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In search for better regulation of transparency of ownership and public financing of media

On the report and methodological framework

This analysis is aimed at giving an overview of current regulations and practice in Bosnia and Herzegovina concerning transparency of media ownership and media financing from the public budget and overview of practice in other countries in order to develop substantial recommendations to improve policies in this area. The analysis and recommendations will be the basis for advocating transparent media ownership and advance forms of financing of media from the public budgets, which will help prevent abuse in these areas and improve media integrity and pluralism.

The research was conducted as a part of the “Media and Public Reputation” project, which recognises transparency of media ownership as an important step towards alleviating the pressure on reporters and editors and protecting freedom of media.

Chapter one of this report deals with the issue of transparency of media ownership, while **chapter two** focuses on direct financing of media from budgets of public bodies. Each chapter is based on analysis of legislative and regulatory framework in Bosnia and Herzegovina, an overview of current practices in BiH and an overview of the EU regulations, policies and practice in other countries, with the focus on good practice. At the end of each section, the report offers recommendations for development of legislative, regulatory and institutional framework in order to break the deadlock around these issues. The analysis is primarily based on secondary research, which included:

- Analysis of laws and regulations governing transparency of media ownership and ownership of companies in the media industry,
- Analysis of laws and regulations governing financing of media from the budget of government institutions,
- Analysis of secondary sources of current practices in BiH relating to transparency of media ownership and media financing from the budget of government institutions
- Analysis of secondary sources about good practices of media transparency and financing of media from the budgets of government institutions in other countries.

Where needed, the analysis was complemented with inputs from the primary research, including interviews (in the part about financing) and information collected through direct contacts with relevant institutions, organisations and individuals (in both part). The primary research analysis also includes consultations with experts (from BiH and abroad) carried out in the form of written comments, individual and group online and *in-vivo* consultations about the concerning issues.



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I Transparency of media ownership

Summary

This report demonstrates a strong need for strengthening the transparency of media ownership and media-related sectors in Bosnia and Herzegovina. The lack of media ownership regulations has resulted in a complete absence of insight about the individuals and interests behind media operations, thus preventing the state to adequately regulate ownership concentration, foreign ownership and conflict of interest in media and related sectors, and finally prevents development of advanced policies that promote good journalism in the service of public interest. Furthermore, lack of ownership-related information creates room for exerting pressures on and influencing editorial autonomy and media contents, keeping them out of sight of general public and thus depriving the citizens of a rational basis to choose the media they will trust.

Relying on international guidelines and experiences of other countries, this report offers recommendations for drafting regulations that will ensure transparency of media ownership as a prerequisite for securing public interest in the communications sector. The recommendations target legislative and/or regulatory solutions, which would:

- Include all media sectors (radio and TV broadcasters, press, online media, news agencies) and related sectors (audience measurement companies).
- ensure transparency not only in view of direct owners and equity shares but also a) information on indirect and beneficiary owners and stakes in media organisations, b) details on interests of a media organisation (and of individual stakeholders) in other companies (especially in other media, ad agencies, major advertisers, audience measurement companies), c) information on stakes of owners of related parties, be it legal entities or individuals (e.g. family members, board members who are also media owners, co-owners of undertakings in which the media owners have a stake), d) information on the main sources of media revenues, e) details about political and other affiliations of owners, as well as f) information on managerial structures and editors-in-chief.
- authorise and capacitate an appropriate institution to collect and publish this information, ideally in a centralised and searchable electronic database, and authorise and capacitate an appropriate institution to monitor reliability of the data and sanction media which fail to submit complete data in a timely manner.
- adopt regulatory standards to regulate: a) excessive concentration and foreign ownership, which threaten the media pluralism and create room for corruptive practice b) conflict of interest in order to make the media ownership incompatible with any position within media regulatory bodies, public broadcasters, functions or positions in legislative, executive or judicial power. It is necessary to ensure monitoring of implementation of these standards.



