THE INDEPENDENCE AND FUNCTIONING OF THE REGULATORY AUTHORITY FOR ELECTRONIC MEDIA IN SERBIA

AN ASSESSMENT USING THE INDIREG METHODOLOGY

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Study commissioned by the Council of Europe

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EXECUTIVE SUMMARY

This study carries out an independent assessment of the Regulatory Authority for Electronic Media (REM) of Serbia. The scope of the study is to apply the INDIREG methodology to the REM and provide contextual interpretation of the results with policy recommendations. This study has been commissioned by the Council of Europe, on the request of REM, in the framework of the Project "Reinforcing Judicial Expertise on Freedom of Expression and the Media in South-East Europe (JUFREX)".

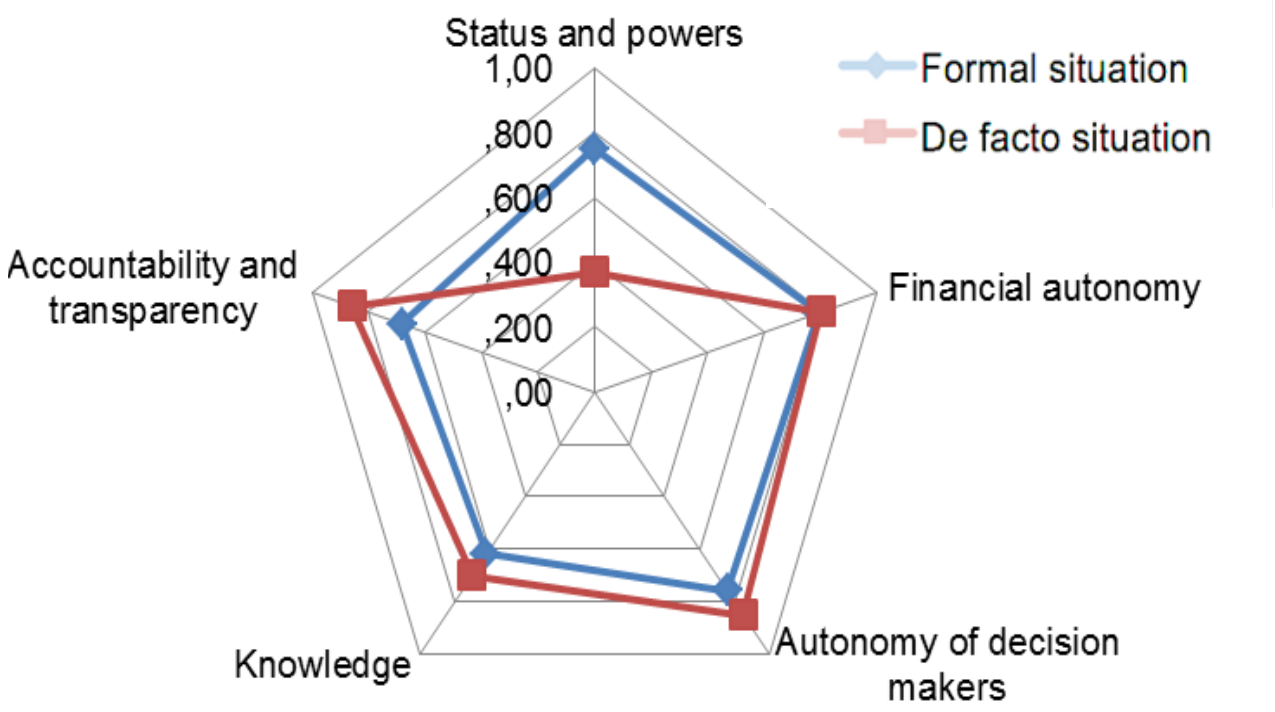
REM, seated in Belgrade, was set up in 2014 according to the Law on Electronic Media as the new independent regulatory authority for electronic and audiovisual media services' sector. REM is caught and operates in a challenging media context, in addition to lacking the optimal support of the parliament and being sidelined by the Ministry on Culture and Information. REM in this situation appears to retreat to overly formalistic (law-abiding) activities without necessarily being effective in regulating the Serbian electronic and audiovisual media. Many stakeholders from the media sector do not perceive of REM as an authority pointing to a lack of enforcement or the deflection of responsibility (e.g. monitoring election campaigns) which has undermined its public credibility.

The INDIREG methodology offers a scientifically backed methodology to appraise the formal and de facto independence of supervisory authorities in the audiovisual media sector on five different dimensions: (1) Status and powers, (2) Financial autonomy, (3) Autonomy of decision-makers, (4) Knowledge and transparency and (5) accountability. This implementation study on REM proceeds in three steps:

1. Gathering data on formal and de facto independence of REM;
2. Applying the INDIREG Ranking Tool to REM;
3. Deriving attention points and contextual interpretation of the results.

The graphical representation below constitutes the applied Ranking Tool of REM representing the situation in July 2017. It is important to note that the Ranking Tool is an interim step in the analysis from which attention points are derived for contextual interpretation.

The Ranking Tool applied to REM



The following attention points were derived from the applied Ranking Tool:

Status and powers dimension

- Under normal circumstances it should suffice that a regulator's independence is recognized in an act of parliament, however, in a variety of ways the Serbian administrative legal tradition does not recognize independent authorities which can contradict REM's independence.

- While the 2014 Electronic Media Law introduced a number of elements which would actually strengthen the tasks and powers REM is no longer the "owner" of the important strategy for the development of Radio Media Service and Audiovisual Media services in the Republic of Serbia.

- There are clearly shortcomings with the ability to impose and the use of deterrent sanctions, however, they are not alternating sides of the same coin. On the one hand, the regulator cannot impose financial sanctions which are certainly more effective than reprimands and warnings. On the other hand, REM underuses the most deterrent sanction it has, i.e. the temporary ban on programmes.

- There is a risk that REM can be instructed (other than by a court) through the central strategy for the development of Radio Media Service and Audiovisual Media Services in

the Republic of Serbia and the required review of the constitutionality and legality of by-laws and rule-books.

Financial autonomy dimension

- While the budget setting and approval procedure are clear and legal defaults are foreseen for the situation that the parliament does not approve the new budget, but the fact that REM operates on the basis of an outdated budget plan curtails its autonomy to decide how its budget is spent.

Autonomy of decision-makers dimension

- The formal set-up of nomination and appointment procedure of members to the Council is best practice and scores well in the legal assessment of the Ranking Tool.
- The procedure for nomination and consolidation of candidates among the organisations that together form a single nominator is prone to failure in practice.
- The procedure for nomination and appointment of new members of the REM Council is frequently delayed and interrupted on procedural grounds.
- The Council members seem to be removed from daily operations and the Council appears to function more as a filter than an engine of the independent regulator.

Knowledge dimension

- The qualification and expertise of Council and staff did not raise significant attention points, neither at formal nor at actual levels.

Accountability and transparency dimension

- REM complies with the letters of the Law on Electronic Media on publications but does not create true engagement with its stakeholders, the public and the media.

The policy recommendations below were derived as a result of the contextual interpretation of these attention points. Policy recommendations are addressed either to the parliament or to REM.

Policy recommendation addressed to the Serbian legislator

Status and powers	1. Collaborate with international assistance and request an independent study on the possible tensions between the public administrative framework and independent regulatory bodies in Serbia. 2. Create clear-cut roles and responsibilities with regards to the central strategy for the development of the media service of radio and audiovisual media services in the Republic of Serbia.

	3. Clarify in the Law on Electronic Media that that the constitutionality and legality review should be exclusively for the judiciary. 4. Clarify the role of REM in relation to the monitoring of election campaigns 5. Amend the Law on Electronic Media with a view to equip REM with the power to issue financial sanctions, also in relation to violations of programme content requirements, following a warning and subject to judicial review.
Financial autonomy	6. Support the independence and functioning of REM in line with the law on electronic media by timely adoption of REM's annual financial plan.
Autonomy of decision-makers	7. Support the independence and functioning of REM in line with the law on electronic media by timely organization of timely nominations and appointing new members to the REM Council. 8. Support the independence and functioning of REM in line with the law on electronic media by timely adoption of REM's statute. 9. Treat each nomination and appointment procedure as a self-standing procedure.
Knowledge	10. Re-introduce that the members of the Council are (part)time employed
Transparency and accountability	11. Clarify and possibly specify procedures for handling REM's Annual Report.

Policy recommendation addressed to REM

Status and powers	a. Liaise with the other sector-specific independent regulators in Serbia and compile information about the impact from horizontal administrative rules. b. Adopt a scheme how REM uses its sanctioning powers that would gradually escalate sanctions in order to step up deterrence.
	c. If financial sanctions are revised, REM is advised adopt a by-law formulating a graduated response so that sanctions for not paying fees are announced and mounted corresponding to the law. d. If the process of approving the final plan becomes timely, schedule an external independent expert review of the agencies financial autonomy, including its fee structure, collection process

	and enforcement strategy.
Autonomy of decision-makers	e. The members of the Council should be more assertive and visible representatives of REM.
Knowledge	f. REM staff should be allowed and encouraged to be more assertive and visible representatives of REM. g. Take regular stock of the composite knowledge of the Council and communicate this to authorized nominators in order to enhance chances for a distribution of competences and knowledge conducive for a well-functioning steering of the agency.
Accountability and transparency	h. Redesign REM's website and make it more engaging, use of headlines and news bulletins in addition to administrative and technical content. i. Put more effort into outreach, specifically to emphasize the agency redesign of 2014.

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INTRODUCTION

This report assesses the independence and the effective functioning of the Regulatory Authority for Electronic Media (REM) in Serbia using the INDIREG methodology. In 2011 the INDIREG study that was commissioned by the European Commission formulated a scientifically-backed methodology to assess the formal and actual independence of supervisory authorities in the audiovisual media sector.[1] The INDIREG methodology has been applied to many European supervisory authorities in the audiovisual media sector, either as a self-assessment or by an external research team.[2]

Such assessments of the independence and effective functioning of supervisory authorities in the electronic and audiovisual media sector are of course just a means to a different end. Independence vested to the supervisory authority shall ensure impartial implementation and enforcement of the laws applying to radio and audiovisual media that respects media freedoms in line with European standards, notably from the Council of Europe but also increasingly the European Union legal framework. An independent and effective supervisory authority should withstand political and economic influence as well as deliver good regulation to the benefit of media organisations, citizens and democracy in the country.

This study has been commissioned by the Council of Europe, in the framework of the Project "Reinforcing Judicial Expertise on Freedom of Expression and the Media in South-East Europe (JUFREX)".[3] The overall objective of the project is to promote freedom of expression and

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[1] Hans Bredow Institute for Media Research/Interdisciplinary Centre for Law & ICT (ICRI), Katholieke Universiteit Leuven/Center for Media and Communication Studies (CMCS), Central European University/Cullen International/Perspective Associates (eds., 2011): "INDIREG. Indicators for independence and efficient functioning of audio-visual media services regulatory bodies for the purpose of enforcing the rules in the AVMS Directive." Study conducted on behalf of the European Commission. Final Report. February 2011.

[2] See Irion, K., Ledger, M., Svensson, S., and Fejzulla, E.: "The Independence and Functioning of the Audiovisual Media Authority in Albania." Study commissioned by the Council of Europe, Amsterdam/Brussels/Budapest/Tirana, October, 2014 <https://rm.coe.int/16800c8f3b>; Institute of European Media Law and University of Luxemburg: "AVMS – RADAR: Audio Visual Media Services - Regulatory Authorities' Independence And Efficiency Review." Study conducted on behalf of the European Commission. Final Report. 2015 <https://ec.europa.eu/digital-single-market/en/news/study-audiovisual-media-services>.

[3] JUFREX is a three-year, regional project, started in April 2016, implemented in Albania, Bosnia and Herzegovina, Montenegro, Serbia, "The Former Yugoslav Republic of Macedonia", and Kosovo.

freedom of the media in line with Council of Europe standards, with a specific focus on the Judiciary in South-East Europe.

This assessment and report has been conducted on the request of REM which is remarkable in terms of a supervisory authority asserting its independence and seeking external advice on improvements in the governing legislative framework but also their own practices. In the past months the study team has been regularly in touch with REM in the running up to this report and we would like to thank Milan Todorović, Ljubisa Kuvekalovica and the staff in general for their support. We recognize REM's very healthy attitude towards undergoing an external assessment which per definition will not only discover virtues.

The research team has also conducted interviews with important stakeholders for their role in the governance of the Serbian media and in media organisations.[4] In this report we will not attribute to individual stakeholders or reproduce the content of a particular interview. We would like to express our gratitude to these stakeholders and all persons who offered their valuable time for interviews and thereby helped the study team to under the legal and factual circumstances around REM and the legal framework as well as the media markets in Serbia. All mistakes are of course our own and we are careful to flag when we present factual circumstances or offer our own interpretation and assessment.

A number of caveats are necessary when an external research team is tasked with such an assessment in a third country. The external perspective clearly is an advantage when approaching an institution that is key to media governance in a country. The advantage of not being tied up with sometimes conflictual issues can also mean that an external assessment is less nuanced and does not need a strict chronology who did what when and for what reason. For the purpose of this assessment we only need to ascertain how independently and effectively the supervisory authority operates in the local context.

When reading this report we urge your understanding that the local context of course very much conditions how well a supervisory authority can perform its mandate.[5] Countries which have in comparison a short democratic tradition and a rather small economy to support a variety of media outlets are a particular challenge for independent supervisory authorities in electronic and audiovisual media because these are asked to outperform their own context. From our interviews we understand that trust in democratic media institutions and independent journalism, for

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[4] See Annex B for an overview over the stakeholder categories.

[5] Irion, K., and Jusić, T.: "International Assistance and Media Democratization in the Western Balkans: A Cross-National Comparison", (2005) 4 *Global Media Journal - German Edition* 2 <http://www.globalmediajournal.de/2015/01/16/international-assistance-and-media-democratization-in-the-western-balkans-a-cross-national-comparison/>.

example, is a rare commodity in Serbia. It requires special efforts in terms of transparency, inclusiveness and vigilance for an institution to build and defend its credibility in an environment of mistrust.

This report is structured as follows: Part 1 provides a concise introduction to the European standards on independent supervisory authorities in the media sector and the INDIREG methodology that is necessary to understand its actual application. Part 2 then applies the Ranking Tool to REM and provides justifications for contested indicators in particular. Part 3 derives attention points from the Ranking Tool and then evaluates these in the light of the facts and circumstances surrounding the legislative history and inception of REM, leading up to a set of policy recommendations addressed to the Serbian legislator and REM.

1. Independent supervisory authorities in the media sector and the INDIREG methodology

Across regulatory domains the function of independence for better regulatory outcomes is a complex process:

> [F]or independence to lead to better policy outcomes, a complex causal chain needs to operate, leading from statutory provisions granting independence to behavioral patterns demonstrating independence, to policy decisions, and, ultimately, to policy outcomes.[6]

However, different to other regulatory domains featuring independent regulatory bodies the audiovisual media sector displays two aspects that are specific:

1. the objective of regulation in the media sector to guarantee media freedoms; and
2. the specific and at times sensitive relationship between the media sector and elected as well as non-elected politicians' (i.e. the media as 'fourth estate').[7]

Throughout Europe, independent supervisory authorities have virtually become the natural institutional form for regulatory governance in the audiovisual media sector.[8] The Council of Europe adopted a specific recommendation on the independence and functions of regulatory authorities for the broadcasting sector (Rec (2000)23)[9] that was reinforced with a 2008 declaration.[10] Through various programmes the Council of Europe continues to support the

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[6] Hanretty, C, and Koop, C. (2012). "Shall the Law Set Them Free: The Formal and Actual Independence of Regulatory Agencies", Regulation and Governance, 2012, p. 195.

[7] Irion, K., and Ledger, M., 'Measuring independence: Approaches, limitations and a new ranking tool', in: W. Schulz, P. Valcke, and K. Irion, eds., *The Independence of the Media and Its Regulatory Agencies. Shedding new light on formal and actual independence against the national context*, 139-165 (Bristol: Intellect Publ, 2014), p. 2f.

[8] Irion, K., and Radu, R. (2014). 'Delegation to Independent Regulatory Authorities in the Media Sector: A Paradigm Shift through the Lens of Regulatory Theory' in: W. Schulz, P. Valcke, and K. Irion, eds., *The Independence of the Media and Its Regulatory Agencies. Shedding new light on formal and actual independence against the national context*, 15-53 (Bristol: Intellect Publ), p. 17.

[9] Council of Europe, Recommendation (Rec (2000)23) of the Committee of Ministers to the Member States on the independence and functions of regulatory authorities for the broadcasting sector <https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804e0322>.

[10] Council of Europe, Declaration of the Committee of Ministers of 26 March 2008 on the independence and functions of regulatory authorities for the broadcasting sector <https://wcd.coe.int/ViewDoc.jsp?p=&Ref=Decl(26.03.2008)&Language=lanEnglish&Ver=original&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75&direct=true>.

building of independent media organizations and fosters independence as a value in media production and governance. Also the Organisation for Security and Cooperation in Europe (OSCE) monitors media freedom and development in European countries.

By contrast, the European Union is a multi-governmental organisation pursuing a deeper political and economic integration which can issue its own laws to harmonise the conditions in the internal market. The 2010 Audiovisual Media Services (AVMS) Directive recognises the role of independent regulatory bodies for audiovisual media governance but did not prescribe their set-up in the member states.[11] In 2011 the INDIREG study that was commissioned by the European Commission formulated a scientifically-backed methodology to assess the formal and actual independence of supervisory authorities in the audiovisual media sector.[12] In its 2013 Resolution on Standard-settings for media freedom across the EU, the European Parliament called on the Commission to include in the evaluation and revision of the AVMS Directive also provisions on independence of media supervisory bodies.[13] With this the European Parliament follows an earlier report of the High Level Group on Media Freedom and Pluralism who recommends that "[a]ll regulators should be independent, with appointments being made in a transparent manner, with all appropriate checks and balances."

In 2016, the legislative process for a reform of the AVMS Directive was launched. The European Commission put forward a proposal which, among others, would enshrine the independence of audiovisual regulators into EU law.[14] Reinforcing the independence of audiovisual media

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[11] European Parliament and the Council of the European Union (2010), Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), Official Journal of the European Union of 15.4.2010 L 95/1, Article 30.

[12] Hans Bredow Institute for Media Research/Interdisciplinary Centre for Law & ICT (ICRI), Katholieke Universiteit Leuven/Center for Media and Communication Studies (CMCS), Central European University/Cullen International/Perspective Associates (eds., 2011): "INDIREG. Indicators for independence and efficient functioning of audio-visual media services regulatory bodies for the purpose of enforcing the rules in the AVMS Directive." Study conducted on behalf of the European Commission. Final Report. February 2011.

[13] European Parliament, Resolution of 21 May 2013 on the EU Charter: standard settings for media freedom across the EU (2011/2246(INI)), para. 35.

[14] Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities (COM/2016/0287 final), article 30 and recital 33.

regulators would be an important novelty, given the key role of audiovisual regulators in shaping and preserving the internal market and guaranteeing the pluralism of the media. If adopted, the proposed amendments are far reaching, requiring:

- media supervisory authorities to be legally distinct and functionally independent of any other public or private body;
- media supervisory authorities to be able to exercise their powers impartially and transparently, in particular not to seek or take instructions from any other body in relation to the exercise of the tasks assigned to them;
- the competences and powers of the independent regulatory authorities, as well as the ways of making them accountable shall be clearly defined in law;
- media supervisory authorities to have adequate enforcement powers to carry out their functions effectively;
- that independent regulatory authorities have separate annual budgets which are made public; and
- national regulatory authorities have adequate financial and human resources to enable them to carry out the task assigned to them.

This proposal is still in the legislative process and debated by the EU legislator (the Council and the European Parliament) which can lead to textual amendments.[15] Only once the EU legislator has adopted the legislation will the exact requirements for independent regulatory authorities be fixed in European Union law. There is usually a period of two years from the publication in the Official Journal for member states to implement the amendments in their national laws.

The standard-setting activities by the Council of Europe are addressed to all its member states, including Serbia. The recommendations by the Council of Europe form an important benchmark for local media systems and their development towards European standards. By contrast, European Union law applies to member states of the European Union but is also transposed by candidate and accession countries into their national law by way of preparing for EU membership.

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[15] European Parliament: "Briefing: EU Leislation in Process: The Audiovisual Media Services Directive", 27 June 2017 <http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/583859/EPRS_BRI%282016%29583859_EN.pdf >.

The following section introduces the INDIREG study and methodology in the context of the application of European standards in the media sector.

1.1. The INDIREG study's conceptual approach to independence

The INDIREG study undertook to identify key characteristics for a functioning 'independent regulatory body' as referred to in the Audiovisual Media Services (AVMS) Directive and formulating criteria with which these characteristics could be measured. Recognising that independence 'is a multi-faceted concept, the interpretation of which depends heavily on context' the INDIREG study adopts as a functional working definition:

> A regulator is independent if it has within the governance structure a position that ensures that the regulator performs the decision-making process meeting the normative requirements for which the independence of the regulator is called for.[16]

As highlighted in the final report of the INDIREG study, no regulatory agency can be truly independent from its environment, since it always has to dynamically interact with elected officials and other stakeholders as well as to correspond to democratic legitimacy and accountability requirements. Independence is:

> 'rather a necessity for a regulator to keep an equal distance from all possible interests in order to balance them impartially and aim at achieving long-term results benefitting all stakeholders as contrary to serving short term interests of various groups'.[17]

The INDIREG study delivered a review of the extensive literature on the emergence and spread of independent regulatory bodies and what is meant by 'independence'.[18] The knowledge on what constitutes independence of regulatory bodies from regional best practices and research informed the INDIREG methodology that is briefly summarized below.

1.2. The INDIREG methodology

The INDIREG study offers a scientifically backed methodology to appraise the independence of supervisory authorities in the audiovisual media sector. It is grounded in the understanding that regulatory independence should be measured separately for formal and de facto independence, while preserving the complimentary relationship between both sides.[19] Because of the limitations

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[16] Hans Bredow et.al. , "INDIREG Final Report", p. 46.

[17] Lamanauskas, T. (2006): "The key features of independence of national telecommunication regulatory authorities and securing them in law". In: *Law* 61, p. 79.

[18] Hans Bredow et.al. , "INDIREG Final Report", pp. 12ff.

[19] Irion, K., and Ledger, M., p. 151.

to measure a quality like independence, this methodology inverts the logic by measuring the risk of influence by external players rather than the level of independence of the regulators.[20]

In its entirety the methodology is documented in the INDIREG study and the following summary aims to ground an understanding for the purpose of this study. Applying the INDIREG methodology to a specific media supervisory authority proceeds in three steps:

1) Gathering data on formal and de facto independence;

2) Applying the INDIREG Ranking Tool;

3) Deriving attention points and contextual interpretation of the results.

The preliminary assessment in step two is pre-structured by the INDIREG Ranking Tool that translates regional best practices and research into two sets of indicators:

1) Indicators of formal independence refer to legal provisions and the institutional design of the independent regulatory body as prescribed by law; and
2) Indicators pertaining to de facto independence are a combination of compliance indicators and additional safeguards against and actual risks of undue external influence.

The INDIREG study provides justifications for every formal and de facto indicators that was included in the Ranking Tool.[21] All indicators are weighted to reflect their relative influence on the independence of a media regulatory authority. Also the indicators' weighting is made transparent.[22]

In a nutshell, the Ranking Tool is a new composite index that operationalizes indicators on regulatory independence in the audiovisual media sector from regional best practices and research on five different dimensions[23]:

1) **Status & Powers**: the regulator needs to have sufficient independence attributed through its legal status and competences; if any other body or person other than a

[20] Ibid.

[21] Hans Bredow et.al. , "INDIREG Final Report", p. 370f.

[22] Ibid.

[23] The definitions of the dimensions below are extracted from Hans Bredow et.al. , "INDIREG Final Report", pp. 7

court that can overrule decisions and or give instructions the autonomy decreases, and it must have competences to issue binding decisions that go beyond recommendations.

2) **Financial Autonomy**: the regulator must be equipped with sufficient financial resources; otherwise there are risks for both its independence and efficient functioning.

3) **Autonomy of Decision-makers**: it is necessary that the nomination and appointment procedures are constructed in a way that prevent a considerable structural bias in decision-making.

4) **Knowledge**: the body should be equipped with sufficient human resources and adequate expertise to perform its duties.

5) **Transparency & Accountability**: the body must have a minimum obligation of transparency and be accountable for its decisions that balances its relative autonomy.

Once the questionnaire of the INDIREG Ranking Tool is filled in the results are visualized in a graphical representation (a so called spider-web chart), where each axis (i.e. dimension) displays a potential sphere of influence with the exception of accountability and transparency.

The organization of indicators into different dimensions is also an advantage in the third stage when attention points are derived from the filled-in Ranking Tool. Such attention points can be that the application of the Ranking Tool shows that there is a potential risk of external influence with regards to the formal and/or de facto independence on certain dimensions. The attention points undergo a context sensitive interpretation to obtain an understanding of whether in the light of all circumstances they could indeed present a risk for external influence on the independent regulatory authority or are balanced by other contextual factors.

1.3. The Implementation of the INDIREG methodology

This study applies the INDIREG methodology to REM in Serbia and captures the situation up until July 2017, with special emphasis on the 3-year period from August 2014 to July 2017. This presents an adaptation of the original methodology which aims for a longer period of retrospective assessment. This adaptation is in our view justified in order to permit a clean slate since the passing of the Law on Electronic Media and the founding of REM in 2014, as a successor to the Republic Broadcasting Agency (RBA). .

In order to gather data on formal and de facto independence (the first step of the INDIREG methodology), research took place in two distinct phases between mid-May and mid-September 2017.

The first phase of data-gathering lasted from mid-May to early June 2017 with three tasks carried out simultaneously. The project's local correspondent was asked for extensive information that would enable assessment of the formal dimension of the Ranking Tool. This information-gathering resulted in the tables available in this report in Annex 2 and an extensive list of excerpts from media reporting on REM and its predecessor between 2003 and 2017. The project's local correspondent also identified possible interviewees and informants for the various stakeholder categories of importance to the INDIREG methodology. These stakeholder categories can be found in Annex B. At the end of this stage it was possible to determine most of the answers for the formal side of the Ranking Tool, with only some questions flagged for further discussion and deliberation in the stakeholder fact-finding mission.

The second phase of data-gathering consisted of a fact-finding mission involving interviewing 16 persons on site in Belgrade between July 3 and 6, 2017, and follow-up interviews with 5 persons carried out online between July 18 and September 18 2017. Thus, a total of 21 interviews were carried out. Most of the interviews (17) were carried out by two study team members (Michele Ledger and Sara Svensson in most cases, Sara Svensson and Nevena Rsumovic in one case), which ensured capacity to cross-check facts and interpretations both during and after the interviews. All interviewees received in advance information about the project, a blank Ranking Tool and a consent form for recording the interviews for summary purposes. (An opportunity to supply non-recorded confidential information was given but never utilized by interviewees.) Interviewees that could be expected to have detailed and technical knowledge about the operation of REM were also given the full data in the INDIREG tables. At the beginning of each interview a summary of the project was given together with information on how data would be used. No names of interviewees, only stakeholder category, were to be included in the report, i.e. the study does not attribute opinions to specific interviewees. At the same time interviewees were made aware that the sector is relatively small, and that it would be easy to derive approximately to whom we had talked for those in that sector. It should be noted that the media reports revealed that several interviewees had been vocal voices in the sector for years, thus making anonymity in this report less of an issue for them. It should also be noted that opinions were not taken at face value but triangulated with information from other sources.

The focus in the interviews was on elaborations of the interviewee's relationship to REM, and to their assessments of the five different dimensions of the Ranking Tool (Status & Powers, Financial Autonomy, Autonomy of Decision-Makers, Knowledge and Transparency & Accountability). However, the interview guideline was adapted to the specific interviewee and his/her level of experience of interaction or work with REM.

