

**#ReForMediaMKD**

**THE ROLE OF STRUCTURAL PLURALISM  
IN THE MACEDONIAN, CROATIAN AND  
MONTENEGRIN TV SECTOR**

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# THE ROLE OF STRUCTURAL PLURALISM IN THE MACEDONIAN, CROATIAN AND MONTENEGRIN TV SECTOR

Author: PhD Snezhana Trpevska

## 1. THE NOTION OF STRUCTURAL PLURALISM AND THE OBJECTIVES OF THE ANALYSIS

In order to effectively achieve the goals of media policy, the regulatory bodies in the audiovisual sector must possess at least minimal powers. Traditional powers defined in the most important documents of the Council of Europe usually include: policy-making (regulatory powers), policy implementation, and decision-making that is binding on third parties.<sup>1</sup> These powers are accompanied by the power for organizing and coordinating structural pluralism, i.e. the existence of a plethora of media in the broadcasting landscape.<sup>2</sup> Structural pluralism is, in fact, one of the central and most important goals of media policy and refers to the understanding of the media system as a system in which there is a wide range of media types and media formats that reflect the different cultural, social, political and other perspectives in society, which offer different ways of interaction and use.<sup>3</sup>

The American tradition in media policy analyzed structural pluralism through the prism of economic and competition law,<sup>4</sup> and not as an issue of media regulation. However, the structural dimension of the media system in terms of different media services according to type and genre, forms of financing, patterns of ownership, distribution patterns or action sectors, cannot be considered in isolation from media policy and regulation. The application of market logic alone in the construction of the media system leads to excessive emphasis on profit, economic efficiency and competitiveness and neglect of other normative goals in media policy - pluralism, democratic values, social inclusion, protection of minors, protection of cultural identity, etc.

In the European media policy, pluralism as a regulatory goal is mentioned in many documents of the Council of Europe and the European Commission. It is a complex notion that contains the aspect of structural pluralism that must be built into national regulation as well. The European Commission defines media pluralism as a broader term, covering different dimensions or domains: general domain, pluralism of ownership, geographical pluralism, political pluralism, cultural pluralism and pluralism of media and genres.<sup>5</sup> The notion of structural pluralism that we use in this paper largely coincides with the pluralism of media and the pluralism of genres. In order to ensure minimum diversity in the broadcasting landscape, the regulation at the national level should envisage the existence of the public service, commercial media, non-profit media sector, television and radio programme services, as well as various programme formats so as to ensure the diversity of the offer, the provisions for preventing unauthorized concentration of ownership, etc. In addition, the regulatory body should be given general powers to ensure the diversity of the broadcasting landscape and specific obligations or mechanisms to accomplish this.<sup>6</sup>

<sup>1</sup> European Commission. AVMS-RADAR, *AudioVisual Media Services-Regulatory Authorities' Independence and Efficiency Review: Update on recent changes and developments in Member States and Candidate Countries that are relevant for the analysis of independence and efficient functioning of audiovisual media services regulatory bodies* (SMART 2013/0083). (Brussels, European Commission, 2015), pg. 68

<sup>2</sup> The powers of the regulatory bodies are given in short on the web-page of the European Platform of Regulatory Authorities <https://www.epra.org/articles/about-regulatory-authorities> (Accessed on 20 December 2017).

<sup>3</sup> Klimkiewicz, B. "Introduction Structural Media Pluralism." *International Journal of Communication* 4 (2011): 8, p. 908. .

<sup>4</sup> Ibid, pg. 908

<sup>5</sup> European Commission. *Independent Study on Indicators for Media Pluralism in the Member States – Towards a Risk-Based Approach, Prepared for the European Commission, Directorate-General Information Society and Media SMART 007A 2007-0002*. (Brussels: European Commission, 2007).

<sup>6</sup> In some countries, like Croatia, there is a special fund for financing domestic content, thus contributing to the variety of the offer in terms of content. This indirectly contributes to enriching structural pluralism.

In order to achieve structural pluralism in today's digital environment, it is important to make the various types of domestic TV services available to the audience on all technological platforms. For example, the audience can watch domestic television channels via digital terrestrial television (DTT), IPTV-platform, cable network, satellite or online. In other words, regional and local TV channels can be distributed to the audience through different platforms or networks, with or without a subscription fee for access to the platform. Apart from a segment of the digital terrestrial platform and the Internet, all other platforms have a conditional access, i.e. the viewer must pay a subscription to access domestic and foreign TV channels that are distributed through the specific platform. In doing so, the audience should have the freedom and the opportunity to decide which technical platform they want to access. However, those households that do not have the means or want to watch only domestic TV channels licensed by the regulator should be provided with free access to the domestic TV channels through the digital terrestrial platform. Therefore, the development and shaping of structural pluralism in such a technological environment is not a simple task for the regulator, since it should take into account many factors: the need of the audience to have access to various domestic channels and content that meet their informational and cultural requirements, the production costs the domestic channels have in order to fulfil their programme commitments, the real potential of the market, i.e. the available sources for financing the domestic channels, the need to maintain a level of healthy competition so as to have a competition on the market, i.e. to prevent excessive influence of individual media on the public opinion, etc.

The main goal of this analysis is to determine what legal powers the regulatory bodies from Macedonia and from the two countries in the region (Croatia and Montenegro) have, and the manner in which they shape structural pluralism in practice. In order to respond the designated objectives, the following research questions have been elaborated in the analysis:

- 1) Is structural pluralism contained in the regulation as a regulatory objective and how are the competencies of the regulatory bodies in terms of pluralism formulated?
- 2) What specific powers and mechanisms do the three regulatory bodies of the region have in terms of shaping the broadcasting landscape?
- 3) Have the regulatory bodies developed a vision and strategic objectives for advancing the activity and promoting diversity of the media in the television sector and what is the real picture of the structural pluralism in the television sectors of the three countries?

Methodologically, the analysis relies primarily on the analysis of legislation, documents and studies, as well as on official statistics published on the websites of the regulatory bodies. The analysis of the legislation is limited only to the laws that regulate the existence and competencies of the regulatory bodies in the audiovisual sector: the Law on Electronic Media of Montenegro,<sup>7</sup> the Law on Electronic Media of Croatia<sup>8</sup> and the Law on Audio and Audiovisual Media Services of Macedonia.<sup>9</sup> In addition, in-depth interviews with the current and former representatives of regulatory bodies have been conducted. In Montenegro, the regulatory body is the Agency for Electronic Media, in Croatia it is the Council for Electronic Media, and in Macedonia it is the Agency for Audio and Audiovisual Media Services.

In the first part, the analysis deals with whether the objectives of the law and the provisions on the competences of the regulatory bodies explicitly state the powers with respect to the protection of structural pluralism, drafting or proposing strategies and programmes for economic and technological development of the broadcasting activity and reliance on analysis and research as the basis for strategic planning of the audiovisual sector. This section also elaborates on the practice of the regulatory bodies and other competent institutions: with respect to which body or institution proposes and adopts strategies or programmes for the development of the broadcasting activity, whether those strategies or programmes are made on the basis of analyses and data, what is the vision or strategic goals outlined in these programmes in terms of structural pluralism and the development of the broadcasting activity, and in what way is the achievement of the strategic vision monitored by the regulator.

<sup>7</sup> "Zakon o elektronskim medijima Crne Gore" (Law on the Electronic Media of Montenegro), Sluzbeni list Crne Gore br. 054/16.

<sup>8</sup> "Zakon o elektroničkim medijima Hrvatske" (Law on the electronic Media of Croatia), Pročišćeni tekst zakona NN 153/09, 84/11, 94/13, 136/13

<sup>9</sup> "Zakon za audio i audiovizuelni medijumski usluzi", (Law on Audio and Audiovisual Media Services), Sluzhben vesnik na Republika Makedonija br.184/13, 44/14, 101/14, 132/14, 142/16, 132/17.

The second part of the analysis provides an overview of all specific authorizations or mechanisms that the regulator can use to effectively coordinate and shape structural pluralism: i.e. adopt by-laws, grant licenses, monitor and prevent the unauthorized media concentration, supervise the implementation of the law and impose measures and sanctions. The emphasis in this section is on: (1) the manner in which different types of licenses or approvals for audiovisual media services are granted; and (2) the efficiency with which regulators supervise compliance with the requirements of the law and the licenses.

The third part of the analysis compares the current situation with structural pluralism in the three countries and elaborates the considerations or plans of the regulators and other stakeholders in view of this matter. Finally, relying primarily on the opinions and the perceptions of the regulatory bodies, conclusions and recommendations have been made with respect to the direction in which the development of the future media policy should move in terms of shaping structural pluralism, the development of the audiovisual activity and raising the quality of the offer that the audience receives.

