

# Bulgarian media policy and law: How much Europeanization



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**ABSTRACT:** The present paper differentiates between two related but not identical processes: on the one hand, the approximation of Bulgarian media law with Community law, and on the other the real transformations in the media sector caused by the process of the EU integration of Bulgaria. The Community law implementation is a prerequisite for the legislative reform in countries in accession but it is only *one of the elements* of EU conditionality. The critical analysis of the effectiveness of EU conditionality in respect of Bulgarian media policy and law has been carried out.

**KEYWORDS:** Europeanization, media policy, media law, approximation, Bulgaria



## **LEGAL INTEGRATION v. EUROPEANIZATION**

The Bulgarian Radio and Television Law (RTL), adopted in 1998, aimed to transpose the revised *Television without Frontiers Directive* (TWF). As recognition of the alignment with the *acquis*, Bulgaria was admitted to MEDIA Program right after its temporary closing of the negotiation chapter “Culture and Audiovisual Policy”. Bulgaria is also a signatory of the Convention on Transfrontier Television of the Council of Europe and the Additional Protocol to it. Since 1998, around 20 amendment laws of the RTL have been adopted. Two of them (2000, 2006) aimed at further alignment of the RTL with the *acquis*.

As a whole, Bulgaria has coped successfully with the transposition of Community law – as of February 2008, it was ranked second among Member States with 99.77% harmonization as 1720 Directives from a total of 1724 had been transposed. But the laws are only instruments for the accomplishment of the policy goals and priorities.

Europe’s role as a factor leading to modernization has been a research subject in the so-called Europeanization Studies (Wessels, Rometsch, 1996; Wallace, 2000; Radaelli, 2000). The Europeanization concept is becoming fashionable (Olsen, 2002) due to the fact that the analysis of Europeanization processes goes beyond the question of compliance of the domestic legislation with the *acquis*. Although law-

yers tend to limit their research to their own scope of interest, an interdisciplinary approach to integration studies is becoming dominant. It is now evident that the transposition of thousands of Community directives should not be viewed as an end-in-itself. Instead, it should lead to real transformations and strengthening of Community values like human dignity, freedom, democracy, equality, human rights and the rule of law.

The Europeanization concept still needs theoretical precision. The present study adopts Radaelli's viewpoint (Radaelli, 2000; Radaelli, 2001), according to which Europeanization refers to the establishment, institutionalization, dissemination of formal and informal procedures, rules, paradigms, modes, ways in which things are done, shared positions and standards defined and consolidated on the EU level in the scope envisaged by the Treaties and afterwards incorporated within the domestic public policies. This should affect not only formal decision-making procedures but also beliefs and values about *the penetration of the spirit and principles* of Community policies into domestic policies, structures and practices.

Integration studies analyze *horizontal* and *vertical* mechanisms of Europeanization that lead to substantial diversity of policy instruments used to regulate media markets at national levels. Taken together, the two mechanisms have led to the Europeanization of media market regulation at national levels in the form of formal changes to media laws, the adoption of suggested policy instruments, and regulatory approaches at the national level (Harcourt, 2003). *The vertical mechanism* consists of Community requirements and standards formalized in legislative and non-legislative acts. The practice of the European Court of Justice is an additional substantial source of Community law particularly due to the fact that the Court's decisions often lead to legislative initiatives which "translate" the Court's findings into Community legislation.

EU standards also have a *horizontal impact* through exchange of data, expertise and good practices. When markets are liberalized, the European standards and rules penetrate through market mechanisms. The intensive communication and better knowledge of European policies creates expectations for Europeanization and enhances the integration processes – particularly when EU policies address adequately the interests of citizens and businesses.