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It is high time for the competent institutions in BiH to start developing modern media policies in line with the recommendations and best practice of EU to regulate transparency of media ownership. Until the aforementioned system of transparency of media ownership is established, the competent bodies should urgently work towards increasing the transparency of media ownership by using the existing systems of registration of business entities and organisations, publishing the Register of the Communications Regulatory Agency which contain information about electronic media ownership and facilitating the access to information on demand. In addition, the civil sector and the media need to make every effort to collect, analyse and publish data, raise awareness of the importance of media ownership transparency, policy analysis and recommendations, and ultimately advocate adequate policies and monitor their implementation.

Recommendations to increase the transparency of media ownership in Bosnia and Herzegovina

According to the aforementioned, it is necessary to adopt a series of measures that would promote the transparency of media ownership, but also prevent excessive concentration of ownership and promote media pluralism, regulate the proportion of foreign actors in the media ownership, and eventually prevent a conflict of interest and increase the insight into the hidden political and financial interests that affect the media, impairs the already weak and questionable market relations and threaten the integrity of the media system. In short, the transparency of media ownership is of public interest.

In order to make a breakthrough in media policies related to the transparency of ownership, in this document we propose the strategic framework for the relevant publics, including government institutions, the media and the civil sector, and the general public. At the same time, it is necessary to:

- 1. Adopt regulations on the transparency of media ownership;** Common standards of transparency of the companies within the business law are insufficient to ensure significant insights into the information about the owners in the media sector. In addition, there are arguments to advocate the greater transparency of media companies, since they have a crucial role in informing the public, supporting the political debate and influencing the public opinion. The aforementioned non-binding international standards and EU guidelines for the accession countries can also be the starting point for the advocacy of transparency standards. Article 10 of the European Convention on Human Rights and Freedoms, which was ratified and has been in force in B&H since 2002, stipulates the obligation of the State to guarantee effective pluralism, and such obligation should be given concrete expression through domestic legislation preventing illegal concentration of ownership and through the related standards for transparency of media ownership. The Ministry of Communications and Transport of B&H, the Committee on Transportation and Communications in the Parliamentary Assembly of B&H, the Committee on Transportation and Communications in the Parliament of FB&H and the Committee on Education, Science, Culture and Information in the National Assembly of Republika Srpska should launch an initiative for the establishment of the legal



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framework for the transparency of media ownership in consultation with the media industry and the civil sector (NGOs and citizens). The following are more concrete guidelines on what the standards on transparency of media ownership should define:

- a) **Media sectors to which the requests for transparency refer to;** A comprehensive system of transparency can be achieved only if the legislation covers all media sectors (electronic, print, online media) and preferably all media-related companies (first of all advertising agencies, companies that provide information on the viewership/readership/listener ratings/web-site attendance, distributors, etc.). In order to fully encompass the online platforms as well, the request should not be limited to the media which are registered as businesses, but should cover all the platforms with high number of participating authors and where there is editorial control over the contents¹, including the media/platforms of associations and foundations.
- b) **Obligation of all media (radio, TV, print and online) to report information on media ownership and ownership in related activities** to the designated State institution (with competences for collecting this information in all media sectors²), should apply not only to the media themselves (which do not need to possess the information on hidden owners and influences), but also to each stakeholder in a media company (and related activities). At the same time, any kind of abuse of this system of transparency of ownership for the purpose of covert control and supervision over the media should be prevented in a way that the competences of a given bodies should be strictly limited to collecting information on the ownership. In addition, for the same reason, the registration should not be coordinated by the executive power, but the bodies with a higher degree of political independence (institutes of statistics, Agency for Prevention of Corruption and Coordination of Fight Against Corruption (APIK), or CRA-the new competences of which would include the collection of data on ownership for all media sectors). Alternatively, competences in this sense can be divided between CRA (for broadcasters, distribution of the program, companies performing audience measurement), and the Press Council (for the online and print media and the distribution of the press), but in both cases it is necessary to ensure sufficient resources for adequate and comprehensive registration of these entities, as well as the interoperability of databases.
- c) **The scope of information on the ownership;** Legal regulations should guarantee the transparency of ownership all the way to the actual natural persons. Designated State institution should be given information not just on direct owners but also on:

¹ Other platforms should be exempt in order to enable unimpeded freedom of expression of an individual, including the right to anonymity. In addition, the transparency of the media ownership system should not be overburdened in a way that would exceed the realistically achievable capacities. In the development of these standards, it is necessary to consult the recommendations of the Access Info Europe Project, including the specific recommendations, for example, in terms of the proportion of stakes that should be included in the data reporting system, the deadlines for reporting the change of ownership, etc. Ten recommendations on transparency of media ownership, 2013.

