

London School of Economics and Political Science

**Small and Resistant: Europeanization in Media  
Governance in Slovenia and Macedonia**

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# Abstract

This thesis contributes to our understanding of the role of European Union policy in national level governance of the audiovisual media sectors in small states in South East Europe. It compares the Republics of Slovenia and Macedonia, two countries of similar size and population that emerged from the same former-Yugoslav media system. Slovenia is a new EU member state and Macedonia is a candidate country, therefore both are formally bound by EU audiovisual media policy. Europeanization research, particularly in new Member States and candidate countries, has focused on compliance with transposition deadlines and the implementation of specific EU Directives. This study takes a bottom-up approach, making media governance its object of study based on a conceptualisation of governance by Jan Kooiman (2003), but still focused on identifying the role of the EU within that national level governance. It draws on interviews with stakeholders in both countries, examination of secondary data available on the respective media markets, and accounts from civil society actors and regulators to arrive at an overall picture of media governance.

It finds that in these two cases the role of Europeanization, defined in this thesis in relation to the EU, centres on the use of EU rules by domestic actors in order to forward their strategic interests. It argues that the media sectors in these two cases are largely resistant to Europeanization because of their small size and the particular relations between media and political elites. This thesis suggests that the media sector may be different from other sectors such as transport, environmental protection, or labour in terms of Europeanization and governance because the role of media in domestic politics. However, this is not a simple story of the democratic and governance failures often attributed to Southern European countries. This thesis shows the complexity in which Europeanization takes place, and highlights the importance of market conditions and market players to this process.

## Declaration

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I declare that my thesis consists of 100,352 words.

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# Acronyms

<b>AEK</b>	Agency for Electronic Communications (Macedonia)
<b>APEK</b>	Agency for Post and Electronic Communications (Slovenia)
<b>AVMSD</b>	Audiovisual Media Services Directive
<b>BC</b>	Broadcasting Council of Republic of Macedonia
<b>CEE</b>	Central Eastern Europe
<b>CME</b>	Central European Media Enterprise
<b>CoE</b>	Council of Europe
<b>DTT</b>	Digital Terrestrial Television
<b>EBU</b>	European Broadcasting Union
<b>EC</b>	European Commission
<b>EPRA</b>	European Platform for Regulatory Authorities
<b>EU</b>	European Union
<b>GRP</b>	Gross Rating Point
<b>GD</b>	General Director
<b>IPTV</b>	Internet Protocol Television
<b>KZK</b>	Commission for the Protection of Competition (Macedonia)
<b>MDC</b>	Media Development Center (Macedonia)
<b>MFF</b>	Macedonian Film Fund
<b>MIM</b>	Macedonian Institute for the Media
<b>MRT</b>	Macedonian Radio Television
<b>MRD</b>	Macedonian Radio Diffusion
<b>MUX</b>	Multiplex for digital terrestrial broadcasting
<b>NMS</b>	New Member States
<b>NRA</b>	National regulatory authority
<b>ODIHR</b>	Office of Democratic Institutions and Human Rights
<b>OSI</b>	Open Society Institute
<b>OSCE</b>	Organization for Security and Cooperation in Europe
<b>PSB</b>	Public service broadcasting
<b>RTVSLO</b>	Radio Television Slovenia
<b>SEE</b>	South East Europe
<b>SFC</b>	Slovenian Film Centre
<b>TWFD</b>	Television without Frontiers Directive
<b>UVK</b>	Competition Protection Office (Slovenia)

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# Legislation

## European

DIRECTIVE 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.

DIRECTIVE 2002/21/EC Framework Directive on a common regulatory framework for electronic communications networks and services

DIRECTIVE 2002/77/EC on competition in the markets for electronic communications networks and services

DIRECTIVE 2007/65/EC Audiovisual Media Services Directive

DIRECTIVE 2010/13/EU Audiovisual Media Services Directive

## Slovenian

Zakon o Radiotelevizija Slovenia (Radio and Television Corporation Act of Slovenia) 1994

Zakon o medijih (The Mass Media Act) 2001

Zakon o Radiotelevizija Slovenia (Radio and Television Corporation Act of Slovenia) 2005

Zakon o Digitalna Radiodifuzija (Digital Broadcasting Act) 2007

Zakona o avdiovizualnih medijskih storitvah (Law on Audiovisual Media Services), 2011

## Macedonian

Закон за Радиодифузната Дејност (The Law on Broadcasting Activity) 1997

Закон за Радиодифузната Дејност (The Law on Broadcasting Activity) 2005

Закон за Електронски Комуникации (Law on Electronic Communications) 2005

Закон за измени и дополнување на законот за радиодифузната дејноста (Law for changing and adding to the Law on Broadcasting Activity) 2007

Законот за изменување и дополнување на Законот за основање на Јавното претпријатие Македонска радиодифузија (Law for changing and amending the law establishing the public company "Macedonian Broadcasting") 2009

Закон за измени и дополнување на законот за радиодифузната дејноста (Law for changing and adding to the Law on Broadcasting Activity) 2011

Законот за изменување и дополнување на Законот за радиодифузната дејност (Law for Amending the Law on Broadcasting Activity) 2012

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# Chapter 1: Introduction

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“Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.”

Copenhagen Criteria (June 1993)

In early 2012 Swedish Modern Times Group (MTG) announced that it was pulling out of the Slovenian broadcasting market, despite its TV3 having increased audience share from 1% to 11% in three years. TV3 was the first station to receive a national license in Slovenia, but was quickly overtaken by a network formed of local stations that eventually became PopTV. MTG had bought into TV3 in 2006 as the station was floundering in the face of competition from PopTV and the public service broadcaster (PSB). MTG explained its departure and closure of the station by the inability of TV3, which was nevertheless Slovenia's third most popular national commercial station, to turn increased ratings into higher advertising income. MTG argued that the reason was domestic regulators' failure to ensure fair competition (STA, 2012a). Shortly afterwards, the Norwegian company Norkring announced it was closing Slovenia's only commercial digital terrestrial television (DTT) network, having gone as far as to press criminal charges against the PSB in relation to unfair competition (STA, 2012b). These closures left Slovenia with only one DTT network in the hands of its PSB with implications for media pluralism. They also point to serious barriers to free and fair competition in the audiovisual media sector of Slovenia, a country that has been a member of the EU since 2004 and whose laws were formally brought in line with EU rules for television and for telecommunications in 2001.

Is this a situation of failing Europeanization? It might be tempting to dismiss these problems as results of Southern European corruption and cronyism, or the famously inefficient bureaucracies. I argue that to do so would be taking an overly simplistic view of the roots of these problems that would limit the potential for dealing with them. There are those who are looking to the EU to get more involved in the regulation of media pluralism, but can further Europeanization play a role? A European Citizens Initiative is pushing for the Commission to start developing a new Directive on media freedom and pluralism,<sup>1</sup> but what role do existing directives play in these countries? The European Parliament's Civil Liberties Committee adopted a resolution calling for more EU involvement in media freedom and concentration monitoring,<sup>2</sup> and the EC launched a consultation in response to a report it commissioned on media freedom and pluralism.<sup>3</sup> The EU already has rules about free competition and common standards in audiovisual media services, so how do they function in these countries? I argue that the important question to ask at this time, and the one I address in this thesis is: **What is the role of Europeanization in audiovisual media governance?**

Europeanization research in other policy areas has produced a variety of theories explaining variations in compliance with EU Directives or the impact of EU at the domestic level. These have been largely based on institutional factors and an assumption that the EU causes change at the domestic level. However, these variable-based approaches take Europeanization as a given and look at factors affecting it, rather than consider its role in national level governance. They therefore fail to take into account some of the complexity in these environments. For one thing, EU integration is not the only process going on in the last two decades for these countries. Media scholars, particularly from the region (e.g. Bajomi-Lázár, 2008; Jakubowicz, 2007b, 2008; Splichal, 1999, 2001), describe emancipatory reactions to the state controlled systems of the previous regime as well as the pressures of globalization and commercialization in the media. Secondly, these scholars argue that media governance in this region has been typified by the efforts

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<sup>1</sup> <http://www.mediainitiative.eu/>

<sup>2</sup> <http://www.europarl.europa.eu/news/en/pressroom/content/20130218IPR05922/html/Media-freedom-MEPs-call-for-annual-EU-monitoring-of-member-states%E2%80%9999-media-laws>

<sup>3</sup> <http://ec.europa.eu/digital-agenda/en/public-consultation-independent-report-hlg-media-freedom-and-pluralism>



of domestic political elites to maintain control of the media and characteristics of the market, namely the lack of professionalism and clientelism. Neither the role of political parties nor characteristics of the markets to which EU policy applies have been thoroughly considered in Europeanization studies. There is also an empirical gap in the Europeanization literature in that there has been little research in the media sector, and there is much more to be understood about the process in Southern Europe and the new Member States (NMS).