Ultimately, the interviews aimed at obtaining information and perceptions on how the formal and de facto indicators should be applied to REM. They also provided important information and perceptions that aided the contextual interpretation in Part 3 of this study.

The second step of the INDIREG methodology was to apply the Ranking Tool, which took place in the end of July 2017. This was done using the initially gathered information together with the transcribed/summarized notes from the interviewees, and involved multiple discussions among the team's members. The Ranking Tool was published on August 4. Those dimensions that were not self-evident were justified (see Part two of this report).

Finally, thorough analysis of the material resulting in derived attention points and contextual interpretations of the results was carried out in August and September 2017 by the team leader Kristina Irion, with support of Sara Svensson and Nevena Rsumovic.

PART 1 – APPLYING THE RANKING TOOL TO THE REGULATORY AUTHORITY FOR ELECTRONIC MEDIA (REM)

2.1. The Regulatory Authority for Electronic Media in Brief

The Regulatory Authority for Electronic Media (REM), seated in Belgrade, was set up in 2014 as the successor of the Republic Broadcasting Agency (RBA). REM has its legal base in the Law on Electronic Media, which was adopted on 2 August 2014 and entered into force on 13 August 2014 (Official Gazette 83/2014). Among others, the Law on Electronic Media incorporated new regulatory substance of the 2010 EU AVMS Directive.[24] That year two other interrelated laws were adopted: the Law on Public Information and Media (which in particular confirmed that state-owned media should be privatized) and the Law on Public Service Broadcasting. The new legal set-up effectively separated the legislation on the supervisory authority REM from that of the Public Service Broadcaster, called Radio Television of Serbia (RTS) and Radio Television of Vojvodina (RTV).

The 2014 Law on Electronic Media modified the institutional design of the supervisory authority that was renamed REM. First, REM was set-up as an independent regulatory authority that "is functionally and financially independent of government bodies and organizations, media service providers and operators." (article 5). Second, the law introduced changes to the nomination and appointment procedure of the members and the president of the Council, with journalistic, media and civil society organizations nominating a larger share of candidates than before (see for details Part Two and Part Three). Third, the new law enumerates the powers of the supervisory authority REM and lays down rules on sanctions and how they are to be used by REM. Next, the law increased demands on transparency at all levels, in addition to the general premise that the work of the Council and of the regulator at large shall be open to the public (articles 19 and 38). REM should conduct public hearings as part of its general rule-making (article 40), publish specified documents and information on its website (article 38), including decisions with motivations and the annual report with the content set out in article 39. Another important change concerns the situation of REM employees which were brought under the regulations governing the rights and duties of the civil servants in Serbia (article 5).

REM has a history going back to 2002 when the National Assembly of the Republic of Serbia passed the law on Broadcasting that would set up the RBA, as it was then called. There is significant continuity between the former RBA and the REM in terms of its operations as well as with respect to its human resources. The members of the Council could continue their mandates until its expiration and, aside of the change of their status to civil servants, the employees of the

[24] AVMS Directive (fn. 11).

RBA were transferred to the REM (article 114). As in the previous law, it is still the case that REM appoints the members of the Council of the public service broadcaster.

The changes in the 2014 law came after several years debate, in which both domestic and international actors took part. There had been controversies about the predecessor RBA, such as for example surrounding the appointment of Council members and a judicial reversal of the RBA's decision to revoke the license of BK TV by the Supreme Court of Serbia.[25] In 2003, the European Bank for Reconstruction and Development withdrew at the suggestion of the Organization for Security and Cooperation in Europe (OSCE) the funding for RBA. [26]

[25] Translations by INDIREG study team member Nevena Rsumovic of excerpts from media articles in 2006, see Vecernje Novosti; p. 7, Glas Javnosti; p. 9, Blic; p.10; Danas, 7; Politika, p. 10, May, 2006).

[26] Sasa Markovic: "The OSCE withdraws funding from Serbia's Broadcasting Council, further threatening its independence." Article published in Transitions Online, 22 October 2003. Retrieved at <http://www.tol.org/client/article/10844-questionable-credibility.html > (accessed 17 September 2017).

Table 1. Summary of key events that influenced REM and its predecessor

2002	2003	2004	2005	2006	2007	2008	2011	2012	2014	2015	2016	2017
-Passing of Broadcasting Law by the Parliament of Serbia	-Extraordinary parliamentary elections Broadcasting Law comes into effect & Creation of Republic Broadcasting Council -Election of the nine members of the Council. Broad debate about procedure and suitability of those elected. -OSCE withdraws funding from the Broadcasting Council.	-Presidential elections	-Amendments to the Law on Broadcasting	-European Commission expresses concern with the amendments to the Broadcasting Law in Serbia.	-Extraordinary parliamentary elections	-Extraordinary parliamentary elections Presidential elections	-Debates about a package of media laws Strategy for the Development of the Public Information System	-General parliamentary elections Presidential elections	-Extraordinary parliamentary elections -Law on Public Information and Media -Law on Public Service Broadcasting -Law on Electronic Media replaces the Broadcasting Law -The Regulatory Body for Electronic Media – REM – is created -REM Council President Goran Karadžić elected as President	-Digital terrestrial broadcasting switchover completion. -Drafting of Advertising Law -Goran Karadžić (10 February 2016 ceases to be the REM Council President, but reason not specified / not specified that his mandate has expired) -Mandates of 3 REM Council members expires (Bishop jegarski Porfirije – Perić. Živojin Rakočević and Gordana Suša. One new member elected: Olivera Zekić	-REM Council Deputy President: Goran Petrović (re-elected as member 27 December 2016; 10 February 2016 authorised to have all rights and obligations of Council President (starting 18 February 2016) until the election of new Council President) -Three new members elected (Aleksandra Janković, Đorđe Vozarević and Radoje Kujović) and one re-elected (Goran Peković)	-Presidential elections Presidential elections -Mandate of three Council members expire (Slobodan Veljković, Miloš Rajković and Božidar Nikolić) expire. Not replaced as of September 2017.

REM exercises authority, rights and competences based on the 2014 Law on Electronic Media as well as ten other laws.[27] It also needs to follow the relevant government strategies, such as the 2009 Strategy on Digitalization and the 2011 Media Strategy.[28] REM is the competent supervisory authority with relation to electronic and audiovisual media content, including rules on advertisement and sponsoring, as well as aspects of transmission and distribution of electronic and audiovisual media. It does, however, not have competence over spectrum and electronic communications (i.e. networks and services in general). The latter is covered by RATEL, the Regulatory Agency for Electronic Communications and Postal Services.

REM has a range of policy implementing and third party decision-making powers. In terms of policy implementation, it adopts general by-laws, rule-books, guidelines and recommendations, it details the procedure, requirements and criteria for licensing in accordance with the provisions of the law and prescribes the form and content of the license and adopts binding rules for media service providers to follow. Before passing certain by-laws and regulations REM is obliged to obtain an opinion on their constitutionality and legality (article 22), however it is not specified by whom precisely.

In relation to third party decision-making powers, REM, among other things, issues broadcasting licenses, controls the operation of media service providers and decides on changes in connection with the programming activities of media service providers. For carrying out its activities REM is responsible to the National Assembly of the Republic of Serbia (article 5).

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[27] These are the Law on Public Service Broadcasting (Official Gazette 83/2014), Law on Public Information and Media (Official Gazette 83/2014), Broadcasting Law (last update Official Gazette 41/2009 – out of force except articles 76-94), Law on Electronic Communications (Official Gazette 44/10), Advertising Law (Official Gazette 79/05) – with the Law on Electronic Media coming into force, articles 14-23 and 94-98 of the Advertising Law came out of force, Law on General Administrative Procedure (Official Gazzete of FRY no. 33/97 and 31/01 and Official Gazette no. 30/10), Law on Copyright and Related Rights (Official Gazette of Serbia and Montenegro no. 61/04), Law on Special Authorizations for Efficient Protection of the Right to Intellectual Property (Official Gazette no. 46/06), Law on Confirmation of European Strategy on Cross-Border Television (Official Gazette 42/09), Law on Free Access to Information of Public Importance (Official Gazette120/2004, 54/2007, 104/2009 and 36/2010).

[28] See Strategy for Switch-over from Analog to Digital Broadcasting of Radio and Television Programs in the Republic of Serbia, Official Gazette no. 52/2009, 18/2012 and 26/2013. and Strategy of Public Information System Development in the Republic of Serbia by 2016. Official Gazette of RS, 75/2011.

REM does not have general policy-making powers, even though it initiates the preparation and amendment of laws, regulations and strategies. For example, according to the law REM can propose a strategy for the development of the media service of radio and audiovisual media services in the Republic of Serbia but it is the government who approves the strategy (articles 22).

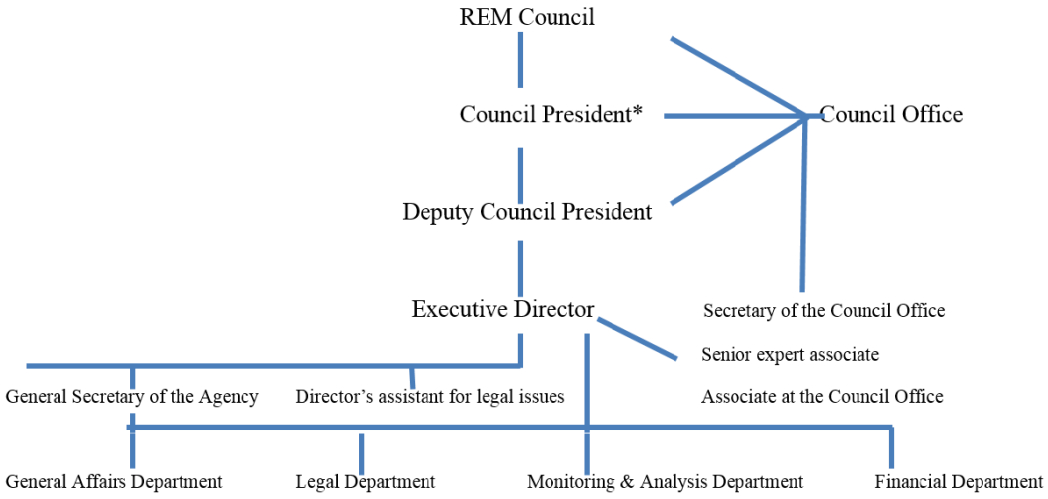
The powers of sanctions of REM include warnings, publications of decisions in the media, and revocations of license, but it is not authorized to set fines directly or allocate penalty payments. In cases of non-compliance or offenses it has to go through the court system. We elaborate more on its status and powers with relation to the dimensions of importance for the INDIREG methodology in Part Two and Part Three

Figure 1 reproduces the organogram of REM. The highest-decision making body of REM is the Council and the constituting law provides for nine members. Presently the Council has 6 member.

As of April 2017, REM has a total number of staff of 73, excluding the members of the Council. REM's operational services are divided into four departments: General Affairs, Legal, Monitoring & Analysis and Financial issues. The largest department is the Monitoring & Analysis department, which has 45 staff members.

The Council meets at least twice a month for regular meetings. These meetings generally take place as physical face-to-face meetings. If needed, the REM Council can schedule extra meetings, which may take place electronically or over phone. The staff's top-layer and two department heads take part in all Council meetings, i.e. Executive Director, General Secretary of the Authority, the Secretary of the Council Office and the Head of the Legal Department and the Head of the Monitoring Department.

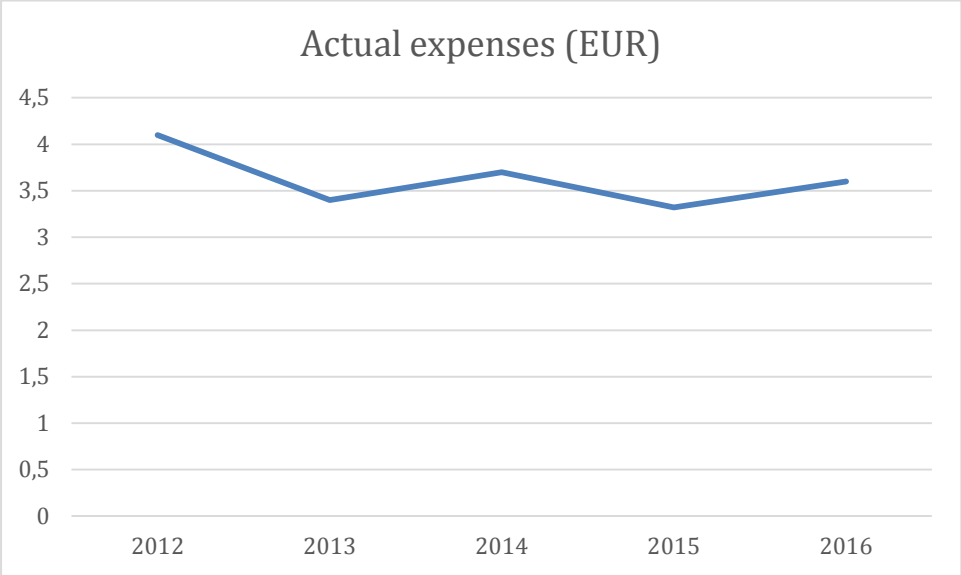
Figure 1: Organogram of REM.



**with authority/competences of director*

REM has a budget of around 4 million EUR a year and Figure 2 exhibits the evaluation of budget over the last five years as given in Annual Reports and converted to EUR as of July 2017.

Figure 2: Evolution of Budget



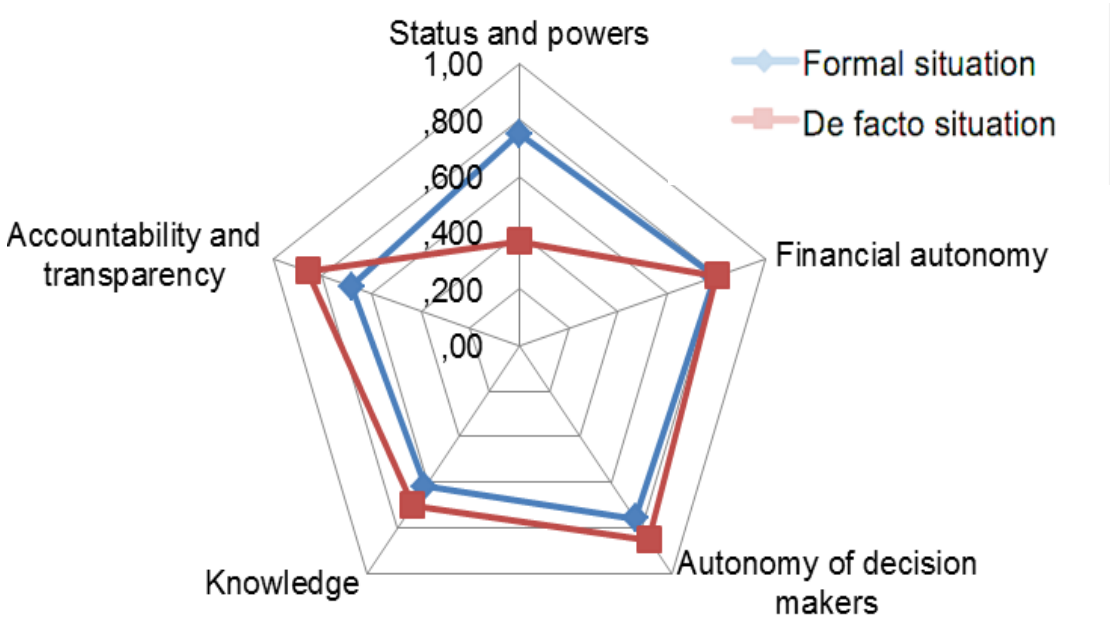
Source: Actual expenses (i.e. not budgeted expenses) as given in REM Annual Reports (2012-2016). Note that the expenses were originally given in RDS and have been converted to EUR using the exchange rate as of July, 2017. The numbers therefore show slight deviations as compared with previous information in English given about the authority (e.g. the AVMS-RADAR report, 2015).

Key activities ahead of REM are the re-submission of a proposal of a strategy for the development of the media service of radio and audiovisual media services in the Republic of Serbia to the government for approval, the implementation of provisions that align the Serbian law with the AVMS Directive (outlined ahead) and carrying out the aforementioned tasks and duties with this general organizational and resource framework.

2.2. The Ranking Tool Applied

The graph below represents the INDIREG Ranking Tool as applied to REM in September 2017. It is important to note that the Ranking Tool is an interim step in the analysis from which attention points are derived for interpretation in Part 3. The completed tables with information on the legal and de facto situation of REM's independence and functioning are in Annex C.

Figure 3: The Ranking Tool applied to REM



The graphical representation of the Ranking Tool should be interpreted as follows: For the dimensions of status and powers, financial autonomy, autonomy of decision-makers and knowledge, the further the position of the point is outwards along the relevant axis, the more the regulator can resist external influence. The graphical representation of the de facto situation should not be seen as simply mirroring the formal situation, but as drawing attention to potential risks to exert external influence on the independent regulatory body. The reading is different for the accountability

and transparency dimension in the sense that 'the fuller the web', the more effective transparency and accountability mechanisms are in place.[29]

In order to proceed directly to the interpretation of the Ranking Tool and the derivation of attention points go, to Part 3.

Table 2 lists all indicators and answer options that were selected when applying the Ranking Tool to REM. The highlighted indicators are those that emerged as contested after data gathering and for which we provide justifications in the section below.

[29] See for the interpretation of the Ranking Tool INDIREG study (fn. 1), p. 369.

Table 2 – Answers selected from pre-defined options in the Ranking Tool (See Annex C for full Ranking Tool)

Status & Powers			
Formal Dimension	***Assessment***	**De facto Dimension**	***Assessment***
What is the legal structure of the regulatory body?	*A separate legal entity/autonomous body*	Has the act on the status of the regulatory body been modified in a way that has reduced its tasks and powers?	*Yes*
How is independence of the regulatory body guaranteed?	*Independence is recognized in an act of parliament*	Has the governing law of the regulatory body been modified to influence a particular case/conflict?	*No*
What type of regulatory powers does the regulatory body have?	*Policy implementing powers and third party decision-making powers*	Have the formally granted powers (policy implementing powers and third party decision making powers, excluding sanctions) been used	*Yes, but not for all powers and in all circumstances*
Are these regulatory powers sufficiently defined in the law?	*Yes*	How does the regulatory body supervise whether the rules are correctly applied by the regulatees?	*Through ad hoc monitoring/monitoring after complaints, with concrete procedures to follow*
Does the regulatory body have supervision powers?	*Yes*	Has the regulatory body received instructions by a body other than a court in individual cases/decisions or in relation to its policy implementing powers in the last 5 years?	*Yes*
Does the regulatory body have information collection powers towards regulatees (eg. regarding quotas)?	*Yes*	Have the decisions of the regulatory body been overturned by a body other than a court/administrative tribunal in the last 5 years?	*No*
Can the regulatory body be instructed (other than by a court) in individual cases/decisions or in relation to its policy implementing powers?	*Yes, by the government/minister in limited cases*	Has the regulatory body taken adequate measures in case of material breach by an AVMS provider?	*No*
Can the regulatory body's decisions be overturned (other than by a court/tribunal?	*No*	Has the regulatory body taken adequate sanctions in case of continued breach by an AVMS provider?	*No*
What type of enforcement powers does the regulatory body have?	*No power to impose deterrent fines*	In case of several breaches by different AVMS providers: Have even-handed/comparable measures been taken against all providers?	*No*
Does the regulatory body have sufficient legal power to decide on internal organisation	*Yes*	Does the regulatory body effectively decide on internal organisation and human	*No*

and human resources?		resources?	
		Does the regulatory body have a sufficient number of staff to fulfil its tasks and duties?	*Yes*
Financial autonomy			
Formal Dimension	***Assessment***	**De Facto Dimension**	***Assessment***
How is the budget of the regulatory body determined?	*By the parliament with involvement of the regulatory body*	Is the regulatory body's budget sufficient to carry out its tasks and duties?	*Yes*
Does the law clearly specify the budget setting and approval procedure?	*Yes*	Is the regulatory body's budget sufficiently stable over time?	*Yes*
What are the sources of income of the regulatory body?	*Mixed source*	Does the regulatory body have sufficient autonomy to decide for which tasks it spends its budget?	*No*
Does the law clearly specify the source of funding?	*Yes*	Is the regulatory body under pressure to compensate a lack of stable funding from the state or from the market, by imposing fines or requesting ad-hoc financial contributions from the state?	*Not applicable*
Autonomy of decision makers			
Formal Dimension	***Assessment***	**De Facto Dimension**	***Assessment***
What is the nature of the highest decision making organ of the regulatory body?	*A board*	Are political majorities or political power structures reflected in the composition of the highest decision making organ?	*Impossible to say*
Who has a decisive say in nomination/appointment of the regulatory body's highest decision making organ?	*Mix between parliament/government/civil society/professional associations*	Have there been cases where the appointer failed to appoint the nominated candidate?	*Yes*
What is the term of office of the chairman/board members?	*A fixed term of office of a certain duration (above the election cycle)*	Have board members/chairman resigned before their term of office due to political conflicts?	*No*
Does the term of office coincide with the election cycle?	*No*	Have one or more board members been dismissed for non-objective grounds in the past 5 years?	*No*
Does the law foresee that board members are appointed at different points in time (staggered appointment)?	*No*	Has the entire board been dismissed or otherwise replaced before the end of term in the last 5 years?	*No*
What is the situation regarding renewals of board members/chairman?	*Renewal not possible/limited to one or two instances*		
Are there rules on incompatibility at the nomination/appointment stage of the	*Can be composed of one or two of the following groups/*		

members of the board/chairman so that the highest decision making organ… (3 answers possible)	*government/parliament/industry*		
Incompatibility extended to relatives?	*No*		
Requirement to act in an independent capacity?	*Yes*		
Are there rules preventing conflicts of interest of chairman/board members during their term of office?	*Yes*		
Is there a period during which former board members are limited to work for the regulatees (so-called cooling-off period)?	*No*		
How can the chairman / individual board members be dismissed?	*Dismissal possible for grounds listed in the law, but margin of discretion*		
Dismissal of the entire board	*Not possible to dismiss the entire board*		
Knowledge			
Formal Dimension	***Assessment***	**De Facto Dimension**	***Assessment***
Are requirements for professional expertise (i.e. knowledge/experience) specified in the law? For board members/chairman?	*Yes*	Do board members/chairman have adequate qualifications and professional expertise to fulfill the duties of the regulatory body?	*Yes, a majority.*
Are requirements for professional expertise specified in the law? For senior staff?	*No*	Does senior staff have adequate qualifications and professional expertise to fulfill the duties of the regulatory body?	*Yes a majority*
Are requirements for qualifications (e.g. education, diploma requirements) specified in the law? For board members/chairman?	*Yes*	Does the regulatory body seek external advice when needed?	*Yes*
Are requirements for qualifications specified in the law? For senior staff?	*No*	Does the regulatory body cooperate with other national/foreign regulators in charge of audio-visual media regulation?	*Yes*
Does the law foresee that the regulatory body can seek external advice?	*Yes*		
Is the regulatory body legally obliged to cooperate with other national or foreign regulators and does it have the required mandate to do so?	*Yes*		
Accountability and transparency			
Formal Dimension	***Assessment***	**De Facto Dimension**	**Assessment**

Does the law specify that the regulator's decisions need to be published?	*Yes*	Does the regulatory body publish its decisions, together with motivations	*Yes, all decisions (and motivations) are published*
Does the law specify that the regulator's decisions need to be motivated?	*Yes*	Where are the decisions published?	*On the website (and other official channels)*
Is the regulatory body required by law to organise consultations?	*Yes, but only in cases specified in the law*	Does the regulatory body organize consultations?	*Yes but only in cases specified by law*
Is the regulatory body required to organise these consultations as open or closed consultations?	*Open consultations*	Does the regulatory body organize the consultations as open or closed consultations	*Open consultations*
Is the regulatory body subject to a reporting obligation and is it specified in law?	*Yes, the reporting obligation is specified in the law and is limited to public bodies only.*	Does the regulatory body explain the extent to which responses are taken into account in final decisions?	*Yes*
Does the law specify a mechanism of ex-post control by a democratically elected body?	*No*	Does the regulatory body publish periodical reports on its activities?	*Yes*
Is an appeal procedure against the decisions of the regulatory body foreseen in the law?	*Yes but in some circumstances only and before an external court/administrative tribunal*	Has the regulatory body been assessed/controlled by a democratically elected body in the last five years?	*No*
What are the accepted grounds for appeal?	*Errors in law only*	Have there been cases where the report has been refused in the last 5 years?	*Not applicable*
Is external auditing of the financial situation foreseen in the law?	*Yes*	Have the decisions of the regulatory body been overturned by a court/administrative tribunal in a significant number of cases?	*No*
		Is the regulatory body subject to periodic external financial auditing?	*Yes*
		Has auditing revealed serious financial malpractices?	*No*

2.3. Justification of indicators

The following provides our justifications on those indicators that were not unambiguous or emerged as contested after data gathering. Such situations arise primarily but not exclusively with regards to de facto indicators, because the assessment of the formal independence could be based on the legal situation. In order to revisit the full implementation of the formal Ranking Tool please refer to the tables in Annex B.

In the end, we also highlight aspects that are not captured by the Ranking Tool. Some of these elements are then discussed in Part 3, which lists and elaborates on attention points that have been taken into account in the development of the policy recommendations.

2.3.1. Status and powers dimension

Formal situation: How is independence of the regulatory body guaranteed?

In the applied Ranking Tool, the selected answer option is "independence is recognized in an act of parliament", which is the second best case option after "in the constitution/ high court decision". There are some independent bodies whose status is regulated by the Serbian constitution, namely the National Bank (article 95), State Audit Institution (article 96), Ombudsman (article 138). Article 137 of the Constitution foresees that particular public powers may be also delegated to specific bodies through which they perform regulatory function in particular fields or affairs.

Following its constituting legislation REM is established as an independent regulatory organization and should be functionally and financially independent of government bodies and organisations, media service providers and operators (article 5 of the Law on Electronic Media). We were hesitating whether this is sufficient because Serbian administrative legal tradition does not recognize independent authorities,[30] which can contradict the formal designation of REM's independence. For example, in Serbia independent authorities are to some extent curtailed by the rules on public services, civil servants and financial guidelines in the public sector because they furnish horizontal rules affecting the operation of independent regulators. We decided that this is already compensated by choosing the second best option to answer this question.

[30] Jovanka Matic: "New Laws, Old Threats: Monitoring EU Guielines in Serbia," 2015 Monitoring Reports (South-East European Media Observatory), South East European Media Observatory, 21 June 2015, p. 16. < http://mediaobservatory.net/radar/monitoring-eu-guidelines-serbia-new-laws-old-threats>

Formal situation: What type of regulatory powers does the regulatory body have?

In the applied Ranking Tool, the selected answer option is "policy implementing powers and third party decision-making powers" which is the best case scenario.

There are two issues which could thwart the finding that REM has policy implementing powers and third party decision-making powers. First, certain policy implementing powers of REM are subject to a constitutionality and legality review according to article 22 of the Law on Electronic Media. It goes without saying that by-laws and rule-books have to conform with constitutional law and the very legal basis for issuing those. What is problematic in our view is that the Law on Electronic Media does not specify who is in charge of this review and whether this should not be exclusively the judiciary.

Second, powers given to independent agencies are 'entrusted' by the government.[31] This is accomplished through the Law on Electronic Media, however, we note that there is a controversy whether independent regulators' 'delegated' powers can be suspended by the government or line ministry in charge. Were this the case, independent regulators in Serbia operate under the lingering threat of disempowerment. In Part 3 this problematic but highly uncertain issue will be revisited again.

Formal situation: Are these regulatory powers sufficiently defined in the law?

In the applied Ranking Tool, the answer is "yes".

