

**MEDIA
OWNERSHIP
MONITOR
ALBANIA**

2018

Legal Assessment

MEDIA OWNERSHIP MONITOR ALBANIA

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Part I: Description of the legislation on media concentration and ownership as well as its implementation, monitoring and transparency

I.1. Legal framework

- *Which laws are supposed to prevent media concentration and monopolies? On what hierarchy level of law (e.g. constitution, civil code, special laws or decrees; national/regional) is media concentration being addressed?*

Neither the Albanian Constitution nor the Albanian Civil Code contain any provisions regarding media ownership concentration. The main piece of legislation laying down preventive rules on media concentration and monopolization is Law No. 97/2013, "On audio-visual media", as currently in force. This law contains provisions aimed at limiting the shares of a shareholder or his/her family members (up to the second degree) in a second or third media company, while it also introduces restrictions on the volume of advertising that a media company can broadcast. Another piece of legislation laying down rules for regulating monopolies is the Law 9121/2003 "On the protection of competition". This law sets out general rules for all types of businesses and addresses vertical control as well as indirect control issues.

- *What types of media are included in or excluded from the regulation? Is there regulation for digital media?*

According to the Law 97/2013 "On audio-visual media", only those audio-visual media broadcasting on either analogue or digital frequencies fall within its scope. There is no equivalent law / regulation for print media, online, audio and cable media, or satellite broadcasting.

- *If no – or not sufficient – legislation exists: is there legislation in the making? What is the status quo of the political process?*

There is currently no political or legislative initiative pending or under consideration for introducing further regulation on media ownership, prevention of monopolisation and concentration of media ownership.

- *Please, describe how the law defines media concentration (e.g. cross-ownership; audience share, circulation, turnover/revenue, the share capital or voting rights). Are family members included in the conflict of interest rules? How is their affiliation considered in the definition of ownership?*

The audio-visual media law does not contain definitions for the terms of media monopolization and concentration. The only concepts that the law introduces are those of the limitation of the owner's shares / voting rights in respect of a second media company and a limitation on the share of the audio and audio-visual media advertising market that a media company might occupy.

Regarding audio-visual media, restrictions are imposed on the percentage of the total capital (20%) in a second company holding a national license, while for analogue audio broadcasting media, the maximum amount of participation in a third media with a national license is limited to 10% of that media company's capital.

The applicable legal framework imposes similar limitations of shares that a shareholder can have in relation to a second media company holding a local or a regional license.

The audio-visual media law also provides for a restriction of a commercial nature, which concerns the prohibition of occupying a share of more than 30% of the advertising market by a company that holds a national audio or audio-visual broadcasting license.

The audio-visual media law also regulates situations of conflict of interests arising in cases where two or more shareholders of a media company are family members up to the second degree. In such cases, the law will allow only one of the shareholders to hold shares in that company, with prior authorisation from the Audio-visual Media Authority.

➤ *Does legislation take into account **vertical integration** (i.e. control by a single person, company or group of some of the key elements of the value chain, i. e. production, aggregation, distribution and related industries such as advertisement or telecommunications)? How?*

Special legislation on print and audio-visual media does not lay down any legal provisions regarding vertical media control.

Law 9121/2003 “On the protection of competition” as currently in force, provides for limitations only in relation to concentration of enterprises active in the same field of economic activity. This limitation however is not specific to media companies but applies to all companies engaged in any form of economic activity (see Article 10 of Law no. 9121/2003). According to this law, the concentration of enterprises is prohibited when a permanent change of control is caused, as a result of:

- a) the merger of two or more undertakings or parts of undertakings that are independent of one another;
- b) the benefit of direct or indirect control by one or more natural persons who at the same time have control of at least one other undertaking; or from one or more undertakings to one or more undertakings, or one part of the last through the purchase of shares, quotas or assets, contracts or any other lawful means;
- c) direct or indirect control over one or more undertakings or parts of the latter.

Albanian legislation does not provide for restrictions in vertical integration when the media enterprises concerned are separate entities and are active in different (albeit related) fields of media content production and distribution.

➤ *Have there been **changes in the legislation** on media concentration issues over the past 5 years? Have there been **any major new market entrants or mergers & acquisitions (M&As)**? How have these cases been handled? Have there been any important **conflicts**?*

One of the most fundamental changes that occurred in 2013 was the repeal of the Law 8410/1998 "On public and private radio and television in the Republic of Albania" and the adoption of the new law 97/2013 "On audio-visual media in the Republic of Albania". The latter introduced a series of provisions regarding digital broadcasting (which was not covered by the previous law) while it also introduced the definition of many terms that were also not

addressed in the previous law. One of the new key concepts was that of the limitation of shareholders' participation in other media companies.

Another important development has been the adoption, by virtue of Council of Ministers Decision No.292, dated 2.5.2012, of the Transition Strategy from analogue to digital broadcasting under the Geneva Agreement GE06.

There was an initiative in 2015 to change the law on audio-visual media by means of an amendment that would address media concentration projections by abolishing Article 62 of the audio-visual media law. The proposed amendment was criticized by representatives of the European Union, the Council of Europe and the OSCE and was ultimately not adopted by the Albanian Parliament. More concretely, the head of the EU Delegation in Tirana, Romana Vlahutin, in a letter addressed to the Speaker of the Albanian Parliament dated 19/6/2015, noted that:

"The amendment will negatively impact competition among audio-visual media, creating a risk of monopolism and provide for media groups concentration and therefore have a negative impact on media freedom in Albania".

OSCE Representative for Freedom and Media, Dunja Mijatovic, expressed in a letter to the Speaker of the Albanian Parliament dated 3/6/2015 that:

"Having closely analysed the proposed amendment to repeal the Article 62 of Law no. 97/2013, my conclusion is that this could in the long term very negatively impact media plurality and therefore media freedom in Albania. Namely, for vibrant media landscape where there is a plurality of views and opinions, it is essential to ensure that no one person or company is able to dominate and ultimately control the media landscape. This is why countries have developed legislation that imposed limits and provides for an assessment of the possible impact on media freedom and plurality before any major take-overs or mergers of media outlets take place. This should also remain the case in Albania."