Since the study of all aspects of the Europeanization of media policy requires coverage of many interactions at national and supranational level, the present research focuses mainly on the impact of EU accession on Bulgarian media policy and legislation. The Europeanization of national policies within the enlargement process has already been discussed in the literature (Sedelmeier, 2006). Its implications for the specific domestic policies have also been considered (Dimitrova, 2005). The level of Europeanization of national media policies has been analyzed with regard to certain key issues (Jakubowicz, 2004; Harcourt, 2002; Harcourt, 2003; Meyer, 2005), including Bulgarian media policy (Ognyanova, 2005; Ognyanova, 2007).

## COMMUNITY MEDIA POLICY AND LAW: SCOPE AND INSTRUMENTS

The development of opportunities for transfrontier transfer of television services within Europe has led to the development of supranational regulation. Initially, the Community media policy covered a limited extent of the audiovisual area. In 1984, the European Commission made explicit the idea for Community audiovisual policy<sup>1</sup> and a little later it used for the first time the term ‘Community audio-visual policy’.<sup>2</sup> Community media policy has found expression in the acts (strategies) of the European Commission.<sup>3</sup> In spite of the declared intention that printed media and Internet shall not be regulated at Community level, some priorities (media pluralism, protection of minors) have already led to widening the range of Community policy in respect of new media as well. Directive 65/2007/EC clearly shows that such a tendency exists.<sup>4</sup>

Whereas the Europeanization processes affect the entire reform of the media sector in post-communist countries, the legal integration has only partial impact on media laws in Member States. There are *coordinated and non-coordinated zones* within national media laws. The achievement of the goals and priorities of the Community media policy needs harmonization of *certain aspects of media services*. Member States should guarantee the free provision of services regardless of frontiers. At the same time they are required to guarantee the “growing importance of media services for societies and democracy – particularly through guarantees for the freedom of information, diversity of opinions and media pluralism, education and culture.” Therefore in the process of transposing Directives Member States are bound to conform to the two goals of harmonization:

- (a) removing the obstacles that hinder the free movement of services: that calls for coordination of the applicable laws aimed at facilitating the free movement of information and ideas within the EU (negative integration), and
- (b) protection of common values, particularly in respect of the physical and moral development of minors, through specific measures on a supranational level (positive integration).

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<sup>1</sup> European Commission (1984). *Television without Frontiers: Green Paper on the establishment of the common market for broadcasting, especially by satellite and cable*. COM (1984) 300.

<sup>2</sup> European Commission (1986). *Proposal for a Council Directive on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of broadcasting activities*. COM (86) 146 final.

<sup>3</sup> The strategic acts in the audiovisual fields as: COM (1999) 657 final Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions Principles and guidelines for the Community’s audiovisual policy in the digital age; COM (2003) 541 final Communication from Digital “Switchover” to Analogue “Switch-off”. COM (2001) 534 final Communication on certain legal aspects relating to cinematographic and other audiovisual works etc.

<sup>4</sup> Directive 65/2007/ EC (*Audiovisual Media Services Directive*). OJ L 332, 18.12.2007, rec. 8.

*Coordinated zones* are necessary not only for guaranteeing the free provision of services but also for protecting European cultural production. Directive 65/2007/EC explicitly states that “audio-visual media services are as much economic as they are cultural services.”<sup>5</sup>

*Non-coordinated zones* include “the responsibilities of Member States in respect of organization (including systems for licensing, administrative assignment of authority or tax levying), financing and the contents of programs, the autonomy of cultural development of Member States and safeguarding of cultural diversity within the Community.”<sup>6</sup>

The scope of coordinated and non-coordinated zones is dynamic. Along with it there are differences in the allocation of competence at national and supranational level – for instance, when Community norms allow derogation. A current example is the opportunity for derogation of the ban on product placement, envisaged in Directive 2007/65/EC.<sup>7</sup>

In contrast to Member States with well-established democratic institutions, mechanisms for civic participation in decision-making and commonly accepted democratic media standards, some of the new Member States, including Bulgaria, are only now beginning to organize channels for civil society scrutiny over public decision-making and consolidate the standards of freedom of speech and media pluralism. In such conditions the EU influence is more successful in some coordinated zones (for example commercial communications) where the Community directives specify a set of binding targets which Member States have to follow. Not surprisingly, Europeanization has shown slower progress in non-coordinated zones of domestic media legislation (for example composition of media regulators, status and funding of the public service operators, etc.), where the competence for decision-making belongs completely to the Member States.