² For example, the competences of CRA can be extended in that sense or it may be some other body, such as Croatian Chamber of Commerce in the neighbouring State.



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- *Indirect owners and end users of a given media* (i.e. information on the owners of all legal entities that have a stake in ownership, all the way to the beneficiary owners). This way, the hiding of ownership behind the indirect ownership relations is being limited;
 - *The associated ownership* (the information on any other ownership of all holders of stakes in the ownership of the media, especially the ownership of other media, advertising agencies, major advertisers, the companies that perform measurement of the viewership/readership/listener ratings/web-site attendance of the media);
 - *Related interests of the owners* (for example, information on any functions of the holders of ownership stakes in the media, including the possible managerial or editorial functions in the media or media-related activities or functions within the media regulatory bodies and organizations, the functions in the bodies of political parties, as well as functions in the executive, legislative or judicial authorities);
 - *Legal and natural persons bound by interests* (including immediate family members, as well as associates). What should be made more transparent are the close relations between the two owners of the same media organization. Legal regulations must precisely indicate what types of connection fall under the given legislation;
 - *Significant commercial and political influences, i.e. main income sources of a given media* (especially donations or advertising contracts with the institutions and public companies); This practically means that it is necessary to oblige the media to submit annual reports which contain basic information about the basic sources of income and more precise information on received public funds.
 - For the purpose of disclosing the influences on the media, it is necessary to oblige the media to also submit *information on their leading managers*, including directors, executive directors, editors-in-chief, and the details about voting rights if they are not evenly distributed among the stakeholders in the media company, as well as the Minutes from the general meetings, including voting records (as per the recommendations of the Access Info Europe).
- d) In ideal situation, the law stipulates that the media (and the holders of ownership stakes) have an obligation to submit **documentation that confirms statements related to the above listed items**. In addition, the competent authority has to be empowered to request additional documentation necessary to verify the above mentioned information.
- e) **Prevention of excessive concentration of media ownership** should be a part of this series of measures. In doing so, the aforementioned scope of information on indirect ownership and influences should make it possible to limit not just concentration of nominal ownership but also the concentration of influence through indirect, beneficiary ownership as well as the ownership of associated persons³. It is important to note that with these restrictions, on the other hand,

³ To determine what would represent unauthorised concentration in a particular context, it would be ideal to conduct a comprehensive analysis of the media market, which will take into account the participation of the audience to which the media are intended for, and the total market revenues, but also ownership of the media related sectors (distribution, market research). In the context of the UK, for example, it is said that the limit



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positive measures for the promotion of media pluralism should be developed through specific Government incentives (more about this in the following section)

- f) **The prevention of the conflict of interest;** Media ownership should be made incompatible with any position within the media regulators, public broadcasters, and the duties/functions in the legislative, executive or judicial authorities. More specifically, information about the owners and the interests in the media sector collected through the system described above would have to be used in the process of the appointment of civil servants (at all administrative levels), the appointment of managers and editors in CRA and in the public media (including three public broadcasters, two public news agencies, and a large number of local public television and radio stations), in order to prevent the appointment of the direct, indirect and beneficiary owners and holders of influence on the media companies to these positions⁴. In addition, the data of any indirect interests which political officials have in media companies would have to be made public.
- g) **Regulation of foreign ownership;** The current laws on foreign investments at the State level and at the level of Entities (mentioned above) need to be revised in a way that the standards on the foreign ownership restrictions also include indirect, beneficiary ownership. The spirit of these standards should be based on the preservation of the national character of the mass communications and the preservation of the interests of Bosnia and Herzegovina in this context. The threshold itself of 49 per cent foreign ownership can also be revised⁵, but in any case it is important to ensure that the threshold defined by the law be applicable in practice. For the purpose of ensuring the transparency of foreign ownership over the media and the media-related activities, it is necessary to introduce a ban on media ownership to be held by the offshore companies, the ownership of which is not transparent⁶.

for the allowable concentration of ownership should be 20 per cent for the national newspapers, television, radio and online media (according to the share in the viewership/number of listeners/readership/web-site attendance), or 15 per cent of the total media revenue on the media market. See report: Media Reform Coalition, "The elephant next door: a survey of international media ownership regulations" and other reports at: <http://www.mediareform.org.uk/resources/media-ownership-reports> (Accessed on 20. 10. 2016).