By means of an email dated 5/5/2015 and addressed to Mr. Pollo, Head of the Parliamentary Media Committee, the Council of Europe Office in Tirana observed that:

"We took notice of the amendment proposed by Member of Parliament Mr. Taulant Balla to abrogate Article 62 of the Law on Audio-visual Media in the Republic of Albania and are of the opinion that such changes should be carefully reviewed and based on specialized international expertise. Considering that the amendment will come through the Media Committee, we would like to extend our readiness that upon a request of the Speaker of the Assembly of Albania, we would be in the position to provide expertise in the form of best practices and European standards in view of the Albanian context. As you are aware, media concentration and media pluralism are two concepts which this article aims to tackle, and if completely deleted, it could pose to be problematic."

After a failed attempt to abolish the Article 62, the Association of the Albanian Electronic Media took the case to the Constitutional Court to repeal paragraph 3 of the Article 62. By its Decision no. 56 of 27.07.2016, the Constitutional Court struck down Article 62 point 3 of the audio-visual media law as unconstitutional and ordered that it be repealed. Under this article, no natural or legal person, domestic or foreign, could own more than 40% of the total share

capital of a joint stock company that held a national audio or audio-visual broadcasting license.

According to the Constitutional Court decision, even if paragraph 3 of the Article 62 of the audio-visual media law were to be repealed, the remaining provisions of Article 62 would still be effective in satisfying the legislator's intent, which was the prevention of monopolies and concentration in the media market.

"45. By selecting the most severe means of limitation foreseen by the law, the legislator in this, as well as in other cases where this court has had to abolish legal norms in violation of the principle of proportionality, failed to establish whether that the selection of this measure was informed by an analysis based on (depending on the situation) data, statistics, factual, economic, political, sociological and legal studies, as well as arguments of the executive / lawmaker on why he opted for this particular measure as opposed to another, what other measures / options were available to the lawmaker, and what positive effect did the measure actually have after being put into practice, namely whether it satisfied the post factum test" (see decisions No. 9, date 26.02.2016, and no.33, date 8.06.2016 of the Constitutional Court).

The Constitutional Court has also undertaken a comparative analysis of the situation in Albania with that in countries of the region such as Montenegro, Macedonia and Kosovo, which present similarities in terms of economic, political and structural developments to Albania; none of these countries have introduced a limitation similar to that foreseen by the Albanian audio-visual media law. Furthermore, also EU countries such as Croatia, Romania and Italy, have not introduced a limitation similar to that provided in paragraph 3 of Article 62 of the Media Law, while France, Austria and Poland have limitations of up to 49% of the shares, but only for foreign natural or legal persons who are shareholders of a media company that holds a national license."

The Constitutional Court concluded that:

"55. [...] the means chosen by the legislator to limit the ownership of companies operating in the media field do not bear a reasonable and proportionate relationship with the legitimate aim of the legislator regarding the pluralism of information. Consequently, the Court considers that the lawmaker's initiative is not in accordance with the principle of proportionality, therefore paragraph 3 of Article 62 of the Media Law should be repealed. "

The only major entry in the audio-visual media market has been "Agon Chanel" which started broadcasting on April 5, 2013. Owned by Francesco Becchetti who made a substantial investment into it, the channel quickly became a major contender in the audio-visual field and in 2015 applied for a national digital license. Nevertheless, "Agon Chanel" stopped broadcasting on June 10, 2015, after its assets were forfeited, following the launching of criminal proceedings against the channel's owner, Mr. Becchetti.

➤ *Is media concentration currently on the **agenda** on legislators and policy makers? What are the **blind spots** on media concentration legislation?*

Media concentration is not considered a pressing concern at present. As a result, there are no policy or legislative initiatives aimed at addressing it.

The only time this issue was brought to the attention of policy-makers was in the context of the Parliamentary Resolution dated 13.04.2017, by which the Albanian Parliament endorsed the Albanian Media Authority's (AMA) 2016 activity report. In this resolution, the Parliament of Albania called upon the AMA to implement measures with a view to promoting compliance with the law on audio-visual media, as well as to review and address issues of ownership of broadcasters and advertising. Nevertheless, the report did not contain references to concerns or problems in relation to these or other issues.

Vertical control issues are regulated only by Law 9121/2003 "On competition protection", which should also be applicable to the media and in particular to the audio-visual media, as it is the most influential medium. Since AMA has already been set up and operates in media field, its mandate could be extended to encompass also this area. Adopting such a solution would also remove the risk of a conflict of competences between the AMA and the Competition Authority, the body overseeing the implementation of the Law on Protection of Competition. The Competition Authority recently held that it is not competent to review a complaint against an audio-visual medium, as the media field falls exclusively under the jurisdiction of the AMA whose role is precisely to guarantee that the media in the country operate in accordance with the law (see Decision No. 471, dated 25.07.2017).

The legislation does not lay down clear mechanisms aimed at preventing vertical control, even in relation to persons / entities that, although active in non-media fields, also participate in the audio-visual production and broadcasting chain. Similarly, there are no legal mechanisms aimed at preventing horizontal control.

The restriction imposed by law whereby only 30% share of the advertising market is permitted cannot be easily applied in practice, as the law does not specify how to measure the advertising share, whether this percentage refers to the value of the advertisements or to the advertising airtime. Also, it is not clear how the lengthy teleshopping advertisements (infomercials) are measured, making it impossible for the law to meet its objective which is to limit the level of advertising market share.

Moreover, regardless of the existence of a *lex specialis* in the form of the Law "On audio-visual media", the latter does not contain provisions regulating cases of indirect concentration of media ownership.