Focusing on South East Europe (SEE), this thesis examines Europeanization through an investigation into media governance in Slovenia and Macedonia. Some of the reasons Europeanization research remains limited are that the institutionalist approaches over-emphasize structures (Schmidt, 2010) and fall prey to institutional determinism while neglecting complexity (Dente, Dossi, & Radaelli, 2011). Attempting to overcome these limitations, I have taken a bottom-up approach (Exadaktylos & Radaelli, 2009; Radaelli & Pasquier, 2008) to this investigation. I have made the *interactions* of governance among the state, the market and civil society (Kooiman, 2003) the subject of my research. Although I use a theoretical framework based on neo-institutionalism, I have combined agent-centred and structure-centred theories about how institutions work in order to avoid over-emphasizing structure.

This thesis contributes to the field of Europeanization research in three ways. Firstly, it highlights the importance of markets – their size, condition, and the strategic interests of their actors – in relation to Europeanization. Secondly, it gives further support to claims that the extent to which Europeanization affects change at the domestic level is related to the ability and willingness of domestic actors (Jacquot & Woll, 2004). Finally, it provides detailed information from two countries on the role Europeanization is playing in the audiovisual media sector, a policy area that remains understudied by this field. The evidence from these two cases indicates that size does matter. As I will argue, my findings in this regard have serious implications for what can be expected from Europeanization in this region, at least in relation to audiovisual media policy.

**This thesis finds that Europeanization played only a small role in media governance in these two countries, when domestic actors used EU rules or the authority of the EU to change the distribution of power and resources at the national level in their strategic interest. In addition it shows that the audiovisual media sectors in these two countries were generally *resistant* to Europeanization and their small size contributed greatly to this resistance.**

Before setting out how each of the proceeding chapters contributes to these findings, I will first briefly clarify how Europeanization is defined in this thesis, and in particular what it means in the audiovisual media sectors.

## **1.1 Europeanization**

The term Europeanization does not have one stable meaning, but has been used to describe a variety of processes occurring in Europe (for example see Börzel & Risse, 2006; Bulmer, 2008; Cowles, Caporaso, & Risse, 2001; Falkner, Hartlapp, Leiber, & Treib, 2004; Knill & Lehmkuhl, 2003). Olsen (2002) outlines five phenomena related to changes in Europe for which the term can be used. He lists the changes in territorial boundaries, political unification and the development of European level formal governance institutions, as well as the penetration of national levels of governance and export of forms of political organization and governance typical to Europe. His five phenomena capture both the process of the formation of the EU level of governance and top down transfer or diffusion from the EU level to the national. However, as Sedelmeier (2006) points out, for the most part the literature in this field uses the term as shorthand for the influence or domestic impact of the EU at the state level. He rightly argues that equating 'Europe' with the EU is problematic in Europeanization studies, and it has also been argued that the processes most often referred to as 'Europeanization' should actually be named 'EU-ization' (Flockhart, 2010).

One could include in the study of Europeanization the role of the Council of Europe (CoE), its conventions and other policy instruments such as recommendations, or of the Organization for Security and Cooperation in Europe (OSCE) or other pan-

European organizations. As other scholars have shown these organisations have played a role in media governance in SEE and CEE states, particularly before or in the early stages of the accession process (e.g. Harcourt, 2003b; Sparks, 1995). One could consider the more general diffusion of norms and models from Western European countries. However, my project relates specifically to national level media governance in the context of the countries' relations with the EU. It is concerned primarily with the role of the EU and its policies. Therefore, for the purposes of this thesis, **Europeanization is defined in reference to the EU or as what others might call EU-ization**. I use the following definition from Radaelli (2002), which defines the process in relation the EU and captures the phenomena in a precise manner that can be taken into an empirical project:

“Processes of (a) construction (b) diffusion and (c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, ‘ways of doing things’ and shared beliefs and norms which are first defined and consolidated in the making of EU public policy and politics and then incorporated in the logic of domestic discourse, identities, political structures and public policies.” (p. 108)

Part “(a) construction”, or the process of policy formation at the EU level will not be dealt with in the scope of this investigation. This thesis is concerned with diffusion and institutionalization processes, and the extent to which the EU formal and informal rules or norms play a role in media governance or are incorporated in domestic institutions or public policies. The Europeanization described here is a top-down process, but I do not assume that this process impacts the national level, which is an assumption that leads to seeking factors to explain variations in this impact. Instead, I investigate this top-down process by looking from the bottom-up – by examining media governance and looking for evidence of Europeanization. I will finish introducing the problematic of this thesis by explaining what “formal and informal rules” as well as “shared beliefs and norms” have been consolidated at the EU level and therefore may be diffused or incorporated in Slovenia and Macedonia. This will help to define what Europeanization means for the audiovisual media sectors in particular.

## 1.2 The EU and Audiovisual Media

At the core of the shared beliefs and norms of the EU are adherence to liberal human rights and the principles of “social pluralism, the rule of law, democratic political participation and representation, private property, and a market-based economy” (Schimmelfennig, 2001, p. 59). This normative dimension, with its emphasis on democracy, human rights and rule of law is expressed in treaties and other documents, and in relation to the audiovisual media sector there appears to be a consensus on normative goals related to the public interest function of media and pluralism. For example, the preambles of the Television Without Frontiers Directive (TWFD) and Audiovisual Media Services Directive (AVMSD) that replaced it justify the application of specific rules to audiovisual media services because of:

“Their growing importance for societies, democracy – in particular by ensuring freedom of information, diversity of opinion and media pluralism – education and culture...” (Preamble (5), Council of European Communities, 2010)

In the AVMSD and TWFD there are also references to “the protection of cultural diversity”. Schlesinger (1993, 1997) has argued that EU policy in this sector attempts to translate national level assumptions about media and culture to the EU level. Among other reasons, he finds this problematic because of the dominant economic logic behind the Union, pointing out that “cultural diversity is more than just a set of consumption practices susceptible to rationalization by the policy process” (1997, p. 384). Nevertheless, as Harcourt (2005) argues the policy output of the EU has been determined by legal constraints in the treaties, which limit it to interventions based on economic arguments. Despite the references to culture and democracy in the various preambles, the rules of EU media policy identify it as an industrial policy governing audiovisual media services within the common market (see Harrison & Woods, 2007; Sophia Kaitatzi-Whitlock, 1996). The rules are interventions intended to achieve core aims, defined and agreed at the EU level, of fair competition in a free market and of nurturing the competitiveness of the common market on a global level. The removal of barriers to free competition and the establishment of common standards within Europe are therefore combined with EU-wide protectionism against competition from the rest of the world.

The 1989 Television without Frontiers Directive (TWFD) that opened national television markets to cross-border transmission and investment within the EU was adopted:

“to permit and ensure a transition from national markets to a common programme production and distribution market and to establish conditions of fair competition without prejudice to the public interest role to be discharged by television broadcasting services;” (Preamble Council of European Communities, 1989)

The shared beliefs in the open markets and fair competition on a level playing-field within the EU, as reflected in the EU’s audiovisual media policy, operate alongside commitments to the protection and promotion of the “common programme production and distribution market” (Council of European Communities, 1989, 2010). At the core is EU competition policy that requires the opening of national borders and negative integration through the removal of barriers to trade (Humphreys, 2005; Levy, 1999), which has been done not just through sector specific policy but also through general competition policy (see Harcourt, 2005: Chapter 8). Ensuring that all players are operating under the same rules is the standardization of programme standards, including advertising limits, through *negative content regulations* aimed at protecting audiences from harmful or offensive content and too much or surreptitious advertising (Harrison & Woods, 2007). On the other hand are *positive content regulations* that were put in place “to protect the European Community, culturally and economically, from US hegemony in the audiovisual sector” (McGonagle, 2008, p. 208) and are clear forms of protectionism (Bekkali, 2006; Dolmans, 1995; Tunstall & Machin, 1999). This is mainly the requirement that television stations broadcast 50% *European works* and 10% works from independent European producers (Council of European Communities, 2010).

