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Protecting Freedom of Expression and of the Media in Montenegro
PRO-FREX

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Policy Advice

**Media Ownership and Ownership Transparency Rules:
European standards and good practices in the EU and the Western Balkans**

Council of Europe
Division for Cooperation on Freedom of Expression

The role and responsibility of the Council of Europe in protecting freedom of expression has been underlined in the "Reykjavik Principles for Democracy", the [Reykjavík Declaration – United around our values](#).

The report was prepared within the action 'Protecting Freedom of Expression and of the media in The Western Balkans' (PRO-FREX) that enables the beneficiary institutions and civil society organisations to progress towards meeting their reform agendas in the field of freedom of expression and freedom of media, in line with the European standards.

The action is implemented within the joint programme of the European Union and Council of Europe Horizontal Facility for the Western Balkans and Türkiye running from 2023 to 2026 and aims to contribute to an improved environment for the exercise, by all stakeholders in particular by journalists and media actors, of their rights of freedom of expression, in a more pluralistic and safer media environment, in line with the standards as set by in accordance with Article 10 of the European Convention of Human Rights (ECHR).

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List of Abbreviations

AEM	Agency for Electronic Media (ME)
AEM	Agency for Electronic Media (HR)
AKOS	Agency for Communication Networks and Services (SI)
Arcom	Autorité de régulation de la communication audiovisuelle et numérique (FR)
AVK	Competition Protection Agency (SI)
AVMSD	Audiovisual Media Services Directive
AZZK	Agency for Protection of Competition (ME)
BAI	Broadcasting Authority of Ireland (IE, former regulator to 2023)
CM	Committee of Ministers (of the Council of Europe)
CMPF	Centre for Media Pluralism and Media Freedom
CNAM	Coimisiún na Meán/ Media Commission (IE, regulator since 2023)
CSA	Conseil supérieur de l'audiovisuel (regulator, BE- FR)
EECC	European Electronic Communications Code
EMFA	European Media Freedom Act
EU	European Union
ITU	International Telecommunications Union
KeK	Kommission zur Ermittlung der Konzentration im Medienbereich (DE)
MDIF	Media Development Investment Fund
MPM	Media Pluralism Monitor
Ofcom	Office of Communications (UK)
OFCOM	Federal Office of Communication (CH)
UN	United Nations
VOD	Video-on-demand

1. Introduction

The purpose of this Policy Advice is to provide recommendations for amendments to improve the legislative framework in Montenegro regarding media ownership and concentration, and media ownership transparency. Key standards elaborated in this area by the Council of Europe are referenced in the document, regarding media concentration, media ownership, media pluralism and transparency of media ownership. In addition, the relevant European Union acquis is outlined. The Audiovisual Media Services Directive (AVMS Directive) 2010/13/EU, as amended by Directive (EU) 2018/1808 introduced requirements for transparency of information regarding audiovisual media services regarding the publication of an Impressum. The Directive also allowed for Member States to adopt legislative measures providing that media service providers under their jurisdiction make accessible information concerning their ownership structure, including the beneficial owners (Article 2(5b)). This has subsequently been strengthened by the forthcoming European Media Freedom Act (EMFA) which is expected to be finalised in April 2024 and introduces ownership transparency requirements for all media services.

Among others, the EMFA will require the Member States to support regulatory authorities in providing media ownership transparency databases. The Act also requires that Member States introduce specific rules for assessing media concentrations that could have a significant impact on media pluralism and editorial independence. With regard to these assessments, the national regulatory authorities should be responsible for such assessments or should have a substantive involvement in such assessments. Hence, while references are made to key Council of Europe standards elaborating best practice and also the best practice in a range of countries, it is important to note that with the adoption of the EMFA will become part of EU acquis. This provides an opportunity for the authorities in Montenegro to further enhance their current (January 2024) media reform process by taking these changes into account in the drafting of further iterations of the Law on Audiovisual Media and in the Law on Media. Here, it is important to note that recommendations provided in this report are based on older Drafts of the new Laws. It is anticipated that new drafts of the Law on Audiovisual Media and in the Law on Media will be made available after the completion of this work and hence further analysis or recommendations may be required.

The purpose of this Policy Advice is not to provide a complete review and assessment of the media ownership provisions in the law in Montenegro in comparison to those in other European countries or countries in the region. Rather the purpose is to examine specific aspects of European standards and best practice in other countries that the Agency for Electronic Media (AEM) have identified as being gaps in either the legislation or in the procedures related to media ownership restrictions (foreign and cross media ownership) and to ensuring transparency of ownership and broader policy issues in the promotion of media pluralism.

While the Paper is focused on the audiovisual media sector, reference is made to other media services (particularly in light of the EMFA) such as press and online publications. In addition, any discussions on the issue of media ownership, transparency, concentration, pluralism and diversity should take place against the background of the major changes in the media market in terms of consumer behaviour content access and delivery and the impact of global technology

companies on national media markets. A balance is always required between ensuring pluralism and also sustainability in the market.

2. Executive Summary

The aim of this study was to provide the Agency for Electronic Media (AEM) in Montenegro with an overview of European standards, EU acquis and good practice in European states in relation to media ownership and transparency of ownership. In particular, the AEM was concerned with the rules and practice related to transparency of ownership of foreign individuals and legal entities, and ensuring media pluralism and diversity in the case of transfer of ownership.

The study provides a chapter on European standards regarding media ownership (chapter 3) followed by an overview practice in other European countries (chapter 4), and an examination of the status in Montenegro in current and draft legislation (chapter 5). European standards regarding transparency of media ownership are also elaborated (chapter 6) followed by an overview practice in other European countries (chapter 7) and an examination of the status in Montenegro in the current and draft legislation (chapter 8).

European standards related to the promotion of media pluralism are outlined with examples of policy approaches in other countries (chapter 9). The final chapter provides an overview of recommendations (chapter 10). It is important to note that recommendations provided in this report are based on older Drafts of the new Laws. It is anticipated that new drafts of the Law on Audiovisual Media and in the Law on Media will be made available after the completion of this work and hence further analysis or recommendations may be required.

The current legislation in Montenegro is quite detailed in terms of media ownership rules, but these are further enhanced in line with developments in other countries under the Draft Law on Audiovisual Media Services. In particular a definition of dominant power is introduced and stronger provisions regarding procedures for changes in ownership and applications for licences are also introduced. It is recommended that the procedures for licensing and assessments of potential illicit concentrations in the market also be extended to renewal of licences transfer of licences and transfer of ownership.

It is noted that the Draft Law introduces provisions on changes of ownership requiring a clearance by the media regulatory authority and reflecting good practice in other states (for example Croatia). It would be useful if these provisions clarified that the same procedure applies to the complete transfer of ownership.

The Draft Law also introduces a system for the measurement of dominance based on revenues earned in one market and/or related markets (such as that for distribution of audiovisual media services). This approach is similar to that in Italy and Croatia. Many countries use audience shares as measures of dominance. This is challenging in Montenegro due to a lack of audience data. In this context, it is highly recommended to align the law with the forthcoming European Media Freedom Act (EMFA) regarding the need to ensure that audience measurement systems comply with the principles of transparency, impartiality, inclusiveness, proportionality, non-discrimination, comparability and verifiability.

Also, in relation to the EMFA, it is highly recommended that the AEM is given the competence to play a role in the assessment of mergers and concentrations in the media sector as carried out

by the competition authority. This is also illustrated via best practice in a range of countries whereby the media regulatory authorities provide opinions on the potential impact on pluralism and diversity in the market. Such changes to the legislative framework may need to be implemented in both media legislation and competition legislation.

Regarding transparency of ownership, the current legislation and the draft legislation present quite strong provisions according to European standards and practice. It covers the requirements for audiovisual media service providers and the type of data that should be shared with the regulator or other designated body. It is worth noting that the EMFA requires the same gather of data for all media services (including press and online publications) and this should be taken into account in the alignment with the EMFA in the package of media legislation currently under review (January 2024).

The analysis of the legislation in relation to other national legislation dealing with transparency of ownership concluded there were no issues regarding access to this information for the regulator. However, it is recommended that the AEM be clearly named as an Agency that has access to the Register of Beneficial Owners in Montenegro (as is the case in, for example Slovenia under new Draft legislation). This is in line with Council of Europe Recommendations in the area. The examination of the legal framework in relation to data protection also found no obstacles to the work of the AEM in this area.

Transparency of media ownership also requires the development of a publicly accessible database detailing this information. The EMFA outlines the need for Member States to ensure that media regulatory authorities have sufficient resources and powers in order to implement this obligation.

The Policy Advice further addresses a range of policy approaches to protecting and enhancing media pluralism based on European standards and good practice. Many of these policy approaches already exist in Montenegro, and some minor recommendations are included under Chapter 10.

3. Regulation of media ownership

3.1. Introduction

The majority of European states have media ownership limitations that tend to indicate what would be considered a dominant power in a media market. Ownership limitations may refer to the share limitations of an individual in a company, or of a company with regard to media outlets. Types of concentration include the following:

- Horizontal media concentration and ownership are relevant where there is ownership of several, or shares in several media services in the same market (TV or press or radio)
- Vertical media concentration or ownership are relevant where there is ownership of different companies in the supply chain (for example television and cable/IPTV, or television and production companies). This is a form of cross-media ownership.
- Diagonal media ownership, another form of cross media ownership, refers to common ownership between different sectors such as television, radio, press etc.
- There are also frequently concerns regarding concentration of ownership in the same area (local press, TV, radio etc).
- In terms of economic competition, cross-ownership in related sectors or markets such as advertising agencies can also lead to a dominance in the related market, with a potential to abuse that position in relation to access to revenues and resources (see further below).

Measures of market power or dominance are most frequently assessed in terms of audiences (or readership/circulation with regard to the press), subscribers in relation to Pay-TV and pay video on demand (VOD), and users, subscribers etc (in relation to other online media).

Laws and regulations may prevent the attainment of such dominance, they may have a system to limit further growth of a company, to limit the number of licences held by individuals or legal entities, or there may be remedies to counteract the power of companies.

3.2. Key definitions and concepts in media legislation and policy

3.2.1. The concept of media pluralism

At the outset, it is important to consider the concept of media pluralism as a fundamental aim of media ownership and media concentration rules is the promotion of pluralism in the media. Pluralism of the media is usually considered as being a two-fold concept, relating to both the diversity of ownership of media outlets (external) and also the diversity of output or content of media outlets (internal). Pluralism can also be described as relating to two aspects of the media's role in society - political pluralism and cultural pluralism.

‘Political’ pluralism is about the need, in the interests of democracy, for a range of political opinions and viewpoints to be expressed in the media. Democracy would be threatened if any single voice, with the power to propagate a single viewpoint, were to become too dominant. ‘Cultural’ pluralism is about the need for a variety of cultures, reflecting the diversity within society, to find expression in the media. Cultural diversity and social cohesion may be threatened unless the cultures and values of all groupings

within society (for example those sharing a particular language, race, or creed) are reflected in the media.¹

In the United Kingdom, the definition of plurality as used by the Ofcom focuses on diversity of viewpoints and opinions, and also on preventing any one media owner from having too much influence over public opinion. Hence the focus is on political pluralism, and the market pluralism that promotes political pluralism.

(i) ensuring there is a diversity of viewpoints available across and within media enterprises; and (ii) preventing any one media owner or voice having too much influence over public opinion and the political agenda.²

In Austria, the concept of media diversity is defined in competition law as ‘a variety of independent media companies that are not in the sense of §7 interconnected and it is considered that via their reporting a range of different opinions is guaranteed.’³ In France, the media regulator Arcom focuses on political pluralism both during election campaigns and in general. Article 13 of the Act of 30 September 1986 tasks the regulator with ensuring pluralism in broadcasting, in particular in relation to news and current affairs. In the Netherlands, regarding its role in monitoring media concentration in the market, the Dutch regulator the Commissariaat voor de Media (CvdM) refers to the following definitions of pluralism:

Internal pluralism reflects how social and political diversity are reflected in media content. External pluralism covers the number of owners, media companies, independent editorial boards, channels, titles or programmes.⁴

Hence rules on media ownership and concentration and the protection of pluralism usually have a dual purpose: to ensure a diversity of services, owners, output, content etc: and to ensure that no media service provider is dominant to the extent that they can impact on pluralism of content, editorial independence, and also that a dominant players cannot abuse their positions.