At the same time while the institutions consider themselves well informed and efficient, the lower level of appropriate knowledge and experience affects Bulgaria's readiness as a Member State to make use of the whole spectrum of policy instruments. The impact of non-legislative instruments (funding under Community programs aimed at consolidating the institutional capacity of the regulator, practices and expertise exchange, qualification of the regulator's administration in the framework of so-called *twinning programs* and others) for the Europeanization in media field remains still insufficient.

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<sup>5</sup> Directive 65/2007/EC (*Audiovisual Media Services Directive*), OJ L 332, 18.12.2007, rec. 3.

<sup>6</sup> Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities. OJ L 298, 17.10.1989, as amended by Directive 97/36/EC.

<sup>7</sup> Directive 65/2007/EC (*Audiovisual Media Services Directive*), OJ L 332, 18.12.2007, Article 3g.

## CASE STUDY: BULGARIA

### Media policy: No strategic stage

During democratic transitions, media sector liberalization and promoting market relations require formulating a policy based on analysis of the locus of development in that sector. Media policy at Community level most often finds expression in written sources with strategic character which defines the objectives, priorities and principles of development in the sector, the subjects of governance and instruments for achieving the goals.

Unlike other sectors of the economy, where the government adopts the so-called *sectoral policies*, no political acts (strategies) for media sector in Bulgaria have been developed in the years of democratic transition. Bulgarian Law on Radio and Television (RTL) was adopted and then repeatedly amended without preliminary objective-setting. The absence of written policy documents could be explained by reference to the desire of the political elite at the beginning of the democratic transition to avoid direct government intervention in the media sector. Only in 2006 and under pressure from the European Commission, did the Parliament adopt a strategy for the development of terrestrial radio and television. The common view is that this was purely a formal procedure and has had no substantial impact on the optimization of media regulation. As an example of this flawed approach, the act refers to the principles stipulated in the RTL. Logically, the opposite reasoning should apply: the law should be adopted to achieve the objectives and priorities laid down in strategic acts. As far as the strategy defines specific deadlines, they have not been kept. No-one has been made responsible for the implementation of the strategy, so it is one more reason for the ineffectiveness of the strategy in practical terms.

The lack of strategy, goals and priorities is partially compensated in the cases of *two main scenarios*: (a) definition of priorities as a result of expert analysis in the process of legislation development and adoption, and (b) *ad hoc* definition of priorities.

(a) In this scenario, and it is much better one, strategic issues are resolved by experts in the process of legal drafting. In 1998, for instance, Bulgarian law for the first time made a differentiation between the regulation of networks and services (transmission of program services) and that of the program contents. The principle of technologically-neutral regulation was adopted as well. A year later, the European Commission explicitly wrote down in its strategy for the digital era that *different approaches* towards the regulation of infrastructure and content shall be adopted, since content needs to be regulated consistently regardless of the specifics of its transmission. In spite of the explicitly adopted principle of Community media policy, the next parliamentary majority amended the RTL and compromised the technologically neutral regulation by placing program services in different legal environment, according to their transmission mode (by cable or terrestrial). A pos-

sible explanation can be found in the fact that the MPs with interests in the cable business supported the liberalization of the legal regime for cable program services. The opposition put the matter before the Constitutional Court, defending the neutrality principle. The Constitutional Court fully supported the amendments in the RTL. If clear principles of media policy existed, such legislative changes would not be possible.