Several scholars argue that European quotas are more about protecting the audiovisual industry than the European cultural diversity objectives referred to in directives, green papers, and other documents (Harrison & Woods, 2001; Hitchens, 2006; Motto, Polo, Rey, & Roller, 1997). There is also much debate as to whether or not they are successful in either (Broughton Micova, 2013). Nevertheless, combined

with the EU level subsidies for the audiovisual media sector, these content regulations represent the EU's efforts to protect the 'European' audiovisual media sector against foreign competition.

In summary, though the language of preambles may imply that a key aim of EU media policy is "to safeguard cultural diversity and foster European culture" (B. Peters, 2008, p. 182), the rules for the sector set out in Treaties and Directives derive from the economic management of the common market. The more detailed rules and norms carried through in EU media policy as expressed in its documents can be grouped under the following three core rules. (Council of European Communities, 1989, 2007, 2010; European Union, 2009):

- There should be a common market for audiovisual media services in which there is free and open competition, with special allowances for PSB (for discussion see Humphreys, 2005, 2007);
- Common rules and minimum standards should apply to all audiovisual media services (for discussion see Harrison & Woods, 2007: chapter 10);
- The European audiovisual media sector should be protected and nurtured (for discussion see Papathanassopoulos & Negrine, 2011).

In keeping with the bottom-up approach of this investigation, I did not select EU policy instruments or implementation mechanisms at the outset of the project. This thesis did not start with a particular directive, court decision, accession instrument or competition ruling and look for its impact at the national level. Instead, it asked many questions about media governance in each country and discovered where EU policy and the mechanisms aimed at implementing it were playing a role. It was expected that key directives such as TWFD/AVMSD and competition rules would appear in the data, but some arose unexpectedly like the insistence on copyright protection in EU Progress Reports in Macedonia. The thesis is thus organised around the three core elements listed above as a way to manage the complexity found in the empirical work that examined audiovisual media governance in Slovenia and Macedonia in search of any role played by the EU rules and norms relevant to this sector I now give a brief overview of how the following chapters provide evidence of

the resistance identified in these two cases and answer the question of what is the role of Europeanization in these cases.

### **1.3 The chapters**

Europeanization in this thesis relates to the EU and its policies. Above, I described what it means specifically in the audiovisual media sector. The story of the unceremonious exit of Norkring and MTG from the Slovenian market with which I began suggests that Europeanization in this sector may be incomplete, ineffective or failing in some way. Chapter 2 elaborates several explanations for variations in compliance with transposition of EU rules, and to some extent their implementation offered by the literature from Europeanization studies. I discuss the contribution of this literature and its limitations, particularly in light of the literature on post-socialist and post-communist media systems. I discuss the limitations in the field some of which stem from divisions between structure-centred and agency-centred explanations. I also point out that the arguments of media scholars writing about the region complicate the explanations of Europeanization scholars with accounts of how the strategic actions of political elites impact media governance and media markets.

This thesis is an investigation of national level media governance based on a conceptualization of governance used to define it as an object of study. In Chapter 3, I discuss some of the literature on governance and specifically two models of media governance that have been provided by McQuail (2005) and Puppis (2007). Following a short critique of these models, this chapter elaborates a conceptualization of governance as *interactions* among the state, the market and civil society from Kooiman (2003). I describe how, within these three broad categories, governance actors can be regulatory bodies, media companies, activist groups, and others. I explain that within this conceptualization interactions take place among actors and between actors and structures, as well as at various levels. This chapter then returns to the new institutionalism common to the Europeanization research reviewed in the previous chapter, constructing a theoretical framework based on the concepts of institutional fit and opportunity structures. Although my investigation focuses on identifying the role of Europeanization within national level media governance in these cases I suggest that using these concepts within a *bottom-up*

investigation of governance can help overcome some of the limitations of the *top-down*, EU-centric approach that can confine empirical studies in this field (Dente et al., 2011; Radaelli, 2002; Schmidt, 2010).

I explain how the investigation was operationalized in Chapter 4. This chapter describes the mixed methodology engaged in this investigation that made use of semi-structured interviews, secondary data from administrative records and research by regulators and private agencies, reports from civil society groups, and the relevant laws in each country. I elaborate the logic and strategy of the comparison between the two cases, and also discuss the value and the challenges of using a bottom-up governance approach in an empirical investigation. The aim this approach was to identify the role of Europeanization to the extent there was one, but by looking at media governance as a whole. Therefore after a chapter covering the history up to the situation at the time of my fieldwork the empirical chapters are organised around the core elements of EU audiovisual media policy mentioned above: common rules and standards, European and national protectionism, and free and open competition within the common market.

The presentation of data and findings from the empirical work of this project begins in Chapter 5. This chapter recounts the histories of the audiovisual media sectors in the two countries since independence from Yugoslavia and describes the regulatory framework in place at the time of this study. It combines the few published accounts from civil society groups, administrative data from public bodies, secondary data from various sources and recollections from interviewees. An analysis of the laws that were in effect in 2011 gives a picture of the public bodies involved in governance in each case and their responsibilities and powers as conferred by law. The evidence in this chapter shows that liberalization began immediately following independence and cannot be linked to EU policy. The elaboration of the regulatory frameworks in each case suggests that the rules establishing the regulatory authorities and their powers allowed much room for the influence of political parties, and created weak regulatory bodies particularly in Slovenia.

Chapter 6 looks at the transposition and enforcement of the common standards and rules for the audiovisual sector. A juxtaposition of media law changes with political



events combined with accounts from those involved in law-making show that in both cases media-related laws are used to establish or maintain political influence over the media. These interventions interfere with or over-ride those of the EU leading to delays in transposition or non-compliance. In this chapter I also look at enforcement practice in each case. This is done by describing the behaviour of those charged with enforcement and through analysis of their data on actions taken. I present evidence that despite acceptance or even support for policy within the regulator and the market, there was resistance to its implementation as there was a lack of enforcement of rules for the sector in general. In Slovenia the evidence indicates that the regulatory system was set up to fail by those adopting the laws that established it, and in Macedonia the actions of decision makers within the NRA took actions that were conditioned by the entrenched relationships between political parties and the media. The lack of implementation of the common industry standards has negative implications for the establishment of a level playing field or fair competition in these cases. However in this chapter I also give evidence of domestic market players using the EU as a higher authority in order to rectify this where it was in their interests.

In Chapter 7 I take up the issue of protectionism and look at the interactions involved in both European and national protectionist measures. EU level interventions such as the quotas for European works and EU subsidies are therefore looked at in relation to similar national level interventions. I find that there was some resistance to Europeanization in both cases and that the main point of resistance is misfit with the practices of those in the NRAs and the broadcasters. The evidence indicates that the practices identified were constrained mostly by the small size of these operations and the market in general. This chapter shows that the state support to this sector functioned very differently in each of these cases. The differences between the two cases described in this chapter highlight the potential role of PSB as key to the capacity of the markets in these countries to benefit from EU protectionism. They also illustrate the political ramifications of the small size of the media in these countries and some of the mechanisms of control used by political elites within media governance.

The last empirical evidence is presented in Chapter 8, which focuses on the fair competition in open markets fundamental to the EU's common market. Once again, I

find that the smallness of these two countries was a source of resistance to Europeanization. The limited human and financial resources within their markets make them resistant to full openness and their domestic actors are unable to fairly compete within the common market. At the same time, I show that embedded relationships at the level of organisations and even individuals also served to keep these markets closed to outside investors. It is in this chapter that the details of case of Norkring and MTG's exits from Slovenia are explained along with the lack of openness in both the Slovenian and Macedonian markets. Although there were no limits on foreign channels or content coming in from outside through re-broadcasting, established relationships in these audiovisual sectors served as barriers to entry for investment in the domestic market. In Slovenia one dominant commercial broadcaster, with a foreign owner that entered early on, and the PSB are able to keep out competition. In Macedonia the relationships between political parties and individual broadcasters were such that media existed mainly as tool for achieving political and other business interests, while profit making was not necessarily expected or sought. This was a significant deterrent to new entrants not connected to domestic politics and also seems to be exacerbated by the financial constraints on media companies operating in the small market.