3.2.2. Concepts and measures related to media concentration and competition

A dominant position (Article 102 TFEU) under EU law is defined according to the Court of Justice of the EU, as:

a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by giving it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers.⁵

For example, in Germany, the law focuses on the ‘opinion forming weight’ (the strength of influence on opinion-formation) of media outlets and owners. For television, the German law sets

¹ Doyle, G (2003): Media Ownership: the economics and politics of concentration in the UK and European media. London: Sage.

² Sourced from Ofcom (2015): Report to the Secretary of State on the operation of the media ownership rules listed under Section 391 of the Communications Act 2003. https://www.ofcom.org.uk/data/assets/pdf_file/0027/51867/morr_2015.pdf

³ § 13 para. 2 KartG (Cartel Law)

⁴ Website of the Media Monitor of the Dutch media regulator: <http://www.mediamonitor.nl/>

⁵ Judgment of the Court of 14 February 1978. United Brands Company and United Brands Continentaal BV v Commission of the European Communities. Chiquita Bananas. Case 27/76

this as a 30% share of the audience, or where a company also has interests in a media-related business, a dominant power is established with a 25% audience share.⁶

3.3. Council of Europe Standards regarding media ownership

Key standards in the area of media ownership include the Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content and the 2018 Recommendation of the Committee of Ministers to member States on media pluralism and transparency of media ownership.⁷

The 2018 Recommendation focused on the following five areas: 1) A favourable environment for freedom of expression and media freedom; 2) Media pluralism and diversity of media content; 3) Regulation of media ownership, control and concentration; 4) Transparency of media ownership, organisation and financing; and 5) Media literacy/education. Of particular significance for this report are the recommendations and guidelines related to the following: ownership and control, concentration, transparency of media ownership, organisation and financing including transparency requirements, transparency databases and reports, and co-ordination of transparency regimes.

With regard to ownership and control of media the 2018 Recommendation highlighted the important role of competition law whereby effective competition should prevent individual actors from acquiring significant market power to the extent that this would adversely impact on media pluralism. The Recommendation indicated that regulation can include restrictions on horizontal, vertical and cross-media ownership, including by determining thresholds of ownership in line with the 2007 Recommendation and such thresholds may be based on a number of criteria, such as capital shares, voting rights, circulation, revenues, audience share or audience reach.

Criteria for determining control of media outlets can relate to direct and beneficial control. Relevant criteria can include proprietary, financial or voting strength within a media outlet or outlets and the determination of the different levels of strength that lead to exercising control or direct or indirect influence over the strategic decision making of the media outlet or outlets, including their editorial policy.

The Recommendation addresses the concerns regarding ownership of media outlets by political parties or individuals actively involved in politics, and especially by anyone in elected office. In many countries such media ownership is prohibited. Where it is not prohibited it should be balanced with other checks and balances to ensure editorial independence and transparency of ownership, and appropriate measures for addressing conflicts of interest.

The Recommendation recognises the right to restrict the extent of foreign ownership of media and this should be 'implemented in a non-arbitrary manner and should take full account of

⁶ German Interstate Media Treaty (Medienstaatsvertrag) from 14 / 28 April 2020, Article 60 - Ensuring Plurality of Opinion on Television

⁷ Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership.

https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680790e13

States' obligations under international law and, in particular, the positive obligation to guarantee media pluralism'.

3.3.1. Media concentration

The Recommendation further encourages states to 'develop and apply suitable methodologies for the assessment of media concentration, in respect of both the influence of individual media and the aggregated influence of a media outlet/group across sectoral boundaries. In addition to measuring the availability of media sources, this assessment should reflect the real influence of individual media by adopting an audience-based approach and using appropriate sets of criteria to measure the use of individual media and their impact on the forming of opinions. This audience-based approach should take into consideration the offline and online footprint of the media. The measurement exercise should be carried out by an independent authority or other designated body'.

With regard to competition law and media mergers, 'States are furthermore encouraged to ensure procedures to prevent media mergers or acquisitions that could adversely affect the pluralism of media ownership or diversity of media content. Such procedures should involve a requirement for media owners to notify the relevant independent regulatory authority of any proposed media merger or acquisition whenever the ownership and control thresholds, as set out in legislation, are crossed.'

3.4. European Union acquis

Media pluralism is one of the key objectives of the Audiovisual Media Services Directive (AVMS Directive)⁸ alongside cultural and linguistic diversity, consumer protection, accessibility, non-discrimination, the proper functioning of the internal market and the promotion of fair competition.

In addition, Article 30 (4) emphasises that Member States shall ensure that national regulatory authorities or bodies have adequate financial and human resources and enforcement powers to carry out their functions effectively. The Directive does, however, address transparency of ownership under Article 5 requiring the publication of an Impressum and allowing for ownership transparency requirements in the law (see under 6.1 below).

3.4.1. The European Media Freedom Act

A key piece of legislation that is expected to be adopted by the European Commission and European Parliament in April 2024 is the European Media Freedom Act (EMFA). On December 19 2023, the ambassadors of the EU Member States endorsed the provisional agreement reached on 15 December 2023 between the Council and the European Parliament on the Act.⁹ It is worth clarifying at the outset that where the EMFA refers to a 'media service' it means "a service as defined by Articles 56 and 57 of the Treaty, where the principal purpose of the service or a dissociable section thereof consists in providing programmes or press publications to the

⁸ Audiovisual Media Services Directive 2010/13/EU as amended by Directive (EU) 2018/1808

⁹ Proposal for a Regulation of the European Parliament and of the Council establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU: <https://data.consilium.europa.eu/doc/document/ST-5622-2024-INIT/en/pdf>

general public, by any means, in order to inform, entertain or educate, under the editorial responsibility of a media service provider”.

In addition, where the EMFA refers to a ‘national regulatory authority or body’ this means “any authority or body designated by Member States pursuant to Article 30 of Directive 2010/13/EU” (i.e., the Audiovisual Media Services Directive. This implies that in certain areas, the national independent media regulatory authority has some competence over ‘press publications’ that are provided to the public ‘by any means’ (which includes online). There is no implication of competence over the content of these publications. However, the EMFA therefore enhances the competence of the media regulators to issues such as media ownership transparency, and also assessments of media concentration, as discussed further below.

3.4.2. Competition policy

Competition policy at the EU level addresses the internal (European Union) market. Competition policy includes rules on antitrust (to prohibit agreements between market operators that would restrict competition e.g. via Cartels, and to prevent the abuse of dominance), merger control (concentrations via acquisitions and mergers), and State aid.

For mergers, the thresholds for intervention are based on the entire internal market and investigations focused on mergers that would impact the internal market. Hence case law has dealt mainly with very large market players and market players that operate across a range of countries. With regard to mergers, the European Commission Merger Regulation stipulates that Member States may take appropriate measures to protect legitimate interests other than those taken into consideration by the Regulation and compatible with the general principles and other provisions of Community law. Such appropriate measures include plurality of the media.

State Aid rules in the European Union acquis are part of the legislative framework for competition. State Aid is defined as:

‘an advantage in any form whatsoever conferred by national public authorities to undertakings on a selective basis. Therefore, subsidies granted to individuals or general measures open to all enterprises are not covered by this prohibition and do not constitute State aid (examples include general taxation measures or employment legislation).’¹⁰

In relation to state aid and funding, the European Union has recognised the important public and cultural goods inherent in public service broadcasting:

The cultural, social and democratic functions which it discharges for the common good, has a vital significance for ensuring democracy, pluralism, social cohesion, cultural and linguistic diversity.¹¹

Hence, several Communications have been issued with regard to State Aid to PSB.¹² To align with EU state Aid Rules, the legal framework should include a clear outline of activities that are ‘public

¹⁰ https://competition-policy.ec.europa.eu/state-aid/overview_en

¹¹ Resolution of the Council and of the Representatives of the Governments of the Member States (25 January 1999) concerning public service broadcasting (1999/C 30/01). <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:1999:030:FULL&from=EN>

¹² 2001 Communication from the Commission on the application of State aid rules to public service broadcasting (Text with EEA relevance). Official Journal C 320.

service' in nature and carried out in fulfilment of a clearly defined remit, and also a separate set of activities that are 'commercial in nature.' The Law also needs to prescribe the separation of accounts between public and commercial services. State Aid rules are also relevant for other types of funding for the media. The EU state aid rules contain certain exceptions on the prohibition of state aid, including aid to promote culture and heritage conservation (Article 107.3 (d) TFEU). Of key importance is the fact that: 'aid to the audiovisual sector needs to promote culture. In line with the subsidiarity principle enshrined in Article 5 TEU, the definition of cultural activities is primarily a responsibility of the Member States.'

3.5. Data needed to assess media concentration and media pluralism

There are a range of measures of concentration, or 'opinion-forming power', domination or influence (as outlined above under the Council of Europe standards). Thresholds of ownership may be based on a number of criteria, such as capital shares, voting rights, circulation, revenues, audience share or audience reach.

3.5.1. Audience data

Audience data is key to understanding market power and one of the important criteria used in several countries to indicate an 'opinion-forming power' in the market (for example in Germany where this is equivalent to 30% audience share). The European Media Freedom Act in its recital (paragraph 45) also emphasises that:

Audience measurement has a direct impact on the allocation and the prices of advertising, which represents a key revenue source for the media sector. It is a crucial tool to evaluate the performance of media content and understand the preferences of audiences in order to plan the future production of content.

Article 33 (1) of the EMFA states that:

1. Providers of audience measurement systems shall ensure that their systems and the methodology used by their systems comply with the principles of transparency, impartiality, inclusiveness, proportionality, non-discrimination, comparability and verifiability.¹³

The 2023 MPM Report on Montenegro indicated that 'the market lacks audience measurements and financial transparency'. With regard to the indicator on the 'Plurality of media providers', the country scored a high risk (84%). It was noted that the 'market lacks prerequisites for additional safeguards of media plurality, such as data on media circulation, sold copies, or audience measurement, which increases the risk level.'¹⁴ Article 33 (3) of the EMFA proposes the development of Codes of Conduct in relation to the management of audience measurement systems:

National regulatory authorities or bodies shall encourage providers of audience measurement systems to draw up, together with media service

2009 Communication from the Commission on the application of State aid rules to public service broadcasting (Text with EEA relevance).

¹³ Proposal for a Regulation of the European Parliament and of the Council establishing a common framework for media services in the internal market (European Media Freedom Act)

¹⁴ Monitoring Media Pluralism in the Digital Era - (2022). Country report: Montenegro

providers, providers of online platforms, their representative organisations and any other interested parties, codes of conduct or shall encourage providers of audience measurement systems to comply with codes of conduct jointly agreed and widely accepted by media service providers, their representative organisations and any other interested parties.

Codes of conduct as referred to in the first subparagraph of this paragraph shall be intended to promote the regular, independent and transparent monitoring of effective achievement of their objectives and compliance with the principles referred to in paragraph 1, including through independent and transparent audit.

Bearing in mind that (where referenced) national regulatory authorities or bodies for the purpose of implementing specific aspects of the EMFA are the same authorities as those implementing the AVMSD, it is recommended that further revisions of the Draft Law on Media reflect the requirements to promote audience measurement systems that comply with the principles of transparency, impartiality, inclusiveness, proportionality, non-discrimination, comparability and verifiability. The AEM could be tasked with encouraging the development of codes in this area. In particular, audience data should be made available to relevant authorities (media regulator and competition authority) for the purpose of assessing competition in the market.

3.5.2. Sources of funding: advertising, subscriptions, public funds

Most media services rely on selling their audiences to advertisers. In order to fully understand the nature of market power and to promote pluralism and diversity in the market, it is necessary for media regulators to have an overview of the economics of the market. Most regulators require the provision of data from media service providers which should provide an overview of their revenues. Depending on the nature of collection, this data may be presented in detailed form or be disaggregated. Generally, this information is part of the annual reports that companies should be required to publish detailing income and expenditure.

4. Practice in other European countries

It is not intended that this section provide an overview of the entire range of media ownership restrictions in other European countries but rather that the focus here is on specific aspects of European standards and best practice in other countries that the Agency for Electronic Media (AEM) have identified as being gaps in either the legislation or in the procedures related to media ownership restrictions (foreign and cross media ownership) and to ensuring transparency of ownership (see chapter 7 below) and broader policy issues in the promotion of media pluralism (chapter 9).

