti
52	Nikola Marković	Deputy Editor in Chief	Daily press Dan and President of the Commission for investigation of attacks on journalists
53	Esad Kočan	Editor in chief and acting executive director	Monitor (weekly newspaper)
54	Milena Perović Korać	Deputy Editor in chief	Monitor (weekly newspaper)
55	Sonja Drobac	CEO and Editor in chief	Prva TV

56	Ivan Vukčević	Marketing and Communication Director and Head of Programme	Prva TV
57	Radovan Bogojević	Broadcast Journalist	Prva TV
58	Andrijana Kadija	Director-general	RTCG
59	Vladan Mićunović	Director of TVCG	RTCG
60	Radojica Bulatović	Director of RCG	RTCG
61	Valentina Ščekić	Deputy of director-general of RTCG	RTCG
62	Aleksandra Sekulić Vojvodić	Head producer of RTCG	RTCG
63	Slavko Đurđić	Head of Multimedia Center of RTCG	RTCG
64	Goran Đurović	RTCG Council Complaint Commission	RTCG
65	Marijana Bojanić	Executive Director	Vijesti TV
66	Emilija Rabrenović	Media Specialist	Telenor
67	Sonja Lukić	Manager, Sector for Regulatory Affairs	Telenor
68	Dragan Ratkovic	Regulatory Coordinator, Sector for corporative and legal affairs end Regulatory affairs	M;tel
69	Sonja Mugosa	Regulatory Coordinator, Sector for corporative and legal affairs end Regulatory affairs	M;tel
70	Jovana Novaković	Chief Specialist for Regulatory and Government Affairs, Sector for corporative and legal affairs	Crnogorski Telekom
71	Marjan Popović	Product Development Manager, Marketing sector	Crnogorski Telekom
72	Vidak Stanić	Corporate and Commercial Affairs Specialist, Sector for legal affairs	Crnogorski Telekom
73	Ranko Vujović	Secretary General	Media Council for Self-regulation
74	Amer Ramusović	President	Self -regulatory Council for Local press
75	Ilija Jovičević	Ombudsman	Daily Dan
76	Paula Petričević	Ombudsman	Monitor and Vijesti
77	Mirjana Radović	Lawyer and coordinator of freedom of expression programme	NGO Human Right Action (HRA)
78	Ana Nenezić	Programme Coordinator	Centre for Civic Education (CCE)
79	Goran Djurović	Resident Advisor	TACSO Montenegro Office
80	Mila Radulović	Secretary General	Society of Professional Journalists of Montenegro

81	Marijana Camović	President	Trade Union of Media of Montenegro
82	Radomir Kračković	Vice-president	Trade Union of Media of Montenegro
83	Aneta Spaić	Professor	Law Faculty, Podgorica
84	Jovo Martinović	Journalist	
85	Mila Radulović	Secretary General	Association of professional journalists of Montenegro
86	Tufik Softić	Journalist	
87	Duško Vuković	Journalist, media analyst	
88	Vladimir Otašević	Journalist	
89	Ljiljana Klikovac	Head of Basic State Prosecutor's office	Basic State Prosecutor's office in Podgorica
90	Sanja Jovičević	Special Prosecutor	Basic State Prosecutor's office in Podgorica
91	Ana Bošković	State Prosecutor	Basic State Prosecutor's office in Podgorica
92	Nikola Marković	President of the Commission for investigation of attacks on journalist	Commission for investigation of attacks on journalists
93	Draško Đuranović	Director and Editor in Chief	Daily newspaper Pobjeda
94	Goran Četković	President	Association of journalists of Montenegro



## Appx.5: Questionnaire

Below, the list of topic and sample questions the authors prepared for the assessment visit, carried out from 11-14 September and on 20 September 2017 in Podgorica. The questions were thematically segmented and were provided to the interviewees in advance in both Montenegrin and English language.

### MARKET OVERVIEW AND ASSESSMENT

- Brief history and development of the sector/your sub-sector/your institution since the independence of Montenegro.
- Key figures and facts of the sector/your sub-sector/your institution today.
- How would you compare the situation and health of the sector/your sub-sector/your institution to its situation five years ago?
- How would you compare the situation and health of the sector/your sub-sector/your institution to its situation in neighbouring countries?
- What are the key issues most relevant to the sector/your sub-sector/your institution?