The Law on Electronic Media defines the powers of REM quite precisely. However, there seems to be a lot of legal uncertainty surrounding the question of the extent to which REM should monitor elections campaigns and enforce the law is not clear (see below) and as a result this is creating a confusing picture for inside and outside observers. However, this issue is in our opinion not mainly a problem of legal precision because we find article 47 in connection with article 28 quite precise. Instead we considered the issue over election campaigns in the de facto situation.

De facto situation: Legislative modifications that reduced tasks and powers

In the applied Ranking Tool, the answer is "yes".

The 2014 Law on Electronic Media has a number of elements which would actually strengthen the tasks and powers of REM, for example with regards to issuing technical by-laws and the new task to perform an analysis of the relevant media

[31] See SIGMA: "Public Administration Reform Assessment of Serbia" (April 2014), p. 8 <http://www.sigmaweb.org/publications/Serbia-Assessment-2014.pdf>.

market in cooperation of the competition authority (article 22 para. 16). However, there is one area in which the new law effectively reduced the tasks and powers of REM.

This area revolves around the competences to propose, deliberate and adopt the strategy for the development of the media service of radio and audiovisual media services in the Republic of Serbia. Under the previous law, the regulator was in charge of proposing this strategy to the government/ministry which then formally adopted it. Under the 2014 Law on Electronic Media, REM prepares a proposal of this strategy and forwards it to the government, here the Ministry of Culture and Information, for approval. There is also no time-lapse for the adoption foreseen in the law.

In 2015 REM actually submitted a proposal for a strategy for the development of the media service of radio and audiovisual media services to the Ministry of Culture and Information for approval. The internal deliberation of the government, in other words the consultation with other line ministries, now takes place without REM. Without any decision, the strategy was returned to REM in July 2017 because the government in power at the time performed a place-holder function until a new government will be elected.

De facto situation: Has the governing law been modified to influence a case/ conflict?

In the applied Ranking Tool, the answer is "no".

We note that the legislative change brought in 2014 introduced new provisions on the powers of REM to enforce rules on the protection of media pluralism in relation to the audiovisual sector (articles 103f. of the Law on Electronic Media). The substantive rules on the protection of media pluralism are contained for all media (including the press) in chapter VII of the law on Public Information and Media, which was also adopted in 2014. This law modified horizontal media concentration rules restricting ownership and managerial rights, applying the criteria of circulation for print media (50%) and ratings for electronic media (35%). Under the previous law, a single owner could not own two TV stations.

There are allegations that this change of law 'legitimised' the fact that Antenna Group, owned by Kyriakou family in Greece, has two major TV stations in Serbia - B92 (as of September 2017 called 'O2') and Prva TV, through which it reaches 15.27% of the audience.[32] This would certainly amount to a modification that influences a particular case or conflict as queried by the ranking tool. Nonetheless, we

[32] See Media Ownership Monitor Serbia <http://serbia.mom-rsf.org/en/findings/inidicators/#!9fed61067e34232006ff7dcd0ed479d0>.

do not apply a negative ranking decision because by comparison with other European countries the ownership rules are pretty much average and a limitation of ownership based on the number of national channels is no longer practiced in today's multi-channel distribution networks, be they terrestrial or cable.

Formal situation: Can the regulatory body be instructed by others?

The Ranking Tool answer option is "yes, by the government/minister in limited cases."

In the applied Ranking Tool, an area of concern is issue of whether the regulatory body can be instructed (other by a court) in individual cases/ decisions or in relation to its policy implementing power (notwithstanding possible democratic control mechanisms such as by the Parliament).

First, we already noted above the changes in relation to the passing of the strategy for the development of the media service of radio and audiovisual media services in the Republic of Serbia. This strategy is at the core of the REM's mission (see article 23 of the Law on Electronic Media) and the government can influence quite considerably the regulator through this document. Pending the adoption of this document, the action of REM is therefore significantly diminished, especially in new technology areas (since these issues are covered in the draft Strategy).

The second area concerns an overarching media strategy for which the Ministry of Culture and Information is in charge. A working group have been established to develop the new media strategy, but apparently without the involvement of the regulator. This is rather difficult to understand given that REM pertains of the necessary sector-specific expertise to inform the new media strategy and seems very willing to cooperate.

Lastly, we note that the Law on Electronic Media does not specify who is in charge of this constitutionality and legality review pursuant to article 22 of the Law on Electronic Media. If this is not performed by exclusively the judiciary this offers an angle to instruct the REM on specific issues in its by-laws and policy implementing regulations. In principle REM has in-house legal advisory capacity and an opinion by the responsible ministry on the constitutionality and legality could take the form of a legal advice to REM and should be published.

De facto situation: Has the regulatory body received instructions in the last 5 years?

In the applied Ranking Tool, the answer is "yes".

It is notoriously very difficult to obtain positive evidence of an independent authority receiving any instructions because this would regularly happen undocumented. From the interviews we discern that a number of stakeholders believe there have been cases

of direct or indirect influence of the government on the actions or – more likely resulting in omissions to act - by the regulator. Below we briefly summarize in a neutral fashion these allegations:

Article 47 of the Law on Electronic Media contains programme content rules that need to be respected by media service providers. Among these, the law mentions the need to:

- provide free, true, objective, complete and timely information (para 1);
- respect the ban on political advertising outside of political campaigns and during the such campaign enable registered political parties, coalitions and candidate's representation without discrimination (para 5).

Article 60 foresees that REM must adopt bylaws with detailed rules specifying how these obligations should be respected by operators. The rule-book on the obligations of media service providers during election campaign, was adopted in June 2015.[33] However, the regulator argues that it is not REM's responsibility to monitor elections directly but that this is the responsibility of the election commission. The Ministry of Culture and Information in turn appears to have contested REM's rule-book, namely the definition of election campaign adopted by REM, which would undermine REM's ability to implement the rule-book and law. For in- and outsiders this situation is extremely opaque and very conflictual whereby this may yield benefits to the political party in power.

During recent election campaigns, there have been constant and repeated allegations that the media has systematically given more airtime to the ruling party. REM is reported to have received numerous complaints but these have been either relayed to the media outlet concerned or rejected by REM itself. Observers were also expecting a monitoring report to be published on the media coverage of the election campaign. One short report was published in April 2017,[34] which contains only data relating to

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[33] Regulatory Authority for Electronic Media: "Правилник о обавезама пружалаца медијских услуга током предизборне кампање" (in English: "Rulebook on the obligations of media service providers during election campaign") (Official Gazette RS no. 55/15) (in Serbian) <http://rem.rs/uploads/files/Pravilnici/2575-Pravilnik%20o%20obavezama%20PMU%20tokom%20predizborne%20kampanje%20S%D0%90%D0%88%D0%A2.pdf>.

[34] Regulatory Authority for Electronic Media: "Усвојен извештај о предизборним огласним порукама у кампањи за председничке изборе 2017" (in English: "Adopted Report on Pre-election Advertisement in the Campaign for 2017 Presidential Elections") (April 26, 2017, Official Gazette RS no. 55/15, in Serbian) <http://rem.rs/sr/arhiva/vesti/2017/04/usvojen-izvestaj-o-predizbornim-oglasnim-porukama-u-kampanji-za-predsednicke-izbore-2017>.

the coverage on television of the presidential election campaign between 3 February 2017 and 30 March 2017, without any legal assessment of the situation. The same situation arose during the April 2016 parliamentary election campaign.

This leads observers to believe that the regulator has been politically influenced to refrain from enforcing these rules. NUNS, the Independent Journalists' Association of Serbia, demanded the resignation of all Council members in March 2017.[35] In May 2017 NUNS filed a misdemour claim against REM Council members.[36] A group of parliamentarians from the opposition party have also demanded for all the Council members to be dismissed. [37] Apparently, there is no official record of this motion. The latter option would be a bad outcome for maintaining the independence of the REM and therefore judicial clarification of the competences to monitor media during election campaigns would be most desirable.

Formal situation: Enforcement powers

In the applied Ranking Tool we selected the option that REM has *"no power to impose deterrent fines"*. An area of concern from the formal point of view is on the types of enforcement powers that have been given to REM but lacking the formal power to impose deterrent fines. In the logic of the Ranking Tool this is the worst option because financial sanctions can help improve upfront compliance and enforce the law.

Article 28 of the Law on Electronic Media foresees four types of measures that REM can take:

- remonstrance (blames),
- warnings,
- temporary bans on the publication of programme content (up to 30 days), and

[35] Cenzolovka Website about Media Freedom: "NUNS traži ostavke članova Saveta REM-a" (in English: "NUNS (Independent Journalists' Association of Serbia) requests resignation of members of the REM Council") (23 March 2017, in Serbian) <https://www.cenzolovka.rs/drzava-i-mediji/nuns-trazi-ostavku-clanova-saveta-rem-a/

[36] Cenzolovka Website about Media Freedom: "Krivična prijava protiv REM-a" (in English: "Criminal complaint against REM") (24 May 2017, in Serbian) <https://www.cenzolovka.rs/drzava-i-mediji/krivicna-prijava-protiv-rem-a/>.

[37] Cenzolovka Website about Media Freedom: "Poslanici opozicije zahtevaju smenu kompletnog Saveta REM-a" (in English: "Parliament members of the opposition demand the replacement of the entire REM Council") (April 11, 2017, in Serbian) <http://www.cenzolovka.rs/drzava-i-mediji/poslanici-opozicije-zahtevaju-smenu-kompletnog-saveta-rem-a/>.

– revocation of licenses for certain types of violations of obligations related to programme content (prescribed by articles 47-71 of the law) or for violation of license terms.

Financial sanctions are not mentioned, which means that REM is not allowed to impose fines directly. The breach of certain obligations under the Law on Electronic Media constitute a misdemeanor that can be sanctioned by the judiciary.[38] As the saying goes, it is easier to speak softly if you carry a big stick (strictly in the sense of authority to sanction). We note that the competence to revoke a license is such "a big stick" but certainly an ultimate ratio whereas financial sanctions seem more punitive compared to REM's soft powers of remonstration and warning.

The fines specified in chapter VII of the law can only be imposed by courts. REM just has the power to initiate the court proceeding (article 24 para 3 and article 30 of the Law on Electronic Media). Further the levels of the fines for economic offenses are relatively low, since the maximum fine is set at 3,000,000 RSD (approx. 25,000€) if an operator operates without a license and most other fines range between 2,000 and 10,000 RSD (approx. 80€ and 16,000€).

However, the legal obligations of media service providers in relation to its programme content (article 47 of the Law on Electronic Media), including the rules on political advertisement, would not constitute an economic offense or misdemeanor and hence not even the judiciary can impose different sanction than REM if competent to act. Hence, the Law on Electronic Media stipulates no penal provisions for the media service providers who act contrary to the requirements for electronic media content.

De facto situation: Have the formally granted powers (policy implementing powers and third party decision making powers, excluding sanctions) been used?

De facto situation: Has the regulatory body taken adequate measures in case of material breach by an AVMS provider?

De facto situation: Has the regulatory body taken adequate sanctions in case of continued breach by an AVMS provider?

De facto situation: In case of several breaches by different AVMS providers: Have even-handed/comparable measures been taken against all providers?

[38] See Misdemeanour Law (Official Gazette RS no. 65/2013, 13/2016 and 98/2016) <http://bit.ly/2ftdQMF>.

In the applied ranking tool, on this group of questions, we selected the answer option "Yes, but not for all types of powers or for all instances."

The perception is that REM has not used all its powers and in all cases, that it has not always taken adequate measures in case of breach of the law, was too long inactive or did not escalate enforcement up to the most hefty sanctioning powers it has. While REM has to observe the principle of proportionality (article 28 of the Law on Electronic Media) the actually enforcement practices appear to lack teeth.

The following table provides an overview of the number of sanctions and warnings that were referred to in the annual reports since 2007. It shows that there are wide variations, and we note less activity in recent years. However, the statistic cannot explain why this is the case and there are many different possible explanations for this trend.

Table 3: Use of REM sanction powers per year

Year	Reprimands	Warnings	Temporary bans	Ban on broadcasting without licence	Revocation of licence (temporary or final)
2007	5	1		7	
2008	3	2			
2009	8	4		81	32
2010	4	1		51	
2011	4	1		29	11
2012	48	3			19
2013	9	2			1
2014	16	3		6	1
2015	16	3	1		
2016	4	5			

There are many allegations that ever since its creation the regulator has found it difficult to assert itself as an impartial authority. The study team has not carried out a full-fledged investigation into all the issues but these are some of the most discussed cases:

- One national TV broadcaster received a terrestrial broadcast license on the basis that it would provide quality TV content for children. In practice, this TV channel contains mainly reality TV with highly controversial content which can be deemed harmful to minors while this content was shown outside of the

watershed.[39] It is true that REM has suspended one of the programmes for the duration of one day but this sanction is perceived as being too weak and has not changed the TV broadcaster's practice.

- REM has issued a warning against another broadcaster for airing a reality TV show in violation of rules on human dignity and for harming children participating in the show. This TV broadcaster continued with the contested programme. There have been calls by civil society organisations to ask REM to suspend the TV show and to revoke the licence of the broadcaster.[40] REM's first reaction to this joint letter took almost three weeks[41] – a time span which does not exactly suggest its willingness to perform a watchdog function.

- Official reports by the European Commission note the misalignment between the frequent interruption of retransmitted audiovisual media content by local advertisements with the requirements of Audiovisual Media Services Directive.[42] It attributes this to an omission of the regulator which according to this report is not fulfilling its role of monitoring of the retransmitted audio-visual media content on cable for compliance with advertisement rules.[43]

- The public service broadcaster (RTS), by contrast, perceives that REM controls its programmes for compliance with advertisement rules (advertising minutage) quite tightly, while it feels that other broadcasters are not under such strict scrutiny by REM (see bullet-point above).

- REM has been given the power to elect by secret ballot vote the members of the management board of RTS and RTV. The outcome of the election of the management board of RTS has been commented during some interviews as having been a biased process. Regardless of the reality of the facts, these allegations converge towards continued criticism that RTS is strongly influenced

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[39] See for example UNICEF Serbia: "TV stations should immediately begin complying with the regulations on protection of children from harmful programmes" (Belgrade, 1 March 2016) <https://www.unicef.org/serbia/media_28704.html>.

[40] See Jovanka Matic: "New Laws, Old Threats: Monitoring EU Guielines in Serbia". South East European Media Observatory, 21 June 2015, p. 3 and 16. <http://mediaobservatory.net/radar/monitoring-eu-guidelines-serbia-new-laws-old-threats>

[41] Ibid.

[42] European Commission: "Serbia Report 2015", p. 38; ibid.: "Serbia Report 2016", p. 42.

[43] Ibid.

by the ruling political party and that REM may have contributed to this situation.[44]

In addition, we have to consider REM's role to file to the court procedures relating to economic offenses pursuant to articles 107 to 112 of the Law on Electronic Media. Since the entry into force of the Law on Electronic Media (2014), there has been no violation of the provisions of Articles 107 to 109. The data could not be retrieved from the annual reports and we present data from 2016 supplied by REM. In 2016, REM submitted 49 reports for articles 110 to 112 offences to the competent court the majority of which relate to violations committed in 2015. In 2016, the courts passed a total of 10 judgments in which they imposed fines on media service providers for committed violations prescribed by the Law on Electronic Media.

De facto situation: Effective autonomy regarding internal organization and human resources

In the applied Ranking Tool, the answer is no.

We note that REM should operate under a statute that would specify its working rules and internal organization (article 5 of the Law on Electronic Media). Since the adoption of the Law on Electronic Media in 2014, this Statute has not yet been adopted. In practice, REM is still operating under the previous organizational plan that was adopted by RBA pursuant to the Law on Broadcasting.

According to article 33 of the Law on Electronic Media, the Statute must be adopted by the Council with a two-thirds majority, and the Parliament needs to approve the Statute. The new Statute was sent to Parliament for approval on 6 November 2014 but has not yet been discussed yet, according to our sources.[45] While we note that a parliament has to perform so many roles and tasks incumbent on the democratically elected representatives, also that this is particularly dense in countries that are in the process of legal reform and institution building, and, finally, the lack of continuity of elected representatives, the parliament should not become the bottleneck for the independence and functioning of its independent supervisory authority in the field of electronic services and audiovisual media. Instead, there should be a media

[44] For example, following the recent election in April 2016, the newly elected board of RTV replaced the program director, which led to multiple resignations and dismissals enabling the management board to appoint new program editors and journalists. This led to public outcry by journalists, civil society and the international community.

[45] REM Council adopted the proposed Statute, with changes, in 147th regular session, held on 30 October 2014 <http://rem.itcon.rs/sr-lat/arhiva/sednice/2016/05/147-redovna-sednica-30-oktobra-2014-godine>.

governance action day to work down the queue of decisions, including deliberating the statute of REM.

In terms of internal organisation, one problem that has already been highlighted relates to the fact that REM employees are civil servants which are under the authority of the government. This means, for example, that REM employees could be transferred to other branches of government. It was also brought to our attention that the civil service law prescribes formal qualifications for hiring but in order to work at REM additional sector-specific experience would be necessary too. It was not clear to us whether the Law on Civil Service would prevent REM to publish vacancy notices that signal to applicants that sector-specific experience would be of an advantage.

2.3.2. Financial autonomy dimension

Formal situation: Specification of the budget setting and approval procedure

The answer given here in the Ranking Tool was "yes", i.e. that the budget setting and approval procedure is clear.

According to Article 34 of the Law on Electronic Media REM shall submit a draft financial plan to the Parliament Committee responsible for finances of the media. In practice, the plan needs to be submitted to the Parliamentary Committee on Culture and Information and also the Parliamentary Committee of Finances, and that approval is given by the Assembly. If it does not get approval, or if REM fails to produce a financial plan, the financial plan of the previous year shall be applied (ibid.). We note that such legal defaults are helpful in anticipating situations in which, for example, the parliament does not table the financial plan for a vote. That this practice may raise issues with REM's actual independence and effective functioning is taken up later.

Formal situation: Sources of income of the regulatory body

In the applied Ranking Tool we selected "mixed sources", since the Law on Electronic Media specifies that if the difference between income and expenditure is negative, the missing funds will be provided from the Budget of the Republic of Serbia (article 34). The income source is therefore mixed even though in practice the only source of funding has been fees from media providers and additional funds has not been requested in recent years (see Part 3 for elaboration).

De facto situation: Sufficiency of budget

We answered "yes", i.e. REM's budget is sufficient to carry out its task and duties. The budget of REM has been relatively stable over time (see Figure 2). We received no indication that the resources of REM as such are a key problem but that there are other issues, such as the lack of an up-to-date Financial Plan and the formalistic procedures on government procurement of even small items.

De facto situation: Autonomy to decide about how to spend its own budget

In the Ranking tool we selected "no" to this question, since REM operates on the basis of an outdated budget plan. The financial plan submitted to the parliament has not been approved since the end of 2015, and REM currently is operating according to the Financial Plan of 2015. This means that a number of investments and budget reallocations between categories has not been possible, and activities therefore not been carried out. Such prevents the use of savings in for instance the category of 'vehicles' to spend on 'education of staff'. Another example, we were provided with is the purchase of software licenses or updates, which can for example be used in monitoring media content. This was apparently not possible because the outdated financial plan did not budget for this. This means that because REM operates on an outdated budget/ financial plan its autonomy to decide how its budget is spent is curtailed.

In addition public spending has to go through regular state procurement procedures, which are perceived as cumbersome especially where this concerns very small amounts. The standard example is opening a public procurement procedure to buy toilet paper. This alone would not suffice to find against the autonomy to decide how budget is spent.

De facto situation: Stability of budget over time

The answer given in the Ranking Tool is "yes".

As shown in Figure 2 the financial expenditures of REM have not varied significantly over the past five years. The decrease in salaries following the 2014 incorporation of staff into the civil service corps did not significantly affect expenditures because the decrease was not that substantial and REM added during the same period new staff due to new legal mandates (e.g. the law on copyright introducing an obligation of REM to monitor electronic records for broadcasting content) and also EU accession related issues.

Several interviewees referred to REM's aim from 2014 to aim for 'zero-budgeting' (included in the eventually adopted 2015 financial plan, see above), i.e. that it should occur neither profit (which would have to be handed over the state budget) nor losses (to be covered by the state budget). From the perspective of the stability of budget over time zero budgeting is conform.

2.3.3. Autonomy of decision-makers dimension

Formal situation: Who has a decisive say in nomination/appointment of the regulatory body's highest decision making organ?

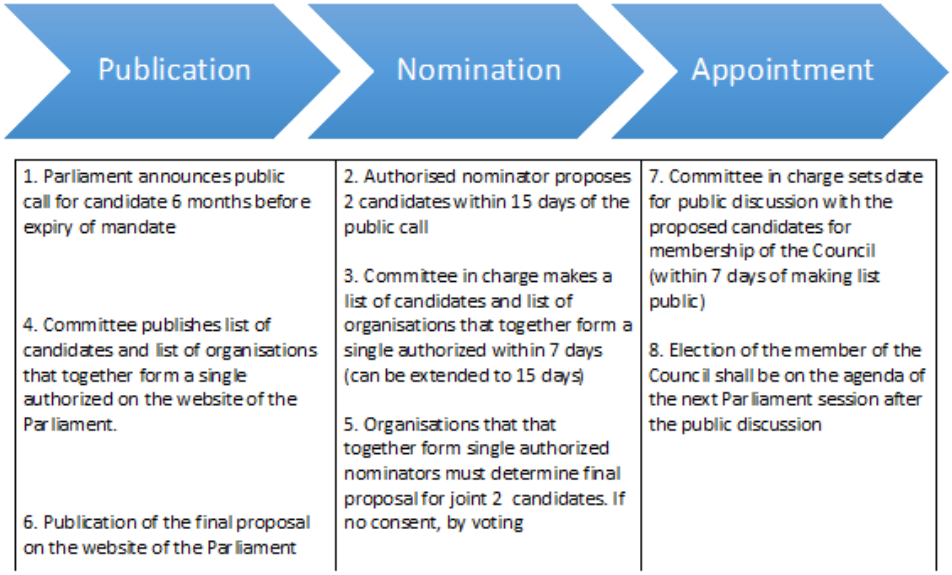
In the Ranking Tool the selected answer option is "a mix between parliament/government/civil society/professional associations". The 2014 Law on Electronic Media has introduced new rules on the nomination and appointment of members to the Council. The candidates are nominated by eight nominators respectively whereby political nominations are reduced to three (article 9 of the Law on Electronic Media):

1. national parliament (can nominate two nominees, whereas previously, it could nominate 3 nominees)
2. parliament of the Autonomous Province of Vojvodina (1 nominee);
3. universities accredited in the Republic of Serbia by mutual agreement (1 nominee);
4. associations of electronic media publishers whose members have at least 30 licenses for the provision of audio and audiovisual media services and/or by associations of journalists in Serbia where each has at least 500 members and were registered at least three years prior to the announcement of a public call by mutual agreement (1 nominee);
5. professional associations of film, stage and theatre artists and professional associations of composers in the Republic of Serbia, if they were registered at least three years prior to the announcement of a public call by mutual agreement (1 nominee);

   Under the previous law, the nominators listed under 4. and 5. fell under a single category of nominators
6. associations dealing with freedom of expression and the protection of children, if they were registered for at least three years prior to the date of the public announcement of the call and have a minimum of three implemented projects in this area in the last three years by mutual agreement (1 nominee);
7. national councils of national minorities, by mutual agreement (1 nominee). This is a new nominator, introduced in 2014;
8. churches and religious communities, by mutual agreement (1 nominee).

Each group proposes two candidates for each post, so for instance, although churches and religious communities have one 'representive' in the Council, they need to propose two candidates. The procedure for nominating and appointing members of the council is specified in articles 10 and following of the Law on Electronic Media. Once the overall procedure is completed, the appointment of new member to the REM Council will be on the agenda at the first next session of the national parliament hereafter. The main steps are summarised in the following flow chart:

Figure 4: Nomination and appointment of Council members



This formal set-up of nomination and appointment procedure is best practice and scores well in the legal assessment of the Ranking Tool. In practice, however, as we will discuss below, it is quite difficult for several organizations that together form single authorized nominator to agree among themselves on the two candidate to be nominated.

Formal situation: Are there rules on incompatibilities at the nomination stage of the members of the board/chairman so that the highest decision making organ?

As an answer option we selected "can be composed of one or two of the following groups: government/parliament/industry".

According to article 12 of the Law on Electronic Media, a council member cannot "be a person who performs a public function or one in a political party in terms of legislation governing the rules relating to the prevention of conflicts of interest in the exercise of public functions. A candidate shall submit a written statement to a designated proponent that there are no restrictions for the election set forth in paragraph 1 of this Article. There is therefore nothing in the law that could prevent someone from the industry to be nominated as a council member, which is not an optimal situation. The incompatibility rules during an appointment, however, would later prevent that a member of the Council is also a direct stakeholder.

Formal situation: How can the chairman / individual board members be dismissed?

In the Ranking Tool the selected answer option is "dismissal possible for grounds listed in the law, but margin of discretion." Article 16 of the Law on Electronic Media lists the grounds for dismissal, most of which are objective grounds:

- illness, based on the findings of the relevant health institutions, s/he is incapable of performing the duties of the Council member for more than six months;
- false declarations on incompatibilities, or an incompatibility arising during the mandate;
- does not perform the duty of the Council member for a period of at least three consecutive months or for a period of 12 months in which s/he fails to perform his/her duties for at least six months;

However, the last reason enumerated in article 16 implies a margin of maneuver: "if he is found to be negligent and to work improperly, or if there are reasons for the indignity and if s/he neglects or negligently fulfils its responsibilities, which can cause major setbacks in the work of the Regulator".

Formal situation: Dismissal of the entire board: not possible to dismiss entire board

The law does not expressly cover this point. When looking at the grounds for dismissal it does not seem that the Parliament could dismiss the entire board unless of course if it were to consider that all board members have been negligent or have worked improperly. It is true that this could become a controversial point which could be clarified.

De facto situation: Has the entire board been dismissed or otherwise replaced before the end of term in the last 5 years?

The answer is "no" in the Ranking Tool and we note that the Law of Electronic Media did ensure continuity of appointed members of the RBA Council. In the applied ranking tool, the answer is no. However, we note that a group of 23 parliamentarians from several opposition parties have initiated a procedure to dismiss all the members of the Council.[46] The trigger was the alleged non-reaction of REM in relation to the media coverage of political parties and political advertisement rules.

De facto situation: Are political majorities or political power structures reflected in the composition of the highest decision making organ?

[46] Cenzolovka Website about Media Freedom. "Poslanici opozicije zahtevaju smenu kompletnog Saveta REM-a" (in English:Parliament members of the opposition demand the replacement of the entire REM Council) (April 11, 2017, in Serbian) <http://www.cenzolovka.rs/drzava-i-mediji/poslanici-opozicije-zahtevaju-smenu-kompletnog-saveta-rem-a/>.

From the menu of answer options of the ranking tool, we selected 'impossible to say', although there are some indications that this may be the case. As explained above this is because the political influence is very strong at all levels of society and the nomination and appointment process is not immune to political nominations by the parliament. There are accounts that professional qualifications have not been the decisive factor in the appointments for the REM Council.[47]

De facto situation: Failure to appoint nominated candidate

In the Ranking Tool the selected option is "yes". The situation is very complex and despite the many interviews, it is quite difficult to get clear picture of the situation nomination and election process. As an illustration of the type of problem we describe the situation at the time of writing of the report. Table 4 shows the current Council members and when they were appointed. In September 2017, three Council members are missing from REM's council.

Table 4: Members of the REM Council

Current member	Date of appointment
1. Goran Petrović	Elected on 31.03.2011 and re-elected on 27.12.2016.
2. Olivera Zekić	Elected on 24.07.2015
3. Aleksandra Janković	Elected on 03.03.2016
4. Goran Peković	Elected on 16.12.2009 and re-elected on 14.10.2016
5. Đorđe Vozarević	Elected on 14.10.2016
6. Radoje Kujović	Elected on 27.12.2016

In May 2017, the mandates of Slobodan Veljković, Miloš Rajković and Božidar Nikolić expired on the same day as they were appointed on the same day in May 2011 (the previous law provided for six-year mandates). To date, they have not been replaced due to the difficulties surrounding the nomination procedure.