4.1. Regulating foreign ownership

A review of recent report on media ownership indicate that there are limited restrictions on foreign ownership of the media. Hence, in this area the transparency of ownership of foreign individuals and legal entities are key and this is addressed in more detail under Chapter 6 where Council of Europe standards are highlighted and state that media ownership requirements should also apply to legal and natural persons based in other jurisdictions and should include

their relevant interests in other jurisdictions. Chapter 7 addresses how this is controlled in other countries. In Austria restrictions are applied to foreign ownership of national audiovisual media service under § 10. (4) of the Audiovisual Media Services Act whereby: a maximum of 49 percent of the shares may be owned by third parties or by legal entities or partnerships that are under the uniform management of a stranger or a company based abroad or over which strangers or legal persons or partnerships based abroad have influence over the company.¹⁵ This limitation does not apply to citizens, legal entities or partnerships based in the European economic Area (EEA). Details on the shares of a media service provider requiring authorization and its shareholders must be registered § 10. (5):

Fiduciary relationships must be disclosed. Shares held in trust are treated the same as shares of the trustor. Shares in a private foundation in accordance with the Private Foundation Act, Federal Law Gazette No. 694/1993, are treated the same as shares of the founder if, due to factual circumstances, the founder has an influence on the activities of the foundation that is comparable to the influence listed in Section 11 Paragraph 5. This provision also applies to foreign legal entities that are equivalent to a foundation.

The French Law restricts foreign ownership (meaning companies outside of the European Union) whereby no foreign national may make an acquisition that has the effect of directly or indirectly increasing the proportion of capital held by foreigners to more than 20% of the company's capital or of voting rights at general meetings of shareholders in a company holding an authorisation in respect of a radio or television service broadcast terrestrially in the French language.¹⁶

4.2. Regulation of cross-media ownership

There are also surprisingly limited examples of cross media ownership restrictions. In the UK, there are rules that restrict cross-media ownership. For example, Schedule 14 of the Communications Act prohibits a newspaper proprietor with a market share of 20% or more of newspaper circulation (excluding online circulation) from holding a Channel 3 licence or a stake in a Channel 3 licensee that is greater than 20%.

Italian Law limits cross-media ownership using revenues. When a company reaches a certain 5 of revenue in one market it limits the possibility of involvement in another market. As an example:

The AVMS Code prohibits nationwide broadcasters that have achieved more than 8% of the revenues of the SIC [Integrated Communications System], and electronic communications companies exceeding 40% of the revenues of the electronic communications sector, from acquiring equity or participating in the establishment of publishers of daily newspapers (with the exception of daily newspapers issued only in electronic form).¹⁷

¹⁵ Federal Act on Audiovisual Media Services (Audiovisual Media Services Act – AMD-G)

¹⁶ See Cappello M. (ed.), *Media ownership - Market realities and regulatory responses*, IRIS Special 2016-2, European Audiovisual Observatory, Strasbourg, 2016

¹⁷ Article 43, para. 5, AVMS Code. See further under: Cappello M. (ed.), *Media pluralism and competition issues*, IRIS Special, European Audiovisual Observatory, Strasbourg, 2020

Similarly, the Croatian Law on Electronic Media also contains economic limitations under Article 65 where it defines a dominant position.

(1) If the total annual revenues from the activities of one provider of media services and electronic publications reach a share of 40% of the share of annual revenues of all providers of media services and electronic publications in the territory of the Republic of Croatia, that provider is considered to have a dominant role on the market and that the pluralism and diversity of electronic media is being disrupted. (2) Only the revenues that Croatian Radiotelevision achieves from performing commercial activities are included in the income from paragraph 1 of this article. (3) During the period in which the media service provider has a dominant role on the market, it cannot, in addition to the existing ones, acquire shares in other media service providers, nor can the Council grant it a new additional concession or permission, nor can it be a provider of a new electronic publication that expands its business. (4) Article 64, paragraphs 4 and 5 of this Act shall be applied appropriately in the calculation of the total annual income.¹⁸

It is interesting to note that the Draft Law on Audiovisual Media Services under discussion in Montenegro takes a similar approach to measuring percentage share of revenues in the media sectors (see below under 5.2.2), in particular to establish dominance in the market. The thresholds used are higher.

The Croatian Law also lists Under Article 64 what are termed as illegal changes of ownership:

(1) Illegal change of ownership related to the protection of pluralism and diversity of electronic media within the meaning of this Act is considered in the following cases:

- a publisher that has a concession at the state level and has a share in another publisher of the same level or lower levels with more than 25% and vice versa
- a publisher that has a concession at the state level and has a share in the capital of a publisher that publishes daily newspapers" that are printed in more than 3,000 copies with a share of more than 10% and vice versa
- a publisher that has a concession at the state level and at the same time publishes daily newspapers with a circulation of more than 3,000 copies and vice versa
- a publisher that has a concession at the regional or local level and has a share in another publisher in the same area, i.e. an area of a higher or lower level with more than 30% and vice versa

¹⁸ Croatian Law on Electronic Media, adopted on October 1, 2021. https://narodne-novine.nn.hr/clanci/sluzbeni/2021_10_111_1942.html

- a publisher who has a concession and has a stake in a legal entity whose activity is the collection, design and mediation of advertisements with more than 10% and vice versa.¹⁹

The Austrian law limits access to the broadcast sector, whereby a company that has more than 30% of a nationwide range radio service, or more than 30% of a nationwide range of the daily or weekly press cannot be a television broadcaster.²⁰

4.3. Licensing and protection of pluralism

The Croatian Law on Electronic Media also limits the granting of licences under Article 66

(1) The Council will not grant a concession to the most favourable bidder selected in the concession granting procedure if it is determined that the granting of a concession would lead to a violation of the pluralism and diversity of electronic media in the sense of Article 63 paragraph 1 and Article 65 paragraph 3 of this Act.

(2) Every bidder to the published notification of the intention to grant a concession is obliged to submit a certified statement with the bid that the eventual award of the concession does not lead to a violation of the pluralism and diversity of electronic media within the meaning of this Act.

(3) The provider of media services referred to in Article 92 of this Act is obliged to submit, together with the request for permission for satellite, internet, cable and other forms of transmission of audiovisual and/or radio programs, a statement that the granting of this permission does not lead to a violation of the pluralism and diversity of electronic media within the meaning of this Act.

In Ireland, the ownership and control of media businesses are mainly regulated in the licensing process according to Section 66 of the Broadcasting Act where applications must be considered with regard to ensuring that: any person, or group of persons, to have control of, or substantial interests in, an undue amount of the communications media in the area specified in the notice; any person, or group of persons, to have control of, or substantial interests in, an undue number of sound broadcasting services in respect of which a sound broadcasting contract has been awarded; any person, or group of persons, to have control of, or substantial interests in, an undue amount of the communications media in the area specified in the notice for the licence.²¹

4.4. The role of media regulators in assessing media concentration and mergers

Recognising that media markets should be treated differently to other markets given the public interest element of their functions, there are several long-standing examples of media concentration being treated differently to concentration in others sectors and also examples of regulators playing a role in the assessment of media mergers (for example in Germany, Austria,

¹⁹ Croatian Law on Electronic Media, adopted on October 1, 2021.

²⁰ Federal Act on Audiovisual Media Services (Audiovisual Media Services Act – AMD-G)

²¹ Ireland – Broadcasting Act 2009: <https://www.irishstatutebook.ie/eli/2009/act/18/enacted/en/print#sec66>

Italy, the UK and Ireland). The Council of Europe 2018 Recommendation recognised the importance of a specific approach to mergers in this sector:

3.10. The relevant independent regulatory authority or other designated body should be vested with powers to assess the expected impact of any significant proposed concentration on media pluralism and to make recommendations or decisions, as appropriate, about whether the proposed merger or acquisition should be cleared, subject or not to any restrictions or conditions, including divestiture. Decisions of the independent authority should be subject to judicial review.

The case of Germany is particular as there is a dedicated regulator to deal with media concentration issues - Commission for Determining Concentration in the Media, the KEK. The Commission is made up of 12 members: six experts in broadcasting and commercial law, three of whom must be qualified to serve in the judicial office, and six legal representatives, as determined by national law, of the State Media Authorities (of which there are 14). The KEK has a range of powers: they consider the safeguarding the diversity of opinion with regard to the authorisation of national broadcasting licences; the KEK must be consulted (under Competition Law) in advance of any antitrust law proceedings relating to the nationwide distribution of television programmes; the KEK can issue an opinion on cases concerning the nationwide distribution of television programmes together with the Monopolies Commission and the Supreme State Authorities.

In addition, the KEK has powers to introduce measures to counteract any dominant influence of opinion and high audience shares. This includes, among others, the allocation of broadcasting time to independent third parties and the implementation of regional broadcasting windows.²² Also, of interest is the fact that the KEK can address what it terms as the possibility of a company to “acquire a dominant influence over public opinion”. This can happen without the issuing of a new licence or the change of participation structure in a company - a company can acquire a dominant influence over public opinion by increasing its audience share or through the disappearance of competing providers. Where this happens the KEK stipulates measures to reduce the dominant influence. Every three years, the KEK publishes a media concentration report on the development of media concentration and measures to safeguard the diversity of opinion in private broadcasting. KEK's media database contains information on companies' participation in nationwide television, radio, press, and online ventures.

In the UK, Media Mergers are addressed in Chapter 2 of the Communications Act 2003, which also amended the Enterprise Act 2002. The legislation outlines the role of the regulator Ofcom and the Competition and Markets Authority (CMA). The Enterprise Act provides for possible intervention in the case of media mergers by the Secretary of State for Business, Innovation and Skills in relation to stated public interest considerations: the need for accurate reporting, free expression, and a plurality of opinion in newspapers in each market.

In Ireland, diversity in the media landscape is defined in the Competition and Consumer Protection Act, 2014 as follows:

²² in accordance with §§ 59 Para. 4, 65 and 105 Para. 4 German Interstate Media Treaty

‘Diversity of Content’ means the extent to which the broad diversity of views (including diversity on news and current affairs) and diversity of cultural interests prevalent in Irish society is reflected through the activities of media businesses in the state including their editorial ethos, content and sources. ‘Diversity of ownership’ means the spread of ownership and control of media businesses in the State linked to the market share of those media businesses by listenership, readership, reach or other appropriate measures.

The Act imposed a number of new and additional functions and obligations on the media regulator including the provision of advice to the relevant Minister on the impact of a proposed media merger on plurality in the state; undertaking reviews on the impact of ownership changes on plurality and publishing a report on this issue; and the commissioning of and/or carrying out plurality-related research activities.²³

These best practice examples of treating media markets as markets of a special interest with regard to public interest have been reflected in the forthcoming European Media Freedom Act, which introduces provisions on the Assessment of media market concentrations under Article 21:

1. Member States shall provide in national law, substantive and procedural rules which allow for an assessment of media market concentrations that could have a significant impact on media pluralism and editorial independence.

The Article then elaborates on the nature of these rules. With regard to these assessments, the national regulatory authorities should be designated as being responsible for such assessments or should have a substantive involvement in such assessments (Article 21 (1c)). Hence, there are now additional countries where such procedures have been or are being introduced in the Law. For example, in Croatia the Electronic Media Law under Article 62 (1) provides for the Agency for Electronic Media (AEM) to submit an opinion (within 30 days of the request for an opinion) to the Competition Authority regarding media mergers and concentrations.²⁴ The Draft Media Law in Slovenia introduces a process of notification and assessment of concentrations in the media, which is managed and decided by the Competition Protection Agency (AVK). In the process of assessing concentration in the media, the AVK should obtain a preliminary opinion from the National Media Council (an expert body to be established under the new Law) on the assessment of the consequences of concentration in the media for the public interest in the field of media (public interest test). If broadcasters or audiovisual media services are involved, AVK also obtains a preliminary opinion from the national media regulatory authority AKOS.²⁵

Therefore it is strongly recommended that the AEM in Montenegro is also tasked with providing opinions to the Agency for Protection of Competition (AZZK) in the case of media mergers.

²³ Ireland - Competition and Consumer Protection Act 2014: <https://enterprise.gov.ie/en/legislation/legislation-files/competition-and-consumer-protection-act-2014-no-29-of-2014-.pdf>

²⁴ https://narodne-novine.nn.hr/clanci/sluzbeni/2021_10_111_1942.html

²⁵ In Slovenian only: <https://e-uprava.gov.si/si/drzava-in-druzba/e-demokracija/predlogi-predpisov/predlog-predpisa.html?id=16268>

5. Montenegro - regulation of media ownership

5.1. Brief overview of the market

Montenegro is a small country with a population similar to that of Luxembourg (less than 620,000 inhabitants) and a highly concentrated media market. According to the Media Sector Inquiry carried out in 2017²⁶ in the context of the first JUFEX project: ‘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.’ In addition, the authors noted that at that time an: ‘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.’