(b) In the second scenario, objectives and priorities are formulated on an *ad hoc* basis, without the necessary expertise, and depend on ideological considerations or economic interests of the ruling majorities. One example where a group protects the economic interests of political parties is the termination of the process of licensing for the period 2001–2006. Since the adoption of the RTL, licensing has been the major priority, as it enabled the legalizing of the media market in Bulgaria. Due to a conflict between the ruling majority and the then operating composition of the media regulator, an amendment in the RTL was adopted, blocking the licensing indefinitely. In the absence of an appropriate legal procedure, a large number of operators with temporary licenses were admitted to the market. They are currently still seeking legalization. The ruling majority is different today, but the market distortions endure.

The lack of strategy and sustainability of policy objectives allows group interests to find their way into the legislation, even in cases when they violate the principles of Bulgarian as well as Community audiovisual regulation. The consequences are not limited to disorientation and delays. The absence of strategy led to *reversibility* of the Europeanization processes of media regulation.

### **Law making: Procedures, producers, performers**

The media law may be examined both as a *law-making procedure* and a *result (legislation)*. While in the negotiating process the emphasis was on achieving results, the procedural aspects of law-making are essential for the Europeanization of media legislation. They determine in a sustainable manner a critically important decision-making framework involving the interests represented in drafting of laws, the level of expertise of the participants in the legislative process, the realization in practice of media policy-transfer and approximation of laws.

At Community level, the legislative process is reformed within the framework of the initiative for better governance and better law-making. Principles have been formulated (transparency, public consultation process, *ex ante* and *ex post* impact assessment, etc.) which are relevant for the effective law-making in Member States as well. The implementation of each of these principles is an element of the Europeanization of the policy-making and legislative drafting on the national level.

The Bulgarian law allows for two entries to the legislative process: on the initiative of the Council of Ministers and on the initiative of individual MPs. The second legal opportunity is used mainly in order to avoid the mandatory coordination and

consultation period required for governmental bills. With the exception of bills aimed at approximation with the *acquis* introduced by the Council of Ministers, all amendments in the RTL have been introduced by individual MPs. The negative effects of such practices involve among other things lack of transparency. Legal amendments allowing operators without licenses to enter the market were adopted in that manner.

Civil society organizations in the media sector are represented in expert groups at different levels and actively participate in the legislative process. They are still an important source of expertise. At the same time, the consolidation of media businesses in Bulgaria led to a natural transformation of the goals of some organizations. While they remain legitimate partners in the legislative process, media operators' associations are now also representing and protecting the interests of relevant private businesses. In the once integrated non-governmental sector concerned with media development and democratization, two separate wings can presently be distinguished – civil society organizations and business associations. The views of media business differ from those of the civil sector at pan-European level as well. The controversial issues include the admissibility of concentrations and the restrictions of electronic commercial communications. Human rights and consumer rights organizations insist on more guarantees for the protection of children and consumers whereas the business stands adamant on maximum liberalization and minimum regulation. In some details and in respect of certain issues, business interests are also in conflict. For instance, present operators do not benefit from the invasion of potential competitors on the market. This led to further differentiation of the business organizations in Bulgaria seeking representation in the legislative process.

A new phenomenon emerging in Bulgaria are the links between NGOs in the media sector and relevant European networks. This is an undoubtedly positive trend in view of the structuring and protection of their goals both at national and European level. This defines new channels for Europeanization of the sector in Bulgaria as well as new sources of expertise.

Media law affects a great number of interests. Good media laws are based on broadly acceptable balances between the citizen interests and corporate objectives, between public operators and commercial operators, between providers and consumers. The emergence of organizations which openly defend civil, consumer or corporate interests is a relatively new phenomenon which has a positive impact on the process of policy-making. Meanwhile it must be acknowledged that the organized business has better opportunities for lobbying compared to the consumers organizations. It is the responsibility of the law-maker not to allow *the asymmetric access to the law-making process* to lead to asymmetries or prevailing of group interests over public interests in the legislation.

Along with guaranteed access to the law-making process, awareness and access to information are the most substantial prerequisites needed for high quality of



legislation. The *information asymmetry* is already a basis for imbalances in the law. Those who possess full and timely information have better opportunities to take part in the decision-making process. All citizens should have access to the relevant statistics and quantitative data available to the state. The Europeanization of law-making calls for transparency and openness.