Albanian legislation contains no definition of other concepts related to media concentration such as audience share, circulation, overall revenue from sources other than advertising such as sponsorships, projects, grants, etc. Sponsorship revenues are not included in the prohibitive criteria in the same way as the restrictions set out regarding advertising. This in turn gives rise to the possibility that revenue from advertising can be classified as sponsorship, thereby making it difficult to monitor and regulate the advertising market. There is also no restriction on the participation of the same natural or legal person in other (not media related) companies.

➤ *Is there specific legislation on foreign investment / ownership within the media business?*

Albanian legislation does not discriminate against foreign natural / legal persons; they are allowed to invest / own under the same conditions as Albanian nationals. The only restriction

is of a commercial nature: thus, before investing, foreign investors are required to register a joint stock company in Albania.

I.2. Implementation – control and monitoring of media concentration

- *Is there an institutional system to address media concentration in place? What sectors – e.g. press, broadcasting or new media – are included? What are the responsible bodies governing media concentration? What are the tasks, duties and responsibilities of the authority/ies defined in detail in the law (e.g. grant licenses, compliance monitoring, sanctioning, other)?*

Article 62 Law no. 97/2013 lays down some mechanisms to avoid media concentration; nevertheless, the article is applicable only to audio-visual media. Press and online media are not subject to any restrictions. In the area of audio-visual broadcasting, the competent monitoring body is the Audio-visual Media Authority (AMA) whose role is to oversee the implementation of provisions aimed at preventing media ownership concentration. Some of the main functions of AMA are: issuing and revoking of licenses and / or authorizations; ensuring fair competition; cooperating with other institutions for the fulfilment of legal objectives, such as the Competition Authority, the Consumer Protection Commission; monitoring of programs transmitted by the Audio-visual Media Service Providers. AMA also oversees the implementation of the law on media by entities operating in the audio-visual field and in case of violation, takes administrative measures and imposes sanctions.

- *If there are more than one authority assigned (e.g. media authority, competition authority, etc.): how is the differentiation of competencies of the diverse authorities defined? Does it work or are there overlaps or blind spots?*

There is only one authority that carries out monitoring and control functions in the field of audio-visual media, in Albania, namely the AMA. It should be mentioned that the Competition Authority, set up under Law no. 9121/2003 "On the protection of competition" operates in the field of competition. The law lays down a largely satisfactory framework for preventing enterprise concentration and abuse of dominant position in the market, but does not, specifically, address the media market that has its own unique features. Thus, for example, there is no commercial law term / concept equivalent to that of audience, an important omission on the part of the legislator as the audience (i.e. the public) is the direct consumer of products that are merely advertised (and not produced) by the media. Moreover, a media outlet can theoretically have a very influential position in the media market despite commanding a small share of the advertising market. Capturing a large share of the audience is thus a factor that, while not necessarily reflective of the competition in the media advertising field, can exert significant influence in the political field by shaping public opinion.

- *Are there any explicit constitutional or other legal guarantees of independence of the authorities (media, competition, telecommunication...) from political and/or commercial interference?*

Under Law 97/2013, the Audio-visual Media Authority is established as an independent body. The law lays down a comprehensive regulatory framework aimed at guaranteeing, in principle, the independence of its members from political and commercial interference. Other bodies, such as the Competition Authority or the Authority of Electronic and Postal

Communications, are independent bodies whose members are appointed by the Parliament. Nevertheless, the members of these bodies do not benefit from a similar set of guarantees, as is the case with AMA, against political interference, as only a simple parliamentary majority is required for their appointment. This in turn suggests that every incumbent government will almost always be in a position to appoint the candidates it favours.

➤ *How are the **appointment procedures** for the authorities defined (e.g. transparent, democratic and objective and designed to minimize the risk of political or commercial interference, for instance by including rules on incompatibility and eligibility)? Are they **respected** in practice?*

The rules and procedures for the appointment of the members of the authorities are transparent, democratic and objective and were introduced following an initiative to that end by the local OSCE mission.

In practice however, these rules have not been observed during the appointment of the AMA members. Thus, the procedure foreseen for the appointing of the AMA members as well as of the members of the Steering Council of RTSH (Albanian Radio Television – the Albanian public broadcaster) is set out in Law no. 97/2013. According to the procedure foreseen under that law, civil society proposes the candidates for the AMA. The ruling party and the opposition are then given the opportunity to request the disqualification of any candidate they have reservations about, the purpose of this exercise being to gradually come up with a list of candidates that are not contested (rather than preferred / chosen) by either the majority or the opposition.

Nevertheless, this procedure was not respected by the Parliament when appointing the new AMA members in 2014, with the Parliament simply appointing the preferred candidates nominated by the majority and the opposition, disregarding the procedure.

In addition to political influence, the appointment of some of the AMA members also raised concerns regarding possible commercial influence, as a high-ranking employee of one of the biggest digital media companies currently operating in Albania was appointed as the Chairman of AMA.

➤ *Is the **budget adequate** and consistent for the authority to safeguard its independence and/or protect it from coercive budgetary pressures and to perform its functions?*

Under the Law 97/2013, AMA's budget is made up of revenues from different sources as well as funding from the state budget. The revenues are mostly based on the licensing fees that the audio-visual media operators have to pay; such a form of financing contributes to AMA's independence.

Nevertheless, it is not possible to ascertain AMA's real operating costs and whether the current budget is adequate.

➤ *What **sanctioning power** do the authorities have to accomplish its role (e.g. power to refuse license requests and to divest existing media operations where plurality is threatened or where unacceptable levels of ownership concentration are reached)? Are there **effective appeal mechanisms**?*

Article 132 of the Law 97/2013 provides for different sanctions in cases of violation of its provisions. Thus, AMA can:

- a) impose a fine;
- b) order a temporary suspension of a license and / or an authorization;
- c) shorten the duration of a license and / or an authorization;
- d) revoke a license and / or an authorization.

The law does not provide for mechanisms aimed at preventing situations that endanger media pluralism or concentration of ownership at unacceptable levels.

The law provides for administrative and legal remedies against all forms of sanctions imposed by AMA. The remedies are effective in terms of access to quasi-judicial (AMA) and judicial bodies.