The 2023 MPM Report indicated that this situation had not improved – ‘the market lacks audience measurements and financial transparency’. With regard to the indicator on the Plurality of media providers the country scored a high risk (84%). It was noted that the ‘market lacks prerequisites for additional safeguards of media plurality, such as data on media circulation, sold copies, or audience measurement, which increases the risk level.’²⁷

The advertising agency Direct Media (see above) which operates in Serbia, Montenegro, Bosnia and Herzegovina and Albania is now owned by United Media, a subsidiary of United Group. United Group also owns Nova M TV (via Direct Media Serbia).²⁸ In June 2022, United Group became the majority owner (51%) of the media company Vijesti. Vijesti owns the Vijesti newspaper, news portal (Vijesti.me) and TV Vijesti. United Group also owns the cable company Telemach. The United Group operates three DTH (satellite) services through Nova, Total TV and Vivacom brand names in eight countries (Greece, Bulgaria, Bosnia & Herzegovina, Croatia, North Macedonia, Montenegro, Serbia, Slovenia), reaching an audience of 40 million people. Its portfolio includes 55 TV channels, among them N1 and Nova TV.²⁹

Hence, there is one company that controls the two national commercial television channels, a major news portal, an important daily newspaper and a cable company. In addition the company has direct ownership links to the main advertising sales agency in the region, and the audience measurement company. This would suggest a complete failure of any attempt to prevent horizontal, vertical or cross-media ownership. At the same time, there are several organisations that claim that the Vijesti media company represents strong independent journalism, such as co-owners, the Media Development Investment Fund (MDIF).³⁰ While the chairman of the board has stated that: ‘United Media, as the new shareholder, has committed to honour and protect the editorial independence and autonomy of the media outlet’.³¹

²⁶ Jufrex (2017): Montenegro Media Sector Inquiry with Recommendations for Harmonisation with the Council of Europe and European Union standards. <https://rm.coe.int/montenegro-media-sector-inquiry-with-the-council-of-europe-and-europea/16807b4dd0>

²⁷ Monitoring Media Pluralism in the Digital Era - (2022). Country report: Montenegro

²⁸ Media Ownership monitor Montenegro: <https://montenegro.mom-gmr.org/en/owner/companies/detail/company/company/show/nova-m/>

²⁹ <https://www.broadbandtvnews.com/2022/06/12/united-media-secures-vijesti-acquisition/>

³⁰ Supporters of the MDIF: <https://www.mdif.org/about/funders-and-impact-investors/>

³¹ <https://www.broadbandtvnews.com/2022/06/12/united-media-secures-vijesti-acquisition/>

5.2. Legal framework regarding media concentration

5.2.1. Law on Electronic Media

The current Law on Electronic media outlines the circumstances where media concentration exists and where illicit media concentration occurs. In accordance with the Law (art. 131) media concentration exists when the broadcaster:

- 1) participates in the founding capital of another broadcaster, a legal entity that publishes a daily printed media or a legal entity that performs the activities of an information agency or vice versa;
- 2) simultaneously holds several authorizations for broadcasting;
- 3) simultaneously broadcasts radio and television programs;
- 4) simultaneously broadcasts radio and/or television program and issues daily printed media that are distributed in the area where the radio and/or television program is broadcast;
- 5) simultaneously broadcasts a radio and/or television program and engages in the activities of news agencies.

Media concentration also exists when the founders of the broadcaster are natural or legal persons who are at the same time:

- 1) founders of another broadcaster;
- 2) founders of a legal entity that publishes daily printed media that is distributed in the area where a radio or television program is also broadcasted;
- 3) founders of the information agency;
- 4) spouses and common-law partners or relatives up to the second degree of relation in the direct or collateral line of natural persons from paragraph 2 para. 1, 2 and 3 of this article.

Illicit media concentration (including in relation to cross media ownership) exists when a broadcaster who holds the approval for broadcasting with national coverage:

- participates in the share capital of another broadcaster to which such authorization was issued with more than 25% of the capital or voting rights,
- participates in the founding capital of a legal entity that publishes daily printed media with a circulation of more than 3,000 copies, with more than 10% and vice versa,
- participates in the basic capital of a legal entity that performs the activity of an information agency with more than 10% and vice versa,
- at the same time publishes daily printed media that are printed in a circulation of more than 3,000 copies;

Illicit concentration is also considered a case in which a broadcaster, except for the national public broadcaster, in the same area broadcasts more than one television and one radio program with the same or similar programming basis. Lastly, Illicit concentration is also the case in which

broadcaster of radio or television program licensed for broadcasting with local or regional coverage:

- participates in the share capital of another broadcaster with regional or local coverage in the same area with more than 30%,
- at the same time, in the same or in neighbouring areas, it publishes daily printed media of local character.

The rules on media concentration are clear but these rules can be detoured in cases in which there is a transfer of ownership in the media, in accordance with the art. 135 of the Law.

5.2.2. Draft Law on Audiovisual Media Services

Currently (January 2024), the process is under way to replace the Law on Electronic Media with a new Law on Audiovisual Media Services. In the Draft Law the first definition of media concentration is almost the same as under the current law (art. 131). The difference is the inclusion of audiovisual media services on demand (video on demand, VOD) in a new paragraph 6:

- 6) simultaneously broadcasts a radio and/or television program and publishes content on an online publication or provides an AVM service on request.

The second definition of the existence of media concentration has also been changed. Paragraph 1 now refers also to on-demand services and to distributors of audiovisual media services. In addition, a new paragraph 4 includes 'founders of an online publication'. The definitions of illicit media concentration are the same as in the current Law. However, illicit media concentration is also considered when the broadcaster and distributor of linear AVM services has a dominant role in the market.

5.2.3. Definition of dominance in the market and limiting actions of dominant players

The draft law introduces a definition of the dominant role in the market, which was not defined in the current Law. A dominant role in the market is:

- 1) the broadcaster and distributor of linear AVM services achieves, collectively, an annual income from the provision of linear AVM services and the distribution of linear AVM services in the amount of at least 60% of the annual income of all providers of these services;
- 2) the broadcaster generates annual income from the provision of linear AVM services in the amount of at least 35% of the annual income of all broadcasters.

The income outlined above also includes the funds that the broadcasters may receive from the Fund for Encouraging Media Pluralism and Diversity. For public broadcasters, only revenues from the provision of commercial services are included in the income.

A broadcaster or distributor of linear AVM services that has a dominant role in the market cannot:

- 1) in addition to the existing ones, acquire new shares, or other rights on the basis of which it participates in the management of another broadcaster or distributor of linear AVM services or a person connected with it;

- 2) obtain a new authorization for broadcasting or authorization for distribution;
- 3) be granted an extension of the coverage area of the existing broadcast license or distribution license.

The Agency for Electronic Media (AEM) is obliged to publish an overview of broadcasters and distributors of linear AVM services with a dominant role on the market on its website no later than the end of June of the current year.

5.2.4. Licence applications

The applicant for the issuance of a broadcasting license is obliged to, along with the application for the public competition for the allocation of broadcasting rights or the application for the issuance of a broadcasting license, submit a certified statement that the eventual issuance of the license will not result in an illicit media concentration. If the Agency determines that, after the issuance of the broadcast approval, an illegal media concentration has been achieved, it will order the broadcaster to remedy the identified deficiencies in relation to the illicit media concentration within three months from the day of the determination. If the broadcaster, without justifiable reason, does not act in accordance with the order for remedy, the Agency will revoke its approval.

Recommendations:

The equivalent rules for licence applications should also be applied to licence renewal, to transfer of licences and transfer of ownership

5.3. Competition Law

The Law on protection of competition (Official Gazette of Montenegro no. 44/2012, 13/2018, 145/2021)³² regulates the protection of competition on the Montenegrin market and the control and monitoring of the compliance of state aid and other issues of importance for the protection of competition and the control of state aid.

This law applies to acts and actions committed on the territory of Montenegro, i.e. to acts and actions that occurred as a consequence of acts or actions committed outside its territory, which have the aim or effect of distorting competition on the territory of Montenegro. This law applies to legal entities and natural persons who perform economic activity and participate in the production and circulation of goods, i.e. services in the territory of Montenegro (hereinafter: market participants), namely:

- 1) business companies and other forms of economic activity, regardless of the registered office and natural persons, regardless of citizenship and residence;
- 2) other entities that directly or indirectly, permanently, occasionally or once perform economic activity and participate in the circulation of goods or services, regardless of citizenship, seat or residence (trade unions, business associations, sports organizations, institutions, cooperatives, holders of intellectual property rights etc.);

³² Law on Protection of Competition: https://azzk.me/wp-content/uploads/2022/12/Zakon_o_zastiti_konkurencije.pdf

- 3) state authorities, state administration authorities, local administration authorities and local governments when, directly or indirectly, they perform economic activities and participate in the circulation of goods and services.

This law applies to related market participants as well, which are considered to be two or more participants who are connected in such a way that one participant controls another or more participants. The control exists in the case when one market participant in another market participant has: more than half of the shares or shares; or more than half of the voting rights; or the right to elect the majority of members of the management body or persons authorized for representation in accordance with the law; or decisive influence on the management and conduct of business of the company. Related market participants, in terms of this law, are considered one market participant.

Concentration of market participants is considered to be:

- 1) merger of two or more independent participants in the relevant market or their parts;
- 2) when one or more natural persons who already control at least one market participant or one or more market participants acquire indirect or direct control over another market participant or its part;
- 3) when two or more independent market participants establish a new market participant or when they acquire joint control over an existing market participant that operates independently on a long-term basis and has all the functions of an independent market participant – joint venture.

The Agency for Protection of Competition (AZZK) assesses the existence of control on the basis of appropriate legal acts and other evidence, but not on the intentions of interested parties. Two or more transactions (acquisition of shares) between the same market participants, executed in a period of time shorter than two years will be considered as one concentration.

Concentrations that create a new or strengthen a dominant position of one or more participants, individually or jointly, which can have a significant effect on preventing, limiting or distorting effective competition on the relevant market, are prohibited, unless the participants of such concentration prove that the concentration will benefit consumers and that the effects of that concentration will be more significant than the negative effects of creating or strengthening a dominant position.

The concentration take place only on the basis of approval issued by the Agency for Protection of Competition at the request of market participants. The request is submitted under the condition that:

- 1) the combined total annual income of at least two participants in the concentration achieved on the Montenegrin market is greater than five million euros in the previous financial year;
- 2) the joint total annual income of the participants in the concentration achieved on the world market in the previous financial year is greater than 20 million euros, if at least one of the participants in the concentration achieved one million euros of income in the territory of Montenegro in that period.

The Agency for Protection of Competition may, after learning about the implemented concentration, order the participants in the concentration to submit a request for the issuance of approval for the implementation of the concentration, if their joint market share on the relevant market of Montenegro is more than 60%. The burden of proving the joint market share of the participants in the concentration is on the Agency for protection of competition.

The Draft Law on Audiovisual Media introduces competences for the Agency for Electronic Media to take media concentration into account in issuing licences to ensure that the eventual issuance of the license will not result in an illicit media concentration.

If the above mentioned thresholds for the market share are met prior in case in which there is a change of ownership in the media, there may be a requirement to also follow the procedure defined by Competition law if the thresholds from that law are met. For example, when United Media S.a.r.l. entered the region and acquired ownership and control over the media outlets in Serbia, Bosnia and Hercegovina and Montenegro that concentration was primarily approved by Agency for Protection of Competition.³³

Recommendations:

There should be a formal procedure for the Agency for Electronic Media to provide Opinions and be engaged in the assessment of media concentrations (as under the EMFA and in the practice of Germany, Austria, Italy, the UK and Ireland).

The thresholds outlined for companies could be adjusted to reflect the importance of the media as a cultural good (as is the case in Austria and Germany)

³³ See the news websites: https://azzk.me/docs/United_Media-City_Magazine.pdf
https://azzk.me/docs/United_Media_-_Nova_Broadcasting-converted.pdf
https://azzk.me/docs/United_Media-Daily_Press-TV_Vijesti.pdf

6. Regulating transparency of ownership

6.1. Council of Europe standards regarding transparency of ownership

The 2018 Recommendation also focuses on transparency of media ownership and emphasises the right of the public to have access to accurate and up-to-date data concerning direct and beneficial ownership of the media, as well as other interests that influence the strategic decision making of the media in question or its editorial line. The Recommendation also emphasises that requirements should be based on clear criteria regarding the media outlets that they apply to. It notes that the requirement of ownership disclosure may depend on the commercial nature of the media outlet, how wide its audience reach is, if it exercises editorial control, what the frequency and regularity of publication or broadcast is, etc., or a combination thereof. Legislation should also determine the time frame within which reporting obligations should be met.