### **Media regulator: An empty shell?**

“EU conditionality” did not appear suddenly, but has been evolving gradually ever since the Copenhagen Summit in 1993. In integration studies, considerable attention is paid to the so-called *EU membership criteria* (Copenhagen criteria, 1993), including the *additional criteria* for administrative capacity (Madrid criterion, 1995), which became the focus of talks during the Eastern enlargement (Dimitrova, 2002). Unlike areas which require re-adaptation and re-building, the institutional reform is evaluated as faster and more successful in areas where policy models are imposed on a *tabula rasa*. In Bulgaria there were preexisting conditions – both legal and social – allowing for a very successful start of the new *media regulator* institution:

a) From a formal point of view, strong incentives provided by the Council of Europe exerted pressure for the establishment of an independent media regulator. Although it was not before 2007 that Community law stipulated that “Member States shall be free to choose the form of their independent regulative bodies in order to perform in objective and transparent manner their obligations in respect of the implementation of the present Directive,”<sup>8</sup> it has been well known from the beginning of the EU accession that Bulgaria has the freedom – but also the responsibility – to establish a competent and independent media regulator.

b) In terms of public expectations, clear social grounds existed for the establishment of an institution *equally distant* from the government and the operators on the liberalized media market. After long years of state regulation of the media, citizens started to appreciate the advantages of distancing the new authority from the political party in power. They were, furthermore, convinced in the *legitimacy* of the regulator.

The RTL provided for the establishment of a media regulator. Ten years later, this body is deprived of public trust and support. The Bulgarian media regulator is neither more independent nor more effective than any public administration department. The regulator’s activities are a bigger financial burden to the state budget than the activity of an analogous public administration unit would have been. On the other hand, unlike civil servants, members of the regulator do not bear personal responsibility for their decisions.

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<sup>8</sup> Directive 65/2007/ EC (*Audiovisual Media Services Directive*), OJ L 332, 18.12.2007, rec. 65.



The low level of administrative capacity hinders the successful implementation of basic competences according to the RTL. During the licensing process in 2007, the regulator repealed its own decisions a week after adopting them, either because of the unpersuasive motives or, more likely, as a result of external pressure. Licensing could only be defined as a hard and racking process. Monitoring, another basic function, has also not been effectively performed. The very philosophy of monitoring needs to be redefined, since we have a rapidly increasing in numbers but permanently insufficient administration. The monitoring of regional program services should have been improved by means of EU pre-accession funds. What we have done, however, is to establish a regional structure of the regulator. That includes purchasing real estate property outside the capital city, which is problematic in terms of the priorities of the reform. No system has been developed yet that would guarantee the monitoring of *all program services* under Bulgarian jurisdiction. There is no specific attention devoted to that area, in particular there is no intensive training of experts in view of the new role of the regulator in the digital era, particularly in respect of the digital switch-over. The coordination with other control and regulatory bodies, for instance the Consumer Protection Committee, needs to be improved.

When discussing the unsatisfactory performance of the media authority, the grounds are firstly in the methods of composition. Although the requirements for all applicants are envisaged in the law, they have been a subject of several amendments *intuitu personae*, by virtue of the personality. The weak parliamentary opposition and fragile civil society could not effectively resist the use of media legislation for specific political appointments. As an example, the amending law (2001) introduced a new requirement that university lecturers could be elected or appointed as members of the regulator only if they have an academic rank. This amendment aimed at preventing the appointment of certain applicants who at that time lacked academic ranks. In the amending law (2005) the minimum requirements for professional experience (five years professional experience in electronic media, telecommunications, law, etc.) have been waived, allowing persons without such standing to be appointed to the regulator immediately after the amendments were adopted.

In practice, the members of the regulator from the parliamentary quota are determined in the same way as Bulgarian ministers – after approval by the political councils of governing parties. Such selection makes the debate over the regulator's autonomy irrelevant, regardless of the long catalogue of independence guarantees set out in the RTL.

