



Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media

Council of Europe
European Commission



Conseil de l'Europe
Commission européenne

Sarajevo, 24 April 2008

EXPERTISE WORKSHOP ON THE INDEPENDENCE OF REGULATORY AUTHORITIES IN THE FIELD OF MEDIA AND TELECOMMUNICATIONS

The workshop, arranged at the request of the Communications Regulatory Agency (CRA) of Bosnia and Herzegovina, was organised by the European Commission (EC) in cooperation with the Council of Europe (CoE) and the Representative on Freedom of the Media (RFOM) of the Organization for Security and Co-operation in Europe (OSCE). The programme of the workshop mission can be found in annex.

The expertise workshop was opened by Ambassador Dimitris Kourkoulas, Head of EU Commission delegation to Bosnia and Herzegovina and Ambassador Davidson, Head of OSCE Mission in Sarajevo and Ms Franziska Klopfer, Programme Adviser from the Directorate General of Human Rights and Legal Affairs of the Council of Europe.

The purpose of the workshop mission was to discuss European standards on the independence of regulatory authorities in the field of media and telecommunications with special reference to financial independence focusing on the possible impact of the draft Law on Salaries and Other Compensations on financial independence of the CRA.

According to the *Parliamentary Assembly of the Council of Europe Recommendation 1664(2004)* on the honouring of obligations and commitments by Bosnia and Herzegovina it is necessary to continue to closely monitor the freedom of media in Bosnia and Herzegovina, including the independence of the Communications Regulatory Agency (CRA). In its March 2007 report on "*The State of Media Freedom in Bosnia and Herzegovina: The Public Service Broadcasting*", the OSCE RFOM concluded that BiH has one of the most advanced self-regulatory mechanisms in Europe, with CRA being the competent body for broadcasting-related complaints. The report goes: "In order to function as a credible and remedial instrument, the political and financial independence of CRA must continue to be guaranteed".¹ Moreover, maintaining the independent position of CRA is a European partnership priority for Bosnia as adopted by the Council of European Union in January 2007. The European Commission shall monitor the implementation of this European Partnership priority through different instruments, notably the annual progress reports presented by the Commission.

European standards on the independence of regulators in the field of broadcasting and telecommunications

The Committee of Ministers of the Council of Europe has defined standards on broadcasting regulation in its *Recommendation Rec(2000)23 to member states on the independence and*

¹ http://www.osce.org/documents/rfm/2007/03/23751_en.pdf

functions of regulatory authorities for the broadcasting sector, in its *Recommendation Rec(2003)9 on measures to promote the democratic and social contribution of digital broadcasting*, as well as in its *Declaration on the guarantee of the independence of public service broadcasting in the member states* of 27 September 2006, and its *Declaration on the independence and functions of regulatory authorities for the broadcasting sector* of 26 March 2008.

In the European Union the *Audiovisual Media Services Directive* adopted in December 2007 makes a specific reference to the role to be played by the competent independent regulatory bodies in this sector. Moreover, in November 2007 the European Commission published its *Proposals for a Review of the 2002 Regulatory Framework for Electronic Communications*. The proposals, which are currently under negotiations by the European Parliament and the Council of the European Union, include new rules to strengthen the independence and enforcement powers of national authorities. To ensure a more consistent application of the regulatory provisions, they must be implemented by independent national regulators not subject to external political pressure or instructions.

On the occasion of the 9th meeting of the International Mechanisms for Promoting Freedom of Expression in 2007, the OSCE Representative on Freedom of the Media (RFOM), together with his counterparts in the UN, OAS, and the African Commission on Human and Peoples' have issued a joint *Declaration on Promoting Diversity in the Broadcast Media* where they expressed, inter alia, concern over "the potential for abuse of regulatory systems for the media to the detriment, among other things, of diversity, particularly where oversight bodies are not sufficiently protected against political or other interference".²

In the light of the above, the independence of regulatory authorities is a key element of European standards in the fields of media and telecommunications. Independence remains a critical issue in ensuring predictability and stability in the regulatory environment for both telecommunications and media.

A 'culture of independence', where members of regulatory authorities in the broadcasting and telecoms sectors affirm and exercise their independence and all members of society, public authorities and other relevant players respect the independence of the regulatory authorities is essential to independent broadcasting and telecommunications regulation. Independent broadcasting and telecommunications regulatory authorities can only function in an environment of transparency, accountability, clear separation of powers and tasks, and due respect for the legal framework in force.

To guarantee the regulator's independence, its members should be protected from any interference from political or economic interests and incompatibility rules for membership in the regulator should avoid that members of the regulator are under the influence of political powers and that members are prohibited from holding interests in enterprises of other organisations in the media or related sectors. In addition national regulatory authorities should also have all the necessary resources in terms of expertise and human and financial resources to carry out their functions properly.

² http://www.osce.org/documents/rfm/2007/12/28855_en.pdf

European standards on the financial independence of regulators in the field of broadcasting and telecommunications

According to European standards on the independence of regulatory authorities the arrangements for the funding of regulatory authorities, a key element in their independence, should be specified in the law in accordance with a clearly defined plan, with reference to the estimated cost of the regulatory authorities' activities, so as to allow them to carry out their functions fully and independently.

Public authorities should not use their financial decision-making power to interfere with the independence of regulatory authorities. Furthermore, recourse to the services or expertise of the national administration or third parties should not affect their independence.