## 2. REGULATION OBJECTIVES AND COMPETENCES OF THE REGULATORY BODIES FOR THE PROTECTION OF STRUCTURAL PLURALISM AND FOR THE DEVELOPMENT OF THE BROADCASTING ACTIVITY

This part of the analysis deals with the following questions: (1) are structural pluralism and the development of the broadcasting activity referred to as regulatory objectives for the purposes of the law and (2) do the regulatory bodies have explicit competences to protect structural pluralism and strategic planning and the development of the audio and audiovisual media services sector (AAVM-services).

### 2.1 Provisions on the regulation objectives

For the purpose of regulation of the audiovisual sector determined in Article 2 of the Law on Audio and Audiovisual Media Services of Macedonia, the notion of pluralism is not mentioned at all. The regulatory objectives are rather more related to the general term “development”, followed by the terms “technical and technological development” and “stimulating and promoting competition” in the audio and audiovisual media services. From the aspect of protection of media pluralism, these provisions are not quite precise and implicitly suggest that the aim of regulation is, first and foremost, to create conditions for economic and technical and technological development of the activity, and not the existence of a multitude of different audio and audiovisual media services.

**Table no. 1 – Overview of the provisions on the objectives of the legal regulations in the three countries**

	MONTENEGRO	CROATIA	MACEDONIA
Principles and aims of the law	<b>Law on Electronic Media</b>	<b>Law on Electronic Media</b>	<b>Law on Audio and Audiovisual Media Services</b>
	<ul style="list-style-type: none"> <li>• Balance in the development of the public and commercial AAVM service providers</li> <li>• Competition and pluralism advancement</li> </ul> (Article3)	<ul style="list-style-type: none"> <li>• No separate provision stating the objectives in the Law.</li> </ul>	<ul style="list-style-type: none"> <li>• Development of the AAVM services</li> <li>• Development of the independent production</li> <li>• Technical and technological development of the AAVM services, convergence with the electronic communications and the information society</li> <li>• Incitement and development of competition in the AAVM services and with respect to rebroadcasting on the public communication networks</li> </ul>

Unlike the legislation of Montenegro and Macedonia, the Croatian Law on Electronic Media does not contain a provision in which the objectives of the regulation of the activity are explicitly stated. Article 3 of the Law on Electronic Communications of Montenegro lists two provisions, among others, from which the regulatory body should begin to shape the audiovisual sector. The first refers to the need to strive for “*balance in the development of public and commercial audiovisual media service providers*”, without mentioning the non-profit broadcasters, which are also established with this law. The second regulatory objective referred to by the Montenegrin law is “*the promotion of competition and pluralism*”, implicitly tying the notion of pluralism mainly with the protection of competition.

## **2.2 Competences of regulators with respect to structural pluralism and the development of the activity**

In the three analyzed laws, the competences of the regulatory bodies are listed either in the general provisions on the competences and/or in the specific provisions concerning the division of responsibilities between the bodies of the agencies: the collective bodies or the ‘councils’ that make the decisions and the directors authorized to implement the decisions. The authorizations related to structural pluralism and the development of the activity are listed in other articles of the law, although they are not explicitly mentioned in the general provisions on the competences.

The table below gives an overview of the powers of the three agencies summarized from all legal provisions regarding: (1) protection of structural pluralism, (2) drafting and proposing strategies and programmes for the development of the broadcasting activity, and (3) conducting surveys and analyses as a basis for the strategic planning for development of the activity.

**Table no. 2 – Overview of the provisions on the general competences of the regulatory bodies in the three countries**

	MONTENEGRO	CROATIA	MACEDONIA
Protection of structural pluralism	No explicit provision in the general competences. However, at the open public competition for granting licenses for radio or TV broadcasting, the applicant that "... will contribute to a better quality and greater variety of the programmes" has the advantage.  (Article 100, paragraph 3)	No explicitly stated competence, however in awarding radio and television concessions, the Council should take into account the "quality and diversity of audiovisual and/or radio programmes".  (Article 73, paragraph 4, line 3)	Protects and develops pluralism in the sense that it should "... encourage and support the existence of various, independent and autonomous AAVM services."  (Article 6, paragraph 1, line 2)
Drafting and proposing strategies and programmes for development	Proposes a programme for the development of the AAVM services, adopted by the Government. Such a programme has not been adopted to date.  (Article 7 and Article 12, item 1)	There is no special provision in the Law on Electronic Media. As of January 2018, the Ministry of Culture in Cooperation with the Council for Electronic Media started working on the general media strategy of Croatia.	There is no special provision in the existing law, however the Agency foresees the preparation of a strategy as part of its Programme.
General competences in conducting research and analyses	No explicitly stated competence in the general competences.	Provision on the competences of the Council in the Agency for Electronic Media:  "...conducts analysis concerning certain issues in the electronic media sector."  (Article 69, item 23)	Provision on the competences of the Agency:  Conducts research and analyses related to certain issues in the AAVM services sector.  (Article 6 paragraph 1, line 14)
Other provisions envisaging the regulators responsibility in conducting analyses and research	The Law does not contain any other provision stipulating that the Agency should conduct analyses or research.	The Law does not contain any other provision stipulating that the Agency should conduct analyses or research.	The Agency prepares a study to determine the justification for publishing an open call for awarding licenses for radio and TV broadcasting, from the aspect of the objectives of the law and the requirements of the audience.  (Article 70, paragraph 4)

Although the objectives of the law do not mention the term pluralism, the obligation to **protect structural pluralism** is quite clearly defined as the competence of the Macedonian regulator, in the sense that it should "... encourage and support the existence of various, independent and autonomous audio and audiovisual media services". The two other regulators in the region do not have such clear competences, but when deciding on granting licenses (in Croatia concessions) for broadcasting radio or television programmes, they are legally bound to be guided, inter alia, by such a criterion. In Montenegro, at the open public competition for granting licenses for radio or TV broadcasting, the applicant that "... will contribute to a better quality and greater variety of the programmes" has the advantage, and in Croatia when awarding concessions for radio and television stations, the Council should take into account the "quality and diversity of audiovisual and/or radio programmes".

The impact on pluralism of various media and content and the desire to create a favourable economic environment for the development of the audiovisual sector are related to the **strategic planning** of the development of the audiovisual broadcasting activity, which, in turn, must be based on an analysis of the economic operations of the entities, and the interest of the audience, the programme diversity and quality of the programmes and other aspects of the audiovisual activity. Out of the three analyzed laws, only the Montenegrin law gives the authority to the regulator to draft a programme for development of the

audiovisual broadcasting activity, which is adopted by the Government of Montenegro. Such explicit authority is neither given to the Macedonian, nor to the Croatian regulator.

The Agency for Audio and Audiovisual Media Services of Macedonia in its annual working programme envisages the drafting of a new Strategy for Development of the Broadcasting Activity for the period 2018-2022, having in mind the fact that the previous Law on Broadcasting Activity from 2005 gave the regulator this authorization, and based on that, two strategies for development of the activity containing comprehensive perceptions of pluralism in all its aspects were already drafted. The attitude of the representatives of the regulatory body is that there is a need for a strategy, but due to the complexity of the problems in the audiovisual segment, more competent institutions should participate in the drafting process, and the strategy should be adopted by the Assembly.<sup>10</sup> The problem with the previous strategic documents was that the law did not define which institution is responsible for its final adoption, i.e. which other institutions, in addition to the regulator, are responsible for their coordinated implementation. The regulator may have a vision for the development of the broadcasting activity, but if other institutions are not involved, the regulator cannot achieve that strategic vision alone.

In Montenegro, so far, the regulator has not prepared and submitted a draft-programme for the development of the audiovisual media services sector to the Government, as there were no opportunities to undertake a comprehensive analysis of the situation in the media sector on the basis of which the development objectives would be set. To that end, in 2017, at the initiative of the regulatory body and in cooperation with several competent institutions, the experts engaged by the Council of Europe developed a comprehensive study<sup>11</sup> of the entire media sector that would be used in the future as a basis for strategic planning for the development of the broadcasting activity.<sup>12</sup>

In Croatia, there is no separate document defining the strategy or vision of the Croatian regulator for structural pluralism, yet the Council for Electronic Media in cooperation with the Ministry of Culture started working on Croatia's media strategy in March 2018.<sup>13</sup> Nevertheless, pluralism in the media sphere as a regulatory objective is incorporated in the existing Law on Electronic Media, and in terms of the public service responsibilities, it is regulated by the agreement between the Government of Croatia and the Croatian Radio-Television. The main mechanism through which the Croatian regulator influences structural pluralism are the competitions for awarding concessions for general or specialized TV channels, where the regulator is guided by the audience research and by special studies that determine the need for new services on the market.