In terms of integration studies, EU pressure is not directly rejected but the institution functions as *an imitation, as an empty shell* (Dimitrova, 2007). It can be argued what is more harmful: the imitation or the explicit rejection of Community standards. In any case, there is no doubt that the media regulator does not terminate

the economic and political influences over the media. On the contrary – it is an instrument for their realization.

There are signs that the independence of media regulation faces problems in other countries too. During the debate over Directive 65/2007/EC the Member States repealed Article 23b of the EU Commission legislative proposal,<sup>9</sup> according to which “Member States shall guarantee the independence of national regulatory authorities and ensure that they exercise their powers impartially and transparently.” Despite the regrets expressed by some Member States like the Netherlands and Lithuania, the text did not gather necessary support. This questions the extent to which the concept of independent media regulators is acceptable to Member States governments. It is yet unclear whether they are genuinely willing to give up control over regulation – and suffer sanctions if they do not succeed in establishing independent media regulators.

Commission’s progress reports concluded that the media regulator in Bulgaria „needs to ensure its capacity to make transparent, justified and impartial decisions. It needs to reinforce its administrative capacity.”<sup>10</sup>

### **Media market: Pluralism under increasing threat**

The liberalization of the media market leads to more choice of services for consumers and better realization of the right to information. Community law guarantees the preconditions for establishment of (and Bulgaria is already part of) the EU internal market. Freedom to provide audiovisual services is guaranteed in the RTL. Market mechanisms imperatively lead to interactions between Bulgarian media and audiences, on the one hand, and audiences and media in other Member States, on the other hand, which creates a favourable environment for the Europeanization of media, quality and diversity of content.

The liberalization of radio and television market in Bulgaria began in the 1990s. This was a separate process, unrelated to the EU integration. After 1999, already on the basis of harmonized legislation, three national terrestrial televisions (one public and two commercial), two national terrestrial radio-operators (one public and one commercial), hundreds of regional terrestrial radio-operators and hundreds of cable televisions were licensed. Unfortunately, the successful start was followed by a five-year pause in licensing caused by political changes after the parliamentary elections in 2001. The licensing process is currently resumed.

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<sup>9</sup> European Commission (2005). *Proposal for a Directive of the European Parliament and of the Council amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities*. COM (2005) 646 final.

<sup>10</sup> European Commission (2005). *Bulgaria. 2005 Comprehensive Monitoring Report*. COM (2005) 534 final; SEC (2005) 1352.

The EU membership of Bulgaria affects the market development, particularly in the following aspects:

a) The termination of analogous terrestrial broadcasting in the EU is planned for 2012. Taking into account the scarcity of spectrum and the requirements of the digital switch-over, the Law on Electronic Communications (2007) stated that the licensing of analogue terrestrial broadcasting of program services in Bulgaria must end by December 2008. This led to tensions between applicants for analogue terrestrial licenses and their opponents (already functioning operators). The latter considered that further analogue licensing will preclude the effective digital transition. The conflict was transferred to regulators as well; the prosecutor's office also intervened and warned the media regulator that the issue of analogue terrestrial licenses for television program services would be a violation of the law. In this case EU pressure is an important factor for alignment of domestic media policy priorities with Community agenda.

b) After the EU accession, Bulgarian media market is more attractive for European and US investors. News Corp., Antenna Group, Emmis International, Modern Times Group Broadcasting (MTG) and others have already entered the market. Foreign groups are purchasing entire Bulgarian media groups; media consolidation is currently under way, often with foreign capital participation. The extent to which media concentrations are related to the Europeanization of Bulgarian media is difficult to determine. Apparently this is a global trend which has both positive and negative effects in this country.