⁴ This includes the necessity of revising the rules on the conflict of interest within the law on appointments of civil servants, as well as regulations concerning the appointment on the managerial positions in CRA, and the procedures of appointment to the positions in the public media. The minimum standards already exist, but they need to be extended to include information about the indirect and beneficiary ownership and related interests (as specified under point b, above). The appointment procedures are supposed to entail that candidates submit a certificate from the database (as described above under points f, and g) of the nonexistence of the conflict of interest in the media sector. The secondary sources suggest that the current procedure of appointment is deeply politicized (See, for example, MSI IREX Reports, Hodžić 2014, etc.).

⁵ Regulations on the foreign ownership restrictions vary in different countries, the threshold generally ranges from 20 to 49 per cent of the ownership over a particular media company, but in general these restrictions are related only to the broadcasting sector. In the EU countries, the restrictions are mostly related to the ownership outside of the European Economic Area, which is also an important fact for BiH as a candidate country. See, for example, Media Reform Coalition, 2013.

⁶ Such ban has been introduced in Georgia, for example, for the broadcasting sector. (Huter 2015, 7)



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h) **Active publishing of information;** Legal regulations should also prescribe the obligation of the media to deliver the same information to the competent authority⁷, to make them available to the public through their web-sites, but also the obligation of the competent State institution (or institutions) to make ownership information easily accessible in a centralised database (or databases). Ideally, this should be done through the establishment of a unique database of the ownership of the media and related activities (advertising agencies, companies that provide data about viewership/readership/listeners ratings, etc.). In terms of procedure, there are different options, the simplest one of which is that media organisations themselves enter the required information into an open online database (similar to the plan of CRA for the establishment of Register of Licensees), or it can be done alternatively or additionally by officers in the competent authority (CRA, Institutes for Statistics and/or APIK/alternatively and PC). For the data contained in the database it is necessary to establish a mechanism of regular updates and reporting on any changes of ownership within a clearly defined period of time. That database should be publicly available, and its use should be as simple as possible. Also, when establishing such a database (or multiple databases, if multiple databases prove to be a more realistic political solution), it is important to ensure clarity of the data and easy use, through the:

- Clear **standards** related to the **format and organization** of the data, in order to facilitate the use and comparison of data;
- **Database searchability**, in order to avoid manual reviews of a large number of documents and facilitate the use of data;
- **Open data format**, which could be downloaded from the website⁸; Original data should be well linked to the data in the database, scanned in .pdf or equivalent format and available for download.

i) **The competence for the implementation and monitoring of standards for the transparency of media ownership.** Legal regulations should include clearly determined responsibility for the collection of information on ownership, responsibility for monitoring and verifying the accuracy of the information and imposing sanctions upon investigation, as well as the responsibility for administering the database and for publishing the data. These questions are usually placed under

⁷ The importance of these measures should be consistently recognized in other segments of media policy. First of all, co-financing from the public budgets should be disabled for the media that do not disclose their overall ownership structure.

⁸ Open format means that the format is independent of the platform and is available without any restrictions that may limit the use of documents and data. The EU Public Sector Information Directive (PSI Directive) defines "machine-readable" format as the format structured in a way so that software applications could easily identify, recognize and extract certain data, including individual data or statements and their internal structure. More in: Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013 amending Directive 2003/98/EC on the re-use of public sector information, *Official Journal of the European Union* L 175/1, 27. 6. 2013.



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the competence of independent State bodies, most commonly, the regulators for the broadcasting sector. In the institutional framework of B&H, the responsibilities of the Communications Regulatory Agency (CRA) in this segment should, therefore, be extended to all media sectors, or be allocated to another government body (such as APIK, Institute for Statistics) or the Chambers of Economy⁹. In addition, the Competition Council of B&H would have to participate in the supervision over the concentration of ownership. In any case, the named institutions need to be provided with sufficient resources for the implementation of the standards of transparency and guarantee political independence and independence from the particular commercial interests (through independent funding, an independent appointment to managerial functions in those bodies, and the conflict of interest prohibitive measures).