- *Please describe the **method** and the criteria for assessing the level of **media concentration**. (e.g. thresholds based on objective criteria, such as audience share, circulation, turnover/revenue, distribution of share capital or voting rights; taking into account both **horizontal integration** (mergers within the same branch of activity) and **vertical integration** (control by a single person, company or group of key elements of the production and distribution processes, and related activities such as advertising).*

The law does not lay down criteria for assessing the level of concentration of media ownership based on the media outlet's audience or revenues. The overall legal framework provides criteria regarding the turnover (these criteria are to be found in the Law "On protection of competition") but not applicable to media in practice, and advertising share in particular (contained in the audio-visual media law). Provisions regarding horizontal integration are lacking, while vertical integration is only partially regulated by the law on protection of competition, not applicable to media sector.

There is no provision for revenue from sponsorships and projects / grants, revenue from which is not considered as advertising revenue.

- *Is the authority **accountable to the public** for its activities, (e.g. is it required to publish regular or ad hoc reports relevant to their work or the exercise of their missions)?*

All authorities established by law are obliged to report on their activities. General activity reports are presented annually to the Parliament and are made public, together with the relevant Parliamentary resolutions. The drafting of ad hoc / special thematic reports is not mandatory, but under the law on the right to information, should such reports be commissioned, then the commissioning authority is obliged to publish them on its website.

In addition to its annual activity report, AMA may also submit other reports on various aspects of its work, following a request to that effect by the Parliamentary Committee on Education and the Mass Media.

- *Can the Government arbitrarily overrule the decision of the authority? In what cases? Are there cases of **illegal state interference**?*

The Government cannot repeal or change the authority's decisions, since under the legislation in force the authority is fully independent. On the basis of all publicly available data, it cannot be concluded that there has been any unlawful intervention by the government in the authority's decision-making processes.

➤ *Have there been **cases of merger and acquisitions** over the past five years? How proactive and how detailed has the authority **implemented the regulation on media ownership**? Have there been cases in which **regulators refused license requests, mergers or forced divestment of existing media operations** in order to avoid excessive concentrations of media ownership? What are the main **challenges** for the authority on the implementation?*

In the last five years there have been no cases of media mergers. There have been unconfirmed reports of a sale of a media outlet, as well as reports that the owner of a national audio-visual media outlet has purchased shares in another media outlet holding a local license.

There have been reported cases where a group of stakeholders, consisting of second degree family members, were not considered as tied stakeholders and were, thus, allowed to jointly own a higher ownership percentage in another media, in violation of the relevant restrictions provided by the law. The lack of transparency in those cases makes it unclear whether the fault lies with AMA (which should not have issued an authorization under such circumstances) or the National Business Centre (if e.g. it proceeded to register the new shareholders in the absence of an authorization by the AMA).

In light of the limited number of decisions reached by AMA as well as their inadequate reasoning, it is not possible to ascertain the challenges that the authority has faced in the implementation of the law.

➤ *Does decisional practice of the authorities indicate that they **use their powers in practice in the interest of the public**? Have there been cases of the **abuse of regulatory power**? What, when? Are the authorities considered **political or technical bodies**?*

Except the controversy that arose regarding the Beauty Contest for digital broadcasting licenses, there have been no cases raising concerns whether the decision-making practices of the authority were contrary to the public interest.

On the other hand, there have been concerns regarding the decision to appoint the former high-ranking employee of one of the biggest digital media outlets as head of the AMA. During his tenure of that position that he still occupies, the head of the AMA has made decisions in favour of the media company where he used to work.

I.3. Transparency of media ownership

➤ *Please describe binding (legal) and non-binding (voluntary) **transparency and disclosure practices of media companies with regard to ownership, investment and revenue sources**?*

There are no special regulations or practices concerning media transparency. However, since all media companies (just like any other businesses in the country) must be registered with

the National Business Centre and specify the names of their shareholders, ownership data is available online for most media outlets, including print media.

Furthermore, the AMA has the authority to inspect the financial reports of the licensed entities; its findings should be made available online.

Ownership data for online media is much more difficult to obtain, as such media are not required to register either as a business or as a media outlet.

On the other hand, electronic media that use audio-visual broadcasts in their activities have to register with both the National Business Centre and the Audio-visual Media Authority. The Regulatory Authority does not have an online register containing proprietary data for media bodies, but such information can be obtained by means of freedom of information requests.

➤ *Which media organizations are covered by the reporting requirements? To whom must disclosure be made? How often/ in what cases has the data to be updated?*

Like any other business, all media outlets should submit annual financial reports to the tax authorities; these reports are confidential. In addition, the media companies' financial statements are also submitted to the National Business Centre, which makes them available on its public database.

Online media with audio-visual broadcasting, along with Audio-visual media, are also obliged to submit financial reports to the Regulatory Authority, AMA. The financial statements have to be submitted each year to the tax authorities and the National Business Centre.

Upon its initiative, AMA might request financial and economic information from audio and audio-visual media companies; exercising this competence falls entirely within its discretion.

The situation is different in the case of some online media, which are not operated by subjects registered in the Republic of Albania. These entities have correspondingly no reporting obligations towards the local authorities.

➤ *What information is required to be disclosed? (e.g. key persons/bodies and their functions in the media; details of shareholders and size of their holding, beneficial owners; interests of the people/body in other media / economic sectors; people influential to the programming/editorial policy; political or other affiliations of the owners and its family members; public advertising revenues, funding from other external sources)*

When submitting a request for an authorization with the AMA, the applicant must submit detailed information such as the name, the seat and the form of the legal entity, official and financial data on financial capital, program data, the technical development plan and the use of equipment, the list of administrators, the income and expenses, forecasts of expenses, the origin and the amount of funding, the names of the board members and their curriculum vitae, as well as information on the ownership structure of the company and its shareholders. The applicant must also respond to any questions that the regulatory authority might have when reviewing the application.