The Croatian and Macedonian regulators have explicit authority to conduct (or commission) **analyses and surveys**, while the Law on Electronic Media of Montenegro does not mention any provision containing such authorization assigned to the regulator.

In addition to the general responsibilities, Article 70 paragraph 4 gives the Macedonian regulator a special obligation. If there are free radio frequencies or if there is available space for new TV services in the digital terrestrial multiplexes, the regulator needs to conduct a study before announcing an open public competition in order to check the justification for granting new licenses, taking into account the objectives of the law and the needs of the audience. Such studies, prior to the announcement of a public competition for granting licenses, were requested by the regulator on three occasions: in December 2015, in August 2016 and in March 2018.

The regulator in Montenegro does not have a specific legal obligation to conduct analyses for the needs of the audience or for the market situation before announcing an open public competition for granting radio or television licenses. The Montenegrin regulator has not done this in practice to date.

The Agency for Electronic Media of Croatia has a legal obligation and, as part of its activities, regularly conducts analyses and research of the media sector: the radio market, the influence of the fund for encouraging pluralism and diversity and the market for electronic publications accessible to the general public via the Internet.<sup>14</sup>

<sup>10</sup> Magdalena Dolveva, Head of the Department for research and long-term development in the Agency for Audio and Audiovisual Media Services, interview with the author of the analysis, 15 March 2017.

<sup>11</sup> Available at: <http://www.delmne.ec.europa.eu/upload/CG%20JUFREX%20Analiza%20medijskog%20sektora%20MNE%2005042018.pdf.pdf>.

<sup>12</sup> Jadranka Vojvodić, Deputy Director of the Agency for Electronic Media, interview with the author of the analysis, 20 February 2018.

<sup>13</sup> Damir Hajduk, President of the Council for Electronic Media of Croatia, answer to the author of the analysis in writing, 24 March 2018.

<sup>14</sup> For example, the Electronic Publication Market Analysis for the requirements of the Croatian regulator prepared by the Institute for Development and International Relations from Zagreb, in 2017. See: <http://www.irmo.hr/hr/publikacije/studija-analiza-trzista-elektronickih-publikacija/>

### 3. POWERS AND MECHANISMS OF THE REGULATORY BODIES FOR SHAPING STRUCTURAL PLURALISM

This section provides an overview of all specific powers or mechanisms by which the regulator can effectively coordinate and shape structural pluralism: adopt by-laws, grant licences, monitor and prevent unauthorized media concentration, perform supervision with respect to the implementation of the law and impose measures and sanctions. The second part of this chapter presents the views of the regulators on the type of licenses to be allocated on the market and the efficiency with which they should supervise the fulfilment of the requirements of the law and the licenses.

#### 3.1 Traditional powers of the regulatory bodies

In order to influence the shaping of structural pluralism, regulatory bodies need to be given a number of other powers or mechanisms with the help of which the specific goals are to be met. We are talking primarily about the traditional powers of the regulatory bodies, which are mentioned in the first documents of the Council of Europe:<sup>15</sup>

- power to adopt by-laws;
- power to grant or revoke radio and television licences or approvals for audiovisual media services;
- power to supervise the implementation of the provisions of the law;
- power to monitor and prevent the unauthorized media concentration;
- power to undertake measures and to impose sanctions.

We can see that the three regulators have almost all the necessary general powers provided by key European documents. For example, **the power to adopt by-laws** is important for shaping structural pluralism because regulators can make rules and decisions that will regulate the following, in detail: the procedure for granting licenses or approvals for performing audiovisual broadcasting activities, the formats of radio or television programme services, the technical, financial, spatial and staffing conditions to be met by the radio and television stations that have been granted licences, etc.

<sup>15</sup> Council of Europe. *Recommendation Rec (2000)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector.*

**Table no. 3 – Overview of the provisions on the specific competences of the regulatory bodies in the three countries**

	MONTENEGRO	CROATIA	MACEDONIA
	Law on Electronic Media	Law on Electronic Media	Law on Audio and Audiovisual Media Services
Power to adopt by-laws	Adopts and conducts by-laws arising from the law. (Article 12, item 10)	Adopts the regulations assigned to them by the law. (Article 69, paragraph 7)	Adopts the acts arising from the law. (Article 6, paragraph 1, line 5)
Power to grant concessions, licenses or approvals for AAVM-services	Decides on the awarding of approvals for providing AAVM broadcasting services and AAVM-services on demand. (Article 12)	Decides on awarding concessions for television and radio broadcasting and issues approvals for radio and TV distribution on the PCN and licenses for AAVM-services on demand. (Article 69,19 and 79)	Decides on awarding licences for television and radio broadcasting and distribution on the PCN and issues licenses for AAVM-services on demand. (Article 6)
Power to supervise the implementation of the provisions of the law and the conditions of the license	Supervises the implementation of the law (Article 12, item 9)	Supervises the implementation of the provisions on the programme principles and obligations stipulated in herewith and in the specific legislation. (Article 69, item 12 and 13)	Performs programme, administrative and exert supervision. (Article 6 paragraph 1, line 12, Articles 27-32)
Power to prevent the unauthorized media concentration	The general competence is not stipulated (Article 12), however Article 14 reads that the Council gives approval for temporal or long-term assignment, leasing or transfer of the approval for providing AAVM-services	Conducts the legal provisions referring to the protection of pluralism and diversity of the electronic media (Article 69, item 11)	Determines the existence of unauthorized media concentrations and approves the change in the ownership structure. (Article 6 paragraph 1, line 7 and Articles 40-43)
Power to undertake measures and to impose sanctions	Is not provided as a general competence (Article 12), however Article 14 reads that the Council adopts an act determining the manner of undertaking measures against the AAVM-service providers	Issues warnings when the provisions of the law or by-laws are not respect and/or files complaints in accordance with the provisions for misdemeanour offenses of this law or the Misdemeanour Law (Article 69, item 6)	Takes measures in cases of breach of the provisions of the law, by-laws and licenses (warnings, requests for filing complaints for misdemeanour offenses, proposals for cancelling their license, erasing them from the registry) (Article 6 paragraph 1, line 3 and Article 23)

The powers of regulators to follow and to prevent the **unauthorized media concentration** were traditionally given to them to protect pluralism, first and foremost. Therefore, the chapters in the legislation concerning the illegal concentration and the measures taken by the regulators commonly bear the title “*protection of pluralism and the diversity of electronic media*”,<sup>16</sup> that is, protection of pluralism and the diversity of audio and audiovisual media services.<sup>17</sup> The provisions regarding unauthorized media concentration in all three analyzed laws are similar and primarily concern the prevention of concentration of ownership of audiovisual media services, in order to prevent excessive influence of one or a group of media on the public opinion. However, today’s configuration of the media environment in which there are many service providers and many transmission platforms has completely changed the logic of the economic func-

<sup>16</sup> Law on Electronic Media of Montenegro, Heading VIII, Articles 129-135 and the Law on Electronic Media of Croatia, Heading V, Articles 52-62.

<sup>17</sup> Law on Audio and Audiovisual Media Services, Heading IV, Articles 34-43.

tioning of the audiovisual sector and imposed a need for new mechanisms that can be used in identifying and assessing the overall impact of larger communication groups on the public opinion. For example, assessing the concentration of the audience has become one of the often applied mechanisms in the last two decades in different countries.<sup>18</sup>

In the interviews with the representatives of the regulatory body in Macedonia, the emphasis was on the fact that the general competence of the regulator to ensure the existence of various audiovisual media does not mean much if the law does not define clear mechanisms for achieving that objective. For example, the provisions for preventing the illicit media concentration in the current Law on Audio and Audiovisual Media Services “... tie the regulator’s hands because they are poorly defined and can be interpreted differently, which results in an obscure understanding of the current or potential new market participants as to the framework in which they can develop their business activities”.<sup>19</sup> In addition, some of the provisions are already obsolete and have no meaning in the current media environment. Such is, for example, the ban on owning a television station and a daily newspaper introduced to prevent too much influence on the public opinion. However, given the fact that in Macedonia, the number of daily newspapers published in hard copy and their circulation has been significantly reduced, a question arises as to the appropriateness of such a ban.

The authorization to grant licenses or approvals for the provision of audiovisual media services is probably the most important mechanism by which regulators can influence the number, type, or format of audiovisual services in the media picture. All three regulators subject to the analysis have such authorizations in the general provisions of the laws, and the following item specifies the various types of audiovisual media services and the procedure followed by the regulator in detail when giving licences or approvals.