### LEGISLATIVE AND INSTITUTIONAL FRAMEWORK

#### Parliament of Montenegro

- What is your opinion on media legislation and its implementation in Montenegro?
- Would you be willing to initiate/support the changes within media legislation, in order for it to be better harmonised with CoE and EU standards, if needed?
- Do you think that such changes would be supported by majority of MPs?
- Would you initiate and/or support the removing of “insult” and “damage to reputation” from Criminal Code (following defamation that was removed in 2012)?

#### Government of Montenegro (PM office and relevant Ministries)

- What is your opinion on media legislation and its implementation in Montenegro?
- What is, in your opinion, the weakest point of current media legislation?
- Do you think that state advertisement in media is fair and transparent enough?
- Do you think that “insult” and “damage to reputation” should also be removed from Criminal Code, following the defamation being deleted in 2012?
- How do you see the editorial and financial independence of RTCG in practice?

#### Others

- What is your opinion on media legislation and its implementation in Montenegro?
- Do you think that media laws are implemented well by regulatory authorities?
- Are there any obstacles that you are facing (if Agency) in implementing the law?
- Do you think that RTCG is independent enough (editorially and financially)?

- Do you think that state advertising in media is fair and transparent enough?

#### PUBLIC SERVICE MEDIA

##### Current situation of the public broadcaster in Montenegro

- How would you describe the overall situation of the PSB in Montenegro? Is it a strong and influential media organisation, in terms of the quality of its programming, audience share, professionalism, editorial independence etc.?
- What is the current market share of PSB? What are the estimations about is the size of the market and what part belongs to PSB? Is the PSB distorting the competition and market rules in the country?

##### Operational impact of legal framework

- What are the key strengths of the PSM legal framework which help and facilitate the fulfilment of its missions?
- What dispositions or aspects of the PSM legal framework make it difficult to operate smoothly and effectively on a day-to-day basis?
- What kind of dialogue exist or should exist between the political authorities and the PSM management to assess the soundness of the legal framework?

##### Financial situation

- What do you think of the current funding model for PSB? How is funding model implemented in practice? Is PSB financially, functionally sustainable?
- How the current financial situation of the PSB affects its editorial independence and quality of programming?
- How will financial model influence the future of PSB and what are the alternatives? Were there any initiatives and ideas for changing the funding model?

##### Governance and internal organisation

- Fundamentals of governance: board, senior management, rules, accountability, reporting, oversight.
- Relationship between PSM board/management and political authorities
- Relationship between PSM board/management and regulatory authorities
- Internal structure, organisational chart, ...
- Recruitment, promotion, internal training, terminations of contract, union/management relations.

##### Institutional autonomy and editorial independence

- How would you assess the legal guarantees for the PSB autonomy and independence enshrined in the legislation? Are those guarantees implemented?
- In what form and with what consequences do governments, political parties and other interest groups influence the functioning of the PSB in practice?
- How much influence managers and editors have on everyday journalistic work in the PSB? How would you evaluate the respect for ethical and professional standards in the PSB news

reporting? Is the journalism in the PSB a 'benchmark of quality and professionalism' for the other news media in the country?

- Do the managers and editors in the PSB keep distance from the Government, state institutions and political parties? Are there forms of hidden or overt 'communication' (or pressures) between the managing bodies and the centres of power?

Content production and development, relationship with independent producers and other content providers

- Who makes the programming decisions? How are these decisions made?
- Proportions of in-house productions versus independent productions.
- Proportions of domestic programmes versus bought from another country.
- Overview of the independent production landscape.
- Investment in news, in local fiction, in domestic shows.
- How to best stimulate creativity?
- Relationship with commercial broadcasters.

Protection of public interest in the programme output (independence and impartiality, cultural obligations, universality and genre diversity of programme etc.)

- Is the concept of 'public interest' properly understood and incorporated in the legislation?
- Were there any debates or public hearings in the Parliament about how the public interest is fulfilled by the PSB in Montenegro?
- Has the main supervisory body in the PSB ever debated about how the PSB fulfils its programme obligations? If yes, what were the conclusions and consequences about PSB's future work?
- Has the broadcast regulator ever conducted an analysis of how the PSB fulfils its mission and programme obligations? If yes, what were the conclusions and consequences about PSB's future work?