In the final chapter, I conclude that both countries were resistant to Europeanization in the audiovisual media sector because of their small size, which limits their markets and media governance interactions in general, and because of the relationship between media and politics, particularly in Macedonia. I explain that the role of Europeanization, for which I found evidence, was in the way domestic strategic actors used EU rules or the EU as a higher authority to forward their interests. This chapter argues that the experiences of these cases indicate that the role of political parties as actors separate from the state or public administration should be considered not just in terms of their policy preferences, but also in terms their other interests and relationships in the sector. I also point out that smallness is neither a social construct that can be changed through social learning nor an institution created by agents to constrain the opportunities available to other actors, yet it has clear consequences for media governance in these two cases. I explain that these findings also have implications for the way we think about and model media governance, in particular how 'the state' or 'government' are considered.

In this closing chapter I also argue that the audiovisual media sector might be a special case in terms of Europeanization because of the role that media play in political life, and because the nature of media goods and consumption makes it difficult for market players, particularly in small states, to take advantage of economies of scale that the common market offers in other sectors. Finally I suggest that as the European Commission considers a possible directive on media freedom and pluralism, revisions to the AVMSD, and other policy changes for the audiovisual media services sector, there needs to more investigation in two areas. Firstly, the EU needs to reassess the effectiveness of its protectionist policies for small states in the context of globalization. I argue that it should invest more in developing these small markets at the national level, rather than supporting large productions to compete with American hits. Secondly, there is a need for careful assessment of what level of pluralism is conducive to media fulfilling its public interest role in markets of various sizes. I suggest that in small states public interest measure aimed at ensuring content diversity and balance might be more effective than measures aimed at encouraging a pluralism of market players.

# Chapter 2: Europeanization of Media Systems

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## 2.1 Introduction

Introducing this thesis I described recent developments in the Slovenian television market that seem to go against the EU's norms and rules for this sector, despite the country being an EU member state. Although I slightly glibly asked if this was a case of failed Europeanization, the research question that I posed was: what is the role of Europeanization in media governance in this region. I formulate the question in this way in order to broaden the scope from what Europeanization research in relation to public policy has dealt with so far. The Europeanization research covered here has so far focused on the impact of changes in EU policy on national level policy and administrations. Scholars have investigated variations in the implementation of EU rules and policy in many sectors, identifying a number of variables explaining these differences among states. Despite its relatively short history, research in this field has been fruitful in terms of explanatory theoretical work on factors that influence Europeanization. As I will argue here, however, there remains much to be understood about this process.

As per the definition of Europeanization given in the introduction, the body of literature that I will cover in this chapter deals with what could also be called EU-ization. It does not include work done on the development (or not) of a European public sphere or European identity, nor does it cover the literature on the formation of EU or other European institutions (for types of Europeanization processes see Olsen, 2002). The body of work covered here focuses on the rules and norms of the EU's public policies, and examines what happens with these policies at the national level. This literature is dominated by institutionalism and draws on empirical research in specific policy areas and often cross-national comparative studies. In the following section, I will present the main explanations it has generated and begin to discuss some of the limitations of the work so far.

The theories developed by these scholars serve as excellent starting points for this project; however, I argue that the field remains limited because the questions that have been asked and answered have assumed a central role for the EU and EU policy, with little attention to other mechanisms of governance or broader public policy dynamics. In addition, while empirical studies have examined Europeanization of labour policy (Falkner, Hartlapp, & Treib, 2007; Falkner, Treib, Hartlapp, & Lieber, 2005) and environmental policy (Luaces, 2002; D. Peters, 2001) and even covered EU Directives on transport (Héritier, 2001), packaging (Haverland, 2000) and others, the media sector remains under-researched. A review of the literature on post-communist and post-socialist media systems describes environments in which old mechanisms of controlling media persist and where there are numerous constraints on the national administrations, regulators and market actors who would be engaged in the Europeanization process.

Therefore in the third section of this chapter I examine the literature on media systems in Central and South Eastern Europe, most of which has been generated by scholars from the region. They write about media systems within the broader process of the post-communist or post-socialist transitions taking place within these countries. They discuss tendencies towards imitation or mimicry of Western European models, but point to severe problems in the choice of models and completeness of the imitation. Some see promise in EU membership and a potential for improvements in the problems they identify in these media systems. Their work highlights efforts by political elites to control the media and to some extent the structural characteristics of media in the region, including market conditions. As I argue below, neither of these issues is covered adequately by the current explanations offered by Europeanization studies, which have yet to thoroughly examine the media sector and media policy, and may even challenge some of the theories.

In the conclusion I identify a gap in Europeanization research, particularly in terms of the media sector and in light of the arguments of scholars studying media systems the region. I argue that the over-reliance on socially constructed structural variables by those belonging to the historical and sociological branches of institutionalism is not sufficiently balanced by the agency-related factors identified by those of the

rational choice school. I maintain that the current Europeanization literature is further limited by its empirical focus on national administrations or civil servants and transposition records, which leaves out those in the market to whom most EU policy applies. Finally, in light of the disappointment that many media scholars from this part of Europe express about the state of the media sectors, I conclude that further understanding of the role of Europeanization in the sector is required before stakeholders turn to the EU to improve this state.

## **2.2 Europeanization Studies: Explaining Variation**

Europeanization studies since the late 1990s have undeniably provided evidence that levels of domestic policy and administrative change vary significantly across the Union (Cowles et al., 2001; Duina, 1999; Falkner et al., 2005; Luetgert & Dannwolf, 2009; Toshkov, 2008).<sup>4</sup> Research in this field began as a quest to explain the differences in the implementation of European policy and compliance with transposition deadlines across the Union (Luetgert & Dannwolf, 2009), and to date, it has provided several theories explaining the great differences among Member States. As Radaelli (2002) argues, this strain of research has been largely top down, starting with rules or policy changes at the EU level and attempting to account for differences in implementation or change at the national level. Much of the empirical work in the field draws on historical and sociological institutionalism, with a heavy reliance on institutional structures as explanatory variables. Here concepts such as path dependency and the *logic of appropriateness* (March & Olsen, 1998) form the basis for theories on why some states are more ‘Europeanized’ than others.

These scholars focus on the interaction between EU policy and socially constructed rules and practices at the national level that are either path dependent (historical) or based on norms, culture and perceptions of identity (sociological). Rational choice institutionalism provides explanations based on the policy preferences of mostly political actors and the extent to which they resist EU inspired changes. In recent work on the new Member States, rational choice institutionalism appeared particularly useful in explaining variance based on the conditionality intrinsic to the

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<sup>44</sup> Works cited use either original data from large scale multi-state studies or compiled data from several case studies. See references for additional examples including individual sector or national case studies.

Eastward enlargement. Scholars of this branch of institutionalism emphasised decisions based on the cost/benefit calculations of political actors, which were largely clear during the accession process. However, since accession two trends have challenged the explanations of these scholars. On the one hand, high rates of compliance in the transposition of EU directives continued among NMS despite the absence of accession related incentives. On the other hand, accounts from qualitative empirical studies have found several implementation failure examples similar to the Slovenian cases of the Norkring and MTG exits, though in other sectors. These indicate that the on-time and thorough transposition of EU policy – in the Slovenian Norkring case in relation to competition – does not necessarily lead to implementation. The identification of these trends seems to have forced a marriage between agent or rational actor explanations and structural ones, but one that is still in the early stages and poses questions that may require investigations bridging the rationalist/constructivist divide in order to answer.

### **2.2.1 *Fit and misfit***

One of the first theories developed to explain differences in compliance with the implementation of or adaptation to EU Directives and policy was the theory of *fit/misfit*. Duina (1999) suggested that variation in the implementation of EU regulations and directives can be explained by the degree to which the policies coming from Brussels differ from existing national policies. However this idea was quickly broadened to include other factors in institutional change at the domestic level. A more sophisticated version of the *fit/misfit* theory was forwarded by Knill (2001), who argued that implementation depends less on sectoral policy fit and more on likeness to values and practice of national administrations. This is based on earlier work that isolated regulatory approach, style and practice as well as *embedded* arrangements in the sector act as key factors in domestic adaptation (Knill, 1997). This was an important step beyond policy characteristics, leading to a distinction that Börzel and Risse (2003) would later make between “policy fit” and “institutional fit”. Nevertheless, it still considered administrative style and culture in terms of its fit with EU rules and regulatory approaches, such as in environmental policy (Knill & Lenchow, 2001a), rather than in terms of enabling or frustrating reforms in general.