6.1.1. Privacy and data protection

Care must be taken regarding the rights to privacy and data protection and disclosure should be limited to individuals directly involved in the ownership of a media outlet or its editorial oversight structures. In exceptional circumstances to be laid down in national law, it should be avoided that an owner who is a minor or otherwise incapable should be exposed.

6.1.2. Specific requirements for national and foreign owners

Regarding specific requirements, the Recommendation states that media outlets operating within State jurisdiction should disclose ownership information directly to the public on their website or other publication and to report this information to an independent national media regulatory body or other designated body. This body should be provided with sufficient and stable financial resources and staff to enable it to effectively carry out its tasks.

Regarding the information to be provided, the following data is outlined below. It should be noted that requirements also apply to legal and natural persons based in other jurisdictions and should include their relevant interests in other jurisdictions.

- legal name and contact details of a media outlet;
- name(s) and contact details of the direct owner(s) with shareholdings enabling them to exercise influence on the operation and strategic decision making of the media outlet. States are recommended to apply a threshold of 5% shareholding for the purpose of disclosure obligations;
- name(s) and contact details of natural persons with beneficial shareholdings. Beneficial shareholding applies to natural persons who ultimately own or control shares in a media outlet or on whose behalf those shares are held, enabling them to indirectly exercise control or influence on the operation and strategic decision making of the media outlet;
- information on the nature and extent of the shareholdings or voting rights of the above legal and/or natural persons in other media, media-related or advertising companies which could lead to decision-making influence over those companies, or positions they may hold in political parties;
- name(s) of the persons with actual editorial responsibility;

– changes in ownership and control arrangements of a media outlet.

6.1.3. Information on sources of financing

The importance of transparency with regard to the sources of financing of media outlets are also addressed given the need to provide a comprehensive picture of the different sources of potential interference with the editorial and operational independence of the media and allow for effective monitoring and controlling of such risks. Hence, States are encouraged to adopt and implement legislation or other equally effective measures that set out the disclosure of information on the sources of the media outlet's funding obtained from State funding mechanisms (advertising, grants and loans). States are furthermore encouraged to promote the disclosure by media outlets of contractual relations with other media or advertising companies and political parties that may have an influence on editorial independence.

6.1.4. Transparency databases and reports

The Recommendation emphasises that national legislation should also provide for the independent national media regulatory authority or other designated body to ensure public access to data about media ownership and control arrangements in the State, including disaggregated data about different types of media (markets/sectors) and regional and/or local levels, as relevant. States should also encourage the independent national media regulatory body or other designated body or institution (academic institution, civil society organisation) to publish regular reports on media ownership and pluralism

6.1.5. Co-ordination of transparency regimes

The 2018 Recommendation also recognises the importance of cooperation between authorities. States should also facilitate inter-agency co-operation and co-ordination, including the relevant exchange of information about media ownership held by different national authorities (such as media regulatory authorities, competition authorities, data protection authorities, company registers and financial supervisory authorities). Similarly, the exchange of information and best practices with equivalent authorities in other jurisdictions should be facilitated.

6.1. European Union acquis and transparency of media ownership

The Directive amending the Audiovisual Media Services Directive (Directive (EU) 2018/1808 amending Directive 2010/13/EU) in the Recital (15) emphasises the importance of media ownership transparency (15):

Transparency of media ownership is directly linked to the freedom of expression, a cornerstone of democratic systems. Information concerning the ownership structure of media service providers, where such ownership results in the control of, or the exercise of a significant influence over, the content of the services provided, allows users to make an informed judgement about such content. Member States should be able to determine whether and to what extent information about the ownership structure of a media service provider should be accessible to users, provided that the essence of the

fundamental rights and freedoms concerned is respected and that such measures are necessary and proportionate.

Article 5 (1) of the Directive requires that media service providers publish an Impressum (name, the geographical address at which it is established; the details, including its email address or website, which allow it to be contacted rapidly in a direct and effective manner; and the Member State having jurisdiction over it and the competent regulatory authorities or bodies or supervisory bodies.

Under Article 5 (2) Member States may also adopt legislative measures providing that media service providers under their jurisdiction make accessible information concerning their ownership structure, including the beneficial owners. Such measures shall respect the fundamental rights concerned, such as the private and family life of beneficial owners and shall be necessary and proportionate and shall aim to pursue an objective of general interest.

As outlined above, a key piece of legislation that is expected to be adopted by the European Commission and European Parliament in April 2024 is the European Media Freedom Act (EMFA). Where the EMFA refers to a 'media service' it means "a service as defined by Articles 56 and 57 of the Treaty, where the principal purpose of the service or a dissociable section thereof consists in providing programmes or press publications to the general public, by any means, in order to inform, entertain or educate, under the editorial responsibility of a media service provider".

In addition, where the EMFA refers to a 'national regulatory authority or body' this means "any authority or body designated by Member States pursuant to Article 30 of Directive 2010/13/EU" (i.e., the Audiovisual Media Services Directive. In the Recital (paragraph 19), it is stated in relation to transparency of media ownership that:

It is crucial for the recipients of media services to know with certainty who owns and is behind the media so that they can identify and understand potential conflicts of interest which is a prerequisite for forming well-informed opinions and consequently to actively participate in a democracy.

Article 6 details the duties of media service providers, which includes a.o. the requirement that:

1. Media service providers shall make easily and directly accessible to the recipients of their services up-to-date information on: (a) their legal name(s) and contact details; (b) the name(s) of their direct or indirect owner(s) with shareholdings enabling them to exercise influence on the operation and strategic decision making, including direct or indirect ownership by the state or a public authority or entity; (c) the name(s) of their beneficial owners as defined in Article 3, point 6, of Directive (EU) 2015/849..'

Article 6 now also requires that:

1a. Member States shall entrust national regulatory authorities or bodies or other competent authorities or bodies to develop national media ownership databases containing the information set out in paragraph 1.

Article 7 (3) states that Member States shall ensure that the national regulatory authorities or bodies have adequate financial, human and technical resources to carry out their tasks under

this Regulation. In addition Member States shall ensure (Article 7 (4)) that where needed for carrying out their tasks under the Regulation that :

... national regulatory authorities or bodies are empowered to request the natural or legal persons to which Chapter III applies to provide, within a reasonable time period, information and data that are proportionate and necessary for carrying out the tasks under Chapter III. Member States shall ensure that requests can also be addressed to any other natural or legal person that, for purposes related to its trade, business or profession, might reasonably be in possession of information and data that is proportionate and necessary for carrying out the tasks under Chapter III.³⁴

Hence, in order for updates to the media legislation in Montenegro to align with the European Media Freedom Act it is necessary that the above provisions be reflected in the law.

7. Practice in European countries regarding transparency of ownership

Most countries have general rules on transparency of ownership, which in many cases have been strengthened under the revised Audiovisual Media Services Directive, and will be further enhanced with the adoption of the European Media Freedom Act. Best practice implies that this data is available to the public at a minimum via regularly published reports but ideally in the form of publicly available databases.

The access of media regulatory authorities to transparency of ownership information is particularly important in the context of issuing licences, the renewal of licences and also the transfer of ownership of media. In addition the transparency of ownership is vital for the proper assessment of mergers and their impact on competition and pluralism in the market.

7.1. Licensing applications, changes in ownership and transfer of ownership

The procedure of licensing of services is one of the key ways in which authorities can limit concentration in the market by placing restrictions on the number of services that one company can hold (in the same or adjacent markets), or the extent to which one broadcaster can hold a percentage of shares in another. Hence, the majority of countries require ownership details in the application.

In 2021, the European Audiovisual Observatory published a report on transparency of media ownership, which is referenced in various parts of this chapter.³⁵ The report outlined that in France, the audiovisual media services that are licensed must disclose their ownership and control structure in the declaration made to apply for a licence. The media the service provider must obtain approval from the Arcom in the event of a change in the direct or indirect control of the company holding the authorisation. These rules apply to digital terrestrial channels and to other services subject to licence or under a declaration regime.

³⁴ Proposal for a Regulation of the European Parliament and of the Council establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU: <https://data.consilium.europa.eu/doc/document/ST-5622-2024-INIT/en/pdf>

³⁵ Cappello M. (ed.), Transparency of media ownership, IRIS Special, European Audiovisual Observatory, Strasbourg, 2021: <https://rm.coe.int/iris-special-2021-02en-transparency-of-media-ownership/1680a57bf0>

In addition, licences or authorisations may be withdrawn where there is a substantial change in the data on the basis of which it was issued, in particular in the event of changes in the composition of the share capital or management bodies and in the arrangements for financing the publisher.

It is also necessary for a provider of terrestrial television services to obtain approval from the regulatory authority (Arcom) in the event of a change in the direct or indirect control, of the company holding the authorisation. The regulator will take into account the compliance of the media service with its contractual obligations relating to the programming of the service.³⁶

The Audiovisual Media Services Act in Austria makes provision for transfer of ownership and changes of ownership. Under Article§10. (8):

If more than 50 percent of the shares that existed at the time the license was granted or a determination was made in accordance with this paragraph are transferred to third parties, the television broadcaster must notify the regulatory authority of this transfer in advance. Multiple transfers must be added together. The regulatory authority must determine, at the latest within eight weeks of the notification, whether the provisions of Section 4 Paragraph 3, Sections 10 and 11 are still being complied with under the changed circumstances. The admission must be revoked after a public oral hearing has been held if the television broadcaster has transferred the shares contrary to this determination.³⁷

For information, Section 4, paragraph 3 relates to the evidence that the service still meets the technical, financial and organizational requirements for a regular event and distribution of the planned radio program and that this will meet the requirements under the licencing procedure. Sections 10 relates to the data on ownership, while section 11 relates to the restrictions on concentration. Hence, the Austrian provisions include a mechanism to ensure that changes in ownership will not impact on the nature of the service and the content as foreseen in the original licensing procedure.

7.2. Unknown ownership or concealment of ownership

Under the Croatian Electronic Media Law, the concealing of the ownership structure of a media service provider, or the ownership structure of an acquirer of shares in the media service provider is prohibited:

(5) Concealing the ownership structure of the media service provider or the ownership of the acquirer of shares or business interests in the media service provider by any legal transaction is prohibited. Legal transactions that conceal the ownership structure of the media service provider or the ownership of the acquirer of shares or business interests in the media service provider are null and void. FN

³⁶ Cappello M. (ed.), (2021)

³⁷ Federal Act on Audiovisual Media Services (Audiovisual Media Services Act – AMD-G)

The Law on Audio and Audiovisual Media Services in North Macedonia also prohibits secret ownership under Article 34 (a provision that also exists in the Law on Trade Companies) whereby: The media service may not have a secret co-owner, i.e., the secret co-owner may not participate with monetary or non-monetary share in the media service.³⁸

7.3. Media ownership transparency databases

As noted above (section 6), the 2018 Recommendation of the Committee of Ministers to member States on media pluralism and transparency of media ownership highlighted the need for media ownership databases to publicise the information gathered via ownership transparency requirements. Accordingly, States should:

“provide for the independent national media regulatory authority or other designated body to ensure that the public has easy, swift and effective access to data about media ownership and control arrangements in the State, including disaggregated data about different types of media (markets/sectors) and regional and/or local levels, as relevant. These data should be kept up to date on a rolling basis; made available to the public free of charge and without delay, and their availability publicised. Ideally they should be accessible and searchable, for example in the form of online databases; their contents should be made available in open formats and there should be no restrictions on their re-use”³⁹

The European Commission Recommendation of 16 September 2022 on internal safeguards for editorial independence and ownership transparency in the media sector also echoed this recommendation.⁴⁰ The European Media Freedom Act (EMFA) under Article 6 now requires that Member States entrust national regulatory authorities or bodies or other competent authorities or bodies to develop national media ownership databases containing the transparency information. Article 7 (3) states that Member States shall ensure that the national regulatory authorities or bodies have adequate financial, human and technical resources to carry out their tasks under this Regulation.

There are many examples of good practice that already exist in this area. In Germany, the KEK (Kommission zur Ermittlung der Konzentration im Medienbereich – the Commission for the determination of concentration in the Media) provides a database of the national television broadcasters and their shareholders, and produces annual reports on the state of media concentration. In addition, it provides infographics on the major media groups operating in the country, on their shareholders and their subsidiaries. The Austrian regulator provides a range of databases covering radio broadcasters, TV broadcasters, and on-demand services (while also providing lists of multiplex operators, programme aggregators, networks and other services). The databases on the audiovisual media services allow searches by name of service, name of

³⁸ Law on Audio and Audiovisual media Services of 2023 (the term “broadcaster” is replaced by “media service” in the most recent set of recommended draft amendments, December 2023).