Connection with the audience/citizens

- Does the main supervisory body of the PSB in Montenegro represent the society at large? How its members are nominated and elected? Do they keep regular connections and discussions with their constituencies? Are there political influences on their work?
- Has the PSB adopted an internal document for keeping communication or including the interests of audience/citizens in its programming policy? If yes, how it is implemented?
- What are the forms of communication with the audience/citizens? Is that process organised as a one-way communication (journalists - audiences) or it is a two-way dialogue between the PSB different bodies with the citizens?
- What the audiences/citizens think about the PSB programming output? How they perceive the quality of its news programmes and other informative programmes? How the PSB editors and journalists use the audience research data? Are there internal discussions about how to adjust and improve programming accordingly?
- What are the forms of audience/citizens participation in the PSB programmes? How often are they invited to take participation in the programmes? What are these programmes?

## International relationships and partnerships

- Relationships and partnerships with foreign PSM: neighbouring countries, EBU, etc.
- International cooperation programmes or partnerships with international institutions (EU, NGOs, etc.): how many have taken place, with what success, what lessons learned?

## Technological development

- How the current technological environment (internet, online media, social networks and the processes of convergence) influences the role and function of PSB and the broadcasting market in the country in general? Are there any challenges posed by the new technologies for the future of PSB? Please explain.
- If and how is the use of new technologies and digitalisation of PSB defined in laws and other policy documents, such as strategies, rules and regulations? Have the PSB developed its own strategic document? If yes, what is the main vision and long-term objectives in terms of technological development?
- What is the current situation in terms of digitalisation and technological development? Is there sufficient human, technical, financial and other resources provided to implement the strategic goals?
- Does PSB incorporate new media and social media in its operation, and if yes in which way, and with what effect?

## Main future challenges

- What are the main challenges for the future?

## INTERNET INTERMEDIARIES AND ONLINE MEDIA PLATFORMS

- What is your opinion on the legislation governing the activity of your sector and its implementation in Montenegro? Is there any need for changes?
- Which are the grounds and criteria used in case of blocking, filtering and takedown of (illegal) internet content?
- What is the role of Protection for computer and safety incidents on Internet unit (CIRT) in blocking, filtering and takedown of (illegal) internet content?
- How do you assess the performance of the competent (judiciary or administrative) bodies?
- How do you assess the practices of the industry (ISPs, mobile operators, social media and other platforms)?
- Are there any safeguards to prevent abuse and arbitrariness and for protection of users rights and freedom of expression? If yes, how are they implemented? Which are possibilities of the concerned parties?
- Are there any industry self-regulation schemes in place? What are the principles they are operating on?
- Are there any cases of telecom-internet-media vertical integration and what are their effects with regard to competition and freedom of expression?

- Could you give us more information about the project “Safer Internet” (Connecting Generations) that is held between the Ministry for Information society and Telecommunications and Telenor in Montenegro?

#### SUPPORT SCHEMES AND STATE AID

##### Support schemes

- What State support schemes for media companies have been established in application of articles 136 and 137 of the Electronic Media Law?
- Are the funds available via these support schemes allocated to media companies in a transparent manner?
- If yes, how is this transparency ensured?
- If not: what are the reasons; what are the consequences on the market; and how can this problem be solved?

##### State aid

- What are the State aid cases in the audiovisual sector that Montenegro had to deal with since the implementation of EU regulatory framework and what were their outcomes?
- Do you consider that the legal framework regarding State aid to PSM is satisfactory or should it be amended?
- If you consider it should be amended, in what ways should it be?
- Do you consider that the legal framework regarding State aid to PSM is properly enforced?
- If yes, how is this enforced?
- If not: what are the reasons; what are the consequences on the market; and how can this problem be solved?
- The 2016 Enlargement report of the European Commission recommends to “ensure the operational independence of the State Aid Control Commission and improve the effectiveness of its control on State aid at all levels”. What is your view on this recommendation regarding its potential impact on the audiovisual sector?
- The 2016 Enlargement report of the European Commission recommends to “complete the alignment of the law on State aid control with the acquis, in line with the Stabilisation and Association Agreement (SAA) obligations”. What is your view on this recommendation regarding its potential impact on the audiovisual sector?

