



NORWEGIAN MINISTRY
OF FOREIGN AFFAIRS



Council of Europe Project
Promoting freedom of expression and information and freedom of the media in South-East Europe
Voluntary Contribution of Norway

Regional Meeting

“Defining specific indicators for establishing and monitoring the transparency, responsibility and operational efficiency of media regulatory bodies”

4 June 2014

Hotel Splendid, Bečići-Budva, Montenegro

Opening remarks: *Silvia Grundmann, Head of Media Division, Directorate General of Human Rights and Rule of Law, Council of Europe, Strasbourg; Emmanuelle Machet, EPRA Secretary; and Lejla Dervišagić, Programme Manager, Media Division, Directorate General of Human Rights and Rule of Law, Council of Europe, Strasbourg.*

Key note speakers: *Eve Salomon, CoE Expert; Michael O’Keeffe, Broadcasting Authority of Ireland; Tanja Kerševan Smokvina, Agency for Communication Networks and Services of the Republic of Slovenia; Jean François Furnémont, EPRA Chairman; and Lorena Boix Alonso, Head of Converging Media and Content Unit, DG CONNECT, European Commission.*

The Council of Europe, in the framework of the Project “Promoting freedom of expression and information and freedom of the media in South-East Europe (SEE)” organised the Regional meeting “Defining specific indicators for establishing and monitoring the transparency, responsibility and operational efficiency of media regulatory bodies”, held on 4 June 2014, in Hotel Splendid in Bečići-Budva, Montenegro.

The aim of this Regional meeting was to gather representatives of the regulatory authorities from Albania, Bosnia and Herzegovina, "The Former Yugoslav Republic of Macedonia", Montenegro, Serbia and *Kosovo¹ and continue the work on definition of above mentioned indicators, started during the regional conference *Indicators for Independence of Media Regulatory Bodies* that has been held in March 2014, in Tirana.

¹“All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.”

Conclusions

The participants of the conference:

- Reiterated the importance of efficient and objective monitoring and evaluation of the standards of RAs independence and the CoE recommendation on the independence and functions of regulatory authorities for the broadcasting sector and its Explanatory Memorandum;
- Highlighted the importance of building the relationship of mutual respect between governments and RAs and work on training of RAs employees and educate whole society about the role and importance of RAs and strengthen the culture of independence. The regulatory authorities should be consulted on all regulation changes and before the adoption of a new legislation and public debates should be organised;
- Welcomed the information that the Albanian Parliament submitted a request to the Council of Europe for the analysis of the independence of the Albanian regulatory body, which was one of the outcomes of the conference held in in Tirana (March 2014). They stressed that other governments should follow Albania's example;
- Adopted the indicators presented by Ms Salomon (please, see page 3).
- Stressed that the analyses *de facto and de jure* based on these indicators should be conducted periodically (once per year, or at least every two years). The analysis should be prepared by an independent commission or several independent experts, in cooperation with the Council of Europe. Detailed methodology should be developed for that purpose and should include series of interviews with all employees of the RAs and take into account all parameters. All indicators should be considered in the light of culture and tradition of societies. This exercise will for sure enhance public confidence in the regulator and highlight the importance of achieving not only formal but also the actual independence (having in mind all informal aspects). The analysis would also be an indicator of the progress towards independence and advancement in the EU accession process. Therefore, it would be useful to search possibilities to include these indicators into Preconditions for accession and EU monitoring reports.
- Agreed that representatives of the RAs present at the meeting should suggest to their RAs to initiate the request for the analysis of their independence based on the indicators adopted during this regional meeting.

It is important to encourage all countries and RAs to discuss these issues and indicators (or at least some of them), and the CoE will do its best to help and support such an initiative.

Eve Salomon

Presentation made during the Regional meeting, Becici-Budva, 4 June 2014

Indicators for Independence of Regulatory Authorities: definition, practice and verification

- Indicators identified from conference in Tirana, March 2014
- Further explanation and proposed key indicators
- Practice and verification

1. Status and powers

Existence and implementation of the legal framework which clearly and unequivocally defines the position, competences, rights and duties of a regulatory body. Particular attention should be devoted to:

- Possibility of autonomous decision making concerning the implementation of the competences prescribed by law (adopting by-laws, pronouncing sanctions in the case of any violation of standards...)
- Clear rules, criteria and conditions for proposing, appointing and releasing from duty council members and the executive director of an independent regulatory body
- Rules for preventing conflict of interest concerning different sources of political and economic influence

This should include:

- Remit and powers (including enforcement powers) should be set out in legislation or Constitution
- High level public policy objectives should be set out in the law, starting with the protection of freedom of expression
- Legal protection against interference by political or industry agents
- Only the court should have power to overturn the regulator's decisions
- Means of appointment and dismissal of council members should be set out in legislation. The council should have the right to appoint the executive director.
- Rules on conflicts of interest should be comprehensive and set out in the law.