The vacant positions need to be filled by persons nominated by the Committee on culture and education, the national councils of national minorities, and the professional associations of film, stage and theatre artists and professional associations of composers. We have been informed that the Parliament has established a list of candidates proposed by the Committee on Culture and a list for the candidates proposed by the association of film, stage and drama artists and the associations of composers. The Parliament failed to draw a similar list of candidates for the national councils of minorities and the Committee on Culture decided to

[47] See Lea Kotlica: "Serbia: Is Regulatory Authority of Electronic Media (REM) Compromised" (translated from Serbian) (21 October 2016) <http://seenpm.org/serbia-regulatory-authority-electornic-media-rem-compromised/>.

suspend the procedure and to initiate a new procedure for nomination of the candidates, which was published in the Official Gazette on June 20, 2017.

Beyond possible political influences in the nomination/ appointment procedure, which can explain the difficulties, it is also apparent that:

- parliamentary work has been slowed because of Parliamentary elections (in 2016) and Presidential elections in 2017;
- the nominators are finding it quite challenging to agree among themselves on the candidates to be proposed. Some argue that some of the authorized nominators are also under political influence.

Some interviewees have also stressed to us that the Parliament is a 'weak' arm of the legislature, and very much under the influence of the government/president. Also, in the past the debates about nomination/appointment attracted a great amount of public scrutiny. Today, the media seem to be less present and interested in covering such debates. As a result nominations and appointments of members of the Council lack public scrutiny.

2.3.4. Knowledge dimension

Formal situation: Legal requirements for qualifications for board members

In the applied Ranking Tool, the answer here is 'yes', since the law requires Board members to be *"*elected from the ranks of distinguished experts in the field important for performing duties from the jurisdiction of the Regulator (media experts, economists, lawyers, telecommunication engineers, etc.)*"* and further specifies that a member of the Council has to have a university degree (article 7 of the Law on Electronic Media).

Formal situation: Legal requirements for professional expertise or qualifications for senior staff

In the applied Ranking Tool, the answer is 'no', since unlike Council members the Law on Electronic Media does not refer to the competence of staff (regardless of seniority or not). Since employees are now civil servants, the requirements of the Law on Civil Servants [48] applies and this law distinguishes between seven levels of competence: Senior Adviser, Independent Adviser, Adviser, Junior Adviser, Associate, Junior Associate, Clerk and Junior Clerk. But this is without consideration

[48] The Law on Civil Servants (in Serbian) (Official Gazette of RS, no. 79/2005, 81/2005 - corr., 83/2005 – corr., 64/2007, 67/2007 – corr., 116/2008, 104/2009 and 99/2014) <http://bit.ly/2uiSdBf>.

of any particular regulatory branch and applies across the public service sector in Serbia.

De facto situation: Adequacy of qualifications and professional expertise of board members/chairman

In the applied Ranking Tool, the answer here is "yes a majority". Presently, there is one lawyer, one defectologist, one professor of the Faculty of Drama Arts, one psychologist, one journalist and one sociologist represented in the Council. While the extensive mix foreseen by the law is not fully represented within the reduced board – notably it lacks telecom engineers and economists – the individual Council members nonetheless have relevant backgrounds. However, whether all members of the Council would indeed qualify as "distinguished expert" as required under law is not evident.[49]

Adequacy of qualifications and professional expertise of senior staff to fulfill the duties of the regulatory body

In the applied Ranking Tool, the answer is "yes, a majority". Since the Ranking Tool differentiates between "yes, all", "yes, a majority" and "No", this statement is primarily based on the reflection of the perceptions from the stakeholders. We note that some interviews showed respect for the qualification of the staff of REM. An interviewed stakeholder representing a journalist association was of the opinion that the staff was very competent but that this was not widely known and visible.

Staff is hired according to REM's rule-book on staff hiring and positions, which was taken over from the previous agency, existing since the establishment of the regulatory body in 2003. The total number of staff as of April 2017 was 73. Currently the biggest department, that of supervision, has 45 staff members out of which around 30 have university diplomas. Most of them have diplomas from the social sciences and humanities, especially journalism degrees. The finance department employs economists and the legal department has people with legal degrees. They hardly have any staff with technical degrees, e.g. telecom engineering, since that according to the Executive Director is not needed for the type of tasks REM has.

The Ranking Tool questions regarding external advice and cooperation were not contentious and do not require justification in this section. REM takes part in both formal and informal networks of regulatory agencies, both European and in the Balkan region. Representatives of REM (both Council and staff members) regularly

[49] See for example Jovanka Matic, "New Laws, Old Threats: Monitoring EU Guidelines in Serbia". South East European Media Observatory, 21 June 2015, p. 3 and 16. < http://mediaobservatory.net/radar/monitoring-eu-guidelines-serbia-new-laws-old-threats>

attend annual meetings of EPRA, CERF, European Regulators Group for Audiovisual Media Services (ERGA), Mediterranean Network of Regulatory Authorities and Black Sea Broadcasting Regulatory Authorities Forum (BRAF). In addition, trainings provided through these networks have given staff chance to enhance their knowledge. In the past, staff has been sent to external events or trainings almost every year.

2.3.5. Accountability and Transparency dimension

Formal situation: Is the regulatory body required by law to organise consultations?

In the Ranking Tool the selected answer option is "yes, but only in cases specified in the law." Public hearings are one of the novelties of the 2014 Law on Electronic Media. The proposal for a strategy for the development of the media service of radio and audiovisual media services in the Republic of Serbia needs to be adopted following a public hearing (article 23). The regulator also needs to conduct a public hearing when it prepares general acts which are directly related to media service providers (article 40). The article also specifies that:

- the public hearing begins on the day of publication of the draft general act on the website of the Regulator;
- the hearing must last at least 15 days;
- REM must publish the public hearing agenda on its website and e-government portal at least seven days prior to the public hearing.

The agenda must include at least:

- date of publication of the draft general act;
- the end date of the public hearing;
- the logistics of the public hearing including date, time and venue;
- the date of publication of the final draft of the general act.

REM is also required to provide insight into the current and completed public debates in a separate section that is dedicated to public hearings on its website.

Formal situation Is the regulatory body subject to a reporting obligation and is it specified in law?

"Yes", the reporting obligation is specified in the law and is limited to public bodies only. Article 39 of the Law on Electronic Media specified that the Council needs to submit to the Parliament its annual report. Article 38 also provides that the reports need to be made public. The article also contains a list of elements to be included in the annual report. The report needs to be submitted to the Parliament by the end of the first quarter of the following year. Parliament can also ask the regulator to submit a report covering a shorter time frame.

Formal situation Does the law specify a mechanism of ex-post control by a democratically elected body?

No, there is no mention that the Parliament needs to approve the report. However, parliament needs to take a more proactive approach to actually discuss REM's annual report in order to generate accountability.

De facto situation: Does the regulatory body organize consultations?

Yes, where legally obliged REM organizes hearings. Table 5 shows the number of consultations that have been organised in the last five years, according to the annual reports. As can be seen, 2014 and 2015 were the years when REM conducted hearings which very much corresponds with the period in which REM adopted new rule-books and by-laws implementing the 2014 Law on Electronic Media.

Table 5: Number of hearings organized by REM

Year	Number	Areas
2012	0	
2013	0	
2014	3	Rule-books
2015	8	By-laws
2016	0	

However, the participation rate in the consultations is said to be extremely low, except for the consultation on the draft strategy for the development of the media service of radio and audiovisual media services in the Republic of Serbia. That the government has its own consultation process and has not approved the strategy for almost two years may decrease the willingness of stakeholders to engage with REM over this strategy further. The regulator initially organised hearings outside of the REM's premises throughout the country. Because of the low turnout, the hearings now take place in REM's office.

De facto situation: Does the regulatory body explain the extent to which responses are taken into account in final decisions

In the applied ranking tool, the answer is yes but there is uncertainty here. Some have criticised the fact that REM does not provide a thorough account of opinions gathered during consultations and the final decisions do not necessarily address the results of the consultations and public hearings. This lack of detail may also be explained by the fact that the regulator does not receive much input. More generally, some industry players have mentioned that they do not rely much on the regulator and they prefer to settle differences among themselves.

De facto situation: Has the regulatory body been assessed/controlled by a democratically elected body in the last five years?

This is not the case, in the Ranking Tool a "no", as a consequence of article 39 of the Law on Electronic Media. Oversight of REM is mainly done by Parliament, through its Committee for Culture and Information. The Committee should in principle hold discussions each year on the annual report of the regulator. Since 2015, no annual report of REM was discussed in the Parliament. It is plausible that this is because the Parliament is often in recess because of multiple elections.

Nonetheless, the chairperson of the Committee is currently Maja Gojkovic who is also the speaker if the Parliament. The chairperson and the other members of the Committee in charge of REM could help to overcome the deadlock in the democratically legitimized functioning of the regulator instead of causing inertia.

Table 6: Consultations of REM

Year	Number	Area
2014	2	• Broadcasting Code • Regulation on Advertising
2013	4	• Inspection/monitoring procedures of operators activity • Regulation on licensing digital networks based on beauty contest procedures • Regulation on Program numbering Plan for digital platforms • Regulation on Conditional Access.
2012	1	• Implementation of the switchover strategy
2011	0	
2010	1	• Round table on digital TV

De facto situation: Rejection of annual report

There is no procedure of voting on the annual report foreseen in the legislation. However, one of our interviewees with insight into the operations of the parliamentary committee indicate that discussions on the merits of the report sometimes have entailed elements of counting votes. While the answer in the applied Ranking Tool is 'not applicable', it should therefore be noted that in 2013 the responsible Parliamentary Committee disapproved of the annual report of the then RBA through overall negative appraisal.

2.4. Issues not captured by the Ranking Tool

Most of the key aspects linked to independence and effective functioning are captured by the five dimensions of the Ranking Tool. However, there are issues that are not

internalized in the Ranking Tool that would have merited inclusion in the case of REM. Some of these overlap with an earlier study conducted by the team of the Audiovisual Media Authority in Albania,[50] which strengthens the case for these issues being of importance in the region and makes it important to list those before moving to contextualized discussion in Part 3.

2.4.1. Status and Power dimension

Redesign of the agency

Applying the Ranking Tool is more difficult in the context of fundamental legislative reform which results in the establishment of a new independent supervisory authority in the media sector. In the formal dimension, the Ranking Tool does not take into account whether such fundamental changes have taken place. Further, on the de facto side it does not include whether these changes were carried out in order to influence the regulator, which actors could steer or staff the agency and how, in a manner benevolent or not to independent functioning.

The legacy of legal reform

There is a Catch 22 between making a legal reform and getting quick results. Through this case study we realise that most energy of REM is invested in crafting and updating implementing regulations and by-laws. This is moreover just an interim step to actually implementing them vis-à-vis stakeholders. What we observe is that REM appears to have been tied-up with activities that produce more specific rules but that actual enforcement activities have suffered in turn. In addition, there are numerous and important reporting obligations and accountability duties which demand quite some documentation.

If we just juxtapose the numbers: Since 2014, REM remarkably adopted 20 new by-laws and three rule-books. In the three years since 2014, and despite some pressing issues, REM issued 36 reprimands, nine warnings and one temporary ban on publication of the programme content. If we discount that reprimands and warnings are not very harsh sanctions which also disappear after two years from the record of the provider (article 29 of the Law on Electronic Media) REM's enforcement authority is on the lighter side of the spectrum.

2.4.2. Financial Autonomy dimension

Salaries of staff and compensation of Council members, respectively

[50] Irion, K., Ledger, M., Svensson, S., and Fejzulla, E.: "The Independence and Functioning of the Audiovisual Media Authority in Albania" (fn. 2).

The ranking tool does not consider specifically the issue of salaries of staff members of the regulator or the compensation members of the Council are entitled to. The indicators on financial autonomy square this issue by asking if the regulator budget is sufficient to carry out its tasks and duties, if it is sufficiently stable over time and whether the regulator has sufficient autonomy to decide for which tasks it spends its budget.

The 2014 Law on Electronic Media changed the rules for employees of REM. Before their contracts were covered under general employment laws and now they are subject to regulations governing the rights and duties of the civil servants (article 5). As a consequence, salary schemes for civil servants apply[51] which has led to some decrease of the staff salaries who transitioned from RBA to REM. The fact that staff since 2014 are de facto member of the civil service may have down-the-line consequences of who can be promoted and on what ground. However, no interviewees had any examples or realistic scenarios of how this may happen at the current point in time.

This law did moreover introduce new rules covering the compensation of the members of the Council. Article 20 of the Law on Electronic Media foresees that the President of the Council receives as a compensation for his or her work the amount of three times the average monthly net salary in the Republic of Serbia and Council members are entitled to compensation in the amount of double the average monthly net salary in the Republic of Serbia. Previously, the remuneration of the president and members of the Council were aligned with the salary of a judge at the Supreme Court. This certainly puts a limit to the level of engagement with regards to the members of the Council which we reflect on as part of the autonomy of decision-makers below.

The assessment of salary and compensation schemes is a rather complex issue. Obviously the more the salary the more attractive the position but a high salary is not a guarantee for attracting the most qualified individuals and may actually lead to negative selection, meaning nepotistic structure.[52] From our background research we

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[51] See Law on Salaries of Civil Servants and Appointees ('Official Gazette RS', no. 62/06, 63/06, 115/06, 101/07, 99/10) and the Law on Establishing Maximum Level of Salaries in the Public Sector ('Official Gazette RS', no. 93/12).

[52] Not related to the independent media regulator but for example "… Serbian agencies often use the opportunity to employ people on the basis of the Labor Law. Being employed under the Labor Law, provides somewhat privileged status compared those employed under the Civil Service Law (primarily because salaries of the former group of employees are not … not limited to the amount of civil servants' salaries). Political benefits from employing people in the public sector with relatively high salaries provide significant incentives for the establishment of new agencies or structural disaggregation of ministerial sectors/units/departments from the Government." US

understand that in parts of the public sector there has been some negative developments in relation to the use of labour law contracts instead of civil service rules and staffing in the public sector.[53] The available expertise on public sector organisation and reform in Serbia recommends such streamlining and equalization in order to prevent the widespread circumvention of civil service status and salaries in the public sector.[54]

The INDIREG methodology does not recommend that there are no checks and balances on the contracts and salaries. The last minute introduction of civil service status in the Law on Electronic Media could as well be related to streamlining personnel affairs in the public sector. Instead of being an exception to the rule of civil service we underline that independent regulatory bodies in Serbia would need a "consistent regulatory framework for their establishment and functioning in the area of human resources."[55] Such a framework should have clearly defined interfaces with the regulations on public servants and salaries but protect independent regulators from receiving instructions or punitive measures, such second staff or assign members to other authorities, as well as make it impossible to employ qualified staff.

2.4.3. Autonomy of decision-makers dimension

Support by a political party during election compromises subsequent perceived integrity and independence of a Council member

The Ranking Tool operates on an assumption of causality that is concerned with whether links to external players (dependence on a category of actors) subsequently affect behavior/participation in the Board. It does not deal with reversed causality, i.e. appointment to the Council creating bonds of dependency with the party supporting the appointment. In the case of REM, the highly charged environment around REM

Aid and BCRR: "Agencies in Serbia: Analysis and Recommendations for Reform" (March 2013), p. 55f. <http://www.bep.rs/documents/news/Analysis%20of%20agencies%20in%20Serbia.pdf>.

[53] A 2014 Report states that "The scope of the Law on Civil Service (LCS) and related by-laws is very limited, as it applies to 26 480 civil servants, representing only 3.4% of the 781 000 public sector employees." See SIGMA: "Public Administration Reform Assessment of Serbia" (fn. 29), p. 14.

[54] See European Commission: "Serbia 2015 Report" (SWD(2015) 211 final, Brussels November 2015), p. 8 <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2015/20151110_report_serbia.pdf>.

[55] See European Commission: "Serbia 2014 Progress Report" (SWD(2014) 302 final, Brussels, October, 2014), p. 10 <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf>.

and its predecessor makes it likely that some individuals do not seek nomination or appointment to the Council out of fear of being associated with the political party that supported their nomination and appointments.

De facto situation: personal integrity and involvement of Council members

Several interviewees stressed that personal integrity of Council member is decisive for the independence and effective functioning of the regulator. There are such outstanding personalities who have built a track-record which testifies to their personal integrity. Beyond, integrity, being a highly personal quality, is hard to measure and it often lies in the eyes of the beholder whether another person has integrity or not. With the Ranking Tool such an elusive quality would be hard to measure which is why the indicators stress qualification and competence.

The investment into leading the REM may thus not be sufficient in order to build trust, reputation and generally show agility and enthusiasm for this appointment. The Council members seem to be removed from daily operations and the Council appears to function more as a filter than an engine of the independent regulator.[56] Council member are not visible, one interviewee observed, they are not active in any public debate.[57] Also, some interviewees have noted that unlike other agencies, in particular the Ombusdsman and the Commissioner for Information of Public Importance and Personal Data Protection,REM does not have a strong individual at its helm, who would defend the work of REM in the public eye.

2.4.4. Transparency and accountability dimension

Acceptance of transparency mechanisms and consultation processes

This cluster of indicators focus on whether open consultations take place, and how transparent the decision-making process of the regulator actually is. It does not capture instances where stakeholders refuse to take part in hearings or attendance is low. We heard that from different sources that hearings and public events organized by REM are not met with stakeholder interest. There can be different reasons for it, such as a lack of a participatory culture, resignation about the often unspecific impact of participation on public policy or that in the end nothing will come out of, or – in

[56] It took us three months to arrange for a written interview with one Council member.

[57] See for example: "All present and prominent former members of REM were invited to the round table, but none answered to the NSSJ's invitation." South Est European Media Observatory: "How to ensure integrity of media regulators?", Roundtable report (2 November 2016) <http://mediaobservatory.net/news-and-events/how-ensure-integrity-media-regulators>.

the worst case - the use of other, apparently more successful channels to influence regulatory policy.

Difference between de facto and perceived situation

The Ranking Tool differs between the formal and the de facto situation, and is primarily intended to be used for self-assessment. When applied externally it is clear that for a number of indicators it is difficult to assess the 'true' de facto situation, without going through a thorough audit or court procedure. What can easily be established, however, is when perceptions of malpractices are present, and that these perceptions in turn threaten the ability of an agency to act in an independent and effective manner. See the discussion in Part 3 for further on this.

In Part 3 we move on to the attention points which we have derived from applying the Ranking Tools for which we will produce a context-sensitive interpretation.

PART 3 - INTERPRETATION OF THE RANKING TOOL LEADING TO POLICY RECOMMENDATIONS

This section derives attention points from the outcome of the Ranking Tool and then lets these attention points undergo a context-sensitive interpretation to obtain an understanding of whether in the light of all circumstances they could indeed present a risk for external influence on the independent regulatory authority or are balanced by other contextual factors.

3.1. Attention points derived from the applied Ranking Tool

The following attention points were derived from the applied Ranking Tool:

Status and powers dimension

- Under normal circumstances it should suffice that a regulator's independence is recognized in an act of parliament, however, in a variety of ways the Serbian administrative legal tradition does not recognize independent authorities which can contradict REM's independence.

- While the 2014 Law on Electronic Media introduced a number of elements which would actually strengthen the tasks and powers of REM, it is no longer the "owner" of the important strategy for the development of Radio Media Service and Audiovisual Media services in the Republic of Serbia.

- REM's competence in relation to the monitoring of election campaigns seems unclear. This needs to be clarified at the very least. If full powers are given to REM to control the airtime allocated to election debates and campaigns during pre-election and election periods, then REM should effectively control and react immediately if the by-laws are not respected.

- There are clearly shortcomings with the ability to impose and the use of deterrent sanctions, however, they are not alternating sides of the same coin. On the one hand, the regulator cannot impose financial sanctions which are certainly more effective than reprimands and warnings. On the other hand, REM underuses the most deterrent sanction it has, i.e. the temporary ban on programmes.

- There is a risk that REM can be instructed (other than by a court) through the central strategy for the development of Radio Media Service and Audiovisual Media Services in the Republic of Serbia and the required review of the constitutionality and legality of by-laws and rule-books.

Financial autonomy dimension

- While the budget setting and approval procedure are clear and legal defaults are foreseen for the situation that the parliament does not approve the new budget the fact that REM operates on the basis of an outdated budget plan curtails its autonomy to decide how its budget is spent.

Autonomy of decision-makers dimension

- The formal set-up of nomination and appointment procedure of members to the Council is best practice and scores well in the legal assessment of the Ranking Tool.

- The procedure for nomination and consolidation of candidates among the organisations that together form a single nominator has been prone to failure in practice.

- The procedure for nomination and appointment of new members of the REM Council is frequently delayed and interrupted on procedural grounds.

- Council members seem to be removed from daily operations and the Council appears to function more as a filter than an engine of the independent regulator.

Knowledge dimension

- The qualification and expertise of Council and staff did not raise significant attention points, neither at formal nor at actual levels.

Accountability and transparency dimension

- REM complies with the letters of the Law on Electronic Media on publications but does not create true engagement with its stakeholders, the public and the media.

- REM is only marginally accountable as it only needs to submit an annual report to the Parliament.

3.2. Interpretation of attention points in the national context

The attention points above resulting from applying the Ranking Tool to REM require a context-sensitive interpretation that helps to explain whether the regulator's resistance against external influences is really endangered by taking into account all facts and circumstances surrounding it. In the following we produce this enriched

interpretation of attention points before concluding whether an attention point indeed presents a risk or not, and offer recommendations how to address the issue at hand.

3.2.1. Status and powers

In the status and powers dimension of the INDIREG ranking tool we provider context-sensitive interpretation of the four attention points we have derived.

Independent regulators and horizontal legislation governing the public sector

The first cluster of issues with the formal and then possibly actual independence of REM stems from the interaction between an independent regulatory body with other horizontal legislation governing the public sector. It has been stressed earlier that regulators have been fitted fairly recently in the public sector organization whereby Serbian administrative tradition and legal framework do not fully recognize their status and role.[58] There is no horizontal regulation (or an 'umbrella' law) regulating establishment and operations of independent regulatory bodies.[59] This is therefore not just an issue for REM but also for other independent regulatory bodies in Serbia.[60]

Serbia is undergoing a larger public administrative reform process aiming for more consistency and better public management in relation to civil service and personnel affairs, equalization of pay, public financial management, public procurement, accountability and so on. The public administrative reform plan is known to be ambitious and implementation is underway. The European Commission's 2016 report on Serbia for example notes:

> → amend the civil service law through an inclusive and evidence-based process to guarantee the neutrality and continuity of the public administration and ensure merit-based recruitment, promotion and dismissal procedures, notably by eradicating exceptions and transitional arrangements in appointments;

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[58] US Aid and BCRR: "Agencies in Serbia: Analysis and Recommendations for Reform" (fn 47), p. 22f.

[59] Ibid., p. 23.

[60] For example the Serbian Energy Agency and the Republic Agency for Electronic Communications (RATEL), see European Commission: "Serbia 2016 Report" (SWD(2016) 361 final, Brussels, November 2016) <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_serbia.pdf>, p. 41, 47; see also OECD, "Independence of Competition Authorities: From designs to practice: Contribution of Serbia", (DAF/COMP/GF/WD(2016)39, 28 September 2016), para. 9 <https://one.oecd.org/document/DAF/COMP/GF/WD(2016)39/en/pdf>.

→ ensure systematic coordination and monitoring and regularly report on the implementation of the public financial management reform programme 2016-20.[61]

Against the background of the public administrative reform and some of its very legitimate objectives, it is not advisable to argue in favour of new legal pockets containing special rules and exceptions from horizontal public sector regulations only for REM. Independent regulatory bodies in Serbia would need in general a consistent regulatory framework for their establishment and functioning.[62] Such a framework should have clearly defined interfaces with the horizontal regulations on public servants and salaries, public budgeting, procurement and financial regulations and so on but protect independent regulators from receiving instructions or punitive measures.[63] There is also a better chance to succeed by approaching the bigger picture instead of advocating the single cause of REM, whereby the need for independent supervision of electronic and broadcasting media and possible new requirements on independence from a modified AVMS Directive should be taken into consideration.

In connection with this, it would be also important to clarify whether there are strings attached to independent bodies being 'entrusted' with competences. As was noted above, the legal set-up between original holders of state authority and public bodies being entrusted with competences is not unambiguously clear. A note of caution is necessary because the intricacies of the public administrative law in Serbia go beyond this study's remit, however, we want to be comprehensive in flagging possible avenues of influence on the independent media regulator that were detected during the data collection stage.

Instructive insofar are the events surrounding RATEL in 2008 where the ministry threatened to revoke all competencies from RATEL in a controversy over its allocation of a dialing code to a private operator without issuing a tender.[64] Although

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[61] Ibid., p. 9.

[62] See European Commission: "Serbia 2014 Progress Report" (SWD(2014) 302 final, Brussels, October, 2014), p. 10 <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf>; Maja Poznatov: "Commission: Serbia should acknowledge the remit of independent bodies" (Euractive, 16 November 2017) <https://www.euractiv.com/section/enlargement/news/commission-serbia-should-acknowledge-the-remit-of-independent-bodies/>.

[63] Such as second staff or assign staff members to other authorities, as well as make it impossible to employ qualified staff.

[64] See Personal Magazin: "Ministry for Telecommunications and Information Society Temporarily Takes Over RATEL Affairs" (13 June 2008, in Serbian) <http://bit.ly/2uAjqPv>.

the ministerial decision was subsequently revoked by the government, and thus RATEL could continue exercising its powers, the government's reasoning apparently did not refute the principle possibility that 'entrusted' powers can be revoked based on the Law on Public Administration under certain circumstances.[65] This, however, would amount to some sort of a 'Kill-switch' in the hands of the genuine holders of state administrative powers that would not be compatible with the theory and practice of delegation of powers and competences to independent regulatory authorities.

We recommend to commission a study that explores the possible tensions between the public administrative framework and independent regulatory bodies in Serbia and make recommendations on how to reconcile the legitimate objectives of the public administrative reform with the establishment and functioning of independent regulatory bodies in Serbia, including REM.

REM should try to liaise with the other sector-specific independent regulators which are established in order to align Serbian legal frameworks with EU law and compile information how regulator's constituting legislation may be impacted from horizontal administrative rules.

REM is no longer the "owner" of the important strategy for the development of radio media service and audiovisual media services in the Republic of Serbia

The second attention point calls into question the changes surrounding the important strategy for the development of radio media service and audiovisual media services in the Republic of Serbia (articles 22 no. 1, 23 of Law on Electronic Media). This strategy defines for a period of seven years for which type of radio and audiovisual media services competitions will be announced and held giving due consideration to the needs, cultural and language aspects, the availability of spectrum, state of technology and so on (article 92). Developing such a strategy would seem "bread and butter business" for a media regulator which moreover would ensure that the regulator has a certain relevance in the market.

As it stands, crucial authority is deflected away from REM in favour of the government. The new rules on the development and adoption of the strategy foresee several stages:

1. REM cooperates with the regulatory authority for electronic communications and authority for the protection of competition,
2. REM conducts a public hearing,

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[65] Vidić, Marija: "Pitanje za milion evra" (In English: Question worth a million EUR). Vreme, (26 June 2008 in Serbian) <http://www.vreme.com/cms/view.php?id=644391>.

3. REM forwards it to the government for approval,
4. The government coordinates with its line ministries,
5. The government adopts the strategy.

The Law on Electronic Media provides that REM is only competent to "prescribe rules that are binding for media service providers, especially those that ensure implementation of the strategy" (article 22 no. 10). Next, REM is tasked to conduct the competitions for terrestrial radio and television broadcasting licences (article 96f.).