The supervision over the fulfilment of legal provisions and licence conditions, together with the ability to impose measures and sanctions, are just as important when it comes to the influence of the regulator on pluralism and on the development of the audiovisual sector. The performance and efficiency of the regulator in supervising and insisting on compliance with the conditions laid down in the licences can greatly help improve the quality of the content and lead to the presence of only the players that really have serious potential and professionalism in the performance of this broadcasting activity.

### **3.2. Positions and practices of the regulators in awarding licences and performing supervision**

The issue that is often raised when it comes to the regulators’ role in shaping the media picture is to what extent they should influence the development of the industry, that is, what is the number of licences they should give to the market. Since the beginnings of the liberalization of the broadcasting sector, some authors felt that the granting of new licenses should be carried out slowly and carefully, taking into account, first and foremost, the demands of the audience and the potential of the market, as that could create a healthy basis for the economic development of the sector.<sup>20</sup> Still, in the countries of our region, such as Bosnia and Herzegovina, Serbia and Macedonia, regulators were established only after a significant number of private radio and TV stations had already emerged on the market, thus placing them in the position to “legalize” the already existing (unregulated) number of broadcasters. The current director of the regulatory body, Zoran Trajchevski, believes that in the first years when the Government made the final decision regarding the concessions, on the proposal of the then Broadcasting Council, too many concessions were awarded, and this still remains as the main problem in the development of the broadcasting sector in Macedonia, since the funding sources that came from the advertisements were practically insignificant for the huge number of media.<sup>21</sup> Moreover, the advocates of the free market economy argued that it was better to allocate as much licences as possible, and then leave the market to do the work. The examples from the region have shown that nobody benefits from this - neither the service providers, nor the advertisers, and not even the audience. Many domestic media competed for the little advertising resources and could not afford to invest in quality domestic production, but rather broadcast cheap imported programmes.

<sup>18</sup> Almiron, N., Llorens, C., Segovia, A. I., Bas, J. J., Grau, H. P. and Suárez, R.. “External Pluralism Protection in Five EU Countries and the US: The Regulatory Authorities’ Views.” *Observatorio (OBS\*)* 6, no. 1 (2012), p. 3

<sup>19</sup> Magdalena Dovleva, interview with the author of the analysis, 15 March 2018.

<sup>20</sup> Salomon, E. *Guidelines for broadcasting regulation. Commonwealth Broadcasting Association*, 2008, p.28.

<sup>21</sup> Zoran Trajchevski, Director of the Agency for Audio and Audiovisual Media Services, interview with Vesna Nikodinoska, researcher at the Macedonian Institute for Media, 19 March 2018.

Digitalization and convergence have completely changed the way audiovisual content is transmitted, as well as the behaviour and habits of the audience. In the period after 1990, in addition to the channels of the public service broadcaster, the Macedonian audience watched the domestic licensed TV channels without compensation, which broadcast their programme through analogue terrestrial transmitters. With the expansion of cable networks, many households gradually joined this platform and, in addition to the domestic TV channels, a large number of foreign channels could be viewed, for a certain fee. With the digitalization of terrestrial television, which ended in June 2013, domestic TV broadcasters became only providers of the AVM services, and the transmission for them began to be performed by the operators of digital terrestrial networks on the national and regional level. However, due to the fact that their programmes are relevant and the domestic audience is interested in them, they are also transmitted by the operators of the cable networks, as well as by the operator of the IPTV-platform. Market conditions are becoming more and more difficult for domestic TV channels, not only because of competition from foreign channels (subtitled for the local audience), but also due to the huge offer of audiovisual content that is directly accessible to the audience on the Internet. In such conditions, it is a true challenge for the regulators to stimulate the development and diversity of domestic audiovisual services, as they are key to meeting the informative and cultural interests and needs of the audience.

In the interviews conducted with representatives of the three regulatory bodies, questions were asked about their position and practices related to the granting of licenses to the commercial audiovisual media and the supervision with respect to the fulfilment of the conditions set in the license: (1) what criteria the regulator follows in deciding whether to announce a tender for new licences for terrestrial broadcasting or for cable distribution, that is, whether consideration is given to the number of TV broadcasters that should be present on the market; and (2) how the regulator acts when some broadcasters do not fulfil their basic obligations, especially when they do not pay the license fee.

In Montenegro, the general position of the regulator is that when there are free frequencies, they are obliged to advertise them, since the entry of new entities on the market must be open because it stimulates competition and can bring quality. They do this periodically when they collect more free frequencies, but before they begin to advertise the free frequencies, they do not conduct a market analysis or an analysis of the needs of the audience.<sup>22</sup> The situation is very complex in the TV sector. The regulator can no longer influence the pluralistic media picture through the granting of TV broadcasting licences since only about 12% of households have access to TV via digital terrestrial platforms. It may be somewhat affected by the issuance of TV approvals for distribution through the PCN, since the law specifies the applicant's obligations to state the programme, technical, organizational and other resources needed for broadcasting the TV service. But, this impact is limited because the applicant has the freedom to decide what kind of service they would broadcast, since the approval is granted on their request, not with the announcement of the competition. There are even reactions from the entities that apply that the requirements in the Montenegrin law are too stringent even now, especially since the providers of these AAVM services should fulfil the same programme obligations as those for DTTs.

Therefore, the position of the Montenegrin regulator is that it is not justified to introduce or define "quotas" for certain types of audiovisual media, i.e. broadcasters, although it is generally believed that in Montenegro there is an unsustainably large number of radio and television programmes. They consider that the regulator can influence pluralism by striving for consistent application and observance of the prescribed conditions in the authorizations for broadcasting with regard to the undertaken programme obligations, the protection of minors, the payment of compensation or other obligations. Yet, the development of the sector and the promotion of pluralism and diversity should be done "by creating and applying a transparent, predictable and sustainable media assistance programme through programme grants for scarce content".<sup>23</sup>

In Macedonia, the regulator has inherited a state of overcrowding of TV licenses on the market, which has been lasting for years and is due to the practice of the past to constantly issue new ones, and to rarely revoke the existing licenses. The current regulator seeks the opportunity to somewhat solve this problem, by revoking the license to the broadcaster when they do not meet the basic conditions, but the number of broadcasters on the market is still too large.<sup>24</sup> Another problem is that in the past, sometimes, out of political reasons, other competent institutions did not cooperate sufficiently with the regulator, i.e. they did not

<sup>22</sup> Jadranka Vojvodić, interview with the author of the analysis, 20 February 2018.

<sup>23</sup> Jadranka Vojvodić, interview with the author of the analysis, 20 February 2018.

<sup>24</sup> Zoran Trajchevski, Director of the Agency for Audio and Audiovisual Media Services, interview with Vesna Nikodinoska, researcher at the Macedonian Institute for Media, 19 March 2018

accept the strategic documents or did not include them in the drafting of laws. One specific example is the adopted transitional provisions of the Law on Audio and Audiovisual Media Services of December 2013,<sup>25</sup> without consulting the regulator, according to which all licenses for performing broadcasting activity were to be replaced with new licenses for the television and radio stations, valid for additional 9 years. In this way, the regulator was prevented from assessing which of the broadcasters had fulfilled their basic conditions for issuing a license, i.e. and instead the regulator was “ordered” to automatically issue new licenses.

Since the adoption of the Law on Audio and Audiovisual Media Services in 2013, the Macedonian regulator has not granted any new digital terrestrial broadcasting licenses for national television channels, although requests have been submitted on two occasions. Despite the fact that after the first and second request, a study was conducted on the justification for issuing an open public competition,<sup>26</sup> the regulator did not decide to announce a competition for issuing new TV licenses. A new request for granting such a license was sent by TV 24 Vesti (owner of a license for television broadcasting via cable), after which the regulator commissioned a new feasibility study for the issuance of an open public competition.

But, in terms of granting licenses for a television service intended for cable distribution, the situation is different. Given that the granting of these licenses is for a relatively unlimited resource, the regulator does not have to announce a public competition and cannot set such restrictive conditions like the conditions for the terrestrial digital broadcasting licenses. In the period from 2014 to 2017, the regulator assigned a total of 20 new licenses, five of which at the state level, 12 at regional level and three at local level.