³⁹ Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership. Recommendation 4.8.

⁴⁰ COMMISSION RECOMMENDATION (EU) 2022/1634 of 16 September 2022 on internal safeguards for editorial independence and ownership transparency in the media sector. https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32022H1634#ntr17-L_2022245EN.01005601-E0017

operator, by area of broadcasting and by means (DTT, cable, satellite etc.) of broadcasting.⁴¹ The Dutch media regulator, Commissariaat voor de Media (CvdM) has been charged with monitoring media concentrations since 2001. The CvdM provides up-to-date information about ownership relationships and market shares in newspapers, magazines, television, radio, internet and distribution in the form of the Media Monitor.⁴²

Regarding smaller regulators, the Belgian CSA also provides a focus on pluralism on a dedicated website, which includes: a database of all the services available (television, radio, on-demand services, print media and other electronic media services); an overview of media groups as well as their structure and shareholding (graphic representation); audience and market shares by sector (television, radio and daily newspapers); media use, the turnover of publishing companies and the level of concentration; data on media content, i.e. the general content offer of television and radio services licensed or authorised (the information, cultural and musical offer as well as the proportions devoted to the different categories of programmes: European, Francophone, etc.).⁴³

In 2020, the Irish media regulator (former Broadcasting Authority of Ireland) launched a media ownership database in cooperation with Dublin City University. In November 2028, the Federal Office of Communications (OFCOM) launched the Swiss Media Monitoring, an interactive Website which aims to document the degree of influence of the press, radio, TV and online media, on the formation of public opinion.⁴⁴ The data collected also provide information on the ownership structures and business ties in the Swiss media market. The development of the monitoring tool was based on data from three research modules. The first examined the role of the various media on individual opinion formation in the Swiss population using a representative survey. The second analysed data from baseline studies in the field of media research to determine the importance of different media for the public. The third investigated established ownership and participation structures in the Swiss media market on the basis of annual reports, industry studies and continuous market observation.

As an example of a state media authority in Germany (at the level of the Lander), the BLM in Bayern launched as initiative to monitor media plurality with its ‘MedienVielfaltsMonitor’ media diversity monitor).⁴⁵ While developed by the BLM and originally used there since 2012, the monitor is now (since 2015) used to assess media diversity throughout Germany. Bi-annual reports are produced regarding the ‘opinion forming weight’ (the strength of influence on opinion-formation) of the media by sector, and by specific brands. This is carried out in a survey commissioned to the TNS – the TNS Infratest – which gathers data on the use of each type of media for information and also on the importance of each type of media for influencing the opinion of users. The monitor has a 4-step model used to determine the shares of media companies in the ‘opinion market’:

⁴¹ <https://www.rtr.at/medien/service/verzeichnisse/tv-v/Fernsehveranstalter.de.html>

⁴² <https://www.mediamonitor.nl/>

⁴³ <https://www.csa.be/pluralisme/>

⁴⁴ <https://www.monitoring-medias-suisse.ch/>

⁴⁵ BLM Media diversity monitor: <https://www.blm.de/de/wir-forschen/medienforschung/medienvielfaltsmonitor.cfm>

1. Empirical determination of the opinion-forming weight of the mass media TV, radio, newspapers, magazines and Internet (weighting study by TNS Infratest);
2. Determining the reach of media offers based on the recognized market studies;
3. determination of the share of media companies in the individual media markets television, radio, newspapers, magazines, internet; cross referencing the reaches and shareholder shares of the providers (using the media database of KEK);
4. Calculation of the shares in the opinion market by adding and weighting the values in the individual media markets.

In Slovenia, a Draft Media Law was published for consultation in December 2023. Among others, it introduces a new media register to update the existing media register. It will provide current data on formal and actual media owners, data on state advertising and received state aid, and other data that is necessary for an understanding of the media landscape. This register will be managed by the relevant Ministry. The Law indicates that the Register will be supplemented via updates from a range of other official databases (such as Public Law records, Ministry of Finance, etc.). Hence the media regulatory authority will have direct access to the relevant register.

This is something that should be included in the legal framework in Montenegro in order to ensure access for the AEM to the relevant official registers. In addition, the inclusion of data regarding state funding and state advertising revenues as in the Slovenian case is recommended.

7.4. Compliance with transparency of ownership rules linked to access to state funds

It is becoming more common to set strong criteria to accessing any public funding that is used in supporting the media – including state aid, subsidies or specific media pluralism funds. The recently published Draft Media Law in Slovenia has included this under Article 15 (state aid allocation procedure) and clarifies that the conditions for participation in tenders may refer to (among others): ‘compliance with ownership transparency requirements, state advertising, conflict of interest...’⁴⁶ The current Draft Law on Media of Montenegro also addresses this issue under Article 21 (Chapter IV – Media Pluralism and Diversity Promotion Fund), where applicants for funds are required to have complied with the provisions on media ownership data and on transparency of funds from public bodies.

The transparency of State Advertising is dealt with under Article 14 of the Draft Law on Media, whereby public sector bodies must deliver data to the relevant Ministry spent on advertising, and media outlets are obliged to also keep records of this funding and deliver the information to the relevant Ministry. This partly implements the EMFA provisions on State Advertising. Article 24 of the EMFA also states that:

‘public funds or any other consideration or advantage granted by public authorities to media service providers for the purposes of advertising shall be

⁴⁶ In Slovenian only: <https://e-uprava.gov.si/si/drzava-in-druzba/e-demokracija/predlogi-predpisov/predlog-predpisa.html?id=16268>

awarded according to transparent, objective, proportionate and non-discriminatory criteria and through open, proportionate and non-discriminatory procedures’

It is recommended to consider in the course of developing the next version of the Draft Law on Media to include in more detail the provisions of the EMFA in the area of state advertising. In addition, according to the MPM 2023 Report on Montenegro, the first report on data delivered to the Ministry ‘was published in June 2023, only to show that neither media nor the state institutions followed these legal provisions. According to the report, only 37% of registered media submitted the report on state institution payments, and 9% of state institutions reported on their media advertising spending.’⁴⁷

8. Montenegro - Regulating transparency of ownership

8.1. Law on Electronic Media

In accordance with the current Law on electronic media (art.129)⁴⁸ audiovisual media service providers are obliged, by 31 December of the current year, to submit to the Agency data on natural and legal persons (name/title, registered office/residence) who, during that year, directly or indirectly became holders of shares in the provider, with information on the percentage of those shares.

Also, audiovisual media service providers are obliged to submit data to the Agency by 31 December of the current year on all their ownership participation in other legal entities that are providers of audiovisual media services; on participation of its owners higher than 10% owned in legal entities that are providers of audiovisual media services.

The Agency is obliged to publish the above mentioned data in the "Official Gazette of Montenegro". Data on shareholders up to 1% of the capital value are published jointly (example – the owners of the percentage of shares less than 1% are marked as “other natural persons/legal entities” with the overall percentage of shares hold by all of them - other natural persons : 12.5%).

The Law sets the definition of related persons (art. 130) as persons who are connected to each other by management, capital or in another way that enables them to jointly determine business policy, operate aligned with the intention of achieving common goals, i.e. so that one person has the ability to direct another or to an important way affects his decision-making on financing and operations, that is, deciding on the programming basis of electronic media. Related persons are members of the immediate family (parents, children, brothers and sisters, adoptive parents and adoptees); related by marriage or cohabitation; related as in-laws or members of the close family of the spouse; related as owners of the total business share, shares or other rights on the basis of which they participate in the management of another person with at least 20% of the voting rights; related in such a way that in both entities, the same person has the total business share, shares or other rights on the basis of which they participate in the management of each of them

⁴⁷ Monitoring Media Pluralism in the Digital Era - (2022). Country report: Montenegro https://cadmus.eui.eu/bitstream/handle/1814/75732/montenegro_results_mpm_2023_cmpf.pdf?sequence=1&isAllowed=y

⁴⁸ <https://aemcg.org/wp-content/uploads/2017/12/Zakon-o-elektronskim-medijima-2.pdf>

with at least 20% of the voting rights; related through a marketing or other contract, when they generate more than 30% of their advertising revenue over a three-month or longer period in one year; related in such a way that they are members of the management body of the legal entity in which they perform this duty and persons who are considered to be connected with the members of the management body of that legal entity in the manner determined by the law.

Even though the law defines the related persons its practical application is questionable as there is no reference to related persons in the sections of the law regulating media ownership transparency and concentration. It is however improved in the draft Law on AVM services, as explained in the paragraph related to the draft Law.

The Agency is regularly publishing the report on media ownership and the obstacles and/or any issues in collecting data required by the current Law were not detected.⁴⁹

Also, it should be pointed out that there could be a potential problem with the ownership transparency in cases in which the non/governmental organisations are operating the media. The current Law is not limiting the possibility for NGO to operate any broadcaster, commercial or non-commercial. Having in mind the fact that in accordance with the applicable Law on non-governmental organisation there is no ownership over NGO, it is possible to misuse this situation to avoid the legal requirements for concentration and revealing the information on ownership. The information that are available on the NGO in the NGO registry that is run by the Ministry in charge of public administration are the information on the persons that submitted the request for the registration of the NGO. The lists of the members of the NGO is not published nor is there a requirement to publish it.

As noted above, the rules on media concentration are clear and are easily to be followed. However, these rules can be detoured in cases in which there is a transfer of ownership in the media, in accordance with the art. 135 of the Law. The only situation in which the transfer of ownership will not be allowed is if there is a foreign owner and the origin of the founding capital couldn't be determined in the country of origin of that owner. There is no clause that the rules that are applicable to allowance of broadcasting in terms of concentration should be applied to transfer of ownership as well.

8.2. Draft Law on Audiovisual Media Services

The work on a draft of the Law on Audiovisual Media Services is ongoing for over 3 years and the Law was set to be put to procedure for adopting in the first quarter of 2023. However, due to recent parliamentary elections held on 11th June 2023 and the new government being appointed on 4th December 2023 the process was put on a hold for a while, with the Law expected to be put to procedure in April/May 2024.

In terms of media ownership transparency the draft sets the obligation of the broadcaster, the provider of on-demand AVM services, the distributor of linear AVM services and the service provider of the platform for the exchange of video content, by 31 December of the current year, to provide the Agency with data on:

⁴⁹ See the Overview of data on the ownership of AVM service providers for the year 2022, published by AEM in June 2023: <https://aemcg.org/wp-content/uploads/2023/06/Pregled-podataka-o-vlasnistvu-pruzalaca-AVM-usluga-za-2022.-godinu.pdf>

- 1) natural and legal persons who directly or indirectly have more than 5% share in its share capital if it is a business company, i.e. data on members of management and management bodies if it is other media founders (non-governmental, religious, sports, representative trade unions and other organizations);
- 2) persons related to them;
- 3) to other broadcasters, providers of on-demand AVM services, distributors of linear AVM services and service providers of platforms for exchanging video content in which persons from point 1 and 2 of this paragraph have more than 5% share in the share capital;
- 4) own or its owners' participation of more than 5% in the basic capital of legal entities whose activity includes the collection, design and mediation in the sale of commercial audiovisual communications; and
- 5) own or its owners' participation of more than 5% in the basic capital of legal entities whose activity includes the collection, analysis and publication of information on viewing, listening or visiting AVM services.

The scope of information that the broadcaster, the provider of on-demand AVM services, the distributor of linear AVM services and the service provider of the platform for the exchange of video content are obliged to provide is wider than prescribed in the current Law, which would contribute to better insight in the ownership structure of the media and any changes that occurred following the issuance of the licences point out to potential illicit concentrations.

The Agency would still be obliged to publish the data on its website. Data on shareholders and owners of shares up to 1% of the value of the basic capital are published jointly.

It is useful to note that although the proposed amendment to Article 131 with the addition of paragraph 6 includes reference to online publications such a reference has not been included here in relation to providing ownership data of online publications. As noted above, the EMFA includes press publications provided by any means in the definition of media services and accordingly must provide transparency of ownership.

The definition of related persons is wider than in the current Law and has been updated in several ways in the Draft Law. Firstly it reflects the acknowledgment of the same sex partnership in the legal system of Montenegro. In addition, there are three new phrases regarding related persons to include:

related with the editor-in-chief of the electronic media in the manner determined by the law; related in such a way that the broadcaster or its owner participates in a legal entity whose activity includes the collection, design and mediation in the sale of commercial audiovisual communications; and related in such a way that the broadcaster or its owner has a share of more than 10% in the ownership of a legal entity whose activity includes the collection, analysis and publication of information on viewing, listening or visiting AVM services.