The competition regulator emphasizes on the positive effects of consolidation. It allows further media concentrations with the motive that they lead to more favourable conditions for the development and distribution of new media services:

- outstanding media groups are expected to introduce their journalistic and technological standards and contribute to the improvement of services in Bulgaria;

- more operators with experience on the European market will also have positive effect on the European works quota;

- relations with the media in other Member States are intensified and Bulgarian program services would have better chances of reaching the European audience.

At the same time there are public concerns about the unfavorable consequences for media pluralism:

- smaller media and individual voices are gradually and *en masse* assimilated;
- media concentrations are accompanied by a change in the type and format of licensed program services. In other Member States the change of format is carried out under supervision and after a relevant test for compliance with the public interest. In Bulgaria the regulator allowed changes in licenses by which the audience was deprived of information program services (Inforadio, New Europe), specialized program service for people with disabilities (Net), sports programs (Sport, Gong), which were replaced by program services with specialized music format.

The non-transparent ownership, in particular the increasing number of media enterprises owned by off-shore companies, hinders the effectiveness of control over media concentrations and the protection of pluralism. The audience has the right to know who is the owner of a relevant electronic media or the publisher of a printed media, since the link between media policy and content, on the one hand, and media ownership, on the other, is a proven fact.

Media concentrations are indirectly related to the success of self-regulation processes in the media which have been stimulated by Community law. If specific measures are not laid down in future domestic law, it can be expected that the standard-setting and monitoring for compliance would fall into the hands of big media business.

Media pluralism protection emerges as common problem for Member States. The efforts for adoption of Community legislation on media concentrations proved to be unsuccessful so far. An attempt to intervene at Community level took place in the 1990s. At that time, a proposal for a Directive was presented by the European Commission at the invitation of the Parliament (Resolution of 1990) and following the *Green Paper on Pluralism and Media Concentration* (1992) and a Communication by the Commission (1994). This draft did not succeed, partly due to the opposition of some Member States which claimed to have full competence in this area, partly for lack of harmonization at the EU level of the criteria used in the different countries to “measure” concentrations.<sup>11</sup>

In 2008, two European institutions have media pluralism enhancement as their priority. The European Parliament works on an own-initiative report on Media Concentration and Pluralism (Mikko Report). In parallel, the European Commission has ordered a study to define indicators for assessing media which will be followed by a Communication in early 2009. In the framework of the 2008 intercultural dialogue<sup>12</sup> Member States are advised to encourage non-profit civil society-based media to better take advantage of the opportunities provided by digital technologies; to foster the process of digitalization of cultural materials and content; to enable new media – on-line as well as mobile services – to contribute to an enhanced accessibility of cultural diversity.

### **Public television: What exactly is public**

The Bulgarian National Radio (BNR) and the Bulgarian National Television (BNT) are successors to state monopoly organizations, which were part of the structures of the executive power during the time of socialism. BNT and BNR are regulated by Chapter Three of the RTL.

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<sup>11</sup> Council of Europe (2004). *Transnational media concentrations in Europe*. Report, prepared by AP-MD. AP-MD (2004) 7.

<sup>12</sup> Decision 1983/2006/EC of the European Parliament and of the Council concerning the European Year of Intercultural Dialogue 2008. *OJ L 412*, 30.12.2006, p. 44.

a) The RTL implies that public media should satisfy the need of the audience for information, education and entertainment – unlike the concept adopted in the US, where the public operators assume mostly those functions which the commercial operators fail to perform effectively. Although the discussions of the advantages of the US model surface with every new revision of the media legislation, the public operators in Bulgaria have the obligation to provide content that corresponds to the diverse needs of all social groups – as if the audience had no access to commercial program services. Therefore it could be argued that Bulgaria has adopted the European philosophy for the programming content of its electronic media.