The position of the Macedonian regulator is that the entry of new entities on the market cannot be restricted, especially when it comes to licences intended for distribution through a cable network, but the only way to influence the number and quality of programme services is to “*monitor the fulfilment of the conditions of the license, and in particular the implementation of the programme obligations determined by the approved programme concept*”.<sup>27</sup> In the period from 2014 to 2017, the reason for the revoking of licenses was most often the non-payment of the license fee, so the number of broadcasters at the beginning of 2018 has significantly reduced compared to the previous years. A total of 10 licenses were cancelled due to non-payment of the fee, and one due to the lack of data or the existence of certain legal obstacles for performing the activity.<sup>28</sup>

Still, the existing legal provisions regarding the revocation of licenses are poorly formulated and do not give the regulator a clear legal argument for initiating a procedure for revoking the license on other grounds as well, especially if the holder does not fulfil the programme conditions. Namely, the Agency may initiate a procedure for revoking a license if the license holder fails to submit a report on the fulfilment of the requirements of the programme concept, but not if the regulator themselves have determined, on the basis of their monitoring, that the broadcaster does not broadcast a programme in accordance with the approved programme concept. Although Article 67 paragraph 6 of the Law on Audio and Audiovisual Media Services stipulates that the broadcaster is obliged to fulfil 80% of the programme concept for which the license has been issued, Article 82 does not stipulate such grounds. Therefore, in the past four years, the Agency has not initiated any procedure for revoking the license on the basis of non-fulfilment of the approved programme concept.

#### 4. STRUCTURAL PLURALISM IN THE TELEVISION SECTOR – THE BROAD PICTURE

This section provides an overview of the different types of AAVM services and the modes or conditions under which an entity can provide these services. Moreover, on the basis of the available documents and the results of the interviews, the fourth heading presents the vision of the three regulators for structural pluralism in the audiovisual (i.e. the television) sector, if such a vision exists in a formal document, and the end gives a comparative overview as to the real picture of structural pluralism in the audiovisual sector of the three countries.

<sup>25</sup> Law on Audio and Audiovisual Media Services, Article 154 paragraph 2.

<sup>26</sup> The first study was published in December 2015, and the second in August 2016. Both studies are available at the web-page of the Agency: <http://avmu.mk/istrazuvanja-studii-tv-so-konk/>.

<sup>27</sup> Emilija Janevska, Head of the Department for Programme Affairs in the Agency for Audio and Audiovisual Media Services, interview with the author of the analysis, 15 March 2018.

<sup>28</sup> The decisions for cancelling the licences are available at: <http://avmu.mk/dozvoli/odzemeni-prestanok-na-dozvoli/>.

## 4.1 Different AAVM-services and licensing procedures

Today, we are not just talking about broadcasting services, i.e. the transmission of programmes only through traditional radio or television channels. We are also talking about the fact that the possibility of obtaining audiovisual content has expanded extensively with the emergence of the Internet and digital transmission modes. To this end, the Audiovisual Media Services Directive (previously the Television without Frontiers Directive), which has been transposed into the national laws of all European countries, now regulates the rules for all audiovisual services, both for traditional television (linear service) and audiovisual media services on request (non-linear services).

The regulatory bodies in charge of implementing these rules at national level issue different types of licences or approvals under different conditions, depending on whether it is a service transfer over a limited resource (analogue radio frequencies or digital terrestrial multiplex) or through a resource which is technically relatively unlimited (cable network, IPTV, satellite, internet, etc.). In addition, the regulators are also authorized to issue certificates or notify audiovisual media services on demand, i.e. the so-called non-linear media services. The definition of these services stems from the Directive itself and is incorporated in the national laws of all three countries. For example, the Law on Audio and Audiovisual Media Services of Macedonia stipulates that the media service is non-linear “... which provides viewing of programmes at a time chosen by the user and at his/her individual request, on the basis of a catalogue of programmes selected by the media service provider...”.<sup>29</sup>

In all three countries subject to this analysis, the conditions under which an entity may carry out radio or television broadcasting activities through a limited resource are more restrictive than those where the broadcasting (or distribution) of radio or TV services takes place through an electronic communications network, whether it is cable, IPTV or a satellite platforms. More specifically, for broadcasting radio or television programme services through analogue radio (for radio) or digital terrestrial multiplex (for radio and television) in all three countries, a public competition with very restrictive criteria should be first announced, which contains the diversity and pluralism to which the applicant might contribute. In Croatia, the regulatory body awards ‘concessions’, ‘licences’ are granted in Macedonia, while in the Montenegrin law this document is called ‘approval’.

When it comes to the establishment of a radio or television programme service provider intended for distribution through cable, IPTV or satellite platforms, no public competition is announced in all three countries, rather the license (Macedonia) or the approval (Montenegro and Croatia) is granted/awarded. However, regardless of the fact that no competition is announced, applicants who apply for such programme services also have to meet certain programme, technical, organizational, staffing and administrative requirements. For example, in Montenegro applicants for this type of AAVM services should submit, inter alia: “an organizational chart and systematization of the job positions that the applicant intends to provide so as to meet the technical and programme requirements ...”, as well as a “programme basis with data on the scope and structure of the programme content (diversity, participation of their own production, European audiovisual works, independent production)”.<sup>30</sup>

<sup>29</sup> Law on Audio and Audiovisual Media Services, Article 3, paragraph 1, item 4.

<sup>30</sup> Law on Electronic Media of Montenegro, Article 102, paragraph 2, items 3 and 4.

**Table no. 4 – Overview of the provision on the procedures for awarding licences and approvals for AAVM services**

	MONTENEGRO	CROATIA	MACEDONIA
	Law on Electronic Media	Law on Electronic Media	Law on Audio and Audiovisual Media Services
Concessions, licenses or approvals for radio service providers	Approvals for radio stations broadcast on radio-frequency (analogue) or distributed via the digital terrestrial multiplex are awarded on open public competition.  (Article 99)	Concession for radio stations broadcast on radio-frequency (analogue) or distributed via the digital terrestrial multiplex are awarded on open public competition.  (Article 73, paragraph 1 and 2)	Licenses for radio stations broadcast on radio-frequency (analogue) or distributed via the digital terrestrial multiplex are awarded on open public competition.  (Article 69, paragraph 1)
Concessions, licenses or approvals for TV service providers	Approvals for TV channels broadcast through digital terrestrial multiplex are awarded on open public competition.  (Article 99)	Concessions for TV channels broadcast through digital terrestrial multiplex are awarded on open public competition.  (Article 73, paragraph 1 and 2)	Licenses for TV channels broadcast through digital terrestrial multiplex are awarded on open public competition.  (Article 69, paragraph 2)
Licenses for radio or TV service providers distributed through the Public Communication Network (PCN)	Approvals for radio or TV stations intended for distribution through the electronic communication network are awarded without an open public competition.  (Article 103)	Approvals for radio or TV stations intended for distribution through the public communication network (cable, IPTV, satellite and other) which neither have concession, nor are AAVM-services on demand are awarded without an open public competition.  (Article 69, item 12 and 13)	Approvals for radio or TV stations intended for distribution through the public communication network (cable, IPTV, satellite) are awarded without an open public competition.  (Article 69, paragraph 3)
Licenses or notification for AAVM-services on demand	For performing audiovisual media services on demand, the Agency issues approvals or based on the public competition (when the service is provided via land radio-frequencies) or on demand (when the service is provided via the PCN).  (Article 116)	For performing audiovisual media services on demand, the Agency issues approvals upon reporting the services in a separate form.  (Article 19)	For performing audiovisual media services on demand, the Agency issues approvals on request.  (Article 56)

With respect to the non-linear audiovisual services in Macedonia, the regulator issues a certificate and lists the providers of such services in the appropriate register, and in Croatia the regulator issues an approval and registers the service in the appropriate register. In Montenegro, the regulator does not issue a separate certificate or approval, but the operator of the public communication network that offers the service receives an approval for the whole programme package of linear TV channels, including the catalogue of TV programmes offered on demand. The Montenegrin regulator does not keep a special register of these services.

#### 4.2 Vision on structural pluralism and the strategic objectives of the regulators

Of the three countries, only the Republic of Macedonia has a strategic document that records the vision for the development of structural pluralism. However, as mentioned earlier, the main problem is that this strategy as a document is not adopted by the Assembly, and therefore it does not oblige the

other institutions to act in a coordinated manner and take measures that encourage the development of the entire audiovisual sector. In the Draft Strategy for Development of the Broadcasting Activity for the period 2013-2017, the regulator himself outlined his vision of how structural pluralism in the audiovisual sector should look, among other things. It concludes that the broadcasting sector is diverse, in the sense that in addition to the public broadcasting service, there is a commercial and non-profit sector, and the audience has access to non-linear services. However, it is assessed that “despite the large number of media, there is a need for increasing the diversity and quality of the programme offer”.<sup>31</sup> For that purpose, a number of measures have been proposed, among which the following are the most important for structural pluralism: give MRT the opportunity to offer specialized services, based on the financial conditions and needs of the audience; stimulate the development of specialized programme services in the commercial sector; motivate the media at the local and regional level to provide information on local and regional topics and events; prepare a separate document on the development of non-profit broadcasting institutions; stimulate the development of multiethnic media, etc.