Media companies are under an obligation to submit their financial balances to the tax authorities and the National Business Centre annually. The names of shareholders and their

shareholdings are made available by the National Business Centre, but only in relation to media outlets that are registered as businesses.

The Albanian Public Radio Television (the Albanian public broadcaster) is also under an obligation to submit annual financial report to the AMA and the Parliament.

Before any enterprise concentration takes place, the law requires a prior approval by the Competition Authority, which is competent in this field for all categories of businesses. This obligation arises in cases where the circulation is predicted to surpass a certain threshold. This situation arose in the case of the “Media Vision” company which although under an obligation to notify the Competition Authority of the concentration it achieved, it failed to do so within the relevant deadline.

There is no obligation to report to any authority people exerting influence on programming and editorial lines, the owners' political preference, other sources of funding, and most importantly the relationship of media owners with businesses in other economic sectors.

➤ *How **accessible** is the information to the public? In what manner is the information to be made available? Is it comprehensible for the general public?*

Shareholders' data and annual balance sheets are available online at the National Business Centre's electronic register.

Information regarding persons working in the media sector, such as their salaries or their position within a media outlet is retained by the competent tax authorities; nevertheless, such information is considered confidential data and is not accessible public.

In addition, AMA holds information regarding electronic media; such information is in principle available through freedom of information requests can be obtained through information requests. Nevertheless, it should be noted that not all information might be accessible as it might fall under the commercial secrecy or personal data exceptions.

Information concerning shareholders is easy to understand, while financial disclosure information is accessible and understandable only by experts.

➤ *How is this **monitored and regulated**? Are there any **sanctions for the failure to report**?*

There is no special legal regulation for media; fiscal legislation is applicable to all businesses, including media. Audio-visual media legislation foresees the obligation of online media to submit their financial statement, while under tax legislation, media are obliged to submit annual balance statements. Failing to do so with the relevant time-limits is punishable by a 10,000 ALL or 70 Euros fine.

➤ *Transparency provisions: Does the responsible body monitor the fulfilment of the provision? Do the media fulfil the requirements?*

There are no particular legal provisions regarding media transparency applicable to media companies; their monitoring is carried out, as for any other business, primarily by the tax authorities.

I.4. Other state influence on media organizations

- *Does the state impose prohibitive **taxes** or levies on media organizations? Does the state **tax policy and practice** discriminate against or favour specific private media outlets over others?*

Tax policies do not appear discriminatory, but tax authorities' practices may prove discriminatory in relation to the frequency of inspections and the severity of penalties imposed on different media outlets. State subsidies to private media companies are prescribed through the article 53 of the law on VAT of the Republic of Albania (92/2014) and provide VAT exemption for furnishing of services of newspapers, magazines and books; and VAT exemption for supplying of advertising for print and electronic media; i.e. all media are exempt of value added tax which in Albania is 20%;

- *What **entry barriers** does the regulatory and institutional system create for new entrants to the media market (e.g. start-up fees or other restrictions)?*

Audio-visual media outlets need to pay an application fee for a license and / or and authorization, which is different from the annual license and / or authorization fees. This requirement does not apply to other, non-audio-visual media.

- *Does media concentration play a role in the process of **spectrum allocation**?*

Frequency spectrum management is carried out by the AMA. Frequency allocation is made on the basis of objectivity, transparency, non-discrimination, availability of free frequencies in accordance with the National Frequency Plan provisions and only in the frequency bands designated to be administered by the AMA. Media concentration does not play a role in the management of the ground frequency spectrum. So, in the process of digital broadcasting license distribution ownership concentration was not taken into account and as a result one media owner received three digital broadcasting licenses out five.

- *Is the **decision-making process** about the allocation of frequencies between public, private and community broadcasters **transparent, open, participatory** and overseen by an **independent regulatory authority**, which meets international standards and is free from political or commercial interference or control by any vested interest?*

The frequency allocation process is open. The allocation of frequencies between public and private broadcasters is regulated by a Council of Ministers Decision. The process is conducted by the AMA, an independent body. Different operators have voiced criticism and concerns regarding political or commercial interference.

The open procurement procedure held by the AMA regarding the frequencies' allocation is a case in point. The procedure led to an exchange of accusations between Digit-Alb, Super Sport and Top Channel with their competitors Media Vizion and Tring TV. According to one of the owners of Media Vision, the procedure was "ridiculous" from the beginning to the end and created a monopoly on the pay per view market. On April 23, 2015, the AMA announced a tender procedure for five licenses to be issued to private operators. Those invited to participate had to meet two criteria: to have a national license and to have experience in digital broadcasting. Top Channel, TV Klan and two digital platforms Digit-Alb and Tring TV submitted tenders. The participation of the Super Sport operator came as a surprise since

it had not participated in the first round, before that tender procedure was cancelled following a court decision. This operator was owned by the same persons who owned the Digit-Alb and Top Channel digital platforms. Media Vizion and Tring TV (which are also owned by the same persons) objected to the participation of the Super Sport operator to the tender, arguing that the terms of the tender favoured the owners of Top Channel, Digit-Alb and Super Sport (which, as noted above, are owned by the same persons). For this reason, they filed a lawsuit asking for the suspension of the tender procedure, while Tring TV withdrew from the tender. In their statements to the press, Media Vizion representatives argued that the AMA sought to establish and perpetuate a monopoly and that although their media outlet was the first victim of this situation, other outlets would also face the same problems in the future. The above took place when the Head of the AMA was Mr. Gentian Sala, who in 2008 and 2009 had been the administrator of “E-Solutions”, company wholly owned by Digit-Alb and therefore was in a situation of conflict of interest. In a statement to the press, he noted that it should not come as a surprise that in such an important process, everybody, from politicians to the Media Commission of the Parliament, express their interests.