Moreover, funding arrangements should take advantage, where appropriate, of mechanisms which do not depend on ad-hoc decision-making of public or private bodies.³

The financial and operational means of a regulator plays an important role in ensuring a stable and predictable regulatory environment. The financial resources available to the regulator, the number of employees and its ability to attract and retain suitable qualified staff are important in assessing the capacity of the regulator to operate effectively.

For the European Commission it is important that national regulatory authorities have their own independent budget allowing them, in particular, to recruit a sufficient number of qualified staff.

The legal framework governing the functions and independence of the Communications Regulatory Agency (CRA) today

The Communications Regulatory Agency (CRA) is an independent State institution with sole jurisdiction over telecommunications and broadcasting across the entire territory of Bosnia and Herzegovina. The CRA has a very high international reputation and is considered as exemplary in the region. The independent status of the CRA is well established, in particular the legal arrangements regarding their financial independence and the appointment of its Director General.

The Law on Communications which entered into force in 2002 defines the mandate and responsibilities of CRA. The Law aims to establish safe and sound mechanisms to ensure the independence of the Agency by preventing the interference in the decision-making of the Agency and its bodies (Agency's Council and Director General). According to the Decision of the High Representative enacting the Law the implementation of the Law and its objectives require a politically independent CRA.

Article 36, Paragraph 3, explicitly forbids the Council of Ministers, individual Ministers or any other person to interfere in any way in the decision-making of the Agency in individual cases. The process of nomination and appointment of the members of the Council and of the Director General in Article 40, Paragraph 3, aims also to ensure, the independence of their decisions from the interference of political party members, and thus to guarantee the independence of the Agency as a regulator.

³ cf Recommendation [Rec\(2000\)23](#) of the Committee of Ministers of the Council of Europe to member states on the independence and functions of regulatory authorities for the broadcasting sector, §§ 9 to 11

Bearing in mind that a key pre-condition for the independence of an institution is its financial independence, the Law on Communications aims to provide for financial independence of the Agency by means of clear provisions contained in Article 43, Paragraph 4, and Article 44. According to Article 43, Paragraph 3, the Council of the Agency shall determine which positions are exempted from the scope of the Law on Civil Service. Paragraph 4, furthermore, provides that the Council of the Agency shall establish by way of a decision the pay structure for calculation of the Agency's staff salaries, the various salary grades in which the staff shall be categorized, and any permissible bonuses.

The financial accountability of the Agency is guaranteed by Article 44 of the Law which stipulates that the Agency submits financial report on its activities to the Council of Ministers Bosnia and Herzegovina (CoM) each year and the use of its funds are reviewed by the Supreme Audit Institution.

The proposed draft Law on Salaries and Other Compensations of the Employees Of the Institutions of Bosnia and Herzegovina and possible threats to the independence of the CRA

Concerns have been raised that provisions on 'Bonuses' and 'Pecuniary Rewards' for institutions covered by the draft Law on Salaries (Articles 29 and 30 of the Law) are too vague and could be applied arbitrarily and therefore threaten the independence of the institutions.

Under the proposed law, and inter-ministerial task force appointed by the CoM is supposed to determine the grading of the posts of institutions covered by the Law. It is important to note that a proper grading of the posts is essential to reflect the importance of the work of the CRA staff and to ensure that the CRA has the expertise and resources needed for its proper functioning in line with European standards.

According to Article 7 of the proposed draft Law, the Council of Ministers determines each fiscal year the basis on which the salaries of all civil servants covered by the draft Law are calculated; apparently this basis could, however, also be changed by the Council of Ministers during the fiscal year. Given the importance of a clearly defined financing plan and the need to avoid ad-hoc financial decisions to ensure the financial independence of the broadcasting regulatory authority, this provision could also be considered problematic.

To conclude:

In the light of the above, and given that to this date, the functioning of the CRA has a high international reputation and is considered exemplary in the region, the experts of the Council of Europe, the OSCE Representative on Freedom of the Media and the European Commission would advise against a change in the provisions regulating the salaries of the staff at the CRA. Instead they suggest that the issue is studied again in more detail by the BiH institutions. The experts suggest excluding the CRA from the applicability of the draft Law, as a broadcasting regulator, just like the judiciary, requires a high degree of independence in its functions.



PROGRAMME

24 April 2008

9:30-10:00 *Opening remarks*

- Mr. Ferdinand Kopp, Charge d'Affairs, EU Commission Delegation to BiH
- Franziska Klopfer, Programme Adviser, Technical Cooperation Department, Directorate General of Human Rights and Legal Affairs, Council of Europe
- Ambassador Davidson, Head of OSCE Mission in Sarajevo

10:00-11:00 European standards concerning the independence and functioning of broadcasting and communication regulatory bodies

- Franziska Klopfer, (Recommendation on the independence of broadcasting regulatory bodies and Declaration on the independence and functions of regulatory authorities in the broadcasting sector)
- Maria-Luisa Fernandez Esteban, Audiovisual and Media Policies, Directorate General for Information Society and Media, European Commission (New audio-visual services directive)
- Cindy van den Boogert, International Relations, Directorate General for Information Society and Media, European Commission (EU regulatory framework for electronic communications)
- Arnaud Amouroux, Office of the OSCE Representative on Freedom of the Media (OSCE commitments to freedom of the media and implications for the regulation)

11:00 - 11:30 Coffee break

11:30 – 12:15 The importance of financial independence of regulatory authorities; Analysis of the impact of the draft Law on Salaries in the financial independence of CRA

- Franziska Klopfer
- Maria-Luisa Fernandez Esteban
- Cindy van den Boogert
- Arnaud Amouroux

12:15 – 12:45 Discussion

12:45 – 13:00 Conclusions