In Croatia, from the beginning of 2018, the Ministry of Culture, in cooperation with the regulatory body, started working on the media strategy of the Republic of Croatia. Pluralism as a concept and as a regulatory goal is inscribed in the general provisions of the Law on Electronic Media, and in terms of the obligations of the public service it is also contained in the agreement between the Government of the Republic of Croatia and the Croatian Radio-Television. In the context of the commercial television sector, although the strategic document has not existed in the past, the regulatory agency was guided by the principle of determining the public interest before deciding to award a new TV concession on a national or regional level. For example, in accordance with the Law on Concessions, the Council of Electronic Media conducts preparatory actions that consist of: (1) announcing a public call to determine whether there is interest in opening a new medium in the area of the concession between and among the local stakeholders, associations, institutions and other entities; and (2) elaborating a feasibility study setting on the public interest and economic justification. Only then can the Council decide to announce a public call for application by interested parties. Moreover, in the analysis of the submitted requests for new TV concessions, the Council also takes into account the existing situation with the pluralism in the area of the concession. There were cases when a competition for a national TV-concession was announced, but the Council did not award it to any candidate because the offers were not qualitative in terms of media pluralism, although the market and economic conditions were met.<sup>32</sup>

In Montenegro, no strategic document or programme for the development of the audiovisual sector has been adopted to date, although according to the Law on Electronic Media,<sup>33</sup> the regulatory body prepares a draft-programme for the development of the sector adopted by the Government of Montenegro. During 2017, with the support of the Council of Europe and the European Commission, a group of foreign experts were engaged in the preparation of a major study of the Montenegrin media sector, which the regulatory body would use as the basis for drafting the text of the draft programme. The Working Plan for 2018 emphasizes that the Agency plans to prepare a draft programme for the development of the sector of AAVM services, based on extensive inter-departmental consultations in order “to optimally coordinate activities and measures for development of the legal framework, as well as the general environment for the development of certain segments of this sector”.<sup>34</sup>

### 4.3 The actual situation with structural pluralism in the television sector

Table no. 5 presents the indicators on the number and type of domestic television channels in the public and commercial sectors of the three countries, given that television is still a the dominant and the most influential medium in the three countries. Using the licensing mechanism, and relying on some strategically created policy and vision, the regulatory bodies should ensure that the audience receives a variety of domestic television services that would satisfy the general information, education and entertainment needs of the viewers, as well as meet the specific cultural needs of certain segments of the audience and develop the cultural identity and domestic audiovisual work in the three countries.

<sup>31</sup> Agency for Audio and Audiovisual Media Services. Draft Strategy for Development of the Broadcasting Activity for the period 2013-2017. (Skopje, Agency for Audio and Audiovisual Media Services, 2013).

<sup>32</sup> Damir Hajduk, answer to the author of the analysis in writing, 24 March 2018.

<sup>33</sup> Law on Electronic Media of Montenegro, Article 7 and Article 12, item 1.

<sup>34</sup> Working Plan of the Agency for Electronic Media of Montenegro for 2018. Available at: [http://www.ardcg.org/index.php?option=com\\_docman&task=cat\\_view&gid=58&Itemid=26](http://www.ardcg.org/index.php?option=com_docman&task=cat_view&gid=58&Itemid=26).

In the structural pluralism of all three countries, public TV channels should have a very important place, provided that sound financial, programme production, technical and other conditions for the development of the public service are provided. In Macedonia and Montenegro, the public service has two television channels, with the second TV service in Macedonia intended for the programmes of the ethnic communities.

The Montenegrin public service uses the second TV channel, in addition to the first one which is mostly informative, in order to meet its obligation to broadcast a diverse programme intended for all segments of the audience in its entirety, i.e. it broadcasts programmes intended for children, educational programmes, culture programmes, sports programmes and other programmes that are not broadcast on the first service. In Macedonia, the public service broadcaster cannot fulfil these functions even in Macedonian, because there is one TV channel, which is not enough to fulfil the obligations with respect to the universality and a variety of programmes. For example, the first service must primarily fulfil the informative function in prime time, and when an important sports or cultural event needs to be covered, it lacks the space. In Croatia, the public service not only broadcasts two TV services available to fulfil these functions, but also has another TV service (HTV 3) which features a variety of genre programmes designed for all segments of the domestic audience.

The public service broadcaster, among other, is obliged to provide programmes with regional and local information. This function in Montenegro is accomplished by three television public service broadcasters on a local level, in addition to the large number of local radio stations. In Croatia, there are no separate legal entities with a public service broadcasting function at the local level, but this obligation is accomplished by the Croatian Radio-Television, which includes several regional centres and several local radio stations that produce information programmes from different areas of the country. There are no public service broadcasters at local level in Macedonia, but the Macedonian Radio and Television is obliged to establish regional production centres with the Law on Audio and Audiovisual Media Services (Article 104, item 6), however, such centres or studios have not been established within MRT so far.

In the overall media picture, commercial TV channels are as important since they should provide the public with alternative sources of information and a variety of programme offers. This does not mean that all licensed TV services should be similar to each other, that is, some of the channels can offer a quality source of information to the audience, while others should be of a specialized type and offer thematically shaped scarce content missing in the entire landscape. It is also important that the regulators take care of the variety of formats and the need of the audience so as to ensure greater participation of domestic programmes in the licensed services.

**Table no.5 – Overview of the awarded licences and approvals to TV service providers in the three countries**

	MONTENEGRO		CROATIA		MACEDONIA			
Public service broadcaster TV-channels on the national level and via satellite	2	- Prvi program - Vtori program	4	- HTV 1 - HTV 2 - HTV 3 - HTV 4 (satelitski servis) - HTV 5	3	- Prv servis (Macedonian language) - Vtor servis (languages of the Ethnic communities) - Tret servis (Assembly channel)		
	1	- Satelitski program			2	- Prv satelitski servis - Vtor satelitski servis		
Public service broadcaster TV channels on the local level	3	- TV Budva - TV Pljevlja - TV Nikšić	0	There is no public service broadcaster on the local level. HRT has regional centres that broadcast programmes with regional and local content.		0	There is no public service broadcaster on the local level. MRT is obliged by law to establish regional production centres, however currently such centres do not exist.	
TV-channels on the national level broadcasting via the DT multiplex	3	- ТВ Прва - ТВ Вијести - ТВ Пинк М	7	- CMC TV (music) - Sportska TV - Doma TV (for children and youth)	- Nova TV (general) - RTL2 (entertainment) - RTL Kockica - RTL TV (general)	5	- Sitel (general) - Kanal 5 (general) - Telma (general) - TV Alfa (general) - Alsat M (general)	
TV-channels on the regional level broadcasting via the DT multiplex	4	- TV Bojn (Podgorica, Uljcin) - TV Glas Plav - TV Sun B. Polje - TV Teuta Uljcin		- DU TV - Kana RI - Trend TV - LTV - Srce TV - NET - Osječka TV - Jabuka TV - TV Zapad	- TV Dalmacija - TV Jadran - STV - TV Šibenik - TV Istra - Tv Nova - Varaždinska - Plava TV - Plava Vinkov. - Zed1 TV	- TV Edo Skopje - TV Era Skopje - TV MTM Skopje - TV Shutel Skopje - TV Skopje	- KTV Kavadarci - K3 Kumanovo - Sitel 2 Kratovo - TV Kiss - Tetovo - TV Koha Tetovo	
TV-channels on the national level broadcasting via satellite	0	There are no specially issued approvals.		The Agency issues approvals for transfer of the AAVM-services for broadcast via satellite, cable, IPTV, internet and other.		4	- TV 24 Vesti - TV Kanal 5 plus - Nasha TV - TV Sonce	
TV-channels on the national level broadcasting via the public communication network (cable, IPTV, Internet and other platforms)	6	- TV Atlas - TV Korona - Novi TV - 777TV - Srpska TV - CHANNEL 1	30 <sup>+...<sup>35</sup></sup>	- Stop TV - EmBeCetv - 24sate TV - Jugoton TV - Klape i tambure - Top Music TV	- Dozhivjeti 100-tu - DeEmCe TV - Školska televizija - Full TV - Hit TV...	4	- TV 21 - TV Shenja - TV Nova - Art kanal	
TV-channels on the regional level broadcasting via the public communication network (cable, IPTV)	0	There are no specially issued approvals.		There are no specially issued approvals.			- TV Amayon Skopje - TV Tera Bitola - TV M Ohrid - TV Star Shtip - Tv Iris Shtip - Telekanal 1 - Strumica	- TV Kanal Vis Strumica - TV Kobra Radovish - TV Uskana 1 Tetovo - Topestrada Tetovo
TV-channels on the local level broadcasting via the public communication network (cable, IPTV)	0	There are no specially issued approvals.		There are no specially issued approvals.			- TV Festa Kumanovo - TV Hana Kumanovo - TV Nova Gevgelija - TV Kochani LD - Kanal 8 Kochani - Protel Probishtip - Kanal 21 Veles - TV Zdravkin - TV Svet Sv. Nikole - TV Kanal Vizija Prilep - TV Orbis Bitola	- TV Moris Ohrid - TV Kaltrina Struga - TV Spektra Labunishta - Dibra TV Debar - TV Gura Kichevo - TV Anisa Plasnica - TV Due Gostivar - G-TV Gostivar - TV Plus Kumanovo - TV Uskana Kichevo