Overall the strategy is a rather central joint between the Law on Electronic Media and its implementation for which an independent regulator would be set-up in order to influence the media sector. In a multi-channel environment, when scarcity in the terrestrial spectrum has much relaxed, as compared to the needs of mobile telephony and data, the grip of the government over the strategy may no longer be justified. In particular, there is a risk that REM can be instructed (other than by a court) through this strategy. Paradoxically enough this may shield REM from politization but it also leaves it to execute a government strategy.

Finally, the cooperation of three independent regulatory authorities, i.e. REM with the regulatory authority for electronic communications and authority for the protection of competition can be rendered meaningless by government decision. Meanwhile the Providers of media services have little reason to attend a hearing or engage with REM as long as there are government avenues to influence the very strategy. Their efforts are also frustrated when the proposal for the strategy is sent back to REM without any substantive motivation, which just happened earlier this year. The relationship between this document and the, to our best understanding separate, Media Strategy also needs to be clarified in terms of content and process of adoption, possibly by involving REM.

As a result, the Law on Electronic Media does not result in clear-cut roles and responsibilities with regards to this central strategy. The law should either revert back to the previous situation when REM was the "owner" of the important strategy for the development of radio media service and audiovisual media services in the Republic of Serbia or the government should be in charge to initiate and develop the very strategy with the input of REM.

The obligatory review of the constitutionality and legality of REM's regulations is not precise and can be a means to exert external influence.

As noted above, the regulator is obliged to obtain the opinion of the constitutionality and legality of certain regulations (Article 22 of the Law on Electronic Media). So far this review has not caused deadlock in the ability of the regulator to adopt by-laws and policy implementing regulations, with 20 new by-laws and three rule-books being

adopted. What is problematic in our view is that the law does not specify who is in charge of this review and what is the legal effect of such a review.

We also infer from our information that even though it is obliged to obtain the opinion of the competent ministry, REM is not obliged to follow this review. If the ministry thinks that REM's regulation is not in conformity with the legislative framework and the constitutions, it could initiate a procedure at the constitutional court for the assessment of the constitutionality or legality.

To our knowledge, the review of one by-law, the rulebook on the obligations of media service providers during election campaign, decided against REM's interpretation of media monitoring of election campaigns. This in turn has undermined REM's activities on the basis of article 47 in connection with article 28 of the Law on Electronic Media. Other stakeholders in turn are highly critical of REM's inactivity in relation to political advertisement during election campaigns, which damages REM's reputation as an impartial media regulator.

We strongly recommend to clarify in the Law on Electronic Media that the constitutionality and legality review should be exclusively for the judiciary in line with article 13 at the end.

REM's competence in relation to monitoring elections

There is a lot of criticism surrounding the conduct of media service providers during election campaigns and there have been allegations that airtime has not been allocated fairly between candidates. In the public eye, this is an area which falls under REM's competence. We have discovered that there is legal uncertainty around this question of competence and we believe that this competence should be clarified and explained clearly.

According to our reading of the law, this is a matter that falls under REM's competence, but if this is not the case, then the law should be clarified. In any event, it is REM's duty to explain its own competences and to report on how its powers are effectively put into practice.

REM's ability to impose and use deterrent sanctions

There are clearly shortcomings with the ability to impose and use deterrent sanctions, however, they are not alternating sides of the same coin. On the one hand, the regulator cannot impose financial sanctions which would be certainly more effective than reprimands and warnings, especially in relation to advertisement regulations and programme content regulations.

The INDIREG Study notes that "the regulator must be equipped with powers by law that are binding for the regulatees beyond the status of mere recommendations, including sanctioning."[66] The study notes that the range of enforcement powers given to a regulator dictates whether it can act independently or whether it needs to turn to courts to enforce compliance with the rules.[67] The INDIREG methodology places great weight on the ability to impose deterrent fines in order to give teeth to the regulation.[68]

REM does not have the possibility to impose fines on media service providers which violate their obligations stemming from the law. The Law on Electronic Media, however, provides for financial sanctions and the procedure foreseen in the law is as follows: If REM finds a violation of specific obligations of the Law on Electronic Media, it has to file a misdemeanor procedure with the competent court (article 24 at the end) which then can impose fines on media service providers pursuant to its articles 107 to 112. This arrangement would ensure, on the one hand, that there are financial sanctions in place to enforce the law. There is however one important exception to this because the Law on Electronic Media does not provide for financial sanctions in the event that a media provider acts contrary to the obligations on programme content contained in article 47.

The division of tasks between REM and the judiciary, on the other hand, can be seen critical because of the time-lapse between the violation and the fine (in many cases well beyond one year), and that REM is just a procedural conduit for financial sanctions. The latter can undermine the genuine authority of the media regulator to implement the law and enforce compliance when necessary vis-à-vis regulatees. In 2015, the ratio between REM initiated court cases and actual rulings on sanctions was very disproportionate.[69] In 2016, this has somewhat improved but it is still not sufficiently deterrent so to speak.

The particular issue that article 47 obligations cannot be enforced with financial sanctions creates a particular gap in the system of sanctions albeit there appears to be

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[66] INDIREG Study (fn. 1), p. 7.

[67] Ibid, p. 306.

[68] Ibid., p. 376.

[69] E.g. "Of all offences by media service providers filed in 2015, REM had received a decision on one complaint of an economic offence by the time of writing this report." Marija Vukasovic: "Indicators on the level of media freedom and journalists' safety (SERBIA)" (December 2016), p. 20 <http://safejournalists.net/wp-content/uploads/2016/12/Full-WB-Media-Freedom-Indicators-2016-ENG.pdf>.

a considerable need to do so. Article 47 covers obligations in relation to programme content, such as the obligations to:

- provide free, true, objective, complete and timely information,
- contribute to raising the general cultural and educational level of citizens;
- not provide programme content that highlights and supports drug abuse, violence, criminal or other misconduct, or provide content that abuses the credulity of viewers and listeners;
- respect the ban on political advertising outside of political campaigns and during the such campaign enable registered political parties, coalitions and candidates representation without discrimination;
- organize prize competitions fairly, with the publication of clear rules on the content and publicly promised reward;
- provide a quality programme in terms of content, from a technical point of view, applying international and national standards, among others.

Especially, the contention about programme content quality and political advertisement rules is solely linked to the powers contained in article 28, namely remonstrance, warning, temporary ban or – the ultima ratio – revocation of the license. Attaching financial sanctions to violations of article 47 can translate into a more effective and flexible means of enforcement. The uncertainty about REM's power and mandate to enforce the rules on political advertisement should be resolved.

Following European standards regulatory authorities in the field of broadcasting should have the power to impose sanctions, in accordance with the law, whereby a warning should precede other sanctions.[70] Following closely the legislative process for amendments of the AVMS Directive, the proposal - if adopted - calls for media supervisory authorities to have adequate enforcement powers to carry out their functions effectively. [71] An appeal procedure can ensure judicial oversight commensurate to the right to an effective remedy, e.g. article 13 of the European Convention on Human Rights.

Contrary to the earlier attention point, there appears to be no horizontal legislation which would actually prevent independent regulatory bodies in Serbia to hold and use financial sanctions. While REM just like RATEL does not have the possibility of

[70] Council of Europe, Appendix to Recommendation Rec(2000)23 (fn. 9), para. 21.; Council of Europe, Appendix to the Declaration (fn. 10), para. 23.

[71] See Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities (COM/2016/0287 final), article 30 and recital 33.

imposing fines, the Commission for Protection of Competition and the Commissioner for Information of Public Importance and Personal Data Protection possess financial sanctioning powers both of which would appear similar sector-specific regulators.

On the other hand, we note that REM underuses the most deterrent sanction it has, i.e. the temporary ban on programmes. In the event of a particularly grave breach of the obligations on programme content requirements and also advertisements, REM could in principle impose a temporary ban on the publication of whole, or parts of, the programme content for up to 30 days. Notwithstanding the need to observe the principles of objectivity, impartiality and proportionality (article 28), REM did never impose a temporary programme ban that would be longer than 24 hours.

In light of the serious issues noted in relation to excessive advertisement breaks in cable TV programmes and reality TV formats that were deemed harmful to minors, REM could do better to step up the use of deterring sanctioning powers. REM should use and exhaust the existing sanctions and specifically react to repeated violations of the rules on programme content and also advertisements with a sanctioning scheme that would gradually escalate sanctions in order to step up deterrence. Here REM should better assert its independence when disciplining its regulatees, whereby commercial advertisement and programme content that is deemed harmful to minors are also least likely to conflict with important media freedoms.

We recommend to amend the Law on Electronic Media with a view to equip REM with the power to issue financial sanctions, also in relation to violations of programme content requirements, following a warning and subject to judicial review (right to an effective remedy).

We also recommend REM to adopt a graduated scheme how it will use its sanctioning powers that would gradually escalate sanctions in order to step up deterrence.

3.2.2. Financial autonomy

REM operating on the basis of an outdated financial plan restricts its autonomy to decide about how to spend its own budget

While the budget setting and approval procedure are clear and legal defaults are foreseen for the situation that the parliament does not approve the new budget, the fact that REM operates on the basis of an outdated budget plan curtails its autonomy to decide how its budget is spent, The financial plan submitted to the parliament has not been approved since the end of 2015, and REM currently is operating according to the Financial Plan of 2015.

We concur with the European Commission's 2016 report on Serbia that the Parliament's support for independent regulatory bodies is not sufficient; even if we discount that the parliament was several times in recess in the last years and makes an

effort to keep up with legislative reforms in a number of important areas.[72] The inaction of the parliament can actually undermine the public perception of REM and contributes to an environment that is not enabling for independent regulators to consolidate themselves as a respectable authority.

We recommend that the Parliament supports the independence and functioning of REM in line with the law on electronic media by adopting the decisions necessary for REM's functioning, namely approving REM's statute and annual financial plans.

3.3.3. Autonomy of decision-makers

The procedure for nomination is prone to failure in practice.

While the formal set-up of nomination and appointment procedure is best practice and scores well in the formal assessment of the Ranking Tool, the nomination stage has been prone to failure in practice for two reasons:

1. It is quite difficult for several organizations that together form single authorized nominator to agree among themselves on the two candidate to be nominated.

2. The nomination procedure for new members of the REM Council is frequently delayed and interrupted on procedural grounds, also affecting the appointment.

Some of the difficulties we observed could have to do with the complexity of the nomination stage. In the case of REM, civil society and professional organisations have been forthcoming in supplying names. However, in some cases the consolidation of candidates between organisations that together form a single authorized proposer did not succeed. It can be that the admittedly complex legal procedure for nominating candidates was not well understood or that a lack of cooperation in following through the procedure can be blamed. In the end the parliament does not follow the rules on appointment and simply does not vote in new members of the Council.

The first edition of new nominations following the procedure foreseen by the 2014 Law on Electronic Media took place in 2015. Some of the organisations who together form a single nominator were not fully informed and not yet experienced in the nominations process. Overall, the nomination procedure could be better communicated helping organisations concerned to understand what is expected from them at which stage.

We do not side whether the frequent delays and occasional interruptions of the nomination on procedural grounds are in the interest of the rule of law or constructed.

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[72] European Commission:"Serbia 2016 Report" (fn. 54), p. 7, 42.

What is obvious is that frequently the nomination procedure commences too late, which is why we call on the Parliamentary Committee in charge to support the independence and functioning of REM in line with the law on electronic media, namely organizing timely nominations and appointing new members to the Council.[73] In order to avoid that one procedural mistake creates stalemate for parallel nomination and appointment procedure, every nomination and appointment should be treated as a self-standing procedure.

The Council members seem to be removed from daily operations.

The REM Council essentially makes decision but seems to have little stake and investment in the independence and effective function of REM. The involvement of the members of the Council is often limited to the regular Council meetings, that is at least twice a month, and when necessary extraordinary sessions that can be electronic or conducted by phone. This creates the image of a complacent regulator as opposed to a vigorous one with the result that stakeholders and members of the public cannot perceive of the personal integrity of the members of the Council.

The members of the Council are not employed by REM and/or do not spend a significant amount of time working with REM. Most Council members have professional carriers outside REM which is normal given that they are not employed by REM. According to article 20 of the Law on Electronic Media, the president and the members of the Council receive a relatively modest compensation. However this way the Law on Electronic Media does not provide the incentives for Council members to invest themselves in the independence and functioning of REM. In the current situation, the REM Council is not in the position to provide leadership and strategically build the regulator's reputation with stakeholders and the public.

One solution would be to revert back to a situation in which the members of the Council are (part)time employed. The members of the Council at the very least, the president of the Council should, should, at the same time, be more assertive and in the public eye visible representatives of REM. All Council members should display very high standards of professional integrity, impartiality and competence in all circumstances and at all times. In case of allegations that REM is not functioning correctly, REM should immediately publish notices explaining its position/actions on its website.

3.2.4. Knowledge

Even though the qualification and expertise of Council members and REM staff did not raise significant attention points, there are a few important observations because

[73] European Commission:"Serbia 2016 Report" (fn. 54), p. 7, 42.

the perception of competence correlates highly with the perception of the regulator's impartiality. Those stakeholders who are professionally involved with REM recognize that overall the staff is qualified and competent but this hardly resonates further. We are not certain whether REM staff intentionally keeps "a low profile" or is shielded from behind the Council. To our assessment REM staff should act more assertive and be allowed to move out from the shadow of the Council.

In many countries, the CEO/managing directors of regulators are in the public eye. They are frequently interviewed and participate in public events. This helps to consolidate the reputation of regulators, which need to be perceived by the public as trusted, impartial and competent.

3.2.5. Accountability and transparency

With a few controversial exceptions, REM complies with the letters of the Law on Electronic Media on publications and its website. Researchers who recently assessed its website note that "REM has demonstrated a rather extensive form of transparency, with publicly available data concerning almost all stages of the policy cycle (the only exception being the fifth element of transparency – feedback)."[74] The most controversial report, i.e. on the monitoring of media coverage during election campaigns were published decidedly delayed.

To our assessment the outreach and communications of REM is kept deliberately formal. However this does not create true engagement with its stakeholders, the public and the media. REM could enhance its public perception and refresh its image via its website. Other media regulators in European countries for example produce a monthly newsletter and news releases when there has been a development.[75]

We note that lacking the support of the parliament (its statute, financial plan and appointments) and being sidelined by the Ministry on Culture and Information (media development strategy, media strategy) can damage the functioning of the regulator. In general, REM should place more emphasise on its relevance as a regulator because

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[74] S. Tomic, S. Taseva, I. Popovic, A. Jovancic, Z. Vojinovic: Agency Transparency and Accountability: Comparative Analysis of Five Regulated Sectors in Serbia and Macedonia (Belgrade Institute for Public Policy, 2015), p. 75.

[75] See for example Ofcom's broadcast bulletin at https://www.ofcom.org.uk/about-ofcom/latest/bulletins/broadcast-bulletins or the news section of Belgian regional regulatory authority (CSA) http://www.csa.be/breves

deserted hearings points to a lack of interest on part of the stakeholders. As a proposal REM could consider an annual event involving all stakeholders and the public, that has some content from REM's operations but also engagement components such as an award for a good programme format.

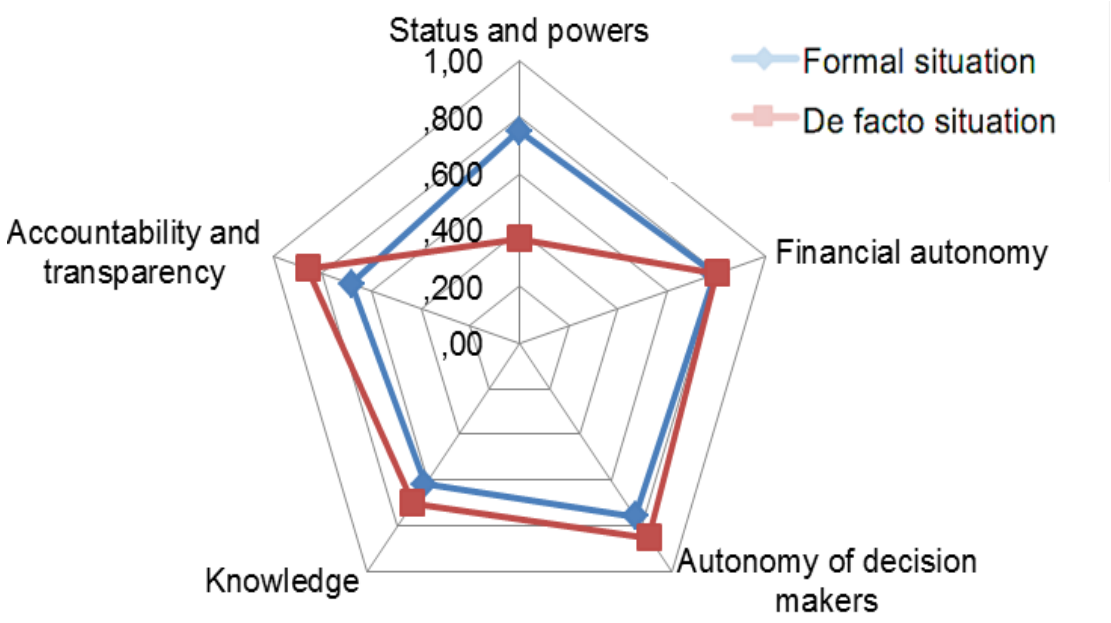
CONCLUSIONS

This study carried out an independent assessment of the Regulatory Authority for Electronic Media (REM) of Serbia. The scope of the study is to apply the INDIREG methodology to the REM and provide contextual interpretation of the results with policy recommendations.

REM, seated in Belgrade, was set up in 2014 according to the Law on Electronic Media as the new independent regulatory authority for electronic and audiovisual media services' sector. REM is caught and operates in a challenging context: media markets in Serbia are highly saturated and government grants are awarded to selective private media. There is low upfront compliance with programme and advertisements rules as well as an overall squeeze on quality content and the accountability function of the media. Lacking the optimal support of the parliament (REM's statute, financial plan and appointments pending) and being sidelined by the Ministry on Culture and Information (media development strategy, media strategy) can damage the effective functioning of the independent regulator. REM in this situation appears to retreat to overly formalistic (law-abiding) activities without necessarily being effective in regulating the Serbian electronic and audiovisual media. Many stakeholders from the media sector do not perceive of REM as an authority pointing to a lack of enforcement or the deflection of responsibility (e.g. monitoring election campaigns) which has undermined its public credibility.

The graphical representation below constitutes the applied Ranking Tool of REM representing the situation in July 2017. It is important to note that the Ranking Tool is an interim step in the analysis from which attention points are derived for contextual interpretation.

Figure 3 (reproduced from section 2.2.): The Ranking Tool applied to REM



The following attention points were derived from the applied Ranking Tool:

Status and powers dimension

- Under normal circumstances it should suffice that a regulator's independence is recognized in an act of parliament, however, in a variety of ways the Serbian administrative legal tradition does not recognize independent authorities which can contradict REM's independence.

- While the 2014 Electronic Media Law introduced a number of elements which would actually strengthen the tasks and powers, REM is no longer the "owner" of the important strategy for the development of Radio Media Service and Audiovisual Media services in the Republic of Serbia.

- There are clearly shortcomings with the ability to impose and the use of deterrent sanctions, however, they are not alternating sides of the same coin. On the one hand, the regulator cannot impose financial sanctions which are certainly more effective than reprimands and warnings. On the other hand, REM underuses the most deterrent sanction it has, i.e. the temporary ban on programmes.

- There is a risk that REM can be instructed (other than by a court) through the central strategy for the development of Radio Media Service and Audiovisual Media Services in the Republic of Serbia and the required review of the constitutionality and legality of by-laws and rule-books.

Financial autonomy dimension

- While the budget setting and approval procedure are clear and legal defaults are foreseen for the situation that the parliament does not approve the new budget that REM operates on the basis of an outdated budget plan curtails its autonomy to decide how its budget is spent.

Autonomy of decision-makers dimension

- This formal set-up of nomination and appointment procedure of members to the Council is best practice and scores well in the legal assessment of the Ranking Tool.

- The procedure for nomination and consolidation of candidates among the organisations that together form a single nominator is prone to failure in practice.

- The procedure for nomination and appointment of new members of the REM Council is frequently delayed and interrupted on procedural grounds.

- Council members seem to be removed from daily operations and the Council appears to function more as a filter than an engine of the independent regulator.

Knowledge dimension

- The qualification and expertise of Council and staff did not raise significant attention points, both at formal and actual levels.

Accountability and transparency dimension

- REM complies with the letters of the Law on Electronic Media on publications but does not create true engagement with its stakeholders, the public and the media.

REM operates in a challenging context: media markets in Serbia are highly saturated, the government selectively subsidizes private media outlets, upfront compliance with advertisements rules in cable TV is low and there is an overall squeeze on quality content and the accountability function of the media. Lacking the support of the parliament (REM's statute, financial plan and one appointments pending) and being sidelined by the Ministry on Culture and Information (media development strategy, media strategy) can damage the effective functioning of the independent regulator.

The policy recommendations below were derived as a result of the contextual interpretation of these attention points. Policy recommendations are addressed either to the parliament or to REM.

Table 7: Policy recommendation addressed to the Serbian legislator

Status and powers	1. Collaborate with international assistance and request an independent study on the possible tensions between the public administrative framework and independent regulatory bodies in Serbia. 2. Create clear-cut roles and responsibilities with regards to the central strategy for the development of the media service of radio and audiovisual media services in the Republic of Serbia. 3. Clarify in the Law on Electronic Media that that the constitutionality and legality review should be exclusively for the judiciary. 4. Clarify the role of REM in relation to the monitoring of election campaigns 5. Amend the Law on Electronic Media with a view to equip REM with the power to issue financial sanctions, also in relation to violations of programme content requirements, following a warning and subject to judicial review.
Financial autonomy	6. Support the independence and functioning of REM in line with the law on electronic media by timely adoption of REM's annual financial plan.
Autonomy of decision-makers	7. Support the independence and functioning of REM in line with the law on electronic media by timely organization of timely nominations and appointing new members to the REM Council. 8. Support the independence and functioning of REM in line with the law on electronic media by timely adoption of REM's statute. 9. Treat each nomination and appointment procedure as a self-standing procedure.
Knowledge	10. Re-introduce that the members of the Council are (part)time employed
Transparency and accountability	11. Clarify and possibly specify procedures for handling REM's Annual Report.

Table 8: Policy recommendation addressed to REM

Status and powers	a. Liaise with the other sector-specific independent regulators in Serbia and compile information about the impact from horizontal administrative rules.

	b. Adopt a scheme how REM uses its sanctioning powers that would gradually escalate sanctions in order to step up deterrence.
Autonomy of decision-makers	c. If financial sanctions are revised, REM is advised adopt a by-law formulating a graduated response so that sanctions for not paying fees are announced and mounted corresponding to the law.
Knowledge	d. If the process of approving the final plan becomes timely, schedule an external independent expert review of the agencies financial autonomy, including its fee structure, collection process and enforcement strategy.
Accountability and transparency	e. The members of the Council should be more assertive and visible representatives of REM.

ANNEX A: LIST OF INTERVIEWS

Stakeholder category	Date of interview	Position
Regulatory Authority for Electronic Media (REM)	2017.07.04	Staff: senior level
	2017.07.24	Staff: senior level (via videolink)
	2017.07.24	Staff: senior level (via videolink)
	2017.09.08	REM council member (online in writing)
	2017.07.05	Former council member
Ministry of Culture and Information	2017.07.03	Politically appointed senior level employee
	2017.07.03	Staff: international relations office
Ministry of Trade, Tourism and Telecom	2017.07.30	Politically appointed senior level employee
Serbian Parliament	2017.07.18	MP: member of Parliamentary Committee of Culture and Information, representing opposition party (via videolink)
	2017.09.18	MP: member of Parliamentary Committee of Culture and Information, representing government party (via videolink)
Public service broadcaster	2017.07.05	Senior staff
Commercial broadcaster	2017.07.04	Legal advisor to TV station
	2017.07.04	Owner of radio station & representative of broadcasting journalists
	2017.07.04	Owner of radio station & representative of radio association
Journalists & academics	2017.07.05	Senior representative of the Association of Independent Journalists of Serbia
	2017.07.05	Senior representative of the Association of Journalists in Serbia
	2017.07.05	Senior representative of the Independent Journalists Association of Vojvodina
	2017.07.05	Senior academic in the field of media studies
	2017.07.06	Journalist
International organizations	2017.07.05	Staff member
	2017.07.05	Staff member

ANNEX B: TABLES JUSTIFYING ASSESSMENT OF FORMAL DIMENSION

THE INDEPENDENCE AND FUNCTIONING OF THE AUDIOVISUAL MEDIA AUTHORITY OF SERBIA

AN ASSESSMENT USING THE INDIREG METHODOLOGY

I. GENERAL INFORMATION

TABLE 1 - MARKET DATA

This table is aimed at gathering information on the number of audiovisual media services that are supervised in the country.

Country	Number of linear commercial services	Number of non-linear commercial services	Number of public service channels (PSBs)
Serbia	Regulatory Authority for Electronic Media > Registry of media services http://www.rem.rs/sr/registar-pruzalaca-medijskih-usluga Those with valid licenses: **Terrestrial**: app. 377 (possibility of double entries on the list) **Cable/Satellite/IPTV**: app. 255 **Internet:** 16	**On-demand**: none listed in the REM Registry http://www.rem.rs/sr/registar-pruzalaca-medijskih-usluga	**Radio Television Serbia (RTS) – national PSB** TV: 4 channels (RTS 1, RTS 2, RTS 3, RTS Satellite) Radio: 4 channels (Radio Belgrade 1, Radio Belgrade 2, Radio Belgrade 3, Belgrade 202) **Radio Television Vojvodina (RTV) – PSB of the autonomous province of Vojvodina** TV: 2 channels (RTV 1, RTV 2) Radio: 4 channels (Radio 1, Radio 2, Radio 3, ORadio)

TABLE 2 - AUDIOVISUAL LAWS AND REGULATORY BODIES

This table lists the regulatory bodies in charge of overseing the areas covered by the Audiovisual Media Services (AVMS) Directive, in relation to commercial linear television, non-linear audiovisual media services and public service broadcasters (PSBs). Il also lists the relevant laws.