Recommendation:

The Agency for Electronic Media should be clearly designated as an Agency with access to the Register of beneficiary owners in order to implement obligations with regard to gathering and publishing data and in relation to the development of a media ownership transparency database.

8.3. Rules on company registration and transparency of ownership

The Law on companies (Official Gazette of Montenegro no. 65/2020 and 146/2021) sets the obligation for the companies and commercial legal entities to provide only the information on the formal owners.⁵⁰ In cases in which the owner is another legal entity there is no obligation to provide any information on the ultimate beneficiary owner and/or indirect owner or persons in control of the company. Also, in cases of joint stock companies with the shares registered separately with the Central clearing and depositary agency there is also no obligation of registration the ultimate beneficiary owner.

However, the Law on prevention of money laundering and financing of terrorism (Official Gazette of Montenegro no. 110/2023) sets a base for establishing of the Register of Beneficial Owners as an electronic database in which information on the beneficial owners is maintained and stored in order to ensure the transparency of ownership structures and to implement measures to prevent money laundering and terrorist financing. Having in mind the fact that the current law was adopted, published and entered into force on 12 December 2023, no by laws are still adopted, so this report will only focus on the text of the law itself. Once the bylaws are adopted there might be some changes or additions to the process of registration of Beneficial owners.

The register of real owners is maintained by the administrative body responsible for tax collection.

Any legal entity, business company, association, institution, political party, religious community, artistic organization, chamber, trade union, employers' association, foundation or other business entity, legal entity that receives, manages or distributes funds for specific purposes, trust, other person, that is, a subject of foreign law equal to it that receives, manages or distributes assets for certain purposes is obliged to enter data on beneficial owners and changes in beneficial owners in the Register of Beneficial Owners, within eight days from the date of their registration in the Companies Registry or the register of tax payers, i.e. within eight days from the change of data on the real owner.

This obligation does not apply to: entrepreneur, the public sector in the sense of the law regulating the deadlines for settling monetary obligations, and to legal entities and companies with multi-member joint-stock companies whose shares are traded on the organized securities market, where they are required to comply with the obligation to publish data and information about real ownership in accordance with the law regulating the rights and obligations of entities on the market securities and other law.

The Register of Beneficial Owners contains the following information:

⁵⁰ <https://www.gov.me/dokumenta/6a24bb15-b69a-4f2f-8dd7-e4e743e98f49> basic text with no amendments added

- name, address, headquarters, social security number or other identification number, tax identification number (PIB), date of registration and date of deletion from Companies house, i.e. register of taxpayers, status information, form of organization, activity codes, data on the representative, proxy or authorized person (name and surname, unique identity number, date of birth, address of residence or residence, PIB, citizenship), data on a natural person who is registered as a member of the governing body (name and surname, unique identity number, date of birth, address of residence or residence, PIB, citizenship), amount of basic (registered) capital, information about the members, i.e. the founders and the percentage of their share, i.e. the number and percentage of their shares (name and surname, unique ID number, date of birth, address of residence or place of stay, citizenship, ownership share - percentage of shares or percentage of participation in the capital or data on the percentage of direct or indirect disposal of property or data on the percentage of the user's income from the property managed or share in the property of a legal entity or other subject of foreign law), a graphic representation of the ownership structure if the obligor has a complex ownership structure, address for receiving mail, account numbers in credit institutions, scanned documentation proving the entered data;

2) information about the real owner, namely: first and last name, unique identity number, date of birth, address of residence or place of residence, PIB, citizenship, data on the ownership share (percentage of shares or percentage of participation in the capital or data on the percentage of direct or indirect disposal of assets or data on the percentage of the user's income from the assets managed or share in the assets of a legal entity or other subject of foreign law) or another type of control (data whether it has a decisive influence in the management of assets, whether it provides funds indirectly or has provided funds or has a decisive influence on decision-making or has a controlling position in management), date of registration, date of change, i.e. date of update and deletion of the real owner from the Register of Real Owners, scanned documentation proving the entered data;

3) data on the category of persons with an interest in the establishment of a trust, another person, i.e. a subject of foreign law equated with it, when the persons who benefit from the trust, another person, i.e. a subject of foreign law equated with it, have yet to be determined (name and surname of the founder or trustee of the trust, beneficiaries of funds acquired from managed assets when future beneficiaries have already been determined or can be determined by the trust or representatives of the interests of the recipients of the trust funds acquired, unique identification number, date of birth, country of residence, citizenship, passport number and country of issue, license number for residence or permits for residence and work in accordance with the regulations regulating the conditions for the entry, movement and residence of foreigners in the territory of Montenegro).

Access to data from the Register of Beneficial Owners is available to:

- 1) financial intelligence unit, supervisory authorities from Article 131 paragraph 1 of this law and competent authorities from Article 96 paragraph 1 of this law;
- 2) obligors; and
- 3) other legal and natural persons.

Obligors, as the entities that are obliged to collect the data and implement the Law on preventing money laundering and financing of terrorism have immediate electronic access to data on beneficial owners entered in the Register of beneficial owners, in order to carry out the client identification procedure. Other legal entities and natural persons have immediate electronic access to data on the real owners, based on electronic identification in accordance with the law regulating electronic identification, namely: first and last name, year of birth, citizenship, country of residence , type and volume of ownership stake.

However, the owners of the entities that are subject to Register of beneficiary owners may submit to the administrative body competent for tax collection a request to restrict or prevent access to all or part of the data to other legal and natural persons if access to that data would put the beneficial owner at risk of fraud, kidnapping, blackmail, violence or intimidation or if the beneficial owner is a child or a person deprived of legal capacity. However, allowing the Agency to access the Register might allow more control on the transparency of media ownership.

Recommendation:

The Agency for Electronic Media should be clearly designated as an Agency with access to the Register of beneficiary owners in order to implement obligations with regard to gathering and publishing data and in relation to the development of a media ownership transparency database.

This is in line with Council of Europe standards under the 2018 Recommendation whereby States should also facilitate inter-agency co-operation and co-ordination, including the relevant exchange of information about media ownership held by different national authorities (such as media regulatory authorities, competition authorities, data protection authorities, company registers and financial supervisory authorities).

8.4. Data protection in the context of transparency of ownership of the media

The Law on protection of personal data (Official Gazette of Montenegro no. 79/2008, 70/2009, 44/2012 and 22/2017)⁵¹ provides the main principles of personal data protection. In accordance with this law personal data is all information related to a natural person/individual whose identity has been determined or can be determined, while processing of personal data is an action by which personal data is automatically or otherwise collected, recorded, noted, organized, stored, changed, withdrawn, used, reviewed, disclosed through transmission, published or otherwise made available, classified , combined, blocked, deleted, destroyed, as well as any other action that is carried out on personal data.

⁵¹ <https://www.azlp.me/docs/zajednicka/zakoni/zakon-o-zastiti-podataka-o-licnosti.pdf> / amendments of 2017 not included

Processing of personal data can be carried out based on the previously obtained consent of the person whose personal data is being processed, which can be revoked at any time.

Having in mind that the person submitting any kind of request to Agency is allowed to ask that the personal data is protected and not disclosed further there is no obstacle in allowing the agency to collect the data on the ultimate beneficiary owners of media outlets. Also, publishing of the data within the legal obligations of the Agency is limited to names only, with no further personal data. To conclude, in terms of personal data protection there is no restriction for the Agency to be allowed to collect the data in terms of ownership transparency requests.

9. Policy measures to promote media pluralism and diversity

9.1. Media pluralism: Council of European standards and initiatives

Regarding media pluralism, another key standard is the 2007 Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content.⁵²

The Recommendation focused on four areas: 1) structural pluralism, 2) diversity of content, 3) transparency of ownership, and 4) scientific research. The recommendation stressed the importance of media concentration rules, of adaption of competition law measures, of ensuring the place of public service media in the new media environment and its role in integrating society, and ensuring PSB is independent and securely financed. Structural issues that were addressed included encouraging the development of other media such as community, local, minority or social media and issues of access to electronic networks and any other financial and regulatory measures necessary to protect and promote structural pluralism of audiovisual and print media.

With regard to measures promoting content diversity, the Recommendation focused on: ensuring a sufficient variety of information, opinions and programmes is disseminated by the media and is available to the public; encouraging the media to supply the public with a diversity of media content capable of promoting a critical debate and a wider democratic participation; promoting the production and provision of diverse content by media organisations; ensuring the availability of content via must carry rules; providing support measures for the creation, production and distribution of audiovisual, written and all types of media contents which make a valuable contribution to media diversity; supporting the training of media professionals, including on-going training, and encourage such training to address the role that media professionals can play in favour of diversity.

9.2. Media pluralism: European Union initiatives

As noted earlier, media pluralism is one of the key objectives of the Audiovisual Media Services Directive (AVMS Directive) alongside cultural and linguistic diversity, consumer protection, accessibility, non-discrimination, the proper functioning of the internal market and the promotion of fair competition, while Member States should ensure that independent media regulatory authorities are able to exercise their powers in order to achieve these objectives.

⁵² Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content. https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d6be3

Since 2011 the European Union has co-financed the Centre for Media Pluralism and Media Freedom (CMPF).⁵³ The centre carries out an annual Media Pluralism Monitor (MPM), which monitors the state of media pluralism in EU Member States, and also in Albania, Montenegro, the Republic of North Macedonia, Serbia and Turkey. The European Commission's European Democracy Action Plan published in December 2020 has the main goal of strengthening democratic resilience. Key aims of the Action Plan include the following: protecting election integrity and promoting democratic participation; strengthening media freedom and media pluralism; and countering disinformation.⁵⁴ In 2021, the Euromedia Ownership Monitor was launched with funding from the European Commission.⁵⁵ The most important development from the action plan was the proposal for a European Media Freedom Act (EMFA), referenced above.

⁵⁶

The European Union has for many years supported content production via the Creative Europe programme. Creative Europe has both a Culture Strand and a Media Strand. The Creative Europe MEDIA strand supports the European film and audiovisual industries to develop, distribute and promote European works, taking into account today's digital environment. In addition, the Creative Europe has a Cross-sectoral strand which aims to reinforce collaboration between different cultural and creative sectors (CCS) in order to help them address the common challenges they face and find innovative solutions. Under this strand, the Creative Europe programme has 2021-2027 programme introduced new initiatives to support to the news media sector, to promote media literacy, pluralism and media freedom, as well as activities to help the sector adjust to the structural and technological changes it faces.

Funding opportunities target the wider European news media sector, including small media. In particular, there are multiple lines of actions to: support journalism partnerships that create systematic collaborations among media organisations; support projects that enable knowledge sharing on media literacy; support a project providing rapid responses to violations of press and media freedom; support self-regulation and ethical codes in journalism; monitor media freedom and pluralism by assessing relevant legal frameworks across Europe and possible risks to media ownership transparency.

9.3. Promoting prominence and findability of content

Article 7a of the AVMSD states that Member States may take measures to ensure the appropriate prominence of audiovisual media services of general interest. Additional areas where media pluralism can be supported include the regulation of electronic communications networks and services used for the distribution of radio or television broadcast channels to the public. Previously regulated under the Universal Services Directive, which has been amended by the European Electronic Communications Code (EECC) entered into force on 21 December 2018.⁵⁷

⁵³ Centre for Media Pluralism and Media Freedom: <https://cmpf.eui.eu/about/>

⁵⁴ European Commission Democracy Action Plan <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0790>

⁵⁵ Euromedia Ownership Monitor: <https://media-ownership.eu/>

⁵⁶ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU.

⁵⁷ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code.

The Code covers ‘must-carry’ rules which allow the Member State to ensure that the electronic communication networks with a significant number of end users are obliged to carry certain radio and television channels in order to meet certain general interest objectives. Most states use these rules to ensure, for example, that public service media or local and community media are distributed. Under Article 114(1):

Member States may impose reasonable ‘must carry’ obligations for the transmission of specified radio and television broadcast channels and related complementary services, in particular accessibility services to enable appropriate access for end-users with disabilities and data supporting connected television services and EPGs, on undertakings under their jurisdiction providing electronic communications networks and services used for the distribution of radio or television broadcast channels to the public, where a significant number of end-users of such networks and services use them as their principal means to receive radio and television broadcast channels. Such obligations shall be imposed only where they are necessary to meet general interest objectives as clearly defined by each Member State and shall be proportionate and transparent.⁵⁸

Hence, it is strongly recommended that any revisions of the Law on Electronic Communications in Montenegro to align with the EU acquis, should introduce must-carry rules to secure the distribution of content of general interest in order to promote media pluralism. These rules can also be cross referenced in the Law on Audiovisual Media.