##### State advertising

- Do you consider that the legal framework regarding State advertising is satisfactory (guarantees fairness, neutrality, equal treatment and transparency in the use of public money) or should it be amended?
- If you consider it should be amended, in which ways should it be?
- Do you consider that the legal framework regarding State advertising – and in particular the Law on Prevention of Illegal Business – is properly enforced?
- If yes, how is this enforced?

- If not: what are the reasons; what are the consequences on the market; and how can this problem be solved?
- Do you consider that the legal framework regarding other direct or indirect use of public money in the media is satisfactory (guarantees fairness, neutrality, equal treatment and transparency in the use of public money) or should it be amended?
- If you consider it should be amended, in which ways should it be?
- Do you consider that the legal framework regarding other direct or indirect use of public money in the media is properly enforced?
- If yes, how is it enforced?
- If not: what are the reasons; what are the consequences on the market; and how can this problem be solved?
- Do the State bodies in charge of these issues have enough powers (including sanctions) to remedy cases of misuses of public money, if there are any?
- Could misuse of State advertising: be considered as a distortion of competition as defined by article 8 of the Law on Protection of Competition; fall under a sectoral analysis as defined by article 40 of the Law on Protection of Competition?
- Are the data about volume and share of State advertising and other use of public money per media company available? And are these data made public?
- Are the data about volume and share of advertising by State-owned companies per media company available? And are these data made public?

#### TRANSPARENCY OF MEDIA OWNERSHIP AND MEDIA CONCENTRATION

##### Transparency of media ownership

- Do you consider that the legal framework regarding transparency of media ownership (article 129 of the Electronic Media Law) is satisfactory or should it be amended?
- If you consider it should be amended, in which ways should it be?
- Do you consider that the legal framework regarding transparency of ownership is properly enforced?
- If not: what are the reasons; what are the consequences on the market; and how can this problem be solved?
- Are there issue of hidden ownership (allegation of ownership of a media company by other persons than those officially mentioned)?

##### Media concentration

- Do you consider that the legal framework regarding media concentration (articles 130 to 135 of the Electronic Media Law) is satisfactory or should it be amended?
- If you consider it should be amended, in which ways should it be?
- Currently, according to Electronic Media Law, media concentration issues are exclusively dealt with by the AEM. But media concentration can also be a competition issue (see the definition of “acts or practices impairing competition in the market” in article 7 of the Law on Protection of Competition). Therefore, should formal cooperation between the AEM and the Agency for the

Protection of Competition be considered, especially regarding the application of the rules of the Law on Protection of Competition about mergers (articles 52 to 59 of the Law on Protection of Competition)?

- Do you consider that the legal framework regarding media concentration is properly enforced? If not: what are the reasons; what are the consequences on the market; and how can this problem be solved?
- Does the AEM have enough powers (including sanctions if necessary) to remedy to media concentration issues?
- The 2016 Enlargement report of the European Commission recommends to “empower the Agency for the Protection of Competition to directly impose fines”. What is your view on this recommendation regarding the issue of competition in the audiovisual sector (media concentration)?

#### JOURNALISM – PROFESSIONAL INTEGRITY AND SAFETY

To the government officials:

- What is your opinion on state of play of media freedoms in MN?
- What is your opinion of legislation related to media freedoms? Please specify.
- What is the registered number of attacks on media representatives in MN in the last 2 years? - Were they resolved and if so, how?
- Please explain to us the circumstances surrounding the events of last elections shot-down of certain internet applications, etc.?

To media associations/representatives:

- What is your opinion on state of play of media freedoms in MN?
- What is your opinion of legislation related to media freedoms? Please specify.
- What are the main obstacles to your work?
- Do you experience threats in relation to your work? Please explain
- What were your experiences during the events of last elections, shot-down of certain internet applications, etc.?

#### SELF-REGULATION OF THE MEDIA

- Are there reports/statistics available about the functioning of the various self-regulatory schemes functioning in Montenegro (amount of complaints, decisions taken, outcome and enforcement of the decisions, funding of the scheme...)?
- Are there reports/statistics available about the functioning of the various media ombudsmen functioning in Montenegro?
- Is there collaboration between self, co and regulatory bodies and if so, how is it applied in practice?
- The Montenegrin landscape in terms of media self-regulation is relatively scattered, with several bodies as well as several other media who rather choose to setup an ombudsman than joining a self-regulatory body.
- What are the reasons for this situation?