The original fit/misfit theory was quickly qualified even further by scholars identifying intervening variables to explain different reactions to misfit. H  ritier and her colleagues examined the fate of EU Transport Directives in several Member States. They argued that, at least for utilities sectors, the stage of liberalization in the country also mattered, along with the overall attitude towards liberalization among decision makers and what they termed “reform capacity” (H  ritier & al., 2001, pp. 257-259). According to them this meant essentially the number of positions within the decision-making institutions; for instance whether it involved a federalist or decentralised system, or multi-party coalitions. The volume edited by Cowles, Risse and Caporaso (2001) continued in this direction with a series of empirical studies that drew on the idea that institutional change is path dependent and therefore implementation depends on the *goodness of fit* between the EU level and existing domestic rules, norms and practices. The simple logic presented was that if there is a good fit with existing domestic structures there will be smooth implementation that does not require much change at the national level. On the other hand, if the fit is not good then there will be high “adaptational pressure” for domestic level change, which may inspire a path changing “critical juncture” or could lead to resistance to implementation.

Though they did not give up on misfit or adaptational pressure being key, the studies in this volume made two important contributions. Firstly, they gave more convincing evidence for the notion that EU rules and policy not only interact with domestic level policy or law in any given sectors, but also with the norms and practice of the national level institutions dealing with that sector. Secondly, they identified several “mediating factors” (Cowles & Risse, 2001) that can impact upon how the adaptational pressure is handled, or the extent to which domestic level change occurs. Among these are some factors based on sociological institutionalism, namely the extent to which changes are considered appropriate within domestic institutional culture or the degree of “learning” of EU norms that takes place, particularly among elites (Checkel, 2001). Others draw more from historical and rational choice perspectives: the existence of multiple *veto points*, or actors that have a say in the processes, and the extent to which there is change in the relative power of those actors. These last two factors appear to be an attempt to incorporate some of the alternative theories that evolved in the same period.



The theories based on institutional fit are *structure-centred* explanations (Checkel, 1999b) for the variations in Europeanization at the national level. Though mediating factors are mentioned, at the core of these explanations is how EU level policy or EU level change interacts with domestic level institutional structures – be they values, administrative culture, or core norms and practices. One could also think of this as the extent to which the domestic institutions are resistant to change. The empirical work supporting these theories relies heavily on investigations of domestic law and national administrations or state bodies and draws on the constructivist tradition. It therefore remains limited in the types of structures considered, mostly leaving out ones outside of these institutions or perhaps characteristic of the countries in general.<sup>5</sup> Enough intervening variables or mediating factors were identified that it makes sense to question whether *policy fit* is really the proper starting point at all (see Mastenbroek, 2005). As I explain below, subsequent empirical work does not support this hypothesis. The notion of *institutional fit* retains some value. It can be seen later in the more recent literature on CEE and SEE, which considers the extent to which domestic institutions accept as appropriate or learn and adopt EU rules and norms.

### **2.2.2 Preferences and veto players**

Knill and Lehmkuhl (1999, 2003) argued that domestic change depends on the mechanism of Europeanization and that “institutional compatibility”, their version of fit, only mattered when the mechanism of Europeanization was institutional compliance. However they maintained that other mechanisms work differently. One such mechanism they described was operating to change the *domestic opportunity structure* or the distribution of resources and power among actors. This they argued was particularly relevant to policy that involved the removal of national level regulation in the interest of the common market, such as the elimination of barriers to cross border broadcasting contained in the 1989 TWFD. By removing rules that defined the distribution of resources and power at the national level, EU policy can change the outcomes and consequences domestic actors can expect from their actions

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<sup>5</sup> The “stage of liberalization” factor in the transport sector identified by Héritier et al. (2001) was a notable exception.

or decisions. Another mechanism, slightly more vague, was “Europeanization through the framing of domestic beliefs” in which EU policy either provides ideas to or influences the expectations of “key actors who can potentially veto reform initiatives” (Knill & Lehmkuhl, 2003, p. 273 ). Though the first of these theories refers specifically to structure, both of them seem in essence to refer to the strategic actions of domestic actors or agents, and whether they may oppose or support EU policy implementation.

These kinds of *preference-related* explanations (Luetgert & Dannwolf, 2009) draw on the *veto player* concept of Tsebelis (1995, 1999). This is the idea that within democracies there are certain players such as opposition political parties, coalition partners or others who are involved in policy decisions and have the power to “veto” policy change. Veto players are individual or collective actors whose agreement is needed in order to change the status quo (Tsebelis, 1995, p. 289) and are often considered in terms of the way political systems are organised. For example, Haverland (2000) found the pace and quality of implementation of the Packaging Waste Directive linked to the number of opposition parties or coalition partners that could *veto* the necessary changes. His data led him to completely reject the fit/misfit theory. Peters (2001) in his study on environmental directives included both the number of veto players and the extent to which each country’s delegation in Brussels is aware of the positions of the domestic veto players during the negotiations on the directives. Except in the case of Portugal, he found a strong correlation between implementation of the Directives and the combination of few veto players and high awareness within delegations. Tightly defined, as in these cases, the concept of veto players refers mainly to political parties in government or parliament.

However, in some policy areas, actors such as trade unions, industry groups, even civil servants or others have been shown to influence implementation. These groups may serve as “norm entrepreneurs” (Börzel & Risse, 2000) or change agents pushing for reforms in line with EU policy, or may oppose its implementation. For example, a powerful union or industry lobby may serve as a veto player despite not being a part of the decision-making bodies of government. The European policy agenda may either alter the positions that such domestic actors have on the relevant issues or the power they have to influence the outcome of policy reform or implementation

processes (Knill, 2001; Knill & Lehmkuhl, 2003). Luaces (2002), for example, found evidence of this in Spain's implementation of certain environmental directives. Looking at the implementation of two environmental directives, she found that their enactment at the EU level forced co-operation among certain public bodies and created "participation channels" for NGOs and consumer groups in favour of implementation (Luaces, 2002, p. 102). In addition, the use of EU funds dedicated to supporting implementation changed the distribution of financial resources among regional and central governments also encouraging co-operation and implementation. She concludes:

"domestic actors have generally produced effective implementation responses when a change in their (usually) non-co-operative strategies was likely to result in positive payoffs and improved results for all the involved actors. These two case studies suggest that this has only been the case when EU economic resources were present, facilitating effective and complete implementation responses to the requirements of the directives."(Luaces, 2002, p. 104)

In this example one can see both the EU policy changing the domestic opportunity structure by creating previously non-existent avenues of influence for groups in favour of change and by changing the positions of potential veto players in different layers of governments. Sudbery (2010) similarly found changes in the domestic opportunity structure for NGOs in Poland working on gender equality issues, whereas McCauley (2011) recently found that the EU context offered potential for change, of which not all French NGOs campaigning against GMO wanted or were able to make use.

These preference-related explanations are *agent-centred* ones (Checkel, 1999b), whether those agents are political parties in government or opposition, trade unions, or even NGOs encouraging reform. Nevertheless, these theories only consider the agents' preferences in relation to EU policy or perhaps related reform processes. The extent to which EU policy is implemented depends on the number and influence of actors interested in resisting the policy. This leaves out other actions or preferences of these actors that are not related to opposition to or support for EU rules and norms, but may be integral to the governance of the sector. Could there not be

actions taken by political or other actors that impact Europeanization without representing a veto or support for anything related to the EU?

### **2.2.3 *Worlds of compliance and beyond transposition***

One limitation common to both groups of literature cited above is that the empirical studies, upon which the theories are based, generally follow implementation up to the point of transposition into domestic legislation. They assess compliance based on meeting the deadlines prescribed in EU directives and in some cases, the completeness of that transposition. In addition, these studies largely focus on one or two related Directives in one or a few Member States. The first large-scale study to do otherwise was that of Falkner et al. (2006; 2007; 2005). They looked at 6 Directives related to EU labour policy in 15 Member States. They compared transposition compliance across the sample, but also included interviews with stakeholders that provided data about enforcement and other forms of follow up post-transposition. Their findings clearly challenged the idea that misfit with existing policy hinders the transposition of EU rules. They also found only weak correlation between compliance and fit/misfit with the existing norms and practices of the national administration and nearly no connection with the number of veto players. Instead they found it more relevant whether or not people in administrations and political veto players had a general desire to comply with the EU than whether the policy itself was a good fit or supported by those actors.