- j) Ensuring adequate human and other **resources for the collection, management, evaluation and publication of these data**, in the body or bodies to be entrusted with the specified responsibilities¹⁰.
 - k) **Sanctions for failure to comply with the standards of transparency of media ownership** must also be a part of the legislation. Sanctions should be imposed if the media deliver incorrect information about the owners or fail to deliver information about the change of ownership within the statutory period. Sanctions could be imposed on media companies, individual holders of ownership stakes and responsible persons within the company who knew or had to know about incorrect information or are responsible for the failure to submit information in due course. Sanctions can range from fines, withdrawal of the valid license (for broadcasters) to prison sentences. Authorized State body should conduct regular check-ups of the accuracy of information on ownership (i.e., a random sample check-up of the data), and check-up of received applications related to the ownership, in order to promote the consistent application of the rules of transparency through the monitoring and sanctions.
2. **Adopt interim institutional regulations for the transparency of media ownership**; the above mentioned unified ownership database, as a rule, is considered the best solution, but considering the possible political, administrative and budgetary obstacles, here we also propose interim solutions:
- **Upgrading the already existing databases**; more precisely, a possibility should be considered to include the information on beneficiary owners and related interests in the media sector in: s) court registers of business entities (for media-related activities), b) registers of organizations and foundations (also for the media and related activities), and especially in c) the existing Register of Broadcasters of CRA. At the same time, it is necessary to ensure active publication

⁹ As is the case with the Croatian Chamber of Economy and the Agency for Business Registers in Serbia; Craufurd Smith and Solte (2014, 7) warn of the risk of exploitation for business interests if the private, professional or business bodies be put in charge of data administration; on the other hand, every effort should be made to avoid political influencing through the involvement of political bodies in data administration.

¹⁰ Ideally, assessment of resources should be made for each of the above-mentioned segments of activity and strengthen the capacities of the institutions responsible for them accordingly.



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of information collected through these systems of registration and licensing¹¹, and clear common standards on the format and organization of the data. In accordance with the global increase in requests for greater transparency of companies, what should actually be done through court registers of business entities is to make available the information on the sole owners of companies. For these changes, it is necessary to revise the rules on the registration of business entities and non-profit organizations, i.e. the rules of CRA on the procedures for issuance of licenses for audio-visual services.

- **Abolishing or minimizing administrative fees** for the access to information about the ownership from the court registers.
 - **Facilitating access to information on ownership upon request** through the enhanced enforcement of the Freedom of Access to Information Act. Specifically, this would mean that it is necessary to ensure their timely and complete response upon a request to access information through adequate promotion, sanctions and strengthening the institutional capacities.
3. **Induce transparency of media ownership through additional and alternative measures.** Prior to drafting the aforementioned legal framework, the civil sector, with possible support of international donors and with participation of media community itself, may give its contribution in the following way:
- make recommendations for the adoption of legislation on transparency of media ownership and participate in public discussions on the issue;
 - develop policy documents which will describe the best standards in terms of the scope of information, competence, operating mechanisms, sanctions, as well as publishing, formatting and organizing data;
 - certain media companies can adopt the practice of releasing information on ownership and the media organizations can also promote this practice among its members. Publishing information on ownership of the other interests of the owner and related persons, information on the main sources of revenue and on the editorial orientation is a part of the practice of the media which are bound to the highest standards of integrity, and for the local media this can be a way of self-promotion and demonstration of their own integrity.

¹¹ More specifically, consideration should be given to the possibility for the databases of business entities at www.pravosudje.ba to be expanded with this new data on the interests in the media sector, to include in that database the data from the territory of Republika Srpska or to establish equivalent databases from Republika Srpska (these data are at the disposal of the agency, APIF and the possibility that it manages the publication of this information should be considered). Also, a possibility should be considered to make the registers of non-profit organizations publicly available; The existing Register of CRA has to be expanded to include the ownership information, i.e. CRA should make available the information on nominal owners that are already at its disposal and in the future, expand the database with the aforementioned additional information on beneficiary owners and interests.