- Does it harm the overall efficiency?
- If yes, what should be done to improve the situation?
- The principles for better self- and co-regulation adopted by the European Commission with a wide range of stakeholders refer to 10 principles in order to evaluate the effectiveness of self- and co-regulatory systems. The explanation of these principles can be found here: <https://ec.europa.eu/digital-single-market/en/best-practice-principles-better-self-and-co-regulation>. For each of these 10 points, what is your view about their respect by the different self-regulatory bodies in Montenegro?
- At the level of conception:
  - Is the participation of most of the actors of the sector secured?
  - Is the conception process open to all stakeholders?
  - Is the involvement in the system driven by good faith?
  - Are the objectives of the system clearly set out?
  - Is legal compliance ensured?
- At the level of implementation:
  - Is there room for iterative improvements of the system?
  - Is there a monitoring of the system?
  - Is there an evaluation of the system?
  - Is there a procedure for resolving disagreements?
  - Is there an adequate and transparent financing of the system?
- These ten principles are supplemented in a study on the “Effectiveness of self- and co-regulation in the context of implementing the Audiovisual Media Services Directive” (commissioned by the DG Connect of the European Commission to the research company Panteia and available here: <https://ec.europa.eu/digital-single-market/en/news/audiovisual-and-media-services-directive-self-and-co-regulation-study>) by three other principles in terms of enforcement. These three criteria partly overlap with some of the ten Principles, but provide useful additional ways to describe the most suitable conditions for an effective self- or co-regulatory system. For each of these 3 points, what is view about their respect by the different self-regulatory bodies in Montenegro?
- At the level of enforcement:
  - How is the complaint resolution mechanism functioning?
  - What is the outcome of the decision?
  - Can there be sanctions and if yes are they enforced?
  - Is there cooperation with international organisations engaged in media reform in Montenegro regarding the issue of self-regulation?
  - What kind of support from international organisations could be considered with a view to improve self-regulation in the media sector?

#### MEDIA LITERACY

##### Strategies, initiatives and stakeholders

- Is there a nationally adopted strategy or action plan for developing media literacy in Montenegro? If yes, was it adopted after a wide and inclusive debate?



- Who are the most relevant stakeholders which have undertaken initiatives or projects in the field of media literacy?

#### Public institutions

- What are the competencies of the Ministry of Education and other institutions in the field of education?
- What are the powers and competencies of the Agency of electronic communications in the field of media literacy?
- What have the other public institutions undertaken in terms of developing media and digital literacy? Are there other initiatives to bring digital and media literacy to underserved communities and special populations (via public libraries, museums and other community centres)?
- Are there initiatives to integrate core principles of digital and media literacy education into teacher preparation programmes?

#### Research organisations and academia

- Is there any research conducted on the individual levels of digital and media literacy in the country? Is there any other research conducted so far that support the needs of students, educators, policymakers and other stakeholders?
- Are there any basic measures of digital and media literacy developed to assess learning progression among students?

#### NGO sector, self-regulatory initiatives

- What is the role of the NGOs in developing media literacy skills among population? What have the NGOs for consumers' protection undertaken in terms of strengthening people's capacity to assess message credibility and quality?
- What have the other NGOs done in the field of information and digital literacy? Are there self-regulatory initiatives to raise awareness and to integrate digital and media literacy competencies?
- Are there initiatives for partnerships between NGOs and media to increase media and digital literacy among audience?

#### COPYRIGHT/INTELLECTUAL PROPERTY RIGHTS

##### Ministry of Culture/Directorate of Media, Ministry of Justice, Intellectual Property Office

- What is your opinion on state of play of copyright in media in Montenegro?
- Do you cooperate with the Agency for Electronic Media/Media/Cable operators when drafting new laws?

##### Agency for Electronic Media

- What is your opinion on state of play of copyright in media in Montenegro?
- Do media respect the List of events of major importance for society?
- Have you had any dispute related to right to short reporting so far?
- What is your opinion on use of digital rights management (DRM) by media and cable operators?

- Is there any issue that you would like to raise (from your practice) in relation to breach of copyright and intellectual property rights by media?

Association of Cable operators, Cable operators

- What is your opinion respect of copyright on media scene in Montenegro?
- Have you experience any problem with foreign advertisement placed within domestic programme so far and, if yes, how have you solved it?
- Do you use any DRM in your work? If yes, have you experienced any obstacles with it in practice? Please explain.

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