The authors constructed a typology of countries based on this characteristic and argued that different explanations are valid in each type. They grouped the 15 countries studied, the Member States before 2004, into clusters that they called “worlds” each with a “specific typical pattern of reacting to EU-induced reform requirements, hence a specific *national culture of appraising and processing adaptation requirements*” (Falkner et al., 2007, p. 404 emphasis in original). They identified three types: the *world of law observance*, the *world of domestic politics*, and the *world of transposition neglect*. The key difference among them is the “culture of compliance” and general desire to comply with the EU:

“In the world of law observance, abiding by EU rules is usually the dominant goal in both the administrative and the political systems. The same is only true for the administrative system when it comes to the world of domestic politics. There, the process can easily be blocked or diverted during the phase of political contestation. In the world of transposition neglect, by contrast, not even the administration acts in a dutiful way when it comes to the implementation of EU Directives. Therefore, the political process is typically not even started when it should be. It needs to be mentioned, however, that politicians in the world of transposition neglect also do not tend to take compliance with EU law very seriously – otherwise the bureaucrats could not get away with such behaviour, at least in the longer run.” (Falkner et al., 2007, p. 407)

According to Falkner and her colleagues, the veto player explanation is more useful than the fit/misfit theory; however it only works in the world of domestic politics where administrations move things forward, but then progress can be halted by political veto players. In the world of law observance, any objections to EU policy by potential veto players are made irrelevant because of a common culture of compliance. They explain that in such cases, the drive to comply over-rides potential objections based on policy preferences. Preferences of veto players are made irrelevant also in the world of transposition neglect because of the inertia of national administrations.

In these cases, according to Falkner and her colleagues, implementation is stalled before it gets to the decision-making points where political actors come into play. Falkner et al. (2005) also attempted to include enforcement in their large-scale study of a number of elements of European social policy, because they argue a distinction should be made between transposition and enforcement phases of implementation. Relying on information from interviews within ministries and labour inspectorates, they were able to identify several cases in which rapid or on time transposition was followed by negligent enforcement. This work did two important things to move the field forward. Firstly, it showed that non-policy related factors should be considered, namely general cultures of compliance and structural characteristics such as the capacity or efficiency of administrations. Secondly, it began to generate data on post-transposition implementation and flags the potential that dutiful transposition does not necessarily mean effective enforcement.

In an excellent example, Versluis (2007) picked up the call to broaden the concept of implementation beyond transposition (Falkner et al., 2006; Mastenbroek, 2005), adding enforcement by domestic regulatory authorities and compliance by companies in relevant industries to her investigation of the implementation of the Safety Data Sheets Directive in four Western European states. In three out of her four cases, correct and on time transposition was followed by little enforcement or compliance by industry. She explains this by the lack of salience in that the data sheets issued never received media attention or were associated with any known incident, and she reports that inspectors and industry representatives claimed the data sheets regulations did not stand out among all the legislation that had to be implemented. According to her, implementation after transposition was weak “simply because it is not considered to be important enough” (Versluis, 2007, p. 63). This explanation would have to be tested in cases in which the Directives were more important or involved in more high profile or controversial subject matter. Nevertheless, she demonstrated the fruitfulness of looking beyond transposition into the practice of those charged with enforcing EU rules.

Following up on their earlier research, Falkner and Treib (2008) did this when they expanded their worlds of compliance typology to the NMS. They looked again at labour policy related directives, this time in four of the NMS. They identified a *world of dead letters* (Falkner & Treib, 2008, p. 310) in which the often literal transposition of directives is followed by insufficient enforcement. Two explanations they give for these post-transposition implementation problems are the lack of individual litigation and support for employees from civil society groups such as trade unions. These two may be specific to this type of policy; however the authors also cite the lack of capacity in the state bodies charged with monitoring and enforcement, as well as shortcomings in the judiciary. The latter two explanations could apply to a broad range of policy areas or sectors. The Eastern enlargement of the EU in 2004 with Bulgaria and Romania following in 2007 opened up a whole new direction for Europeanization research (see Sedelmeier, 2006). It was new for many reasons, including the way the accession process was conducted, the sheer number of countries involved, and the post-communist or post-socialist heritage of the NMS.

#### 2.2.4 *External incentives and conditionality*

In 1994 Hungary and Poland were the first countries from CEE and SEE to apply for EU membership. The others soon followed suit launching a process in which these countries were individually assessed in relation to the Copenhagen Criteria and compliance with the *acquis communautaire*, or the body of EU laws. The 2004 enlargement negotiations have been referred to as “little more than a process of checking off a massive and essentially non-negotiable list of EU laws and regulations” (Mungiu-Pippidi, 2005, p. 18). However, because of the political and economic conditions of the Copenhagen Criteria, the accession process also involves rules and areas over which EU institutions have no formal competencies in Member States (Sedelmeier, 2006, p. 4). The conditions for entry into the EU are therefore the approximation of domestic laws to those of the EU, as well as meeting the more abstract political and economic criteria, and these form the basis for the “conditionality” of the accession process. The perception of power imbalance between the EU and applicant countries is a core aspect of the concept of conditionality (Hughes, Sasse, & Gordon, 2004, p. 524), and fundamental to its operation are the cost/benefit analysis of domestic actors weighing the benefits of membership and costs of being left out against the domestic costs of meeting the membership conditions (see Schimmelfennig, Engert, & Knobel, 2003; Schimmelfennig & Sedelmeier, 2004). It is essentially a carrot and a stick.

Compliance with the transposition of EU Directives regulations was of course high among those states with ambitions of entering the Union. Scholars from the rational actor branch of institutionalism explained the variations that did appear among countries prior to accession in terms of external incentives, “in particular with the credibility of EU conditionality and the domestic costs of rule adoption” (Schimmelfennig & Sedelmeier, 2004, p. 671). They claimed that governments were most compliant in terms of transposition when they felt the offer of membership or threat of exclusion was most credible and outweighed the domestic costs of adopting the EU rules.

Several authors aptly pointed out that in some cases changes required by the EU came up against institutional choices or commitments made in the early days of

transition (Dimitrova, 2004; Hughes et al., 2004). Drawing on the concept of path dependency, they argued that paths taken early on in transition could be either enabling or constraining. It was suggested that this weakens any causal relationship between compliance and conditionality (Hughes et al., 2004). For example, the transposition of the TWFD was among the conditions for the NMS acceding in 2004. An argument could be made that the transposition of TWFD in these states was enabled where the process of the liberalization of television markets and spread of multi-channel services was already underway. Nevertheless, there is ample evidence that conditionality mattered during the accession process ending in 2004 at least partly because there was significant asymmetry between the EU and the candidates (Dimitrova, 2004; Grabbe, 2001, 2006). The veto player explanation fell by the wayside because the speed and the pressure of the process were so great. Negotiations mostly engaged the executive government empowering them in relation to other parts of government and civil society (M.-C. Fontana, 2011), and even pro-reform civil society groups were largely shut out of the process (Börzel, 2010). The cost of staying out of the EU was simply too great (Vachudova, 2007) and therefore external incentives to meet the conditions of accession meant transposition compliance was high. Nevertheless, further empirical investigation quickly added more nuance to this seemingly simple agent-centred explanation.

The volume edited by Schimmelfennig and Sedelmeier (2005) is the most extensive and theoretically cohesive collection of empirical studies on Europeanization in CEE. It provides a rich body of evidence generally supporting the external incentives explanation. The book sets the external incentives explanation against others and some of the contributors find that explanations can be complimentary. For example, Jacoby (2005) argues that in the early period when EU conditionality was weaker, the policy makers in CEE still drew lessons from within the EU. Several of the authors found the structure-centred social learning or *norms resonance* explanations mentioned above applicable to the early stages (Andonova, 2005), when conditionality is weak (Schwellnus, 2005), or when looking at compliance at multiple levels (Epstein, 2005). In a manner similar to Falkner and her colleagues, Epstein (2005) and Grabbe (2005) looked closely at lower level implementation of EU rules by central bank officials and those charged with border management. Each found that Europeanization was not just a matter of officials' cost/benefit analyses,



but also of social learning and an “acceptance of the policy paradigm underlying the EU’s rules” (Grabbe, 2005, p. 133). Outside of this volume there was more evidence for factors related to fit with domestic norms.