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- information on the online and print media published by the **Press Council** should be extended in a way to include information on the ownership relations. Legislative measures (mentioned above) may also include the obligation for the online and print media to deliver information on ownership (including direct and indirect owners) to the Press Council. International donors could contribute with the financial support to the Press Council in order to strengthen its capacities to manage and possibly verify these data. Also, consideration may be given to the possibility that PC gets funds from the State budget to ensure permanent and adequate collection and administration of the collected data. Alternatively, the possibility should be considered that more civil society organizations establish and lead a comprehensive database of information, which will encompass the data on the ownership of all media sectors and related activities.
4. All aforementioned legislative, regulatory and self-regulatory measures need to be followed by an adequate **campaign of raising awareness of citizens**, in order to promote the use of information. And in the framework of institutional and non-institutional solutions, it is necessary to actively inform the citizens about the benefits and availability of data on media ownership.
 5. The civil sector should have a crucial role in the **use of, analysis, contextualization and presentation of data on ownership** in the form that is accessible to citizens

In the end, it should be noted that this report accentuates the development of local policies of media transparency in accordance with the principle of subsidiarity, but also recognizes the need to ensure, at the international level, the interoperability of data in order to ensure easier combining of the information from several countries. It is possible that the standards of the European Union, in perspective, would develop in that direction. The European Commission also provides support to a centralized database Mavise which is a significant source of information on the owners of radio and TV broadcasters in the territory of the EU. However, the input data for this database are provided by the national institutions, and the database still does not include information on the natural persons standing behind the indirect owners. As per the recommendations of the Access Info Europe, the European Commission should support the Member States in the development of legislation on transparency of ownership. (Darbishire and Harrison 2012, 6).

However, as described in this document, some countries have already taken significant steps towards greater transparency and integrity of the media. It is high time that Bosnia and Herzegovina finally puts the issue of the transparency of ownership of the media on the agenda, and to adopt standards by which it will demonstrate true commitment to a democratic media system. This report can be the starting point for the broad discussions and advocacy of better regulation of the transparency of media ownership.



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II Public funding of media

Summary

This report demonstrates the need for a thorough reform of public budget media funding in Bosnia and Herzegovina to keep media in service of public. The current financial relations between public sector and media in Bosnia and Herzegovina involve tens of millions allocated annually for the media. For an impoverished media market, these are significant amounts which, in the absence of transparency, clear public interest criteria, guarantees against instrumentalisation, conflicts of interest and arbitrary choice of media to which funds are allocated and lack of editorial accountability guarantees, can be misused for exerting influence on editorial policy or for personal financial gain. Finally, despite the absence of substantial monitoring, the effects of media subsidies in BiH, which are aimed at improving the quality of journalism and the public interest function, are utterly questionable. Therefore, media policies need to be urgently improved in order to minimise the abuse of these resources and to make them an instrument in service of public. The development of such policies requires an inclusive approach and consultations with experts and general public. On the basis of this analysis, and relying on the good practice of developed democracies, the core recommendations were developed in terms of legislation and regulations, which should include:

- Regular publication of all relevant information on **media subsidies/procurement** on the website of relevant authority and in a centralised database. Not only information on the amounts awarded but also all other information on subsidies/procurements should be made timely available (included a detailed description of the purpose, the award procedure, the method of application, the accompanying documentation, the assessment standards and criteria, information on the decision-making bodies, guarantees against conflict of interest, information on all applicants and evaluation of their applications).
- Regular collection and centralised **publication of information on media that receive subsidies or wish to apply for public subsidies/procurement**. Such a database should include information on the number of employees, turnover, main sources of revenue, public sector revenue and subsidy granting authorities, the use of the funds and effects thereof, audit findings and compliance with the audit recommendations, number of visits/readers/viewers/listeners, information on the membership in self-regulatory bodies, information on editorial statutes, editorial responsibility guarantees, history of compliance with the decisions of the regulatory and self-regulatory bodies, information on main sources of revenue. In the future, an updated data entry should be a prerequisite for public funding of media, and this information should be the basis for allocation of subsidies and monitoring the effects thereof.
- An obligation to adopt **the public interest criteria** in all forms of media funding (including subsidies and public procurement). According to experience of other countries, these criteria can relate to the features of media content (home production, information programmes, different types of contents, topics, share of individual social groups, watchdog function, compliance with professional standards, depth and scope of reporting), or features of the media organisation itself (e.g. non-profit organisation, a larger number of staff, good safeguards of labour rights, well defined statutes, ownership transparency, revenue, etc.). Ideally, media funding policies must ensure promotion of not only particularly scarce programmes of public interests but also of the general information function of the media.
- An obligation to **establish an independent decision-making system for allocation of subsidies**; The