- *Is the **state advertising** distributed to media fairly, for example proportionately to their **audience share**? How would you describe the **rules of distribution** of state advertising? Is it being monitored?*

State advertisements are not distributed fairly among the media. There is no mechanism to guarantee that state advertisements are based on audience share. The state advertising procurement rules are rather simplistic and leave plenty of room for abuse, especially since the procedure allow for advertising contracts to be awarded to advertising agencies, which can then outsource the contracts without being obliged to respect any specific criteria. There is no body mandated with monitoring this process. Another problem regarding advertisements is that they are often commissioned in the context of various projects implemented by central or local government authorities that are not subject to any procurement rules.

- *Is there a **monitoring of advertising allocation**?*

The monitoring of the advertising distribution is performed by the AMA. The law does not allow an operator to occupy a higher than 30% share of the advertising market in the country. Based on the organizational structure of the AMA, it appears that this authority has set up a section entrusted with carrying out such monitoring. Nevertheless, it is not clear how effective this monitoring can be, as the amount of advertising is measured in terms of advertising airtime and not of the advertising market's value.

- *Are there **others laws or policies** by which the state/ government interferes in the media business (e.g. blocking of websites, censorship)? Which? Is **freedom of press and editorial independence** is guaranteed in law and respected in practice? (please elaborate only shortly)*

There is currently no legal act that gives state bodies the right to intervene in the field of media business. In principle, freedom of the press is guaranteed by law. In practice, there are cases of complaints by media and journalists' associations alleging state interference with press freedom. Self-censorship is a particularly problematic phenomenon, as not only it is widespread but it can also constitute the result of indirect, and hence difficult to identify, pressure exerted by the government. Self-censorship is often also the consequence of the

close links between owners of media companies and companies active in other fields (e.g. in the construction sector) that compete for state funds – indeed, at times the owners of both kinds of companies are the same.

➤ *Have there been any major **changes** in these topics (state advertising, process of spectrum allocation, taxes for media outlets) over the past five years? Have there been conflictive **cases or law suits** on these topics?*

There has been no change in the state procurement rules for advertising. Regarding the frequency distribution, the adoption of the transition strategy from analogue to digital broadcasting was a significant development. The strategy is based on the GE 06 - Regional Radio-communication Agreement on the Planning of the Digital Terrestrial Broadcasting Service in Regions 11 and 32, in the Frequency Bands 174-230 MHz and 470-862 MHz, (Geneva, 15 May - 16 June 2006). New fiscal policies have also been adopted by the government that assumed office in September 2013; nevertheless, these policies have been of a general nature, are applicable to all types of businesses and are not specific to media companies. Judicial proceedings have been filed regarding the Beauty Contest for the legalization of the digital broadcasting spectrum and digital frequency allocation; media entities Agon Channel, Digital Channel, Digit-alb sh.a, Top Channel, Media 6 have launched administrative and judicial proceedings regarding the licensing procedure for digital frequency operators that took place in 2013, as well as for technical decision-making problems and allegedly discriminatory criteria. Vision Plus also launched judicial proceedings calling for the national licensing competition procedure launched by the AMA in 2015 to be declared unlawful.

Part II. Indicators – Checklist

II.1 Regulatory safeguards against high concentration of ownership and/or control in media (horizontal)

TELEVISION	Description	Yes	No	N A	M D	
Does the media legislation contain specific thresholds or limits , based on objective criteria (e.g. number of licenses, audience share, circulation, distribution of share capital or voting rights, turnover/revenue) to prevent a high level of horizontal concentration of ownership and/or control in this sector?	This question aims to assess the existence of regulatory safeguards (sector-specific) against a high horizontal concentration of ownership and/or control in the TELEVISION sector.	0.5				Existence (E) of safeguards
Is there an administrative authority or judicial body actively monitoring compliance with the thresholds in the audiovisual sector and/or hearing complaints? (e.g. media and/or competition authority)?	This variable aims to assess if the law/regulation provides a due monitoring and sanctioning system for the regulation on audiovisual media concentration.	1				
Does the law grant this body sanctioning/enforcement powers in order to impose proportionate remedies (behavioural and/or structural) in case of non-respect of the thresholds?	The variable aims at assessing if the law is providing a due system of sanctions to sector-specific regulation, such as: <ul style="list-style-type: none"> • Refusal of additional licences; • Blocking of a merger or acquisition; • Obligation to allocate windows for third party programming; • Obligation to give up licences/activities in other media sectors • divestiture. 	1				
Are these sanctioning/enforcement powers effectively used?	This indicator aims to assess the effective implementation of sector-specific remedies against a high horizontal concentration of ownership and/or control in the television media.	Low risk: the relevant authority effectively uses its sanctioning powers in all the relevant cases			0.5	Effective

		Medium risk: the authority's powers are not always used in all the relevant				
Total		3				

PRINT	Description	Yes	No	N A	M D	
Does the media legislation contain specific thresholds or limits , based on objective criteria (e.g. number of licenses, audience share, circulation, distribution of share capital or voting rights, turnover/revenue) to prevent a high level of horizontal concentration of ownership and/or control in this sector?	This question aims to assess the existence of regulatory safeguards (sector-specific) against a high horizontal concentration of ownership and/or control in the print sector.	0				Existence (E) of safeguards
Is there an administrative authority or judicial body actively monitoring compliance with the thresholds in the audiovisual sector and/or hearing complaints? (e.g. media and/or competition authority)?	This variable aims to assess if the law/regulation provides a due monitoring and sanctioning system for the regulation on audiovisual media concentration.	0				
Does the law grant this body sanctioning/enforcement powers in order to impose proportionate remedies (behavioural and/or structural) in case of non-respect of the thresholds?	The variable aims at assessing if the law is providing a due system of sanctions to sector-specific regulation, such as: <ul style="list-style-type: none"> • Refusal of additional licences; • Blocking of a merger or acquisition; • Obligation to allocate windows for third party programming; • Obligation to give up licences/activities in other media sectors • divestiture. 	0				
Are these sanctioning/enforcement powers effectively used?	This indicator aims to assess the effective implementation of sector-specific remedies against a high horizontal concentration of ownership	Low risk: the relevant authority effectively uses its		X		Effective

	and/or control in the television media.	sanctioning powers in all the relevant cases Medium risk: the authority's powers are not always used in all the relevant				
Total		0				