9.4. Promoting media pluralism in European countries

Audiences in certain smaller countries are frequently dominated by foreign companies. This is particularly the case in Austria, Ireland and the French language media market of Belgium where content is received from much larger neighbouring markets with the same languages (from the UK, Germany and France).⁵⁹ In addition, there has been a growth of pan-European companies that offer TV channels in a range of countries. These can be described as pan-European groups with channels that play an important role in various national markets (for example Central European Media Enterprises, RTL, and the Modern Times Group) and tend to own national generalist channels with a high market share. These may be more appropriately referred to as multi-country broadcasters.⁶⁰ The main player in the Irish market is the UK company Virgin Media which owns the commercial channels and the main cable operator. In South East Europe, this pan-European player is the United Group present in eight countries and operating in broadcasting and distribution (cable and satellite).

The United Group is dominant in the market of Montenegro, as outlined above. Attempts by the United Group to take over Pro Plus in Slovenia (the company owning the two national commercial channels Pop TV and Kanal A plus a range of thematic channels) and to acquire these from

⁵⁸ Directive (EU) 2018/1972 - the European Electronic Communications Code.

⁵⁹ Jurisdictional Review of plurality policies, guidelines, practices and rules. Prepared on behalf of the Broadcasting Authority of Ireland (BAI) by Deirdre Kevin, Commsol, March 2018.

⁶⁰ See: European Audiovisual Observatory (2016): MAVISE EXTRA- Media ownership: towards Pan-European groups? by Gilles Fontaine and Deirdre Kevin. <https://rm.coe.int/16807835e3>

Central European Media Enterprises was blocked by the Slovenian competition authority in 2018. The company also owns Telemach Slovenia. The Slovenian Competition protection Agency (AVK) stated that such a takeover could bring horizontal effects of concentration on the television advertising market, the market for the purchase of rights for the transmission of sports content and the wholesale market for the supply of children's programs.⁶¹ In November 2022, after receiving the approval of the competent regulatory bodies, United Media became the owner of 71 percent of the ownership in Adria Media, a company that owns the most prestigious portals and printed editions in Slovenia.⁶²

In a situation of dominance in the audiovisual media market, there are several ways in which regulators promote media pluralism.

9.4.1. Public service media and local and community media as pillars of pluralism

The 2018 Recommendation of Committee of Ministers of the Council of Europe on media pluralism and transparency of media ownership in its preamble notes that:

9. Independent and sustainable public service and not-for-profit community media can serve as a counterbalance to increased media concentration. By virtue of their remit and organisation, public service media are particularly suited to address the informational needs and interests of all sections of society, as is true of community media in respect of their constituent users. It is of utmost importance that the mandates of public service media include the responsibility to reflect political pluralism and foster awareness of diverse opinions, notably by providing different groups in society – including cultural, linguistic, ethnic, religious, sexual or other minorities – with an opportunity to receive and impart information, to express themselves and to exchange ideas.⁶³

In addition, the Council of Europe report on Information Disorder⁶⁴ also recommends the importance of government support for public media and local media in the battle against disinformation:

Support public service media organisations and local news outlets. The financial strains placed on news organisations in recent years has led to 'news deserts' in certain areas. If we are serious about reducing the impact of information disorder, supporting quality journalism initiatives at the local, regional and national level needs to be a priority.

Hence, it is key that States continue to provide stable and foreseeable financing for Public Service Media and that there is a fostering of sustainable local and community media.

⁶¹ <https://www.blog.uporabnastran.si/2019/01/18/united-group-ne-bo-postal-novi-lastnik-druzbe-pro-plus-ta-tako-ostaja-v-lasti-medijske-druzbe-cme/>

⁶² <https://unitedmedia.net/united-media-has-become-the-majority-owner-of-the-slovenian-company-adria-media/>

⁶³ Council of Europe, Committee of Ministers (2018): Recommendation CM/Rec(2018)1[1] of the Committee of Ministers to member States on media pluralism and transparency of media ownership

⁶⁴ Council of Europe (2017): Information Disorder: Toward an interdisciplinary framework for research and policy making.

9.4.2. Promoting media pluralism through the licensing process

Another important tool in the regulatory toolbox for the promotion of media pluralism is the licensing of services. Ideally, licensing of broadcast services should reflect an overall strategy of licensing that aims to maximise diversity and pluralism in the market.

At EU level, there are no harmonised rules regarding the issue of access to the audiovisual market, which has led to a wide diversity of licensing systems for audiovisual media services (AVMS) in the national legislative frameworks. Of key importance is that the licensing system places obligations on audiovisual media operators regarding the schedule of content (news, children's programmes, entertainment, etc) according to the particular licence contracts/tenders.

This is particularly relevant to digital terrestrial broadcasters such as the national commercial generalist channels. Such obligations should also relate to the range of content regulations outlined in the relevant national legislation and the AVMSD, and also the rules around European production and independent production. National regulations may also include rules on programming in the national language, on in-house content production and national content production. The licensing process is also an important tool in the control of concentration as outlined above with examples of limiting licensing in order to prevent the development or enhancement of a dominant position in the market. As discussed above, it is important to ensure transparency of ownership in all aspects of licensing including application, renewal and transfer of licences.

9.4.1. Funding to promote media pluralism

The 2013 report of the European Commission - High Level Group on Media Freedom and Pluralism recommended that:

..there should be a provision of state funding for media which are essential for pluralism (including geographical, linguistic, cultural and political pluralism), but are not commercially viable. The state should intervene whenever there is a market failure leading to the under - provision of pluralism, which may be considered as a key public good.

The 2018 Recommendation of the Council of Europe on media pluralism and transparency of media ownership also placed an emphasis on support mechanisms for the media sector. The recommendation stressed that states should develop, in consultation with representatives of the media and civil society organisations, strategies and mechanisms to support professional news media and quality independent and investigative journalism, including news production capable of addressing diverse needs and interests of groups that may not be sufficiently represented in the media. The major changes to the dynamics of media markets in particular the growing use of media online have had a major impact on the advertising markets in Europe which normally provide a considerable amount of the funding required for the production of content – of programming and also of news.

The majority of smaller European countries have established funds for pluralism and/ or journalism with the aim of promoting and preserving national identities and culture and also supporting national democracies (such as Austria, Belgium, Ireland, Denmark, Norway the Netherlands, Slovenia and Croatia). This is in response to the major financial challenges in the

media sector particularly since the emergence of global players and their impact on national audiences and the national advertising resources. It is widely recognised that in order to preserve culture, identity and ensure the resilience of democracies, it is necessary to fund the relevant content and support quality journalism. Given the major impact of global technology companies in the last decade – on advertising, on audiences, and on the business model of news production, it is now even more urgent. Following the changes to the Audiovisual media services Directive, it is now also possible for countries to place financial obligations on services that target the country. Linked to the issue of transparency of media ownership and the need to develop media ownership transparency.

The Fund for Encouraging Pluralism and Media Diversity in Montenegro (under the Media Law) is a good example of such funding with a detailed list of topics of public interest. As noted earlier, the Draft Law on Media under Article 21 requires that applicants for funds comply with the provisions on media ownership data and on transparency of funds from public bodies.

9.4.2. Monitoring media pluralism and reporting

Linked to the issue of transparency of media ownership and the need to develop media ownership transparency databases is the broader issue of monitoring media pluralism in the market.

As an example, the Belgian CSA Pluralism database of the Belgian French speaking community is published on the regulator's website on the basis of the Decree on audiovisual Media Services that includes a chapter on transparency and protection of Pluralism.⁶⁵ The website provides: a database of all the services available (television, radio, on-demand services, print media and other electronic media services; an overview of media groups as well as their structure and shareholding (graphic representation); audience and market shares by sector (television, radio and daily newspapers), such as market shares, the time of use of the media, the turnover of publishing companies and the level of concentration; and data on media content. Other examples of databases were already outlined in relation to media ownership transparency (above) including reference to those in Austria, Belgium, the Netherlands, Germany, Slovenia and Switzerland.

10. Key findings and recommendations

10.1. Recommendations related to the legal framework in Montenegro

Currently (January 2024), several draft laws are still under discussion in Montenegro including a Draft Law on Media, a Draft Law on Audiovisual Media and a Draft Law on RTCG. This presents an opportunity to update the laws also according to the EMFA.

- It is highly recommended that a definition of media pluralism be added to the legislative framework. Media pluralism is referenced in both the Draft Law on Media, and in the Draft Law on Audiovisual Media. Examples were provided under chapter three above. A further example of a definition of media pluralism which reflects the overview of the concept

⁶⁵ Décret sur les services de médias audiovisuels (art. 6 et 7). Chapitre IV – Transparence et sauvegarde du pluralisme. See: <https://www.csa.be/pluralisme/>

outlined above is elaborated in the Draft Law on Media under consultation in Slovenia (under Article 3 (13)):

Media pluralism, or the plurality and diversity of the media, covers the diversity of the scope, use and distribution of media in relation to ownership and control (pluralism of media ownership and control), types and genres of media (pluralism of media types and genres), political positions (political pluralism), cultural expressions (cultural pluralism) and local interests (geographic pluralism).⁶⁶

- In the Draft Media Law (and possibly the Law on Audiovisual Media Services) , it would be necessary to include a definition of “media service” that reflects that in the European Media Freedom Act
 - a service as defined by Articles 56 and 57 of the Treaty, where the principal purpose of the service or a dissociable section thereof consists in providing programmes or press publications to the general public, by any means, in order to inform, entertain or educate, under the editorial responsibility of a media service provider
- As noted earlier, the legislative framework needs to reflect the EMFA (Chapter III, Articles 6 and 7) with regard to information that media service providers must provide to the independent regulatory authority regarding their ownership. In addition, the State must entrust the national regulatory authority or another competent body to develop a national media ownership database (Article 6).
- Adequate financial, human and technical resources should be provided to the regulatory authority to carry out their tasks under this Regulation. They should have sufficient powers to request the information.
- Among others, the Law on Audiovisual Media needs to be adapted to include additional competences of the Agency. Under Article 11 (Jurisdiction of the Agency), the following competences should be added:
 - Develop and maintain a national media ownership database and develop procedures for regularly gathering such data from audiovisual media service providers
 - This database should include media ownership information on “media services” as defined under the EMFA and including press and online publications hence a procedure should be developed to gather data on ownership of other forms of media. The EMFA designates media regulator or other designated body as having the competence to develop broad media ownership transparency databases.
 - Publish regular reports on media pluralism
 - In cooperation with the competition authority, to carry out assessments of the impact of media concentrations on plurality, editorial independence and market sustainability
 - Provide formal opinions on investigations into competition and media concentrations.

⁶⁶ In Slovenian only: <https://e-uprava.gov.si/si/drzava-in-druzba/e-demokracija/predlogi-predpisov/predlog-predpisa.html?id=16268>

- It is recommended that the procedures for licensing and assessments of potential illicit concentrations in the market also be extended to renewal of licences transfer of licences and transfer of ownership.
- the Draft Law introduces provisions on changes of ownership requiring a clearance by the media regulatory authority and reflecting good practice in other states (for example Croatia). It would be useful if these provisions clarified that the same procedure applies to the complete transfer of ownership.
- It is highly recommended to align the law with the forthcoming European Media Freedom Act (EMFA) regarding the need to ensure that audience measurement systems comply with the principles of transparency, impartiality, inclusiveness, proportionality, non-discrimination, comparability and verifiability.
- It is highly recommended that the AEM is given the competence to play a role in the assessment of mergers and concentrations in the media sector as carried out by the competition authority. Such changes to the legislative framework may need to be implemented in both media legislation and competition legislation.
- It is worth noting that the EMFA requires the same gather of data for all media services (including press and online publications) and this should be taken into account in the alignment with the EMFA in the package of media legislation currently under review.
- It is highly recommended that the AEM be clearly named as an Agency that has access to the Register of Beneficial Owners in Montenegro, in line with Council of Europe Recommendations in the area. The examination of the legal framework in relation to data protection also found no obstacles to the work of the AEM in this area.

10.2. Policy recommendations on the promotion of media pluralism

- Developing a licensing strategy
- Introducing rules on ‘must-carry’ and prominence..
- Adding further transparency criteria to applicant to the Fund for Encouraging Pluralism and Media Diversity covering all state funds including state advertising.

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