The work of Kelley (2004) on minority policy and Hughes et al. (2004) on regional policy argued that normative pressure also plays a role alongside the external incentives vs. domestic costs calculations of conditionality. There is, therefore, ample evidence that the external incentives model alone does not explain the process of Europeanization in CEE and SEE. One group of scholars suggests that alongside external incentives there was normative pressure inherent in the accession process, while another group argues that through the accession process, social learning took place leading to the acceptance or adoption of EU norms and rules. The implications of these two explanations are very different.

The conditionality and normative pressure combination would imply that post accession the countries in CEE and SEE would revert or perhaps even back track on Europeanization (see Dimitrova, 2004; Schimmelfennig & Sedelmeier, 2004), while those still involved would continue to Europeanize as long as the potential for membership was credible. This has not happened. In terms of transposition of Directives and infringement cases the NMS continue to outperform the old ones quite remarkably (Knill & Tosun, 2009; Sedelmeier, 2008; Toshkov, 2008). This means that even without the carrot of membership these states generally continue to comply with EU rules, at least formally. Examining this surprising trend, Sedelmeier (2008) concedes that “socialisation” may also have been taking place during the accession process. One challenge to the conditionality plus social learning theory comes from the evidence from studies such as that of Falkner and Treib (2008), described above, demonstrating that in some policy areas there are gaps between formal transposition of EU rules and norms and enforcement or implementation at lower levels (see also Falkner, 2010). Dimitrova (2007, 2010) has suggested that EU regulations may become *empty shells* in the domestic context. Could this be what happened in Slovenia in relation to competition policy in the digital television market and resulted in the exit of Norkring and MTG? As Sedelmeier (2008) and Dimitrova (2010) suggest, more systematic qualitative research is needed to understand if and

why there may be formal compliance, yet deficient application or enforcement. This may require some new approaches to Europeanization research.

### **2.2.5 *Europeanization research gaps***

Scholars in the field of Europeanization have yet to study the process in relation to the media sector and EU media policy. Alison Harcourt has made the most important contribution and her findings highlight the limitations of Europeanization research to date. In her 2005 book she argued that because of the EU, many Member States were forced to allow greater liberalisation than their governments would otherwise have chosen (Harcourt, 2005, Ch. 7). Her investigation showed the influence of not just EU Directives, but also European Courts of Justice and the Merger Task Force on national level media policy. This differed somewhat from what Humphreys had found in relation to the telecommunications industry specifically, in which he concluded that the EU was only an intervening variable in the face of direct pressure from private corporate interests and globalisation (Humphreys, 2002). Both of these studies focused on Western Europe, but Harcourt also looked at media policy in CEE. She argued that although there were multiple influences on media policy in CEE during the 90s, in the end the EU was most influential because of the accession process (see Harcourt, 2003a, 2003b). Her findings at this stage supported the relevance of EU conditionality to the media sector. However, most recently she finds:

“Although European policy models were adopted on paper which include provisions of public service broadcasting and subsidies for independent and national production, states in Central and Eastern Europe faced coercive pressure particularly from the US and the private media not to adopt these provisions but to follow a ‘liberal’ market model. The result is that although on paper regulatory models resemble those of Western Europe, in practice a more liberal market model is operating in these states.” (Harcourt, 2012, pp. 152-153)

Though she does not make a connection to the *empty shells* referred to by Dimitrova, Harcourt’s findings point to a discrepancy between the adoption of EU policy “on paper” and actual practice in the media sectors in these countries. As I argued above, current understanding of the dynamics of Europeanization are limited by the fact that

most research has empirically equated the process with on time and correct transposition of EU Directives.

Media scholar, Hedwig de Smaele (2004, 2007), in her look at audiovisual media policy in the NMS of the 2004 accession, found that these states mainly amended their media laws to be compliant with TWFD between 2000 and 2002 in the context of the pressure to comply with the *acquis*. Her evidence supports the arguments of Europeanization scholars that conditionality played a role in compliance with the transposition of EU policy into law in this period; however, she further suggests that due to limited cross-border distribution among these states and small independent production sectors, there may be problems with implementation of these laws. Ognyanova (2009) ventured past the transposition of EU Directives in her account of Europeanization of audiovisual media policy in Bulgaria. Although she does not look systematically at enforcement or behaviour of the NRA, she recounts related legal changes and some key actions by the NRA claiming that it amounts to an *empty shell* in terms of post-transposition implementation. The extent to which the variables used to explain variations in transposition compliance are applicable to the situation Harcourt describes or to cases where compliance in law is not matched in practice is not yet clear. In the literature cited above, there does seem to be enough evidence that both actors or agents and structures should be considered.

Another limitation I mentioned is the narrowness of both agent and structure centred factors considered. To some extent this can be seen as a problem of institutional determinism. This results from the model of institutional causation used that associates institutional variation with policy variation (see Dente et al., 2011, p. 7). This limitation may also be a product of the rationalist/constructivist division evident in the Europeanization literature, and its empirical focus on transposition records, governments and national administrations or civil servants. As actor-centred factors, rationalists have focused on the policy preferences of political actors as veto players or governments' strategic decisions in the face of external incentives. This leaves little room for the potential role of other actors, including those subject to the regulations or provisions contained in EU Directives. The sociological, or constructivist institutionalist literature covered here makes a good case for the examination of institutional fit. However, in considering the structures against which

*appropriateness*, and therefore fit, is determined, current literature focuses primarily on norms, identity and even an overall “culture of compliance” (Falkner et al., 2007) or lack thereof. Despite the fact that many of the EU policy areas covered in qualitative case studies directly involve specific markets or the economy as a whole, conditions of the market or industry in question have barely been touched on. I found examples only in the work of Falkner and her colleagues and Versluis.

To what extent can goodness of fit or veto player theories explain Slovenia’s non-compliance with competition policy and the apparent barriers to an open and common terrestrial television market described in the introduction? What does Europeanization have to do with the influence of transnational media companies highlighted by Harcourt (2012)? As I have just described, Europeanization literature so far takes the institutional causality of the EU as a point of departure and explains variations in the impact or changes caused by the EU. Europeanization research therefore has generated valuable theories about factors that might influence this process. However, in order to provide scholars, policy makers and media sector stakeholders with a better understanding of what might be accomplished through EU policy in the media sector, I argue that it is important to investigate what role the Europeanization process has in these national media systems. Media scholars writing about the region generally describe and explain the problems they see in media governance and media markets. Europeanization is only part of the picture they paint, and many of the problems they describe seem to run counter to the rules and norms of the EU. I therefore turn to a more in-depth review of the literature on media systems in this region to give an overview of the environments in which Europeanization may be taking place and draw out some of the challenges their findings pose for existing Europeanization theories.

### **2.3 Post-Communist Media Systems**

The end of communism in Europe brought about rapid change in political, economic and social systems, and for some states also in borders, identity and name. This has provided a fertile ground for academic study from various disciplines, but I will focus on the literature that discusses the changes in the media systems. First, however, there is a need for some geographic clarification. The fall of the Berlin

Wall and break-up of the USSR and Yugoslavia left many new states behind, all of which can fall into the category of post-communist states. Karol Jakubowicz in his seminal work *Rude Awakening*, looks at media systems in states from his native Poland to Tajikistan. He divides these into two categories based on the factors contributing to their transition (see Jakubowicz, 2007b, pp. 98-102) and the political system that followed (see *ibid.* Chapter 5), all of which helps to clarify some of the vast differences in the way these countries have developed. However, most of his examples, and the work of the other scholars discussed here, cover the countries west of the Ural Mountains. I use Central and Eastern Europe (CEE) to refer to the region from the Baltic States down to Hungary and Romania and from Poland to Russia, not including the Caucasus or Central Asian republics. By South East Europe (SEE) I mean the successor states of the former Yugoslavia plus Albania and Bulgaria.