<sup>35</sup> The Croatian Agency for Electronic Media has issued more than 30 approvals for linear audiovisual services with domestic content that can be rebroadcasted on the cable network, IPTV-platform, Internet, satellite or any other platform. Most of these services have a specialized format: music, sport, educational, religious content, health, etc. In addition to these services, more than 20 approvals have been awarded for audio visual services that purchase and broadcast foreign content programmes (films, sports, documentaries, etc.).

The national-level television channels intended for transmission via digital terrestrial networks are the most important segment in the commercial sector because they use broadcasting frequencies, which are a limited resource, although digitalization has allowed a number of programme services to broadcast on a single broadcasting frequency. Licensing these services takes place through a competition and hence regulators can impose more serious programme obligations on these channels and influence the diversity of programme formats and content offered to the audience. Also, these channels, due to the coverage of the license, are transmitted through the IPTV platform and the cable networks, so they reach the majority of the audience and hence are an exceptionally important segment for creating a plural media image in the TV sector.

The manner in which digitalisation of terrestrial television channels has been carried out in each country, apart from the technical aspect, has a very important social aspect as well – the manner in which it would affect freedom of expression and media pluralism. The free space opened with digitization has been used by many countries to open TV channels that would offer new domestic content to the audience and enrich the existing offer. Some countries, however, did not implement this process very wisely in the direction of preserving the public interest, and allowed digital terrestrial network operators to retransmit “new” foreign TV channels or awarded licences to new domestic channels with the same or similar programme offer to the existing ones.<sup>36</sup> Thus, the audience in those countries did not get anything different and new, and this only created unnecessary or unhealthy competition to the existing TV channels.

The review of the national-level TV services in the three countries concludes that the social aspect of digitalization was the main concern in the Republic of Croatia, since the free space of the digitized frequencies was used to license new TV channels that enriched the overall media picture and the audience were offered various formats and contents. Thus, in addition to the TV channels of the public service broadcaster and the two TV channels of general format (TV Nova and RTL television) that existed before the digitalization and offered an alternative source of news coverage to the Croatian Television, the Croatian audience now has access to five more TV channels of specialized format that are intended for different segments of the audience (music channel, programmes for children and youth, sports, etc.). Nevertheless, the specialized channels have obligations to broadcast a large percentage of domestic programmes and, thus, also contribute to fostering cultural identity and developing the domestic production.

In contrast, in Macedonia, in addition to the only TV channel of the public service broadcaster in Macedonian, there are four additional commercial general format TV service providers (Sitel, Kanal 5, Alfa and Telma) that offer news and entertainment programmes. In addition to them, there is another general format television channel, which broadcasts programmes in Albanian and Macedonian (Alsats-M). Although with the first Strategy for the Development of the Broadcasting Activity (2007-2012) the regulator on the basis of the research conducted of the audience noted the need for new specialized services, such licences were not granted in the segment of digital terrestrial broadcasting. The main reason for this was that digitization was carried out in a manner different from that envisaged in the first strategy proposed by the regulator, due to the fact that the Draft Strategy with the digitalisation scenario envisaged in it was not accepted by the competent ministry that was supposed to propose the Strategy to the Assembly together with the necessary draft legal solutions for the implementation of the digitization. Instead, a tender was announced and an approval was granted for an operator of three digital terrestrial networks, obligated to transfer the existing licensed national TV channels, and the remaining free space was granted the right to retransmit foreign TV services instead of leaving room for licensing new domestic TV service providers. One of the possible reasons for abandoning the digitalization scenario set in the First Draft Strategy was the fact that cable television was already quite advanced in Macedonia and the new DTT-platforms for transmission could not be competitive to the cable networks if they only transmitted domestic TV channels. In addition, the role of the regulator was completely marginalized because the regulator was not given the opportunity to intervene in the change of the overall media image via legal amendments by restructuring the licenses of the existing TV channels during their transformation from licenses for broadcasting activities into licenses for programme service providers.

The programme offer presented to the audience in Montenegro is similar to that in Macedonia, as in addition to the public service broadcaster TV channels, there are three other channels of similar (general) format that broadcast mainly news and entertainment via the DTT segment. Specialized TV channels do not exist in this segment of the television market.

<sup>36</sup> Dragomir, M. and Thompson, “*Mapping Digital Media: Global Findings*”. New York, Open Society Foundations, 2014.

The DTT segment at the regional level is also important for structural pluralism because its main function is to offer information and other programmes expressing regional and local specifics to the audience. If there are strong and professional private TV service providers on a regional level, the audience can get more detailed information about everyday life problems. This, of course, depends on the size of the country, the potential of the market, and whether the public service at the state or regional level meets these needs of the audience. When licensing this type of TV service, the regulator should take all these aspects into consideration. The review concludes that this kind of TV service providers cover all areas of the Republic of Croatia equally, while in Macedonia there are several TV channels in the area of Skopje and Tetovo, as well as one TV station in Kumanovo, Kavadarci and Kratovo. The reason for this is mainly located in the fact that the transfer through the regional DTT platforms was financially unsustainable for most of the broadcasters that broadcast their programme on a regional level through this platform, therefore some of them either switched to cable transmission or completely waived the licences.

Only Macedonia has service providers with special satellite broadcasting licenses that reach the domestic audience through a cable or IPTV platform. Their number has been reduced from twelve to four (TV 24 News, TV Kanal 5 Plus, Nasha TV and TV Sonce). In Montenegro, no approvals for such licenses have been issued in general, while in Croatia approvals without competition or on request are granted for different types of transmission (satellite, cable, IPTV, internet or other type of platform), and no distinction is made in the area of coverage. Moreover, only in Macedonia, there are different levels of coverage in the allocation of licences intended for cable broadcasting. The review shows that in Macedonia there are many regional and local TV service providers intended for transmission over the cable networks, which is due to the fact that this type of transmission is financially the most cost-effective for the former broadcasters on local and regional level.

**Table no. 6 – Overview of the domestic non-linear television services in the three countries**

	MONTENEGRO		CROATIA		MACEDONIA	
Нелинеарни ААВМ-услуги на барање	1	- Crnogorski telekom Ekstra TV	10	- HP Produkcija - HRT - Hrvatski Telekom - Iskon internet - Masport media - Nova TV Internet - Nova TV plus - OT Optima Telekom - Pikboks - Vipnet		- Max TV Videoteka - Vip now on demand

Table no. 6 presented the new types of licensed (non-linear) television services that viewers from the three countries can watch on demand, selecting content from a catalogue offered on cable or IPTV. These kinds of services were mostly developed on the Croatian audiovisual market, where the Council for Electronic Media awarded 10 approvals to non-linear service providers.

## 5. CONCLUSIONS

### ***Media pluralism is not clearly acknowledged in the legislation as a regulatory objective in the audiovisual field***

Media pluralism as one of the key objectives of regulation in the audiovisual sector is not clearly recognized in the regulation of the three countries. Although the relevant legislation of Montenegro and Macedonia contains special provisions for the purpose of the law, only the Montenegrin law explicitly mentions that one of the objectives (of the legal regulation) is the development of competition and pluralism. The manner in which the provision on the objectives of regulation in the Law on Audio and Audiovisual Media Services of Macedonia is formulated points to the conclusion that the primary goal of this law is to encourage and protect the competition and the technical and technological development of the media business activity, and not the existence of different media services. The Croatian Law on Electronic Media does not contain a provision in which the objectives of the regulation of the activity are explicitly stated.