RADIO	Description	Yes	No	N A	M D	
Does the media legislation contain specific thresholds or limits , based on objective criteria (e.g. number of licenses, audience share, circulation, distribution of share capital or voting rights, turnover/revenue) to prevent a high level of horizontal concentration of ownership and/or control in this sector?	This question aims to assess the existence of regulatory safeguards (sector-specific) against a high horizontal concentration of ownership and/or control in the radio sector.	0.5				Existence (E) of safeguards
Is there an administrative authority or judicial body actively monitoring compliance with the thresholds in the audiovisual sector and/or hearing complaints? (e.g. media and/or competition authority)?	This variable aims to assess if the law/regulation provides a due monitoring and sanctioning system for the regulation on audiovisual media concentration.	1				
Does the law grant this body sanctioning/enforcement powers in order to impose proportionate remedies (behavioural and/or structural) in case of non-respect of the thresholds?	The variable aims at assessing if the law is providing a due system of sanctions to sector-specific regulation, such as: <ul style="list-style-type: none"> • Refusal of additional licences; • Blocking of a merger or acquisition; • Obligation to allocate windows for third party programming; • Obligation to give up licences/activities in other media sectors • divestiture. 	1				
Are these	This indicator aims to assess	Low risk:			0.5	E

sanctioning/enforcement powers effectively used?	the effective implementation of sector-specific remedies against a high horizontal concentration of ownership and/or control in the radio media.	the relevant authority effectively uses its sanctioning powers in all the relevant cases Medium risk: the authority's powers are not always used in all the relevant			
Total		3			

INTERNET	Description	Yes	No	N A	M D	
Does the media legislation contain specific thresholds or limits , based on objective criteria (e.g. number of licenses, audience share, circulation, distribution of share capital or voting rights, turnover/revenue) to prevent a high level of horizontal concentration of ownership and/or control in this sector?	This question aims to assess the existence of regulatory safeguards (sector-specific) against a high horizontal concentration of ownership and/or control in the online sector.	0				Existence (E) of safeguards
Is there an administrative authority or judicial body actively monitoring compliance with the thresholds in the audiovisual sector and/or hearing complaints? (e.g. media and/or competition authority)?	This variable aims to assess if the law/regulation provides a due monitoring and sanctioning system for the regulation on audiovisual media concentration.	0				
Does the law grant this body sanctioning/enforcement powers in order to impose proportionate remedies (behavioural and/or structural) in case of non-respect of the thresholds?	The variable aims at assessing if the law is providing a due system of sanctions to sector-specific regulation, such as: <ul style="list-style-type: none"> • Refusal of additional licences; • Blocking of a merger or acquisition; • Obligation to allocate windows for third party programming; • Obligation to give up 	0				

	licences/activities in other media sectors • divestiture.					
Are these sanctioning/enforcement powers effectively used?	This indicator aims to assess the effective implementation of sector-specific remedies against a high horizontal concentration of ownership and/or control in the online media.	Low risk: the relevant authority effectively uses its sanctioning powers in all the relevant cases Medium risk: the authority's powers are not always used in all the relevant	X			Effective Implementation (I)
Total		0				

MEDIA MERGERS	Description	Yes	No	N A	M D	
Can a high level of horizontal concentration of ownership and/or control in the media sector be prevented via merger control/competition rules that take into account the specificities of the media sector?	This question aims to assess the existence of regulatory safeguards (sector specific and/or competition law) against a high horizontal concentration of ownership and/or control in the media sector through merging operations. For instance, the law should prevent concentration in merging operations: -By containing media-specific provisions that impose stricter thresholds than in other sectors; -The mandatory intervention of a media authority in merger and acquisition cases (for instance, the obligation for the competition authority to ask the advice of the media authority); - The possibility to overrule the approval of a concentration by the communication	0.5				Existence (E) of safeguards

	authority for reasons of media pluralism (or public interest in general)); -that - even though they do not contain media-specific provisions - do not exclude the media sector from their scope of application.					
Is there an administrative authority or judicial body actively monitoring compliance with rules on mergers and/or hearing complaints? (e.g. media and/or competition authority)?	This variable aims to assess if the law/regulation provides a due monitoring and sanctioning system.	0.5				
Does the law grant this body sanctioning/enforcement powers in order to impose proportionate remedies (behavioural and/or structural) in case of non-respect of the thresholds?	The variable aims at assessing if the law is providing a due system of sanctions to sector-specific regulation, such as: <ul style="list-style-type: none"> • Blocking of a merger or acquisition; • Obligation to allocate windows for third party programming; • Obligation to give up licences/activities in other media sectors • divestiture. 	0.5				
Are these sanctioning/enforcement powers effectively used?	This indicator aims to assess the effective implementation of sector-specific remedies against a high horizontal concentration of ownership and/or control in the television media.	Low risk: the relevant authority effectively uses its sanctioning powers in all the relevant cases Medium risk: the authority's powers are not always used in all the relevant cases High risk: the relevant authority never uses its sanctioning	0			Effective Implementation (I)

		powers				
Total		1.5				

II.2 Regulatory safeguards against high degree of cross-ownership

CROSS-MEDIA OWNERSHIP	Description	Yes	No	N A	M D
Does the media legislation contain specific thresholds, based on objective criteria, such as number of licences, audience share, circulation, distribution of share capital or voting rights, turnover/revenue, to prevent a high degree of cross-ownership between the different media?	This indicator aims to assess the existence of regulatory safeguards (sector-specific and/or competition law) against a high degree of cross-ownership in different media sectors.	0			
Is there an administrative authority or judicial body actively monitoring compliance with these thresholds and/or hearing complaints? (e.g. media authority)	This variable aims to assess if the law/regulation provides a due monitoring and sanctioning system for the regulation on audiovisual media concentration.	0			
Does the law grant body sanctioning/enforcement powers in order to impose proportionate remedies (behavioural and/or structural) in case of non-respect of the thresholds?	The variable aims at assessing if the law is providing a due system of sanctions to sector-specific regulation, such as: <ul style="list-style-type: none"> • Refusal of additional licences; • Blocking of a merger or acquisition; • Obligation to allocate windows for third party programming; • Obligation to give up licences/activities in other media sectors; • Divestiture. 	0			
Are these sanctioning/enforcement powers effectively used?	the relevant authority never uses its sanctioning powers The question aims at assessing the effectiveness of the remedies provided by the regulation.	Low risk: the relevant authority effectively uses its sanctioning powers in all the relevant cases Medium risk: the authority's powers are not always used in all the relevant High risk: the relevant authority never uses its	X		