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decisions should be made by expert commissions (not political bodies), which should be selected on the basis of a public competition, clear and relevant merit-based criteria, while abiding by standards preventing the conflict of interest. Alternatively, one should consider democratisation of the media subsidy decisions in a way to enable citizens to vote on media bids or to choose the media to which the state should then grant a proportionate share of the state aid.

- A requirement imposed on public sector to clearly justify **any procurement of media services**, including: a) by demonstrating a specific public interest in the given services and contents produced and b) by demonstrating that the public interest in the given case cannot be ensured without the procurement concerned (especially through the regular activities of the public media). It is therefore necessary to prevent non-transparent negotiation procedures and direct agreements, and to ensure the fundamental principles of transparency, active competition, non-discrimination and the best value for money.
- **Strengthening the monitoring over public funding of media**, including the assessment of legitimacy of allocation procedure, the standards of the fund use, the effects of allocated subsidies and their contribution to the matters of public interest. Monitoring should comprise regular media reports on subsidies, national and external financial audits, performance audits and appropriate mechanisms to monitor implementation of the audit recommendations.
- **Strengthening editorial independence** of media that receive funds through measures related to: a) financing (a precise and fixed method of budgeting for public media, setting the upper limit of public funds that can be allocated to commercial media, independent allocation procedures); b) appointment and status of editors-in-chief and journalists (public calls, clear professional criteria, consulting journalists about the appointment of editors-in-chief, publishing information on appointment procedure, introducing a conscientious objection clause and improving the status and respect of labour rights). Articles of incorporation of the media outlets should incorporate standards referred to in indent b) herein, and prescribe that non-compliance with these standards should be sanctioned.
- **Strengthening media's responsibility for the subsidies received**, including: a) an obligation of media to submit narrative reports on the attainment of goals for the purpose of which the funds have been allocated to them, financial statements showing the use of these funds and overall business operations of the media, and copies of the invoices paid with the aid funds: and b) an obligation of media to visibly indicate (on the title page, in the programme credits, etc.) that a particular media or content has been subsidised from public funds.

Recommendations for regulating public sector-media financial relations

Financial relations between public sector and media in Bosnia and Herzegovina need to be systemically organised in line with methodical, harmonised and specified principles of public interest. The urgency of such policies stems from the fact that significant funds are already being allocated to media under different models, but their transparency, the criteria, the independence and impact on public interest are alarmingly questionable. Institutional monitoring over these relationships needs to be increased in order to prevent the misuse of these funds, to provide public insight into these financial relations, and ultimately make these funds a well-elaborated and inclusively defined tool of public interest. Legislation



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and regulations governing public sector media funding should include¹²:

1. An obligation imposed on the public granting authority to **timely publish** on its websites: a) detailed **guidelines** on media financing schemes (including a description of the application and award process, supporting documents, criteria and evaluation standards, information on the decision-making bodies, information on guarantees of no conflict of interest, information on all applicants and evaluation of their applications; b) **information** on all money transfers to media (periodically).
2. **Centralised collection, processing and publishing of information** on subsidies awarded within a single electronic registry (which should be maintained by Ministry of Finance or alternatively, a media regulatory authority).
3. A requirement imposed on public sector to clearly justify **any procurement of media services**, including: a) by demonstrating a specific public interest in the given services and contents produced and b) by demonstrating that the public interest in the given case cannot be ensured without the procurement concerned (i.e. through general information programmes and especially the regular activities of public media).
4. An obligation to comply and consistently apply during **public procurement** of media services the fundamental principles of transparency, active competition, non-discrimination and the best value for money, which *inter alia* includes application of open procurement procedures for these services, publishing of a public call and enabling all interested bidders to participate in the procedure under fair and equal terms and submit their bids. In doing so, it is therefore necessary to prevent non-transparent negotiation procedures and direct agreements.
5. Control and reducing **the exemptions from application of the Public procurement Act**, in the part relating to conclusion of contracts on acquisition, development, production or co-production of programme for radio and TV broadcasting, in order to avoid misuse of public money for political purposes.
6. An obligation to adopt **the specific public interest criteria** in all forms of media funding (including subsidies and public procurement); At the legislative level, major guidelines can be offered and an obligation can be imposed on public authorities to precisely define and publish fund allocation criteria. According to experience of other countries, these criteria can relate to the features of media content (home production, information programmes, different types of contents, topics, shares of individual social groups, watchdog function, compliance with professional standards, depth and scope of reporting), or features of the media organisation itself (e.g. non-profit organisation, a larger number of employees, good safeguards of labour rights, well defined statutes, ownership transparency, revenue, etc.). Ideally, media funding policies must ensure the promotion of not only particularly scarce programmes of public interests but also of the general information function of the media. Consequently, the non-profit nature of the media - meaning that there is no action in the financial interests of the owners - should be taken as one of the indicators of action in the public interest or interest of certain social groups.
7. An obligation to **establish an independent decision-making system for allocation of subsidies**; The decisions should be made by expert commissions (not political bodies), which should be selected on the basis of a public competition, clear and relevant merit-based criteria, while abiding by standards

¹² The recommendations were prepared on the basis of insights contained in the report by Sanela Hodžić, the editor.



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preventing the conflict of interest, and/or ensure participation of representatives of professional organisations in the expert commission. The competition should be as transparent as possible and it should entail publishing of criteria, information on the procedure, candidates and ratings of each individual candidate. Alternatively, one should consider democratisation of media subsidy decisions in a way to enable citizens to vote on the media bids or to choose the media to which the state should then grant a proportionate share of the state aid.

8. **Strengthening the monitoring over public funding of media**, including the assessment of the allocation procedure legitimacy, the standards of the use of funds, the effects of allocated subsidies and their contribution to matters of public interest. Monitoring should comprise regular media reports on subsidies, national and external financial audits, and performance audits; Capacities and readiness of audit offices, Communications Regulatory Agency and Anti-corruption Agency need to be additionally strengthened to be able, like their equivalents in other countries, to oversee and review the patterns and effects of such media financing. Also, implementation of recommendations of audit offices should be improved by means of appropriate sanctions and pressures.
9. **Strengthening the editorial independence** of media receiving funds through measures related to: a) financing (a precise and fixed method of budgeting for public media, setting the upper limit of public funds that can be allocated to commercial media, independent allocation procedures); b) appointment and status of editors-in-chief and journalists (public calls, clear professional criteria, consulting journalists about the appointment of editors-in-chief, publishing information on appointment procedure, introducing a conscience clause and improving the status and respect of labour rights). Articles of incorporation of the media outlets should incorporate standards referred to in item b) herein, and prescribe that non-compliance with these standards should be sanctioned.
10. **Strengthening the media's responsibility for the subsidies received**, including: a) an obligation of media to submit narrative reports on the attainment of goals for the purpose of which the funds have been allocated to them, financial statements showing the use of these funds and overall business operations of the media, and copies of the invoices paid with the aid funds: and b) an obligation of media to visibly indicate (on the title page, in the programme credits, etc.) that a particular media or content has been subsidised from public funds.
11. The overall legitimacy of financial relations between public sector and media and accountability of all stakeholders in the process should be increased through regular collection and centralised publication of all relevant data not only on the subsidies and procurements but also on the media receiving or wish to apply for public subsidies. Ideally, media themselves should enter **the data on funds received into a centralised database**. Such a database should include information on the number of staff, turnover, main sources of income, income from public sector, and public authorities that granted them the funds, purpose of the subsidies/procurement, spending of the funds and results achieved by subsidies/procurement, audit findings and compliance with audit recommendations, number of visitors/readers/viewers, information on self-regulatory bodies, editorial statutes, editorial accountability guarantees, history of compliance with the decisions of regulatory and self-regulatory bodies, main sources of revenues. Ideally, media should support this information by appropriate documentation. The updated data entry in the future should be defined as a prerequisite for any public sector media funding.