The law has defined BNT as a *public service operator*. But the public (audience) does not have impact over any one of the three axes of activity (programming, funding, management) yet. A radically different approach should be introduced in order to achieve a strong interdependence between public expectations and *consumer and citizen value* of all public program services.

b) The RTL provided for mixed funding of the public operators (license fees, advertising). Funding through fees was never implemented. From the legal point of view, the main reason appears to be the difference between *taxes* and *fees*: while people who do not watch a particular program (do not benefit from a service) are not obliged to pay fees, taxes are mandatory regardless of the using the service. Inability to establish a mechanism to „charge against service” led to a presidential veto on that part of the law and blocked the introduction of license fees. Currently, the funding of public operators comes from the budget although the law allows limited advertising as well (up to 15 minutes per day for BNT). Sponsorship and teleshopping are allowed within the limits set by the revised *Television without Frontiers Directive*.

The budget funding is legally arranged as a temporary solution until the enforcement of the mechanism of funding by license fees. This provisional way of funding has already been in use for ten years. It is protracted every year by the annual state budget laws. Funding by fees has become problematic because of reasons such as:

- changes in consumer behaviour and a decreasing interest in the programs of the public operators;
- low fee collectibility;
- failure to update rate of fees so as to ensure sufficient resources for the new tasks of public operators in the information society;
- inability to identify the so-called terminal devices (receivers) in cases where the obligation for payment depends on the availability of a terminal device in households and offices.

Discussing the future, some experts suggest that the next media law should waive the mechanism of funding by fees and envisage simple funding by budget instead. The European Commission assumes that the funding of public television by budget does not contradict its public nature, provided that it is in accordance with the regulation of state aid and criteria defined in the practice of the Court of Justice (Altmark Case, 2004). In order for BNT to be funded through state subsi-

dies, there should be a guaranteed transparency, effective control over the expenses and revenues and full compliance with the principles for state aid in the media sector, which are currently being updated.

“Non-transparent public television” is an oxymoron. For the time being any civic appeal for more transparency in the BNT is considered an attack in favor of the commercial operators. BNT remains close to power and inaccessible to public control.

c) Until the democratic transition, BNT was managed by the government; now the director-general is appointed by the media regulator in a competition procedure. Insofar as there are justified doubts about the independence of the regulator, the public has no high expectations for the selection of independent directors-general of Bulgarian National Television. The competitions are conducted on the basis of the concepts for the development of BNT, including a public defense of the concepts of the most successful applicants. According to the prevailing media opinion, the competition outcome is predetermined. Indeed, the name of the winner in the last competition – Uliana Pramova, present director-general, was published on the website of the regulator before the public defense, which was later explained as a technical error. The regulator does not exercise control over the implementation of the concepts, which makes the competitive procedure pointless. No instruments for accountability of the management are introduced. In brief, to quote one of the former managers of BNT (Asen Agov, former director of Channel 1): *The television follows the winners.*

## CONCLUSIONS

This paper contains summarized critical analysis of the process of reforming the media policy and legislation “beyond the transposition of directives” at the beginning of Bulgaria’s membership in the EU. The problems of Bulgaria in relation to the reform in media regulation have been repeatedly communicated in the EC Annual Progress Reports and Monitoring Reports, as well as in the recommendations of European experts as part of their peer-reviews during the preparation for EU accession. Four important fields – strategic policy-making, law making, regulatory system, media market including public service broadcasters – were selected for analysis of the level of Europeanization of the Bulgarian media policy and legislation. The study maps only the main problems and traces the most important reforms that lie ahead.

In the eve of Bulgaria’s membership, the European Commission concluded that there were still a limited number of areas where further progress was needed in the months leading to accession and beyond. The concerns of the EC refer to areas of structural funds, judicial reform, fight against corruption and organized crime,<sup>13</sup> but they also have an indirect impact on the media sector in Bulgaria.

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<sup>13</sup> European Commission (2006, 2007, 2008). C (2006) 6570 final Commission Decision on establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific bench-



The introduction of Directive 65/2007/EO lies ahead. There are expectations that not only transposition of Community legislation, but also questions related to the non-coordinated zones of media legislation will be put in the focus of the emerging public debate. A comprehensive reform of the Bulgarian media policy and legislation – or non-transparent regulation of ever more consolidated media market? The near future will give us the answer.

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