		sanctioning powers		
Can a high degree of cross-ownership between different media be prevented via merger control/competition rules that take into account the specificities of the media sector?	For instance, cross-ownership can be prevented by competition law: - by the mandatory intervention of a media authority in M&A cases (for instance, the obligation for the competition authority to ask the advice of the media authority); - by the possibility to overrule the approval of a concentration by the competition authority for reasons of media pluralism (or Public interest in general); Even though the law does not contain media-specific provisions - it does not exclude the media sector from its scope of application	0		
Is there an administrative authority or judicial body actively monitoring compliance with these rules and/or hearing complaints? (e.g. media and/or competition authority)	This variable aims to assess if the law/regulation provides a due monitoring and sanctioning system for the regulation against a high degree of cross-ownership in different media sectors via merger control/competition rules	0		
Does the law grant body sanctioning/enforcement powers in order to impose proportionate remedies (behavioural and/or structural) in case of non-respect of the thresholds?	Examples sanctioning/enforcement powers and remedies: - blocking of a merger or acquisition; - obligation to allocate windows for third party programming; - must carry obligation to give up licences/activities in other media sectors; - Divestiture.	0		
Are these sanctioning/enforcement powers effectively used?	The question aims at assessing the effectiveness of the remedies of the regulation.	Low risk: the relevant authority effectively uses its sanctioning powers in all the relevant cases	X	

		<p>Medium risk: the authority's powers are not always used in all the relevant cases</p> <p>High risk: the relevant authority never uses its sanctioning powers</p>			
Total (Mean of L-e und L-I sub-indicators)		0			

II.3 Regulatory safeguards for transparency of ownership and/or control

Transparency Provisions	Description	Yes +	No -	NA	MD	
Does national (media, company, tax...) law contain transparency and disclosure provisions obliging media companies to publish their ownership structures on their website or in records/documents that are accessible to the public ?	The aim of the question is to check regulatory safeguard for transparency towards the citizens, the users and the public in general.	0				Existence (E)
Does national (media, company, tax...) law contain transparency and disclosure provisions obliging media companies to report (changes in) ownership structures to public authorities (such as the media authority)?	The aim of the question is to check regulatory safeguard for accountability and transparency towards public authorities.	1				
Is there an obligation by national law to disclose relevant information after every change in ownership structure?	This question aims at assessing if the law provides rules on the public availability of accurate and up-to-date data on media ownership. This is a condition for an effective transparency.	1				
Are there any sanctions in case of non-respect of disclosure obligations?	This question aims at assessing if the law on media ownership transparency can be enforced through the application of sanctions.	1				Effective Implementation
Do the obligations ensure that	This question aim at assessing	Low		0.5		

the public knows which legal or natural person effectively owns or controls the media company?	the effectiveness of the laws that deal with media ownership transparency and if they succeed in disclosing the real owners of the media outlets.	<p>Risk: All the effective owners are known by the public</p> <p>Medium : some owners are still unknown</p> <p>High Risk: Effective owners are still hidden</p>			
Total (Mean of L-e und L-I sub-indicators)		3.5			

II.4 Regulatory Safeguards against political control over media and distribution networks ownership

Ownership by politicians	Yes +	No -	NA	MD
Does any law contain limitations to direct and indirect ownership/control of mainstream media by politicians ?	0.5			
Does the regulation apply to all media (print, audiovisual and online) with no significant exemptions?	1			
Is there an administrative or judicial body actively monitoring compliance with these rules and/or hearing complaints?	1			
Does the law grant body effective sanctioning/enforcement powers in order to impose proportionate remedies in case of noncompliance with the rules?	1			
Total	3.5			

II.5 Regulatory Framework for Media Regulation

Please report on the corresponding authorities responsible for media concentration monitoring in your country. This could be a:

- Media Authority
- Competition Authority
- Telecommunication Authority

If there are different authorities, please copy the checklist and fill in one checklist for each authority.

[Specify authority and insert name] Media Authority, Competition Authority	Yes +	No -	NA	MD
Are there any explicit constitutional or legal guarantees of independence of the media authority from political or commercial interference?	1			
Are appointment procedures for the media authority transparent, democratic and objective and designed to minimize the risk of political or commercial interference, for instance by including rules on incompatibility and eligibility?	1			
Are the procedures for allocation of budgetary resources for the media authority transparent and objective, <i>i.e.</i> leaving no scope for arbitrary decisions by the governing powers?	1			
Are the tasks, duties and responsibilities of the media authority defined in detail in the law (<i>e.g.</i> grant licenses, compliance monitoring, sanctioning, other)?	1			
Does regulation attribute sanctioning powers to the media authority (<i>e.g.</i> warning, fine, suspension or revocation of license, other)?	1			
With regard to the media authority decisions, are there effective appeal mechanisms in place?	1			
Are the appointment procedures for the media authority respected in practice ?	0			
Does decisional practice of the media authority indicate that the authority uses its powers in practice in the interest of the public?	0.5			
Is the budget adequate and consistent for the media authority to safeguard its independence and/or protect it from coercive budgetary pressures and to perform its functions?	1			
The Government cannot arbitrarily overrule the decision of the media authority .	1			
Is the media authority accountable to the public for its activities , (<i>e.g.</i> is it required to publish regular or ad hoc reports relevant to their work or the exercise of their missions)?	1			
Total	9.5			

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