Country	Areas	Main laws	Regulatory body in charge of commercial television	Regulatory body in charge of non-linear commercial media services	Regulatory body in charge of PSB
Serbia	Information requirements (art. 5 AVMS Directive)	**Law on public information and media (Official Gazette 83/2014)** http://www.anem.org.rs/en/propisi/laws.html V. IMPRINT, IMPRINT SUMMARY AND IDENTIFICATION Articles 34-36	Regulatory Authority for Electronic Media	Regulatory Authority for Electronic Media – nowhere specified, but can be concluded from the following: **Law on Electronic Media (Official Gazette 83/2014)** http://www.anem.org.rs/en/propisi/laws.html	Regulatory Authority for Electronic Media

Country	Areas	Main laws	Regulatory body in charge of commercial television	Regulatory body in charge of non-linear commercial media services	Regulatory body in charge of PSB
		Art. 34: Every medium must display basic information about itself in the form of imprint, imprint summary or identification.		Article 5: The Regulatory body for electronic media (hereinafter referred to as Regulator), established by this Law, is an independent Regulatory organization as a legal entity that exercises public authority for the purpose of: the effective implementation of the defined policy in the provision of ***media services*** in the Republic of Serbia (bold by researcher) **Article 4 (Definitions):** **Item 2: media services** means audio visual media service and radio media service; **Item 3:** **audiovisual media service** means a service providing audiovisual programme content to an unlimited number of users via electronic communication networks under the editorial responsibility of the service provider, in the form of television broadcast, on-demand audiovisual media service, as well as audiovisual commercial communication;	
	Audiovisual commercial communication, sponsorship, product placement (Art. 9 – 11 AVMS Directive)	Law on Electronic Media (Official Gazette 83/2014) http://www.anem.org.rs/en/propisi/laws.html Audiovisual commercial communication: Article 56 Sponsorship: Article 57 Product placement: Article 58 Article 60: The Regulator shall bring the general bylaws which establish detailed rules for carrying out the obligations set forth in Articles from 47 to 59 of this Law. Advertising Law (Official Gazette 6/2016, in Serbian only)	Regulatory Authority for Electronic Media	Regulatory Authority for Electronic Media	Regulatory Authority for Electronic Media

Country	Areas	Main laws	Regulatory body in charge of commercial television	Regulatory body in charge of non-linear commercial media services	Regulatory body in charge of PSB
		http://www.paragraf.rs/propisi/zakon_o_oglasavanju.html Covers audiovisual commercial commercial communication throughout. *Sponsorship: Articles 64-69* Article 65: Regulatory Authority for Electronic Media more precisely defines content of notice, manner of broadcasting and time of broadcasting of notice on the sponsor, as well as conditions of the use of title or other symbol of the sponsor as a title of the sponsored programmatic content. *(unofficial translation by the researcher)* *Product placement: Article 28* Regulatory Authority for Electronic Media more precisely defines conditions and the manner of display and pointing to merchandise, service, stamp or other insignia from point 1 of this article in programmatic content *(unofficial translation by the researcher)* *Product placement: Article 30* Regulatory Authority for Electronic Media more precisely defines the form, duration and place of informing on product placement. *(unofficial translation by the researcher)* **Rulebook on Advertising and Sponsorship in Media** (in Serbian only) http://bit.ly/2qNgfXv Covers audiovisual commercial commercial communication throughout. Product Placement: Articles 3-7 Sponsorship: Articles 8-13			
	Accessibility to people with a disability (Art. 7 AVMS Directive)	**Law on Electronic Media (Official Gazette 83/2014)** Article 52 A media service provider shall, in accordance with its financial and technical capabilities, make its programmes and their content accessible to people with	Regulatory Authority for Electronic Media	Regulatory Authority for Electronic Media	Regulatory Authority for Electronic Media

Country	Areas	Main laws	Regulatory body in charge of commercial television	Regulatory body in charge of non-linear commercial media services	Regulatory body in charge of PSB
		hearing and vision impairments. The Regulator shall urge media service providers to make their content available to persons referred to in paragraph 1 of this Article. **Law on Public Information and Media (Official Gazette 83/2014)** Article 12 With a view to protecting the interests of persons with disabilities and ensuring equality in their exercising the right to freedom of opinion and expression, the Republic of Serbia, Autonomous Province and local self-government unit shall take measures to ensure smooth receipt of information intended for the public, in the appropriate form and by applying appropriate technologies, and provide part of funds or other conditions for the operation of the media that publishes the information in Sign Language or in Braille Code, or in another way facilitate the exercise of these persons' rights pertaining to the public information sector.			
	Broadcasting of major events (Art. 14 AVMS Directive)	**Law on Electronic Media (Official Gazette 83/2014)** Article 64: Access to Major Events	Regulatory Authority for Electronic Media	Regulatory Authority for Electronic Media	Regulatory Authority for Electronic Media
	Access to short news reports (Article 15 AVMS Directive)	N/A The only mention: **Law on Electronic Media (Official Gazette 83/2014)** Access to Major Events (Article 64) The chosen short extract shall be used solely for general news programmes, and may be used in on-demand audiovisual media services only if the same programme is offered on a deferred basis by the same media service provider.	N/A	N/A	N/A
	Promotion of European	**Law on Electronic Media (Official Gazette 83/2014)** Articles 65 (The proportions reserved for European	Regulatory Authority for Electronic Media	Regulatory Authority for Electronic Media	Regulatory Authority for Electronic Media

Country	Areas	Main laws	Regulatory body in charge of commercial television	Regulatory body in charge of non-linear commercial media services	Regulatory body in charge of PSB
	works (Art. 13, 16, 17 AVMS Directive)	audiovisual works) and 66 (European audiovisual works from independent producers)			
	Hate speech (Art. 12 and 6 AVMS Directive)	**Law on Electronic Media (Official Gazette 83/2014)** Article 51 (Prohibition of Hate Speech) **Law on public information and media (Official Gazette 83/2014)** Article 75 (Prohibition of Hate Speech)	Regulatory Authority for Electronic Media	Regulatory Authority for Electronic Media	Regulatory Authority for Electronic Media
	Television advertising and teleshopping, (Art. 19 – 26 AVMS Directive)	**Law on Electronic Media (Official Gazette 83/2014)** Article 67 (Television advertising and teleshopping) (*includes the following:* Regulators shall specify the requirements for broadcasting advertisements and teleshopping in the manner referred to in paragraph 7 of this Article.) **Advertising Law (Official Gazette 6/2016, in Serbian only)** TV and Radio Advertising and Teleshopping: Art. 31-37, also Art. 21 (teleshopping) **Rulebook on Advertising and Sponsorship in Media** (in Serbian only) http://bit.ly/2qNgfXv TV advertising and Teleshopping: Art. 15-26	Regulatory Authority for Electronic Media	Regulatory Authority for Electronic Media	Regulatory Authority for Electronic Media
	Protection of minors (Art. 27 AVMS Directive)	**Law on Electronic Media (Official Gazette 83/2014)** Article 68 (Protection of Minors) **Advertising Law (Official Gazette 6/2016, in Serbian only)** Articles 21-26 (Special rules on the protection of children and minors) Also mentioned in: Articles 10, 34, 46, 47, 49, 50, 54, 56, 60, 67-69, 78.	Regulatory Authority for Electronic Media	Regulatory Authority for Electronic Media	Regulatory Authority for Electronic Media

Country	Areas	Main laws	Regulatory body in charge of commercial television	Regulatory body in charge of non-linear commercial media services	Regulatory body in charge of PSB
	Right of reply (Art. 28 AVMS Directive)	**Law on public information and media (Official Gazette 83/2014)** XIII. REPLY TO INFORMATION AND CORRECTION OF INFORMATION Articles 83-100	Regulatory Authority for Electronic Media	Regulatory Authority for Electronic Media	Regulatory Authority for Electronic Media
	Communication and cooperation with other European regulation bodies and the Commission (Art. 30 AVMS Directive)	**Law on public information and media (Official Gazette 83/2014)** Article 27 (Cooperation with government and other agencies and organizations) The Regulator shall work with Regulatory bodies of other countries in the field of providing media services, i.e. relevant international organizations on matters within its jurisdiction. According to the only available **Statue of the Regulator (dated 2005)** on its website (Official Gazette 102/2005) within its competencies is „*International cooperation with adequate organizations of other states and adequate international organizations*“ (*translation by researcher)*	Regulatory Authority for Electronic Media	Regulatory Authority for Electronic Media	Regulatory Authority for Electronic Media

TABLE 3 - REGULATORY BODIES – GENERAL INFORMATION

This table provides basic information on the regulatory authority (name, website address, date of establishment and location).

Country	Name of regulatory body	Link to website	Date of establishment	Location
Serbia	Regulatory Authority for Electronic Media	http://www.rem.rs	9 July 2003 (formerly Republic Broadcasting Agency; name changed according to the new Law on Electronic Media adopted in 2014)	Belgrade, Serbia Trg Nikole Pašića 5
	Regulatory Agency for Electronic Communications and Postal Services	http://www.ratel.rs	19 December 2005 (it became functional as of this date)	Belgrade, Serbia Palmotićeva 2

TABLE 4 - SECTORS COVERED

This table provides an overview of the areas that are covered by the regulatory authority.

Country	Body	Audiovisual content (radio/TV, on demand media services	Transmission aspects of audiovisual content	Distribution aspects of audiovisual content)	Spectrum	Electronic communications (networks and services in general)	Others (e.g. energy, post)
Serbia	Regulatory Authority for Electronic Media	Yes	No	Yes for certain aspects such as multiplexes, no for other aspects such as must carry which is RATEL's responsibility	No	No	No

TABLE 5 - STAFF AND OVERALL BUDGET

This table provides an overview of the staff and overall budget of the regulatory authority. The figures are given for the areas covered by the AVMS directive (where possible) for regulators with a broader area of responsibility.

Country	Body	Total number of staff foreseen in statutes/law	Current staff count	Annual budget (€m) foreseen in statutes/law	Current annual budget	Reference year +source
Serbia	Regulatory Authority for Electronic Media	N/A	82 (including 2 members of the Council) + 7 other members of the Council	Financing of the Regulator is set in accordance with the financial plan adopted by the Council for each year. The Regulator submits a draft financial plan to the Parliament Committee responsible for	Total income realized in 2016 433.725.895 RSD - app.€ 3.5 mil. Total income from licenses: 360.776.454 RSD = app. € 2.9 mil.	Regulatory Authority for Electronic Media Information Booklet (in Serbian only, last update April 2017) http://bit.ly/2rpCou0

Country	Body	Total number of staff foreseen in statutes/law	Current staff count	Annual budget (€m) foreseen in statutes/law	Current annual budget	Reference year +source
				finances of the media no later than the 1st of November of the current year for the following year. Approval of the financial plan under paragraph 1 of this Article is given by the Assembly. **Law on Electronic Media (Official Gazette 83/2014)** Article 34		

II. INSTITUTIONAL FRAMEWORK

TABLE 6 - LEGISLATION ESTABLISHING AND GOVERNING THE REGULATORY BODY

This table shows the legislation setting up and governing the regulatory authority.

Country	Body	Legislation setting-up the regulatory body	Governing legislation
Serbia	Regulatory Authority for Electronic Media	Law on Electronic Media (Official Gazette 83/2014) In Serbian: http://rem.rs/uploads/files/Zakoni/5605-Zakon%20o%20elektronskim%20medijima.pdf In English: http://www.anem.org.rs/en/propisi/laws.html	http://www.rem.rs/sr/regulativa/zakoni-i-strategije The Agency assumes, enforces and exercises authority, rights and competences, and acts based on: • Law on Electronic Media (Official Gazette 83/2014) http://www.anem.org.rs/en/propisi/laws.html (English) • Law on Public Service Broadcasting (Official Gazette 83/2014) http://www.anem.org.rs/en/propisi/laws.html (English) • Law on Public Information and Media (Official Gazette 83/2014) http://www.anem.org.rs/en/propisi/laws.html (English) • Broadcasting Law (last update Official Gazette 41/2009 – out of force except articles 76-94) • Law on Electronic Communications (Official Gazette 44/10) • Advertising Law (Official Gazette 79/05) – with the Law on Electronic

Country	Body	Legislation setting-up the regulatory body	Governing legislation
			Media coming into force, articles 14-23 and 94-98 of the Advertising Law came out of force In Serbian: http://www.paragraf.rs/propisi/zakon_o_oglasavanju.html • Law on General Administrative Procedure (Official Gazzete of FRY no. 33/97 and 31/01 and Official Gazette no. 30/10) • Law on Copyright and Related Rights (Official Gazette of Serbia and Montenegro no. 61/04) • Law on Special Authorizations for Efficient Protection of the Right to Intellectual Property (Official Gazette no. 46/06) • Law on Confirmation of European Strategy on Cross-Border Television (Official Gazette 42/09) • Law on Free Access to Information of Public Importance (Official Gazette120/2004, 54/2007, 104/2009 and 36/2010) Also, strategies – 1. digitalization and 2. media system development

TABLE 7 - LEGAL STATUS

This table provides information on the legal status taken by the regulatory authority.

Country	Body	What form does it take?	It is a separate legal entity?	If it is not a separate legal entity, it is part of:	Specific organisational characteristics	Source
Serbia	Regulatory Authority for Electronic Media	Independent legal entity (Art 5) 'the Agency is an autonomous legal person and is functionally	√	N/A	Law on Electronic Media (Official Gazette 83/2014) Article 6 Regulatory bodies are the Council and the President of the Council. The Council shall decide upon all matters within the sphere of competence of the Regulator. The Regulator shall be represented by the President of the Council, and in his/her absence by	Law on Electronic Media (Official Gazette 83/2014) Article 5

Country	Body	What form does it take?	It is a separate legal entity?	If it is not a separate legal entity, it is part of:	Specific organisational characteristics	Source
		and financially independent of government state bodies and organisations, media service providers and operators.			the Deputy President of the Council.	

TABLE 8 - INDEPENDENCE AS A VALUE

This table is intended to capture whether independence of the regulatory body is explicitly or implicitly recognised as a value in the legal framework.

Country	Body	Is independence implicitly or explicitly recognised as a value in the legal framework?		Source (highest formal legal level)
		No	Yes	
Serbia	Regulatory Authority for Electronic Media		√ The Regulator is functionally and financially independent of government bodies and organizations, media service providers and operators.	Law on Electronic Media (Official Gazette 83/2014) Article 5

Powers of the regulatory bodies

TABLE 9 - REGULATORY POWERS

This table is aimed at understanding the types of decisions that can be taken by the regulatory body.

We have distinguished from a theoretical point of view, between:

- general policy setting powers, i.e. the power to decide on the general orientation of the rules to be followed (for instance the power to decide on the amount of quotas)
- general policy implementing powers, i.e. once the general policy has been adopted, to specify by means of general or abstract rules how this general policy will be implemented (for example to decide in general terms (not connected to a specific case) how the quotas should be applied and monitored)
- third party binding policy application powers, i.e. the power to take in a specific case a decision binding on specific operator

Country	Body	General policy setting	Genera policy implementing powers	Third party decision making powers
Serbia	egulatory Authority for Electronic Media	No	Yes	Yes
	Areas	The Regulator defines a proposed a strategy for the development of the media service of radio and audiovisual media services in the Republic of Serbia, and forwards it to the Government for approval (Article 22, item1 Law on Electronic Media (Official Gazette 83/2014)	• Adopts general bylaws prescribed by the Act (Article 22, item 3) • Adopts rulebooks, guidelines and recommendations for more efficient implementation of this Law (Article 25) • Details the procedure, requirements and criteria for licensing in accordance with the provisions of this Law and prescribe the form and content of the license (Article 22, item 5) • Adopts rules that are binding for media service providers, especially those that ensure implementation of the strategy referred to in item 1 of this paragraph (Article 22, item 10) • Gives its opinion to the competent state authorities in connection with the accession to international conventions related to the field of providing broadcasting services (Article 22, item 13) • Initiates the preparation and amendment of laws, regulations and general acts for the effective performance of tasks within their scope of work (Article 22, item 14) Determines specific rules relating to programme content in relation to the protection of human dignity and other personal rights, protecting the rights of minors, prohibition of	• Issues licenses for the provision of media service of television and radio linear media service (hereinafter: the license) (Article 22, item 4) • Issues licenses for the provision of media services upon request and specify the procedure for issuing the license (Article 22, item 6) • Controls the operation of media service providers and ensure the consistent application of the provisions of this Law (Article 22, item 8) • Imposes measures on media service providers in accordance with this Law (Article 22, item 9) • Decides on charges in connection with the programming activities of media service providers (Article 22, item 11) Initiates proceedings against the media service provider or the person responsible if their act or omission has the character of an offense punishable by law. (Article 24)

Country	Body	General policy setting	Genera policy implementing powers	Third party decision making powers
			hate speech etc. (Article 22, item 15)	

TABLE 10 - SUPERVISION AND MONITORING POWER

This table is aimed at understanding the supervision/monitoring/information gathering powers of the regulatory body.

Country	Body	Areas	Systematic monitoring	Ad hoc monitoring	Information powers	Monitoring after complaints	Others	Source
Serbia	Regulatory Authority for Electronic Media	Quotas	Yes Annual reports on the work of PSBs (RTS 2010 – 2016; RTV 2'010-2016) and commercial media with national coverage (2010 – 2016) contain information on fulfilment of quotas. (Source: REM 2016 Annual Report – in Serbian only) Reports in Serbian available here: http://bit.ly/2yLIaHA	Not specified (there is a reference in the Rulebook on European audio-visual works (2015), Article 7: TV broadcasters are obliged to report each month to REM with data on the fulfilment of obligations pertaining to the share of European audio-visual works of independent producers and REM may verify the submitted data)	Yes, general powers, but not specified for quotas: Supervision and program department analyses organises, collects, data on program of media service providers. It conducts regular 24 h monitoring of program of PSBs and commercial media with national coverage. (Source: REM 2016 Annual Report – in Serbian only)	No	Regulator can give an opinion on the compatibility of programming content with rules on the protection of minors, at the request of a media service provider (Rulebook on the protection of rights of minors in offering media services – in Serbian only http://bit.ly/2qLb7yh)	Law on Electronic Media (Official Gazette 83/2014) REM can impose measures if these are not respected: Article 65: A television broadcaster shall ensure that European audiovisual works account for more than 50 % of the total annual broadcast programming. Article 66: A television broadcaster shall ensure that European audiovisual works by independent producers account for at least 10 % of the total annual broadcast programme. Article 70: (Inhouse production) A media service

Country	Body	Areas	Systematic monitoring	Ad hoc monitoring	Information powers	Monitoring after complaints	Others	Source
								provider shall ensure that its own production accounts for at least 25 % of its annual broadcast programme. Law on Electronic Media (Official Gazette 83/2014) Article 24- Control of the operation of media service providers (paragraph 2): The Regulator must ensure that media service providers comply with the obligations relating to programme content provided by the Law and the conditions under which they were issued the license, which is particularly related to the type and nature of the programme. Statute of RRA (Official Gazette 102/05) (in the

Country	Body	Areas	Systematic monitoring	Ad hoc monitoring	Information powers	Monitoring after complaints	Others	Source
								absence of more recent statute), Article 5, point 6: The Agency is responsible for the supervision of the work of broadcasters in the Republic of Serbia
		Advertising	Not specified explicitly Annual reports on the work of PSB RTS for 2010, 2011, 2012, 2013 (available in Serbian here http://bit.ly/2yLIaHA) include information on the number of breaches in several areas, including some pertaining to advertising, but with no details except on the number of cases. Annual reports on the work of PSB RTV (2010-2014) include the number of breaches, which includes those pertaining to	Not specified explicitly. Reports on supervision of broadcasters during election campaigns (includes election campaign advertising) (2003,2004,2008,2012, 2014, 2017) Pre-election advertising messages in the presidential election campaign (2.3.2017 – 30.3.2017) http://bit.ly/2yLIaHA Comparison of established irregularities regarding Advertising Law June-December 2010/2011 Analysis of complying with Advertising Law on national TV stations (no year specified) Above analyses published on the REM	Implied by Article 74 of the Advertising Law and Article 24 of the Law on Electronic Media Yes, general powers, but not specified for advertising: Supervision and program department analyses organises, collects, data on program of media service providers. It conducts regular 24 h monitoring of program of PSBs and commercial media with national	No	Regulator can give an opinion on the compatibility of programming content with rules on the protection of minors, at the request of a media service provider (Rulebook on the protection of rights of minors in offering media services – in Serbian only http://bit.ly/2qLb7yh)	Law on Electronic Media (Official Gazette 83/2014) REM can impose measures if these are not respected: Article 65: A television broadcaster shall ensure that European audiovisual works account for more than 50 % of the total annual broadcast programming. Article 66: A television broadcaster shall ensure that European audiovisual works by independent producers

Country	Body	Areas	Systematic monitoring	Ad hoc monitoring	Information powers	Monitoring after complaints	Others	Source
			advertising. Annual reports on the fulfilment of legal and programmatic obligations by commercial broadcasters for 2015 and 2016 provide number of breaches of the Law on Electronic Media, which includes obligations pertaining to advertising. These reports for 2012-2014 include an overview of commercial content representation and breaches of Advertising Law (no. of specific breaches per broadcaster). Reports for 2014 and 2012 include conduct of broadcasters in election campaigns (Jan-March 2014; March – May 2012), which includes data on election-related advertising.	website: http://bit.ly/2yLIaHA	coverage. (Source: REM 2016 Annual Report – in Serbian only)			account for at least 10 % of the total annual broadcast programme. Article 70: (Inhouse production): A media service provider shall ensure that its own production accounts for at least 25 % of its annual broadcast programme. Law on Electronic Media (Official Gazette 83/2014) Article 24- Control of the operation of media service providers (paragraph 2): The Regulator must ensure that media service providers comply with the obligations relating to programme content provided by the Law and the conditions under which they

Country	Body	Areas	Systematic monitoring	Ad hoc monitoring	Information powers	Monitoring after complaints	Others	Source
								were issued the license, which is particularly related to the type and nature of the programme. Statute of RRA (Official Gazette 102/05) (in the absence of more recent statute), Article 5, point 6: The Agency is responsible for the supervision of the work of broadcasters in the Republic of Serbia
		Protection of minors	Not specified explicitly Annual reports on the work of PSB RTS for 2010, 2011, 2012, 2013 (available in Serbian here http://bit.ly/2yLIaHA) include information on the number of breaches of Codex of Broadcasters in several areas, including some pertaining to protection of minors, but with no	Not specified explicitly See monitoring report from 2013 available on protection children and youth by national TV broadcasters http://bit.ly/2sj3HUP	Yes, general powers, but not specified for protection of minors: Supervision and program department analyses organises, collects, data on program of media service providers. It conducts regular 24 h monitoring of program of PSBs and commercial	No Media service providers are required to report complaints about non-compliance with the rules on the protection of minors to the Regulator – Regulator acts on them (Law on Electronic Media (Official Gazette 83/2014), Article 68	Regulator can give an opinion on the compatibility of programming content with rules on the protection of minors, at the request of a media service provider (Rulebook on the protection of rights of minors in offering media services – in Serbian only http://bit.ly/2qLb7yh)	Law on Electronic Media (Official Gazette 83/2014) Article 24 - Control of the operation of media service providers (paragraph 2): During the implementation of the control referred to in paragraph 1 of this Article the Regulator shall ensure that media service providers

Country	Body	Areas	Systematic monitoring	Ad hoc monitoring	Information powers	Monitoring after complaints	Others	Source
			details except the number. These reports for 2014 and 2016 include categorization of program (in %) according to age (e.g. not suitable for younger of 12, 14, 16 years of age). Annual reports on the work of PSB RTV (for 2016, 2014, 2013, 2012) include categorization of program (in %) according to age (e.g. not suitable for younger of 12, 14, 16 years of age). These reports (2010-2014) include the number of breaches of Codex of Broadcasters, which includes obligations pertaining to the protection of minors. Annual reports on the fulfilment of legal and programmatic obligations by		media with national coverage. (Source: REM 2016 Annual Report – in Serbian only)			comply with the obligations relating to programme content provided by this Law and the conditions under which they were issued the license, which is particularly related to the type and nature of the programme. Statute of RRA (Official Gazette 102/05) (in the absence of more recent statute), Article 5, point 6: The Agency is responsible for supervision over the work of broadcasters in the Republic of Serbia

Country	Body	Areas	Systematic monitoring	Ad hoc monitoring	Information powers	Monitoring after complaints	Others	Source
			commercial broadcasters for 2013 – 2016 include categorization (in %) of programmatic content suitable for certain age groups, per broadcaster. These reports for 2015 and 2016 include a number of breaches of the Law on Electronic Media, which includes obligations pertaining to protection					

TABLE 11 - POWERS OF SANCTIONS

This table provides an overview of the sanctions that can be adopted by the regulatory body in case of breach of the rules implementing the AVMS Directive on quotas, advertising and protection of minors.

Country	Body	Areas	Warnings/formal objections	Fine (lump sum) If so, list maximum and minimum amounts	Publication of decisions in the media	Suspension/Revocation of licence	Penalty payments (in case of non compliance with decision)	Others
Serbia	Regulatory Authority for Electronic Media	Quotas	√ Rulebook on the manner of pronouncement of measures to media service providers (Official Gazette no. 25/15) covers breach of obligations pertaining to programmatic content proscribed by articles 47-71 of the Law on Electronic Media. This includes: Art 62 European audiovisual works; Art. 65 The proportions reserved for European audiovisual works; Art. 66 European audiovisual works from independent producers; Art. 70 In house production. The rulebook proscribes pronouncement of measures, not	N/A	√ Rulebook on the manner of pronouncement of measures to media service providers, Art.9	√	N/A	-

Country	Body	Areas	Warnings/formal objections	Fine (lump sum) If so, list maximum and minimum amounts	Publication of decisions in the media	Suspension/Revocation of licence	Penalty payments (in case of non compliance with decision)	Others
			specifying which					
		Advertising	√ all sanctions are discretionary depending on the nature and repetition of the violation. There are four types of sanctions which RBEM is authorized to impose: remonstrance, warning, temporary ban of the publication of certain program content and revocation of the license when it is related to the advertising rules prescribed in the Law on Electronic Media *Not applicable on the rules prescribed by the Law on Advertising	No (courts can impose fines) Legal person RSD 500,000 to 1,000,000 (app. 4.000 – 8.000 EUR) Entrepreneur RSD 10,000 to 500,000 (app. 80 – 4.000 EUR) REM is authorized only to initiate Misdemeanor Proceedings and Court decides on existence of the Misdemeanor and fine	√	√	N/A	

Country	Body	Areas	Warnings/formal objections	Fine (lump sum) If so, list maximum and minimum amounts	Publication of decisions in the media	Suspension/Revocation of licence	Penalty payments (in case of non compliance with decision)	Others
		Protection of minors	√	No (courts can impose fines) Legal person RSD 500,000 to RSD 1,000,000 (app. 4.000 – 8.000 EUR) Entrepreneur RSD 10,000 to 500,000 (app. 80 – 4.000 EUR) Same as above on initiation of procedure.	√	√	N/A	

TABLE 12 - COMPLAINTS HANDLING

This table shows whether there are procedures for dealing with complaints coming from viewers against conduct of audiovisual media service providers. Briefly explain them.

Country	Body	Do complaints handling procedures exist?	Link to website
Serbia	Regulatory Authority for Electronic Media	Yes **Law on Electronic Media (Official Gazette 83/2014), Article 26 (Consideration of Applications)** Natural and legal persons can submit applications, *'if they believe that the content is violating or jeopardizing their personal interests or the public interest'*. Application may be filed not later than 30 days after the initial and/or repeat broadcasts the controversial content. Upon receipt and consideration of the application [....] the Regulator shall submit the application to the media service provider with a request for a hearing no later than eight days from the date of submission of the application. If s/he determines that the application referred to in paragraph 1 of this Article is reasonable, the Regulator shall impose measures in accordance with the provisions of this law on the media service provider, or submit a request for misdemeanor and/or criminal proceedings or initiate other proceedings before the competent state body, and refer the applicant to how it can achieve and protect their rights. Also, REM Statute of 2005 (no later version available; in Serbian only) defines complaints handling procedure in Article 38 http://rem.rs/uploads/files/Statuti/7321-statut-republicke-radiodifuzne-agencije.pdf	http://www.rem.rs/sr/najcesca-pitanja#q30 (procedure available in Serbian only) This is the FAQ section of the website, but it refers to the Broadcasting Law that is out of force, so it is not clear if the procedures are still valid. There is an online form for filing complaints (http://www.rem.rs/sr/zahtevi-i-prijave/podnesite-prijavu). It is also said that complaints must also be sent in original by post, signed.

III. INTERNAL ORGANISATION AND STAFFING

TABLE 13 - HIGHEST DECISION-MAKING ORGAN – COMPOSITION

This table shows whether the highest decision-making organ of the regulatory body/bodies (i.e. the organ responsible for regulatory tasks, namely supervision and enforcement) is an individual or a board/commission and if it is a board/commission, who are its relevant representative components

Representation does not necessarily mean formal representation of that group. It can mean that the board member is expected to emanate from that group, but does not have to formally represent it during the mandate.