The precise formulation of the objectives in the legal regulation is not only a matter of legal technique, first and foremost it is related to the manner in which the “political will” is expressed for the purpose of the legal regulations (*ratio legis*) and for the projection of the effects expected to be achieved thereof. The ambiguously identified regulatory objectives in the audiovisual sector in Macedonia indicate that the laws are not the result of an established media policy and that media pluralism is not yet recognized as a clear regulatory goal.

### ***The development of the audiovisual sector and the media pluralism (in Macedonia) to date did not take place strategically, and it was up to the regulator to implement their own strategic vision***

The protection of pluralism and the diversity of programmes, albeit unclearly defined, is still a task for the regulatory bodies, either as an explicitly stated competence (for the Macedonian regulator) or as a criterion to take into consideration when awarding licenses (for the Croatian and Montenegrin regulators). Yet, the manner in which the provisions on the competences of the Macedonian regulatory body are formulated again indicates that the in drafting the law there was a lack of a clear vision with respect to pluralism as one of the key objectives of the regulatory policy in the audiovisual field.

For the development of structural pluralism it is extremely important if the regulatory bodies are legally authorized to strategically plan and regulate the activity. Only the Montenegrin law states that the regulator prepares a draft programme for the development of the audiovisual activity adopted by the Government of Montenegro. In Macedonia, the previous law contained a provision that the regulator prepares a strategy for the development of the activity, but it was not defined which institution finally adopts, i.e. which institutions, other than the regulator, are responsible for its implementation. Hence, although two strategies for the development of the industry containing comprehensive perceptions about media pluralism were adopted in Macedonia, most of the goals set in them were not implemented. The main reason for this was the fact that for years the role and work of the regulator was perceived through the prism of political parallelism - when the competent ministry was run by a particular political party in power, the regulator was regarded as a body close to the opposition political block, and the tendency was to block all initiatives and to exclude the regulator from the process of policy making. Naturally, this does not mean that the regulator was not used as a political instrument and that, in concrete circumstances, the regulator did not deviate from the strategic vision he had conceived.

### ***The regulators have all the necessary legal mechanisms for shaping the diversity in the TV sector. In Macedonia, the legacy fragmentation of the market, the political and industrial pressure on the regulator had an effect on the aggravation of the overall media image***

The regulatory bodies subject to this analysis have almost all the necessary powers and mechanisms that can influence the shaping of structural pluralism: adopt by-laws, monitor and prevent unauthorized media concentration, grant or revoke licenses or approvals; monitor the implementation of the law and take measures and impose sanctions. The key mechanism is granting television broadcasting licenses, since in that process, the regulators can set criteria in terms of format, genre structure, the share of programmes from their own production, etc. Subsequently, with the supervi-

sion over the fulfilment of these criteria, regulators can influence in raising the quality of content and professionalism in the performance of the audiovisual activity.

The main problem of the countries in the region was that from the moment the regulators started working they were placed in the position to “legalize” the huge number of broadcasters that were already established during the period the announcements were published. In Macedonia, for example, for years, the legacy fragmentation of the landscape had been cited as the reason for the weak financial results and the continuing decline in the quality of the offer of domestic TV stations. The general requirement of all entities incorporated in the first strategy for development of the activity was the rationalization of the TV-market and the moratorium for awarding new licenses in the period pending the digitalization, but instead the regulator, under the pressure from politics and the industry, additionally dissolved the TV-market by granting licences with almost the same formats as the existing formats to the same powerful (and new) media owners tied to powerful politicians.

***Digitization was an opportunity for regulators to reshape the landscape and enrich the offer with local television channels and content. The current picture shows that the audience in Croatia has the greatest access to a variety of general and specialized TV services with domestic content.***

The digitalization of terrestrial television was a huge opportunity for the regulators, with the support of other competent institutions, to change the image in the TV sector. The current picture of pluralism in the TV sector of the three countries largely speaks as to whether during the process of digitization the social aspects of digitalisation were taken into account – i.e. whether the audience got a rich and varied offer of domestic audiovisual services and content. Some countries conducted this process wisely in the direction of preserving the public interest, while others<sup>37</sup> allowed digital terrestrial network operators to retransmit “new” foreign TV channels instead of using the spectrum to open up new domestic TV services. Thus, the audience in those countries did not get anything different and new, and the existing general type TV channels only created an unnecessary or unhealthy competition.

The public service broadcaster should be the leader of the digitization process if it has the adequate financial and technical conditions. Although in Macedonia this was foreseen with the two draft strategies of the regulator, MRT was neither given such an opportunity in the past years, nor did its management have the vision and the plans to enrich the existing ones and offer new specialized services, as is the situation in Croatia. MRT does not even fulfil its basic functions (informative, educational, cultural) because there is only one TV service provider in Macedonia, in contrast to Montenegro and Croatia where there are two TV service providers for that purpose. Moreover, MRT does not have any regional studios to produce information programmes from different parts of the country.

Domestic commercial TV channels, especially national and regional TV stations broadcast through DTT, are of utmost importance for pluralism, as they should provide alternative sources of information and variety of domestic content for the audience. Due to the scope of the license, they are usually (to be) transmitted through the IPTV platform and the cable networks to reach a large part of the domestic audience. Hence, the diversity in this segment is of exceptional importance: among them there should be general type TV channels, which offer a quality alternative source of information for audiences and specialized type channels that offer quality domestic content (programmes for children and young people, music, sports, information about events on a regional level, etc.). However, the picture in Macedonia shows that digitization was not performed in that direction. All five national private televisions are of a general type, very similar to each other, and the volume and quality of domestic content, with rare exceptions, is at a very low level.<sup>38</sup> Regional TV services mainly exist in Skopje, Tetovo and Kumanovo, but the question is how many of them have quality information from the area they cover. As a reminder, both draft strategies specified that the regulator had foreseen the need to introduce specialized programme services and enrich information on local and regional topics and events.

<sup>37</sup> This is the case in Macedonia, where the scenario for digitalization in the first Strategy for Development of the Broadcasting Activity 2007-2012 envisaged using three multiplexes for the existing TV channels and for the introduction of new domestic (specialized) TV-service providers.

<sup>38</sup> Nikodionska, V., Tuneva, M. And Milenkovski, S. Programme Diversity of the Most Influential TV-channels in Macedonia, Croatia and Slovenia. Skopje: Macedonian Institute for Media, 2017.

The reasons for not implementing the strategies are multiple: political parallelism and tensions between the competent ministry and the regulatory body, the intertwining of political and business interests, the conformity and incompetence of individuals responsible for these issues in the institutions, the specifics of the media picture image in Macedonia, and other.

In Croatia, unlike Macedonia, in addition to the public service broadcaster, there are only two other general-type TV channels that broadcast news, while the other five TV channels are of a specialized type designed to meet the special interests of parts of the audience. The digital terrestrial platform in Croatia abounds with a number of domestic regional TV channels (20) covering all of the most important areas of the country. In Montenegro, however, four commercial TV services broadcast regional programmes through the digital terrestrial platform in different regions of the country. Nevertheless, the plurality of the national television segment in Montenegro is very weak as well.

It is also worth noting that only in Macedonia there are licences intended for satellite broadcasting, as well as licenses for cable distribution with different levels of coverage. In other countries, these platforms are issued as approvals and there is no difference between the type of platform and the level of coverage.

## 6. RECOMMENDATIONS

- The Republic of Macedonia needs a comprehensive media strategy, which will include, inter alia, the issue of pluralism in the audiovisual sector and which should be drafted all competent institutions, regulatory bodies and all concerned groups and entities from the media sector and from civil society.
- Based on the strategy, changes in the legislation of the audiovisual field should also be foreseen in order to clearly define the regulatory objectives, powers and mechanisms by which the regulatory body can effectively stimulate and shape structural pluralism. It is particularly important to clearly specify the provisions giving the regulator a clear legal basis for imposing measures if the license holder does not broadcast a programme in accordance with the approved programme concept.
- The media concentration provisions should be revised and updated to encourage the development of the audiovisual sector. It is also important to re-examine the method of calculating the fees for general and specialized type services, because at the moment the rate of the fees does not stimulate the introduction of specialized or thematic channels.
- The Strategy should serve as the basis for the regulatory body in making a special analysis of the situation with structural pluralism, with a plan of the measures and activities that will gradually enrich the number of new domestic channels and contents at both national and regional levels, based on positive experiences in other countries in the region and Europe.
- The public service broadcaster should devise its own vision for transformation into a public broadcasting medium - in order to enrich the programme offer for the audience, increase the number of services and contents that would be present on all platforms and encourage the participation of the audience in the creation of content.
- It is important to encourage technical and technological development and introduction of a large number of non-linear audiovisual services, using the experiences of the countries in which they are successfully developing.

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