Appointment of Members

No 'right' way, but the greater the involvement of government (or Parliament) in the process, the more additional legal safeguards required:

- ❖ Restrictions on eligibility for appointment, e.g. no serving (or former) politicians, clear competency criteria in line with a job description, and comprehensive rules on conflicts of interest (to include close relatives)
- ❖ Open nomination process involving civil society
- ❖ Limited terms of appointment (not linked to election cycle), and renewal
- ❖ Staggered appointments of members
- ❖ Members appointed in individual, not representational capacity
- ❖ Restrictions on employment in the industry following appointment

Termination of Appointment

- Set out in legislation
- Dismissal only if:
 - ❖ Conflict of interest
 - ❖ Physical or mental incapacity
 - ❖ Persistent non-attendance
 - ❖ Bankruptcy
 - ❖ Conviction of serious criminal offence

Practice and verification

- Check legal instruments
- Have there been any examples of interference with regulatory decisions by political or industry interests?
- Have all appointments followed the published procedure?
- Research and questionnaires: do the public believe the regulatory authority acts independently? Are there rumours of corruption?

2. Financial autonomy

Existence and implementation of the legal framework stipulating sustainable and stable sources of financing of a regulatory body, enabling it to plan, manage and dispose of funds in an efficient, transparent and responsible manner, in order to mobilise and keep human and technical resources required for successful implementation of its competences and tasks;

This should include:

- Funding mechanisms and budget process set out in legislation
- Transparent budgeting process
 - ❖ Ideally, the budget should be set by the regulatory authority (and approved by Parliament). At the least, it should be set with the involvement of the regulatory authority.
- Sources of funding
 - ❖ Fees levied from the industry in accordance with transparent criteria
 - ❖ State budget (as secondary source)

Practice and verification:

- Does the regulatory authority have adequate resources (including staff) to fulfil its functions?
- Does the regulatory authority review annually its business plan and seek to cut costs wherever possible? Does it have a 'value for money' ethos?

3. Autonomy of decision-makers

Existence and implementation of clear-cut rules and good practice, meaning that a regulatory body is able to adopt its decisions autonomously, and to make its decisions and their rationales available to the public (e.g. legal or statutory provisions on the obligation to publish general and individual acts in the purview of the regulatory body), and to organise public consultations before adopting by-laws important for regulating the rights and duties of those extending AVM services, so as to enable all stakeholders to give their opinions and suggestions.

This should include:

- Inability of State to interfere with decisions or order the Council to act.
- Accountability (discussed below)

4. Knowledge/ skills

Existence and implementation of clear-cut rules, rights and duties related to the possibility of planning, hiring and developing human resources important for efficient and successful execution of competences in the purview of an independent regulatory body.

This should include:

- Competency requirements for chair and board members (e.g. knowledge, experience, qualifications) set out in the law, and tailored for each recruitment exercise

- Competency requirements for senior staff
- Power to engage consultants and seek external expertise
- Obligation to co-operate with other national and international regulators

Practice and verification:

- Do Council members and staff actually have the competencies required by law?
- Are there complaints from other regulatory authorities about non-co-operation?

5. **Transparency and accountability**

Existence and implementation of clear-cut rules, rights and duties relating to adopting and publishing financial and operational plans and reports of independent regulatory bodies.

This should include:

- Working methods which include regular, open public consultations
- Presentation of annual report and accounts to Parliament and open publication on website
- Attendance before Parliament, or Parliamentary Committee
- Publication of decisions, with full reasons
- Publication of meeting minutes (subject to confidentiality provisions)
- External financial audit

Practice and verification

- Are the accounts and annual report published in a timely manner?
- Does the regulatory authority have a good working relationship with government?
- Are all decisions, with reasoning, published?
- Are minutes published?
- Does the regulatory authority pass its financial audit?

In conclusion...

- “Measurement is the first step that leads to control and eventually to improvement. If you can’t measure something, you can’t understand it. If you can’t understand it, you can’t control it. If you can’t control it, you can’t improve it.” [H. James Harrington](#)