Country	Body	Individual or Board	Legal requirements regarding composition of highest decision-making organ							Implicit representation structures?	Source
			Number of Board members	Representatives of civil society	Representatives of government	Representatives of parliament	Representatives of industry	Experts	Others (e.g. regions)		
Serbia	REM	Council	9	No legal requirement	No legal requirement	No legal requirement	No legal requirement	Nine members are elected from the ranks of distinguished experts in the field important for performing duties from the jurisdiction of the Regulator (media experts, economists, lawyers, telecommunication engineers, etc.). (Article 7) A member of the Council can only be a person who has a university degree, who is a citizen of the Republic of Serbia and resides in the territory of the	Authorised Proposer referred proposes candidates for two members of the Council taking into consideration the proportionate territorial representation of the candidates. (Article 9)	/	Law on Electronic Media (Official Gazette 83/2014)

Country	Body	Individual or Board	Legal requirements regarding composition of highest decision-making organ							Implicit representation structures?	Source
			Number of Board members	Representatives of civil society	Representatives of government	Representatives of parliament	Representatives of industry	Experts	Others (e.g. regions)		
								Republic of Serbia (Article 7)			

TABLE 14 - HIGHEST DECISION-MAKING ORGAN – COMPETENCES, DECISION-MAKING PROCESS, TRANSPARENCY

This table shows the main fields of responsibility of the highest decision-making organ of the regulatory body as well as its decision-making process (in particular its transparency and whether minutes and agendas are published).

Country	Body	Competences	Decision-making process	Is the decision making process transparent?	Minutes and agendas published?
Serbia	Regulatory Authority for Electronic Media (Council)	Law on Electronic Media (Official Gazette 83/2014): The Council decideson all matters within the competence of the Regulator. (Article 6) The Regulator is represented by the President of the Council, and in his/her absence by the Deputy President of the Council. (Article 6) The President of the Council represents the regulator, directs the work of the Council, signs the Council's decisions and ensures their implementation, is responsible for the operation and legality of the Regulator, ensures the work of the regulator is public and performs other duties prescribed by law. (Article 21) As per Statute of 2005 (no new statute available), drawing on the Broadcasting law which is no longer in force, the Council	Law on Electronic Media (Official Gazette 83/2014) (Article 19): The Council takes decisions with a presence quorum consisting of at least five members. The Council takes decisions by majority voting of the total number of members, unless this Law or Statute states that the decision can be made by a two-thirds majority vote. The Council elects a President and Vice President from among its members by a two-thirds majority of the total number of members.	Yes Law on Electronic Media (Official Gazette 83/2014) Article 19: According to the law, the work of the Council is open to the public. Article 38: According to the Rulebook on the work of the Council of the Republic Broadcasting Agency, dated 2013 (http://bit.ly/2rnXuqB (in Serbian only), Council sessions	Law on Electronic Media (Official Gazette 83/2014) Article 38, item 13: the Regulator make available on its website minutes of meetings of the Regulator Council. According to the Rulebook on the work of the Council of the Republic Broadcasting Agency, dated 2013, minutes are to be published on the Regulator's website immediately after adoption. http://bit.ly/2rnXuqB (in Serbian only) Minutes from the last 10 Council sessions are available on the website (in Serbian only): http://www.rem.rs/sr/odluke/sednice-saveta

Country	Body	Competences	Decision-making process	Is the decision making process transparent?	Minutes and agendas published?
		adopts: 1. the agency's statute (governing the functioning of the regulator); 2. a Rulebook on the work of the Council; 3. a Rulebook on internal organization and systematization of jobs and tasks of the Regulator's employees and adopts Rulebook on procedure; 4. a Code of conduct of Council members and Regulator's employees and other general acts of the Regulator; 5. The financial plan of the Regulator; 6. And performs other duties established by law and the atatute.		are public and open to the accredited media, but the Council may decide that a session or a part of it is closed for public	

TABLE 15 - HIGHEST DECISION-MAKING ORGAN – APPOINTMENT PROCESS

This table shows whether there are several stages in the appointment process of the chairman and members of the highest decision-making organ of the regulatory body, for the nomination and appointment phases respectively. It also shows who is involved in each of these two stages (government, minister, parliament, civil society, religious groups, political parties, board members, board chairman, others) and whether the appointer(s) can override the proposals made at the nomination stage.

Country	Body		Nomination stage Yes – No	Nomination stage Specify who is involved in that stage and who has the decisive say	Appointment stage Specify who is involved in that stage and who has the decisive say	If there are two stages, can the appointer ignore the nominations?	Source
Serbia	Regulatory Authority for Electronic Media (Council)	Chairman	No	N/A	The chairman is appointed by the Council members from the ranks of the Council members (2/3 majority votes required)	N/A	REM Statute of 2005 (no new statute avaialable), drawing on the Broadcasting law that is out of force. The Law on Electronic Media does not define nomination and appointment of the Chairman.
		Council	Yes	Authorised Nominators	Council members are	N/A	Law on Electronic Media (Official

Country	Body		Nomination stage Yes – No	Nomination stage Specify who is involved in that stage and who has the decisive say	Appointment stage Specify who is involved in that stage and who has the decisive say	If there are two stages, can the appointer ignore the nominations?	Source
		members		(Article 9): • A competent committee of the Parliament; • A competent committee of the Parliament of the Autonomous Province of Vojvodina; • Universities accredited in the Republic of Serbia by mutual agreement; • Associations of electronic media publishers whose members have at least 30 licenses for the provision of audio and audiovisual media services and/or by associations of journalists in Serbia where each has at least 500 members and were registered at least three years prior to the announcement of a public call by mutual agreement; • Professional associations of film, stage and theatre artists and professional associations of composers in the Republic of Serbia, if they were registered at least three years prior to the announcement of a public call by mutual agreement; • Associations dealing with freedom of expression and the protection of children, if they were registered for at least three years prior to the date of the public announcement of the call	appointed by the Parliament, following the proposal of the authorized nominators. A member of the Council shall be elected if s/he is voted for by a majority of the total number of members of the Parliament. (Article 8)		Gazette 83/2014)

Country	Body		Nomination stage Yes – No	Nomination stage Specify who is involved in that stage and who has the decisive say	Appointment stage Specify who is involved in that stage and who has the decisive say	If there are two stages, can the appointer ignore the nominations?	Source
				and have a minimum of three implemented projects in this area in the last three years by mutual agreement; • National councils of national minorities, by mutual agreement; • Churches and religious communities, by mutual agreement. (Article 10) An authorized proponent in accordance with Article 9 Paragraph 1 Items 1 and 2) of this Law, i.e. an organization that enters into the circle of organizations that together form a single authorized proponent from Article 9 Paragraph 1 Items 3 to 8), shall submit to the competent authority of the Parliament a reasoned proposal of two candidates for membership of the Council within 15 days from the date of publication of the public call (Article 11) If agreement cannot be achieved by consent of all the organizations referred to in paragraph 1 of this Article, the final proposal of joint candidate shall be determined by voting. A candidate referred to in			

Country	Body		Nomination stage Yes – No	Nomination stage Specify who is involved in that stage and who has the decisive say	Appointment stage Specify who is involved in that stage and who has the decisive say	If there are two stages, can the appointer ignore the nominations?	Source
				paragraph 5 of this Article is the one that got the most votes. The competent authority of the Parliament shall provide and organize voting referred to in paragraph 5 of this Article and publish the final proposal on the website of the Parliament.			

TABLE 16 - TERM OF OFFICE AND RENEWAL

This table shows the term of office of the chairman and members of the highest decision-making organ of the regulatory body and whether the term is staggered not to coincide with election cycles. It also indicates if appointment is renewable and for how many times.

Country	Body		Term of office	Is the term staggered not to coincide with election cycle?	Renewal possible? If so, state how many times	Source
Serbia	Regulatory Authority for Electronic Media (Council)	Chairman	5 years	No	Yes. Renewal is possible one time. But no specific provision for Chairman, so same as for any other council member	Law on Electronic Media (Article 14)
		Council members	5 years (Article 14)	No	Yes. Can be renewed once.	Law on Electronic Media (Article 14)

TABLE 17 - PROFESSIONAL EXPERTISE/QUALIFICATIONS

This table illustrates the qualifications and professional expertise required to become a chairman or member of the highest decision making organ of the regulatory body.

Country	Body		Qualifications	Professional expertise	Source
Serbia	Regulatory Authority for Electronic Media (Council)	Chairman of the board Board members	The Council of the Regulator has nine members who are elected from the ranks of distinguished experts in the field important for performing duties from the jurisdiction of the Regulator (media experts, economists, lawyers, telecommunication engineers, etc.). (Article 7) A member of the Council can only be a person who has a university degree, who is a citizen of the Republic of Serbia and resides in the territory of the Republic of Serbia. (Article 7)		Law on Electronic Media (Official Gazette 83/2014)

TABLE 18 - REQUIREMENT TO ACT IN AN INDEPENDENT MANNER

This table shows if there is a requirement for the board of directors and the chairman to act in an independent manner during their term of office.

Country	Body		Requirement to work/act in an independent manner?	Source
Serbia	Regulatory Authority for Electronic Media (Council)	Chairman of the Council Council members	Yes (see Council members) Nothing specified specifically for Chairman Council members must not represent the views or interests of the bodies or organizations that nominated them, but perform their duties independently, according	Law on Electronic Media (Official Gazette 83/2014), Article 13

Country	Body		Requirement to work/act in an independent manner?	Source
			to their knowledge and conscience, in accordance with the law. […] No one has the right to affect the work of the Council members in any way, nor are they obliged to respect anybody's instructions in relation to their work, except for court decisions rendered in the judicial review proceedings of the Council. The only available Statute of REM, dated 2005 and drawing on the Broadcasting law which is out of force stipulates: Article 14: A Council Member is indepedent in his/her work and decision-making. A Council Member may not in his/her decision-making represent positions and interests of any state or political body or any organizations, interest group, broadcaster, other legal or natural persons or the attitudes of the authorised nominator at whose proposal he/she was elected.	

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TABLE 19 - RULES TO GUARD AGAINST CONFLICTS OF INTEREST – APPOINTMENT PROCESS

This table shows whether there are clear rules, in the appointment process of the chairman and members of the highest decision-making organ of the regulatory body, to avoid possible conflicts of interest.

Country	Body		Do such rules exist?		Rules to prevent conflicts of interest with government	Rules to prevent conflicts of interest with political parties	Rules to prevent conflicts of interest with industry	Can other offices be held at the same time?	Others (e.g. obligation to disclose participations in companies)	Source
			Yes	No						
Serbia	Regulatory Authority for Electronic Media (Council)	Chairman	Yes, for Council members. Not specifically for Chairman.		A member of the Council cannot be a person who performs a public function or one in a political party in terms of legislation governing the rules relating to the prevention of conflicts of interest in the exercise of public functions. (Law on Electronic Media,	Same as previous column	Not specified in the Law on Electronic Media. According to the Law on the Anti-Corruption Agency: -Official is obliged to report potential conflict of interest to the Anti-Corruption Agency. (Article 32) -Official is obliged to transfer management rights in a company to a legal entity/natural person not associated to	Generally no. Exceptionally if the Anti-Corruption Agency approves. (Law on the Anti-Corruption Agency, Article 28)	Yes Law on the Anti-Corruption Agency: Official whose public function requires full time or permanent work may not establish a company (Article 33) Official assuming a public function who performs another job or work is obliged to inform the Anti-Corruption Agency about his within 15 days of assuming a public function.	Law on Electronic Media (Official Gazette 83/2014) Law on the Anti-Corruption Agency (Official Gazette no. 97/08, 53/10, 66/11-US, 67/13-US и 8/15-US) (in Serbian only) http://www.acas.rs/zakoni-i-drugi-propisi/zakoni/o-agenciji-za-borbu-protiv-korupcije/

Country	Body		Do such rules exist?		Rules to prevent conflicts of interest with government	Rules to prevent conflicts of interest with political parties	Rules to prevent conflicts of interest with industry	Can other offices be held at the same time?	Others (e.g. obligation to disclose participations in companies)	Source
			Yes	No						
					Article 12)		the person, who can exercise the management rights on behalf of the official until the termination of the mandate of the official.		The Agency decides if there is conflict of interest. (Article 31) Official is obliged to report assests to the Anti-Corruption Agency (Article 43); but this article doesn't apply to public institutions and other organizations established by the Republic of Serbia (Article 45)	
		Council members	Yes		Same as above	Same as above.	Same as above.	Same as above.	Same as above	Law on Electronic Media (Official Gazette 83/2014) Law on the Anti-Corruption Agency (Official Gazette no. 97/08, 53/10, 66/11-US, 67/13-US и 8/15-US) (in Serbian only) http://www.acas.rs/zakoni-i-drugi-propisi/zakoni/o-agenciji-za-borbu-protiv-korupcije/

Country	Body		Do such rules exist?		Rules to prevent conflicts of interest with government	Rules to prevent conflicts of interest with political parties	Rules to prevent conflicts of interest with industry	Can other offices be held at the same time?	Others (e.g. obligation to disclose participations in companies)	Source
			Yes	No						
		Senior staff	**Law on Electronic Media, Art. 5** Regulations governing the rights and duties of the civil servants shall be applied to the rights and duties of the employees at the professional service of the Regulator. Relevant documents do not specify if there are public official among senior staff. If yes, the same applies to them as to the Council							

Country	Body		Do such rules exist?		Rules to prevent conflicts of interest with government	Rules to prevent conflicts of interest with political parties	Rules to prevent conflicts of interest with industry	Can other offices be held at the same time?	Others (e.g. obligation to disclose participations in companies)	Source
			Yes	No						
			members							

TABLE 20 - RULES TO GUARD AGAINST CONFLICTS OF INTEREST – DURING TERM OF OFFICE

This table shows whether there are rules to avoid conflicts of interest during the term of office.

Country	Body		Do such rules exist?		Rules to prevent conflicts of interest with government	Rules to prevent conflicts of interest with political parties	Rules to prevent conflicts of interest with industry	Source
			Yes	No				
Serbia	Regulatory Authority for Electronic Media (Council)	Chairman	Yes for members of Council, not specifically for Chairman		Yes A member of the Council cannot be a person who performs a public function or one in a political party in terms of legislation governing the rules relating to the prevention of conflicts of	Yes A member of the Council cannot be a person who performs a public function or one in a political party in terms of legislation governing the rules relating to	Law on Electronic Media, Article 13: Council members cannot represent the views or interests of the bodies or organizations that nominated them, but perform their duties independently, according to their knowledge and conscience, in accordance with	Law on Electronic Media (Official Gazette 83/2014) Law on the Anti-Corruption Agency (Official Gazette no. 97/08, 53/10, 66/11-US, 67/13-US и 8/15-US) (in Serbian only) http://www.acas.rs/zakoni-i-drugi-propisi/zakoni/o-agenciji-za-borbu-protiv-korupcije/

Country	Body		Do such rules exist?		Rules to prevent conflicts of interest with government	Rules to prevent conflicts of interest with political parties	Rules to prevent conflicts of interest with industry	Source
			Yes	No				
					interest in the exercise of public functions. (Law on Electronic Media, Article 12)	the prevention of conflicts of interest in the exercise of public functions. (Law on Electronic Media, Article 12)	the law Law on the Anti-Corruption Agency: Official is obliged to report potential conflict of interest to the Anti-Corruption Agency. (Article 32) Public official is obliged to transfer his/her managing rights in a company within 30 days from election or appointment to a legal or private person that is not an associated / related party (Article 35) *(translation by researcher)*	

Country	Body		Do such rules exist?		Rules to prevent conflicts of interest with government	Rules to prevent conflicts of interest with political parties	Rules to prevent conflicts of interest with industry	Source
			Yes	No				
		Council members	Yes		Same as above	Same as above	Same as above	Law on Electronic Media (Official Gazette 83/2014) Law on the Anti-Corruption Agency (Official Gazette no. 97/08, 53/10, 66/11-US, 67/13-US и 8/15-US) (in Serbian only) http://www.acas.rs/zakoni-i-drugi-propisi/zakoni/o-agenciji-za-borbu-protiv-korupcije/
		Senior staff	Same as in table 20					

TABLE 21 - RULES TO GUARD AGAINST CONFLICTS OF INTEREST – AFTER TERM OF OFFICE

This table shows whether there are clear rules to avoid conflicts of interest after the term of office.

Country	Body		Do such rules exist?		Is a cooling-off period foreseen?	Source
			Yes	No		
Serbia	Regulatory Authority for Electronic Media (Council)	Chairman	√		Two years – within this period a public official may not be employed or have business cooperation with a legal person, entrepreneur or international organization the activities of which are in relation to the function the official used to discharge, unless the Anti-Corruption Agency gives a consent.	Law on the Anti-Corruption Agency (Official Gazette no. 97/08, 53/10, 66/11-US, 67/13-US и 8/15-US) (in Serbian only) , Article 38 http://www.acas.rs/zakoni-i-drugi-propisi/zakoni/o-agenciji-za-borbu-protiv-korupcije/
		Council members	√		Same as above.	Law on the Anti-Corruption Agency (Official Gazette no. 97/08, 53/10, 66/11-US, 67/13-US и 8/15-US) (in Serbian only) , Article 38

Country	Body		Do such rules exist?		Is a cooling-off period foreseen?	Source
			Yes	No		
						http://www.acas.rs/zakoni-i-drugi-propisi/zakoni/o-agenciji-za-borbu-protiv-korupcije/
		Senior Staff	Same as table above			

TABLE 22 - RULES TO PROTECT AGAINST DISMISSAL

This table shows the rules to protect against dismissal of the whole decision making organ, the chairman and individual members of the highest decision-making organ of the regulatory body. Please add any other comments in the row below.

Country	Body		Do such rules exist?		Who can dismiss? Specify who is involved in that stage and who has the decisive say	Grounds for dismissal listed in legal instrument?	Can the whole body be dismissed or only individual members?	Source
			Yes	No				
Serbia	Regulatory Authority for Electronic Media (Council)	Chairman	Yes, but nothing specific (rules on council members apply)		The Parliament can dismiss a member of the Council at the proposal of at least 20 MPs. Decisions	Yes. 1) due to illness, based on the findings of the relevant health institutions, s/he is incapable of performing the duties of the Council member for more than six months; 2) upon the submission of the proposal s/he gives false information or fails to provide information on the	Only individual members (it would seem)	Law on Electronic Media (Official Gazette 83/2014), Article 16

Country	Body		Do such rules exist?		Who can dismiss? Specify who is involved in that stage and who has the decisive say	Grounds for dismissal listed in legal instrument?	Can the whole body be dismissed or only individual members?	Source
			Yes	No				
					to dismiss the Council member are adopted if voted for by a majority of the total number of MPs. The Parliament needs to obtain the opinion of the Council.	circumstances of Article 12 of this Law; 3) there is any of the circumstances referred to in Article 12 of this Law during the mandate of the Council member; 4) without good reason, s/he fails or refuses to perform the duty of the Council member for a period of at least three consecutive months or for a period of 12 months in which s/he fails to perform his/her duties for at least six months; 5) s/he is found to be negligent and to work improperly, or if there are reasons for the indignity and if s/he neglects or negligently fulfils its responsibilities, which can cause major setbacks in the work of the Regulator. Before making a decision on the dismissal it is necessary to obtain the opinion of the Council on the reasons for the dismissal. Decisions on dismissal can be		

Country	Body		Do such rules exist?		Who can dismiss? Specify who is involved in that stage and who has the decisive say	Grounds for dismissal listed in legal instrument?	Can the whole body be dismissed or only individual members?	Source
			Yes	No				
						made only based on a reasoned proposal, after a procedure has been carried out to determine all relevant circumstances and in which the Council member concerned has been given the opportunity to comment on all the circumstances. The reason for the dismissal of the Council member cannot be political or based on any other personal belief or membership of a political party.		
		Individual Council members	Yes		Same as above	Same as above	Same as above	Law on Electronic Media (Official Gazette 83/2014), Article 16

IV. FINANCIAL RESOURCES

TABLE 23 - SOURCES OF INCOME

This table shows the sources of income of the regulatory authority.

Country	Body	End-user broadcasting licence fees (max level)	State budget	Spectrum fees	Authorisation/licence fees paid by broadcasters	Fines	Other fees, e.g., 'market surveillance fee' based on % of revenues of broadcasters (or other operators – e.g. in case of converged regulators)	Source
Serbia	Regulatory Authority for Electronic Media	No (broadcasting fees are for the PBSs)	Law on Electronic Media (Official Gazette 83/2014) Article 34 If the difference between income and expenditure is negative, the missing funds will be provided from the Budget of the Republic of Serbia. Providing the missing funds, in accordance with paragraph 8 of this Article	No	Yes Article 35 Revenue of the Regulator shall be the proceeds of the fees that the media service provider pays for the right to provide media services, in accordance with the law.	No	No	Information Booklet (April 2017), in Serbian only http://bit.ly/2rpCou0

Country	Body	End-user broadcasting licence fees (max level)	State budget	Spectrum fees	Authorisation/licence fees paid by broadcasters	Fines	Other fees, e.g., 'market surveillance fee' based on % of revenues of broadcasters (or other operators – e.g. in case of converged regulators)	Source
			does not affect the independence of the Regulator.					

TABLE 24 - ANNUAL BUDGET

This table shows who decides on the annual budget of the regulatory body and decides on adjustments to it as well as the extent to which the regulatory body is involved in these processes.

Country	Body	Who decides the annual budget?	Is the regulator involved in the process?	Rules on budget adjustment – who is involved in the process (e.g. parliament, government and/or industry) ?	Source
Serbia	Regulatory Authority for Electronic Media	Financing of the Regulator shall be done in accordance with the financial plan adopted by the Council for each year. The Regulator shall submit a draft financial plan to the Parliament Committee responsible for finances of the media no later than the 1st of November of the current year for the following year. Approval of the financial plan under paragraph 1 of this Article shall be given	Yes	Excess of revenues over expenses in a calendar year shall be paid into the budget of the Republic of Serbia. If the difference between income and expenditure is negative, the missing funds will be provided from the Budget of the Republic of Serbia.	**Law on Electronic Media (Official Gazette 83/2014)** Article 34

Country	Body	Who decides the annual budget?	Is the regulator involved in the process?	Rules on budget adjustment – who is involved in the process (e.g. parliament, government and/or industry) ?	Source
		by the Assembly.			

TABLE 25 - FINANCIAL ACCOUNTABILITY – AUDITING

This table shows if the regulatory authority is subject to periodic financial auditing.

Country	Body	Is the regulatory body subject to periodic external auditing?					
		Yes/no	Periodicity	By national (state) audit office, etc.	Private audit firm	Other	Legal basis
Serbia	Regulatory Authority for Electronic Media	Yes	Annual	Independent auditor (no further details in the Law)	Yes private auditing undertaken for 2016) http://bit.ly/2rc6i4o	No	**Law on Electronic Media (Official Gazette 83/2014)** Article 34

V. CHECKS AND BALANCES

TABLE 26 - FORMAL ACCOUNTABILITY

This table shows to whom the regulatory body is accountable to and through which means (e.g. reports, parliamentary questions).

Country	Body	Body accountable to		Accountability means	Legal basis
Serbia	Regulatory Authority for Electronic Media	Parliament	Yes	For carrying out activities within its jurisdiction the Regulator is responsible to the National Assembly of the Republic of Serbia	Law on Electronic Media (Official Gazette 83/2014), Article 5
		Government	No	N/A	Law on Electronic Media (Official Gazette 83/2014),

Country	Body	Body accountable to		Accountability means	Legal basis
		as a whole			Article 5: The Regulator is functionally and financially independent of government bodies and organizations, media service providers and operators.
		Specific ministers (e.g. Media, finance, etc.)	No but REM is obliged to obtain the opinion of the constitutionality and legality of the regulations (bylaws) from the Ministry of Culture and Media		Law on Electronic Media (Article 22 (3) Law on Public Administration (Article 57)
		Public at large	Yes	Proactive publishing of information (including Information Booklets) and responding to requests for information, both based on the Law on Free Access to Information of Public Importance.	Law on Electronic Media (Official Gazette 83/2014) Article 38: In accordance with the law governing free access to information of public importance, on its website, free of charge, the Regulator shall make the acts available to the public, as well as other full and updated data and information within its scope. REM Statute of 2005 (the only available version, in Serbian), Articles 30-34 specifies publicity of the REM work http://rem.rs/uploads/files/Statuti/7321-statut-republicke-radiodifuzne-agencije.pdf
		Other	No	N/A	N/A

TABLE 27 - REPORTING OBLIGATION

This table is aimed at understanding the scope of the reporting obligation.

Country	Body	Report submitted to	Periodicity	Scope	Does statistical data need to be provided about own performance? Explain	Approval necessary?	Has a report been disapproved?	Link
Serbia	Regulatory Authority for Electronic Media	Law on Electronic Media (Official Gazette 83/2014), Article 38, stipulates that REM publishes its annual reports on its work on its website. Law on Electronic Media (Official Gazette 83/2014), Article 39, stipulates that the Regulator Council shall submit to the Parliament an annual report on the work of the Regulator, which shall contain in particular: • data on completed tasks and duties from the scope of the Regulator in the previous year; • a financial plan, financial reports and the authorized auditor's report; • a report on the decisions on the applications of	Annual or at request of Parliament	Not precisely defined, except on the types of information stipulated by Article 39 of the Law on Electronic Media	Not clear if statistical data explicitly required. See Article 39 of the Law on Electronic Media	Not specified in the Law on Electronic Media	In practice reports are approved	Annual reports on the work of the Regulator available (in Serbian only) on its website: http://www.rem.rs/sr/izvestaji-i-analize/izvestaji-o-radu-rra

Country	Body	Report submitted to	Periodicity	Scope	Does statistical data need to be provided about own performance? Explain	Approval necessary?	Has a report been disapproved?	Link
		natural and legal persons; • other information in connection with the law's enforcement. The Annual Report on the work of the Regulator for the previous calendar year shall be submitted by the end of the first quarter of the following year. The Regulator shall submit, at the request of the Parliament, a report on the work for a period of less than a year, not later than 30 days from the date of receipt of the request.						

TABLE 28 - AUDITING OF WORK UNDERTAKEN

This table shows if the regulatory body is subject to periodic external auditing, either by a private or a national audit office.

Country	Body	Is body subject to periodic external auditing					
		Yes/no	Periodicity	By public authority	By private authority	Other	Legal basis
Serbia	Regulatory Authority for Electronic Media	Yes, financial auditing	Annual	No (audit reports on the website available for the	Yes Audit reports on the website available for the period 2007-2016, all conducted by	No	Law on Electronic Media (Official Gazette 83/2014), Article 34

Country	Body	Is body subject to periodic external auditing					
		Yes/no	Periodicity	By public authority	By private authority	Other	Legal basis
				period 2007-2016, all conducted by private auditing bodies)	private auditing bodies (in Serbian only) http://www.rem.rs/sr/izvestaji-i-analize/finansijski-plan-i-izvestaji		

TABLE 29 - POWER TO OVERTURN/INSTRUCT

This table shows if (regardless of an appeal lodged against a decision) any other body can overturn the decisions of the regulator or give it instructions.

Country	Body	Does anybody have the power to overturn decisions of the regulator?	Ministry/Minister	Government	Parliament	Other	Source
Serbia	Regulatory Authority for Electronic Media		No	No (NOTE: The act determining the payment for the right to provide media services shall be approved by the Government; *Law on Electronic Media, Art. 36*)	No	Court An administrative lawsuit may be filed against a decision made in the procedure for issuing the license for the provision of media services (the imposition of a measure or revocation) (Law on Electronic Media, Art. 42)	No one has the right to affect the work of the Council members in any way, nor are they obliged to respect anybody's instructions in relation to their work, except for court decisions rendered in the judicial review proceedings of the Council. (Law on Electronic Media, Art. 13)

Country	Body	Does anybody have the power to overturn decisions of the regulator?	Ministry/Minister	Government	Parliament	Other	Source
			No	No	No	The Regulator is obliged to obtain the opinion of the constitutionality and legality of the regulations it issues (Law on Electronic Media, Art. 22)	

TABLE 30 - NUMBER OF STAGES IN APPEAL PROCEDURE

The following tables are concerned with the appeal procedure relating to decisions taken in relation to the enforcement of the rules listed in the AVMS directive (eg. non-compliance with quota requirements if binding, advertising, protection of minors, etc.). The stages include the internal stages.

Country	Body	Stage	Number of stages in appeal procedure and appeal body at each stage		Do internal procedures need to be followed before external recourse?	Who has the right to lodge an appeal?	Legal basis
Serbia	Regulatory Authority for	Internal	1	Council	Yes	• Media	Law on Electronic Media, Art. 30

Country	Body	Stage	Number of stages in appeal procedure and appeal body at each stage		Do internal procedures need to be followed before external recourse?	Who has the right to lodge an appeal?	Legal basis
	Electronic Media	External	1 2	Administrative Court It is possible that High Cassation Court is the second instance (as per procedures before Administrative Court; but this is not specified in the Law on Electronic Media or other REM documents)	Explained in REM Rulebook on Pronouncing Measures (in Serbian only) http://bit.ly/2rzQSrt	service providers • Natural persons • REM may file a request for initiating misdemeanour or criminal proceedings or initiate other proceedings before a competent state body (e.g. prosecutor). (2016 REM Annual Report on its work)	In respect of a criminal offense, an economic offense or violation, as well as responsibility for them, the Regulator shall be bound by the final decision of the court that the accused is guilty. Law on Electronic Media, Art. 42 (Judicial Review) An administrative dispute against the final decision of the Regulator may be filed within 30 days of delivery. An administrative lawsuit filed against a decision made in the procedure for issuing the license for the provision of media services (the imposition of a measure or revocation) cannot be resolved solely by any court (dispute of full jurisdiction).

TABLE 31 - DOES THE REGULATOR'S DECISION STAND PENDING APPEAL?

Country	Body	Does regulator decision stand pending appeal body decision?			
		Yes	No	Yes, unless appeal body suspends it	Other
Serbia	Administrative Court	Not explicitly covered by the law or documents	Not explicitly covered by the law or documents	Not explicitly covered by the law or documents	N/A

TABLE 32 - ACCEPTED GROUNDS FOR APPEAL

Country	Body	Errors of fact	Errors of law (including failure to follow the due process)	Full re-examination	Other
Serbia	Administrative Court	Not specified in the law or other documents	Not specified in the law or other documents	Not specified in the law or other documents	N/A

TABLE 33 - DOES THE APPEAL BODY HAVE POWER TO REPLACE THE ORIGINAL DECISION WITH ITS OWN?

Country	Body	Appeal stage	Yes	No	Comments
Serbia	Regulatory Authority for Electronic Media	1 Administrative Court	Not specified	Not specified	Not specified in the Law on Electronic Media or relevant Regulator's documents.

VI. PROCEDURAL LEGITIMACY

TABLE 34 - EXTERNAL ADVICE REGARDING REGULATORY MATTERS

This table shows if the regulatory body is able to take outside advice regarding regulatory questions.

Country	Body	Is a budget foreseen for outside advice?	If so, what is the budget/year?	Must the body respect public tender procedures?	Other requirements
Serbia	Regulatory Authority for Electronic Media	Yes. Consulting services, legal services, seminars and expert services, contracts with external individuals (in Serbian: *ugovori o delu*). The latter can include a variety of occasional and short-term jobs, not just providing professional expertise. Explanation on p. 52 of the 2016 REM Annual Report: Due to lack of own human resources, REM is forced to engage lawyers	**2015.**: ***Ugovori o delu*** Planned 5.164.800 RSD = app. € 42.000 Spent 3.352.922 RSD = app. app. € 27.000 **Legal services** Planned 3.155.000 RSD = app. € 25.600 Spent 3.240.000 RSD = app. €27.000 **Consulting services** Planned 1.850.800 RSD = €15.000 Spent / **Seminars and expert services** Planned 1.250.000 RSD =	Yes	In carrying out specific activities under its jurisdiction, the Regulator may engage other domestic or foreign legal and physical entities. (Law on Electronic Media, Art. 5) The Regulator is obliged to obtain the opinion of the constitutionality and legality of the regulations it issues (Law on Electronic Media, Art. 22)

Country	Body	Is a budget foreseen for outside advice?	If so, what is the budget/year?	Must the body respect public tender procedures?	Other requirements
		with experience in media and broadcasting and copyright in administrative disputes. Also, it is indicated that external human resources with high expertise were engaged (p.51-52).	App. €10.000 Spent 840.452 RSD = App. €6.800 **2016.** ***Ugovori o delu*** Planned 5.258.048 RSD = App. €42.750 Spent 591.251 RSD = app. €4.800 **Legal services** Planned 3.155.000 RSD = app. €25.600 Spent 3.240.000 RSD = app. €27.000 **Consulting services** Planned 1.850.800 RSD = €15.000 Spent / **Seminars and expert services** Planned		

Country	Body	Is a budget foreseen for outside advice?	If so, what is the budget/year?	Must the body respect public tender procedures?	Other requirements
			1.250.000 RSD = App. €10.000 Spent 601.170 RSD = app. € 4.900		

TABLE 35 - PUBLIC CONSULTATIONS

This table shows if the regulatory authority is required to publish public consultations.

Country	Body	Which decisions require prior public consultation?	Requirements on who must be consulted? (e.g. broadcasters, consumer organisations, academics etc.)	Consultation period	Consultation responses published		Legal basis
					Full responses (if authorised by contributor)	Summaries prepared by regulator	
Serbia	Regulatory Authority for Electronic Media	The Regulator shall conduct a public hearing in the preparation of a general act which is directly related to media service providers.	No	The public hearing shall begin on the day of publication of the draft general legislation on the website of the Regulator and shall last	The Regulator is required to provide insight into the current (as well as planned) public debates in a separate section that is dedicated to public hearings on its website.	REM Information Booklet (last update April 2017) states that it should publish on it website “invitation and program of public consultation, as well as the report on conducted public consultation”	Law on Electronic Media, Art. 40

Country	Body	Which decisions require prior public consultation?	Requirements on who must be consulted? (e.g. broadcasters, consumer organisations, academics etc.)	Consultation period	Consultation responses published		Legal basis
					Full responses (if authorised by contributor)	Summaries prepared by regulator	
				at least 15 days.		(in Serbian only, *Rules regarding publicity of work*)	

TABLE 36 - PUBLICATION OF REGULATOR'S DECISIONS

This table shows if the regulatory authority is required to publish its decisions, if its decisions need to be motivated and if impact assessments are required.

Country	Body	Which decisions required by law to be published?	Obligation to motivate decisions? Legal basis?	Obligation to include/publish impact assessment? Legal basis?	
				Ex ante	Ex post
Serbia	Regulatory Authority for Electronic Media	In accordance with the law governing free access to information of public importance, on its website REM is obliged to publish a whole set of information, but as for decisions, in particular: - decisions made at public competitions, with explanations - decisions taken during administrative proceedings initiated against a decision of the Regulator - decisions imposing measures in	Before making a decision on the dismissal of a member of the Council it is necessary to obtain the opinion of the Council on the reasons for the dismissal. Decisions on dismissal can be made only on the basis of a reasoned proposal, after a procedure has been carried out to determine all relevant circumstances and in which the Council member concerned has been given the opportunity to comment on all the circumstances. (Law on Electronic Media, Art. 16) When imposing reminders, warnings or temporary bans on the publication of programme content, the	Yes **Law on Electronic Media, Art. 29** In imposing the measures referred to in paragraphs 1-3 of this Article [reprimand, warning, temporary ban on publication of programme content], the Regulator shall take into account the degree of responsibility of the media service provider and the manner of the performed liability breach, the motives behind the liability violation, the degree of danger or damage to the protected object, how grave the consequences caused by the damage, the	No

Country	Body	Which decisions required by law to be published?	Obligation to motivate decisions? Legal basis?	Obligation to include/publish impact assessment? Legal basis?	
				Ex ante	Ex post
		accordance with the Law, with explanations - decisions on applications of natural and legal persons (Law on Electronic Media, Art. 38) In accordance with the Law on Electronic Media, the following information should be published in the Official Gazette: - opinions of the constitutionality and legality of its regulations - rulebook and instructions for more efficient implementation of the Law on Electronic Media - information on the availability of radio frequencies and place in the multiplex prior to prior to the announcement of a public competition - announcement calling for a public competition for a license	Regulator shall explicitly state the obligation which the media service provider has violated and order them to take measures to eliminate such violations. (Law on Electronic Media, Art. 29)	frequency of the activity, whether a measure referred to in paragraphs 1 to 3 of this Article has already been imposed on the provider, and whether to keep the media service provider after performing a violation.	

VII. COOPERATION

TABLE 37 - COOPERATION WITH OTHER REGULATORY AUTHORITIES

Country	Body	Describe the mechanism of cooperation with other bodies	Source and form of cooperation	Can body receive instructions from other bodies? If so, state which and explain	Comments
Serbia	Regulatory Authority for Electronic Media	Law on Electronic Media (Official Gazette 83/2014) Article 22, item 18: The Regulator shall cooperate and coordinate their work with the body in charge of electronic communications and the body responsible for the protection of competition, as well as other Regulatory bodies in accordance with the Law; Article 27 (Cooperation with government and other agencies and organizations) The Regulator, at the request of the competent state authority, shall give his/her opinion on the accession to international conventions and other agreements relating to the field of broadcasting services. The Regulator shall work with authorities and organizations responsible for public information, electronic communication, protection of competition, consumer protection, protection of personal data, the protection of equality and other bodies and organizations on the issues significant for the field of broadcasting services. The Regulator shall work with Regulatory bodies of other countries in the field of providing media services, i.e. relevant international organizations on matters within its jurisdiction. The competent national authorities shall obtain the opinion of the Regulator in the preparation of regulations related to the field of	Law on Electronic Media (Official Gazette 83/2014)	Not specified in the law. According to the 2016 Annual Report, for instance, the Ombudsman, based on complaints or its own initiative controlled if the Regulator acts in accordance with the state laws and other regulations or with principles of good governance. Also, REM is subject to procedures regarding the Law on Free Access to Information of Public Importance and the Commissioner for Information of Public Importance and Personal Data Protection.	

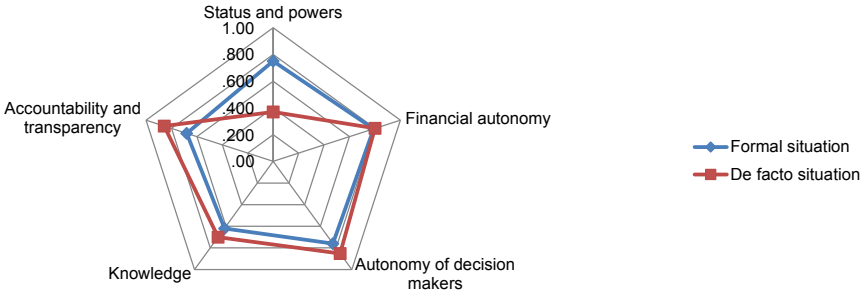
Country	Body	Describe the mechanism of cooperation with other bodies	Source and form of cooperation	Can body receive instructions from other bodies? If so, state which and explain	Comments
		electronic media. Article 23: in cooperation with the Regulatory authority for electronic communications and authority for the protection of competition, REM shall determine a Development Strategy Proposal for radio media services and audiovisual media services in the Republic of Serbia for a period of seven years. Article 100 (Special obligations for operators of electronic communications networks for the distribution of media content): The Regulator shall supervise and ensure the implementation of the operator's obligations prescribed by the provisions of this Article, in cooperation with the Regulatory body for electronic communications. According to the 2016 Annual Report, REM cooperated with the Republic Agency for Electronic Communications and Postal Services (RATEL) and a range of state and other bodies and organizations regard issues pertaining to the Regulator's (REM) competencies. http://rem.rs/uploads/files/PDF/Izvestaj%20o%20radu%202016.pdf (In Serbian only)			

TABLE 38 - INTERNATIONAL COOPERATION

Country	Body	Does it cooperate with other national regulatory bodies in EU and international fora?	Source and form of cooperation (legal basis)	Comments
Serbia	Regulatory Authority for Electronic Media	Yes REM is a member of: • European Platform of Regulatory Authorities-EPRA • Mediterranean Network of Regulatory Authorities – MNRA • Forum of the Black Sea Broadcasting Regulatory Authorities-BSEC BRAF • Central European Regulatory Forum – CERF Source: Report on REM Work for 2016 (in Serbian only) http://rem.rs/uploads/files/PDF/Izvestaj%20o%20radu%202016.pdf	Law on Electronic Media (Official Gazette 83/2014) Article 27 (Cooperation with government and other agencies and organizations) The Regulator shall work with Regulatory bodies of other countries in the field of providing media services, i.e. relevant international organizations on matters within its jurisdiction.	

ANNEX C: THE RANKING TOOL

Serbia	(Country)
	(Body)
Reasearch team	(Evaluator)
Sep-17	(Date)



	Formal situation	De facto situation
Status and powers	0.750	0.370
Financial autonomy	0.790	0.800
Autonomy of decision makers	0.760	0.852
Knowledge	0.620	0.700
Accountability and transparency	0.680	0.857

Formal situation

Status and powers	points (out of):	75	100
What is the legal structure of the regulatory body?	1	12	12
(●) A separate legal entity/autonomous body	12		
( ) Not a separate legal entity/autonomous body but existence of sufficient safeguards (Chinese walls)	6		
( ) Not a separate legal entity/automous body and no Chinese walls	0		
How is independence of the regulatory body guaranteed?	2	7	9
( ) In the constitution / high court decision	9		
(●) In an act of Parliament	7		
( ) In a secondary act	5		
( ) It is not recognised	0		
What type of regulatory powers does the regulatory body have?	1	9	9
(●) Policy implementing powers and third party decision making powers	9		
( ) Third party decision making powers only	3		
( ) Consultative powers only / No third party decision making powers	0		
Are these regulatory powers sufficiently defined in the law?	1	3	3
(●) Yes	3		
( ) No	0		
Does the regulatory body have supervision powers?	1	13	13
(●) Yes	13		
( ) No	0		

Does the regulatory body have information collection powers towards regulatees (eg. regarding quotas)?	1	6	6
(●) Yes	6		
( ) No	0		
Can the regulatory body be instructed (other than by a court) in individual cases/decisions or in relation to its policy implementing powers (notwithstanding possible democratic control mechanisms such as by parliament)?	3	3	13
( ) No	13		
( ) Yes, by the parliament	4		
(●) Yes, by the government/minister in limited cases	3		
( ) Yes, by the government/minister in many cases	0		
Can the regulatory body's decisions be overturned (other than by a court/administrative tribunal)?	1	13	13
(●) No	13		
( ) Yes, by the parliament	4		
( ) Yes, by the government/minister in limited cases	3		
( ) Yes, by the government/minister in many cases	0		
What type of enforcement powers does the regulatory body have?	3	0	13
( ) Availability of a range of proportional enforcement powers (warnings, deterrent fines, suspension/revocation of licence)	13		
( ) Not all range of enforcement powers available, but power to impose deterrent fines	10		
(●) No power to impose deterrent fines	0		
Does the regulatory body have sufficient legal power to decide on internal organisation and human resources?	1	9	9
(●) Yes	9		
( ) No	0		

Financial autonomy

points (out of): 79 100

How is the budget of the regulatory body determined?	2	29	40
( ) By the regulatory body only	40		
(●) By the parliament with involvement of regulatory body	29		
( ) By the government/minister with involvement of regulatory body	26		
( ) No involvement of regulatory body	0		
Does the law clearly specify the budget setting and approval procedure?	1	17	17
(●) Yes	17		
( ) No	0		
What are the sources of income of the regulatory body?	2	20	30
( ) Fees levied from industry - own funds, spectrum fees	30		
(●) Mixed fees (industry and government funding)	20		
( ) Government funding only	0		
Does the law clearly specify the source of funding?	1	13	13
(●) Yes	13		
( ) No	0		

Autonomy of decision makers

	points (out of):	76	100

What is the nature of the highest decision making organ of the regulatory body?

	1	10	10
(●) A board	10		
( ) An individual	0		

Who has a decisive say in nomination/appointment of the regulatory body's highest decision making organ?

	1	13	13
(●) Mix between parliament / government / civil society / professional associations	13		
( ) Ruling and opposition parties involved	12		
( ) Parliament and government	11		
( ) Parliament and prime minister/president	9		
( ) Parliament and political parties	8		
( ) Parliament only	7		
( ) Government only	3		
( ) President/prime minister/minister only	0		
( ) Not applicable/other procedures	0		

What is the term of office of the chairman/board members?

	1	7	7
(●) A fixed term of office of a certain duration (above the election cycle)	7		
( ) A fixed term of office (lower or equal to the election cycle)	3		
( ) Not specified	0		

Does the term of office coincide with the election cycle?

	1	10	10
(●) No	10		
( ) Yes/not specified	0		

Does the law foresee that board members are appointed at different points in time (staggered appointment)?

	2	0	7
( ) Yes	7		
(●) No	0		
( ) Not applicable (no board members)	0		

What is the situation regarding renewals of board members/chairman?

	1	7	7
(●) Renewal not possible / limited to one or two instances	7		
( ) Allowed in more than two instances / not specified	0		
( ) Not applicable (no fixed term)	0		

Are there rules on incompatibility at the nomination/appointment stage of the members of the board/the chairman so that the highest decision making organ ...

	2	3	10
( ) cannot be composed of members of government/parliament/industry	10		
(●) can be composed of one or two of the following groups: government/parliament/industry	3		
( ) can be composed of members of government/parliament/industry	0		

Incompatibility rules extended to relatives?

	2	0	1
( ) Yes	1		
(●) No	0		
( ) Not applicable (no incompatibility rules)	0		

Requirement to act in an independent capacity?

	1	3	3
(●) Yes	3		
( ) No	0		

Are there rules preventing conflicts of interest of chairman/board members during their term of office?	1	3	3
◉ Yes	3		
○ No	0		
Is there a period during which former board members are limited to work for the regulatees (so-called cooling-off period)?	2	0	3
○ Yes	3		
◉ No	0		
How can the chairman / individual board members be dismissed?	4	7	13
○ Dismissal not possible	13		
○ Dismissal possible only for objective grounds listed in the law (no discretion)	13		
○ Objective grounds listed in the law, but margin of discretion. Power of dismissal given to the regulator / the judiciary.	9		
◉ Objective grounds listed in the law, but margin of discretion. Power of dismissal not given to the regulator / the judiciary.	7		
○ Dismissal possible, but grounds not listed in the law, or no rules on dismissal	0		
Dismissal of entire board	1	13	13
◉ Not possible to dismiss entire board	13		
○ Entire board can be dismissed	0		
○ Not applicable (no board)	0		

Knowledge

points (out of): 62 100

Are requirements for professional expertise (i.e. knowledge/experience) specified in the law? For board members/chairman?	1	19	19
◉ Yes	19		
○ No	0		
Are requirements for professional expertise specified in the law? For senior staff?	2	0	19
○ Yes	19		
◉ No	0		
○ Not applicable (no senior staff)	0		
Are requirements for qualifications (eg. education, diploma requirements) specified in the law? For board members/chairman?	1	19	19
◉ Yes	19		
○ No	0		
Are requirements for qualifications specified in the law? For senior staff?	2	0	19
○ Yes	19		
◉ No	0		
○ Not applicable (no senior staff)	0		
Does the law foressee that the regulatory body can seek external advice?	1	12	12
◉ Yes	12		
○ No	0		
Is the regulatory body legally obliged to cooperate with other national or foreign regulators and does it have the required mandate to do so?	1	12	12
◉ Yes	12		
○ No	0		

Accountability and transparency

	points (out of):	68	100

Does the law specify that the regulatory body's decisions need to be published?

	1	12	12
(●) Yes	12		
( ) No	0		

Does the law specify that the regulatory body's decisions need to be motivated?

	1	12	12
(●) Yes	12		
( ) No	0		

Is the regulatory body required by law to organise consultations?

	2	4	8
( ) Yes, in all cases (which have a direct or indirect impact on more than one stakeholder)	8		
(●) Yes, but only in cases specified by law	4		
( ) No	0		
( ) Not applicable	0		

Is the regulatory body required to organise these consultations as open or closed consultations?

	1	8	8
(●) Open consultations	8		
( ) Closed consultations	4		
( ) No consultations required	0		

Is the regulatory body subject to a reporting obligation and is it specified in law?

	2	9	12
( ) Yes, the reporting obligation is specified in law and is addressed to the public at large (including public bodies)	12		
(●) Yes, the reporting obligation is specified in law and is limited to public bodies only (e.g. Parliament and/or government)	9		
( ) No	0		

Does the law specify a mechanism of ex-post control by a democratically elected body

(e.g. approval of annual report by the parliament or a political/public debate with participation of the body)?

	2	0	16
( ) Yes	16		
(●) No	0		

Is an appeal procedure against the decisions of the regulatory body foreseen in the law?

	3	6	12
( ) Yes, in all circumstances and before an external court/administrative tribunal	12		
( ) Yes, in all circumstances, but only before an independent body (with no further appeal before a court/admin tribunal)	9		
(●) Yes, but in some circumstances only and before an external court/administrative tribunal	6		
( ) Yes, but in some circumstances only, and only before an independent body (with no further appeal before a court/admin trib)	4		
( ) No	0		

What are the accepted grounds for appeal?

	2	5	8
( ) Errors of fact and errors of law (ie. the merits)	8		
(●) Errors in law only	5		
( ) Errors in fact only	3		
( ) Not applicable (no appeal procedure exists)	0		

Is external auditing of the financial situation foreseen in the law?

	1	12	12
(●) Yes	12		
( ) No	0		

De facto situation

Status and powers

points (out of): 37 100

Has the act on the status of the regulatory body been modified in a way that has reduced its tasks and powers?

	2	0	9
○ No	9		
◉ Yes	0		
○ Not applicable (not set up as separate body)	0		

Has the governing law of the regulatory body been modified to influence a particular case/conflict?

	1	9	9
◉ No	9		
○ Yes	0		

Have the formally granted powers (policy implementing powers and third party decision making powers, excluding sanctions) been used?

	2	5	10
○ Yes, for all types of powers and in all instances	10		
◉ Yes, but not for all types of powers or in all instances	5		
○ No	0		

How does the regulatory body supervise whether the rules are correctly applied by the regulatees?

	2	5	9
○ Through monitoring according to a set strategy and/or methodology	9		
◉ Through adhoc monitoring/monitoring after complaints, with concrete procedures to follow complaints	5		
○ Through adhoc monitoring/monitoring after complaints, without concrete procedures to follow complaints	0		

Has the regulatory body received instructions by a body other than a court in individual cases/decisions or in relation to its policy implementing powers in the last 5 years?

	2	0	9
○ No	9		
◉ Yes	0		

Have the decisions of the regulatory body been overturned by a body other than a court/administrative tribunal in the last 5 years?

	1	9	9
◉ No	9		
○ Yes	0		

Has the regulatory body taken adequate measures in case of material breach by an AVMS/TVwF provider?

	2	0	9
○ Yes	9		
◉ No	0		
○ Not applicable (no material breach has occured)	0		

Has the regulatory body taken adequate sanctions in case of continued breach by an AVMS/TVwF provider?

	2	0	9
○ Yes	9		
◉ No	0		
○ Not applicable (no continued breach has occured)	0		

In case of several breaches by different AVMS/TVwF providers: Have even-handed/comparable measures been taken against all providers?

	2	0	9
○ Yes	9		
◉ No	0		
○ Not applicable (no breaches by different providers has occured)	0		

Does the regulatory body effectively decide on internal organisation and human resources?			
	2	0	9
○ Yes	9		
◉ No	0		
Does the regulatory body have a sufficient number of staff to fulfill its tasks and duties?			
	1	9	9
◉ Yes	9		
○ No	0		
Financial autonomy	points (out of):	80	100
Is the regulatory body's budget sufficient to carry out its tasks and duties?			
	1	40	40
◉ Yes	40		
○ No	0		
Is the regulatory body's budget sufficiently stable over time?			
	1	20	20
◉ Yes	20		
○ No	0		
Does the regulatory body have sufficient autonomy to decide for which tasks it spends its budget?			
	2	0	20
○ Yes	20		
◉ No	0		
Is the regulatory body under pressure to compensate a lack of stable funding from the state or from the market, by imposing fines or requesting ad-hoc financial contributions from the state?			
	1	20	20
◉ No	20		
○ Yes	0		
○ Not applicable	0		
Autonomy of decision makers	points (out of):	69	81
Composition of the highest decision making organ (board or council) of the regulatory body			
Are political majorities or political power structures reflected in the composition of the highest decision making organ?			
	3	0	0
○ No	19		
○ Yes	0		
◉ Impossible to say	0		
Have there been cases where the appointer failed to appoint the nominated candidate?			
	2	0	12
○ No	12		
◉ Yes	0		
○ Not applicable (no nomination stage/no obligation to appoint nominatees)	0		
Have board members/chairman resigned before their term of office due to political conflicts?			
	1	19	19
◉ No	19		
○ Yes	0		
Have one or more board members been dismissed for non-objective grounds in the past 5 years?			
	1	25	25
◉ No	25		
○ Yes	0		

Has the entire board been dimissed or otherwise replaced before the end of term in the last 5 years?

	1	25	25
◉ No	25		
○ Yes	0		
○ Not applicable (not possible)	0		

Knowledge

points (out of): 70 100

Do board members/chairman have adequate qualifications and professional expertise to fulfill the duties of the regulatory body?

	2	15	30
○ Yes, all	30		
◉ Yes, a majority	15		
○ No	0		

Does senior staff have adequate qualifications and professional expertise to fulfill the duties of the regulatory body?

	2	15	30
○ Yes, all	30		
◉ Yes, a majority	15		
○ No	0		
○ Not applicable (no senior staff)	0		

Does the regulatory body seek external advice when needed?

	1	20	20
◉ Yes	20		
○ No	0		

Does the regulatory body cooperate with other national/foreign regulators in charge of audio-visual media regulation?

	1	20	20
◉ Yes	20		
○ No	0		

Accountability and transparency

points (out of): 78 91

Does the regulatory body publish its decisions (together with motivations)?

	1	10	10
◉ Yes, all decisions (and motivations) are published	10		
○ Yes, but only some decisions are published	5		
○ No	0		

Where are the decisions published?

	1	6	6
◉ On the website (and eventually other official channels)	6		
○ In the official journal or other official channels (but not on the website)	0		
○ Not applicable (decisions are not published)	0		

Does the regulatory body organise consultations?

	2	4	8
○ Yes, in all cases (which have a direct or indirect impact on more than one stakeholder)	8		
◉ Yes, but only in cases specified by law	4		
○ No	0		

Does the regulatory body organise these consultations as open or closed consultations?

	1	7	7
◉ Open consultations	7		
○ Closed consultations	4		
○ No consultations	0		

Does the regulatory body publish responses to consultation?

Does the regulatory body publish responses to consultation?

	1	6	6
(●) Yes	6		
( ) No	0		
( ) Not applicable (no consultations are organised)	0		

Does the regulatory body explain the extent to which responses are taken into account in final decisions?

	1	9	9
(●) Yes	9		
( ) No	0		
( ) Not applicable (no consultations are organised)	0		

Does the regulatory body publish periodical reports on its activities?

	1	9	9
(●) Yes	9		
( ) No	0		

Has the regulatory body been assessed / controlled by a democratically elected body in the last five years?

	2	0	9
( ) Yes	9		
(●) No	0		

Have there been cases where the report (or other form of approval by a democratically elected body) has been refused in the last 5 years?

	3	0	0
( ) No	9		
( ) Yes	0		
(●) Not applicable (no requirement to have a report approved by an external body)	0		

Have the decisions of the regulatory body been overturned by a court/administrative tribunal in a significant number of cases?

	1	9	9
(●) No	9		
( ) Yes	0		
( ) Not applicable (not possible)	0		

Is the regulatory body subject to periodic external financial auditing?

	1	9	9
(●) Yes	9		
( ) No	0		

Has auditing revealed serious financial malpractices?

	1	9	9
(●) No	9		
( ) Yes	0		
( ) Not applicable (not subject to periodic external auditing)	0		