The literature on post-communist media systems largely deals with CEE states, often with the inclusion of Slovenia, which may be because the rest of former Yugoslavia spent the first several years after the break-up involved in conflict. The Yugoslav experience was different from that of countries in CEE not only because of the bloody conflicts, but also because the system in place before the transition was more open than those of the Warsaw Pact countries. Yugoslavia was non-aligned and its citizens could travel freely. Foreign terrestrial channels were not blocked and in the late 1980s some *samizdat*, self-publishing, collectives were allowed and even encouraged, particularly in Slovenia (Bašić-Hrvatinić & Milosavljević, 2001). The literature on media systems in CEE is still relevant to this study on Slovenia and Macedonia for three reasons.

Firstly, as mentioned earlier, neither Macedonia nor Slovenia was deeply involved in the Yugoslav wars. Macedonia's internal violent conflict did not take place until 2001, was limited in scope, and lasted only a matter of weeks.<sup>6</sup> Secondly, in terms of broadcasting and audiovisual media, the system from which Slovenia and Macedonia emerged was not so different from that of the rest of CEE. The greater degree of freedom that could be seen in the print media in the later years of Yugoslavia was not

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<sup>6</sup> I do not mean to belittle the events of 2001 in which several people did lose their lives and which did have a lasting impact on the political and social fabric of the country. However, it was minimal compared to the conflicts in Bosnia, Croatia, Serbia and Kosovo. It also took place well after the legal and institutional basis for the media system was established.

present in the broadcasting sector, in which the state held a monopoly. Finally, there is the commonality of the EU trajectory. With the exception of Russia, Belarus and Moldova, the CEE countries are all now members or at some stage of stabilisation and association with the EU. The same goes for the countries of SEE. Therefore, in the audiovisual media sector, the experience of moving from a state controlled system into the EU in CEE can be quite relevant for the countries of SEE as well.

The literature on post-communist media systems attempts to answer questions about what this region is transitioning towards and the role of various factors in this transition (Bašić-Hrvatin, Kucić, & Petković, 2004; Downey & Mihelj, 2012; Jakubowicz, 2007b; Jakubowicz & Sükösd, 2008b; Splichal, 1994, 2001). Although the term Europeanization is not often used directly by the authors, the role of the EU and the accession processes is ever present. Models from Western Europe play a big part however they cannot necessarily be equated with the norms and rules of EU media policy described in the introduction to this thesis. Scholars from the region draw also on endogenous norms and beliefs about how media should be governed and operate as they express disappointment in the fact that media systems in the region fail to approximate ideal models. These are ideals that most authors acknowledge are not necessarily achieved in the West either. There is even criticism of some of the basic tenets of EU policy and concern that the common market for audiovisual media helps move these media systems farther from that ideal.

Nevertheless, in explanations as to why media systems in CEE and SEE are still very far off, domestic political elites have the starring roles. Media scholars offer agent-centred explanations that involve political elites not as veto players to EU policy, but acting on other interests and highly influential in media governance (Jakubowicz, 2007b; Mungiu-Pippidi, 2008; Splichal, 2001). Some authors also place blame on the characteristics of the media markets, on the informal rules and culture within the sector (Bašić-Hrvatin & Milosavljević, 2001; Dobek-Ostrowska, 2012; Dobek-Ostrowska & Glowacki, 2008; Downey, 2012; Jakubowicz & Sükösd, 2008b). These could be seen as existing parallel to the similar structure-centred explanations for change in national administrations found in the Europeanization literature.

### 2.3.1 *Copying from the West, but not quite*

One of the key observations of media scholars from CEE is the stark difference between the vision that the dissidents and intellectuals behind the overthrow of communism had for the media and the situation that followed. Jakubowicz (2007b) refers to this vision as the *idealistic orientation* and describes it as one based on communicative empowerment, participation, independence, pluralism, localisation and the concept of a “real public media sphere” (pp. 175-176). It was one that grew out of the dissident self-publishing culture and valued the “social management” of media and media freedom (Jakubowicz & Sükösd, 2008a, p. 17). Jakubowicz points out that it was immediately obvious that the new governments that took over after communism were not prepared to fully invest in a participative democratic model. At best, he argues “lip service” was paid to some of those ideas, and some formal legal guarantees put in place, but reality was very different.

Splichal (1994) was one of the first to systematically lament what he called at the time, the *Italianisation* of media systems in CEE, in which parts of the broadcasting system – public and private – were in the control of political parties (see also Splichal, 1999). According to him, this occurred through the uncontrolled privatisation of broadcasting combined with continued political control of PSB. Admitting that this early theory based on the characteristics of one nation-state was limited, Splichal (2001) later describes the changes in post-communist systems as imitative revolutions. His imitative revolutions idea is similar to what Jakubowicz (2004, 2007b, 2008) later describes as a mimetic orientation, however one difference can be seen in the way he finds fault with the fundamental principles that are being imitated:

“In the ECE [CEE] countries, however, the transition started with an abrupt break with the past primarily based on the ideas that were revolutionary in the nineteenth century, such as freedom of enterprise, private property, freedom of political association, parliamentary democracy, and national liberation. The imitative nature of the newly emerging systems may represent an immense obstacle to the development of more democratic systems in the region.”(Splichal, 2001, p. 35)

In his critique, he seems to place some of the blame for the situation in CEE media systems on the model imported from the West and suggests that new elites should have resisted simply adopting the liberal economic model. However he also rightly acknowledges the influence of the past. He suggests that CEE countries have been uninventive about looking for new models and that has resulted in an imitation of both the West and the past. In his breakdown of this imitation, Splichal explains a combination of trends. These are: re-nationalisation (from the past), privatisation, commercialisation and transnationalisation of the opening of markets (from the West), and cross-fertilisation (mostly with Italy) in terms of its rapid and unregulated development of private television. Re-nationalisation he describes as the use of the strategies of the old regimes for political control of the media, mostly apparent in broadcasting but also used in the print press. He argues that this combination has resulted in “the establishment of a kind of ‘political capitalism’ and created a system of ‘paternalist commercialism’ in the media” in which there is no differentiation between the state and the market or between political parties and civil society (Splichal, 2001, p. 52). Splichal seems to find that CEE states have simply copied the worst from both Western systems and their communist past. It is important to note that the processes Splichal describes began before EU accession processes or even applications to the EU.

Jakubowicz instead makes a distinction between a *mimetic* orientation and an *atavistic* orientation. His mimetic orientation refers to copying models from the West and he outlines specific aspects of media policy that he argues have been copied: deregulation and re-regulation, meaning the abolishing of monopoly in favour of an open market and establishment of regulatory bodies; and transformation of the PSB including changing its legal status and structure and securing stable financing (Jakubowicz, 2007b, p. 177). There are obvious parallels between what Jakubowicz describes as being copied from Western European models and the EU media policy outlined in the introduction, though he does not connect it specifically with the implementation of EU rules and norms. The atavistic orientation he describes is rooted in the need that new political elites had to establish themselves and the new system. Whereas Splichal argues that new elites copied old control mechanisms because they continued to have an “old authoritarian conception of the polity” (Splichal, 2001, p. 34), Jakubowicz suggests that new elites maintained existing



systems of control because they both felt insecure in their power base and they felt they deserved to use the media to support the process of reform (Jakubowicz, 2007b, pp. 180-181). The new elites may come from a dissident, freedom-fighting tradition, but when faced with the task of governing they decided to keep a hold of some old ways of controlling the media.

I suggest there is an important distinction in that Jakubowicz seems to imply that new elites may have held a more democratic view of the media, but chose to resist changes to old systems of control because of the structural constraints and political conditions in which they found themselves (see Jakubowicz & Sükösd, 2008a, pp. 22-23). This would point to the strategic behaviour of agents, central to the factors impacting Europeanization identified by rational actor institutionalism (for example Haverland, 2000; Schimmelfennig & Sedelmeier, 2004). On the other hand, Splichal seems to find that values and beliefs about the role of the media left over from the past made the elites resistant to change. His view is more aligned with the structure-centred factors elaborated by sociological institutionalists (Börzel & Risse, 2000; Checkel, 2001). The difference between these two views has implications for what might change the situation that both authors seem to find disappointing. If it is a matter of actor-centred strategic choices then change will depend on incentives, costs and opportunities. If changing the relationship that political elites have with the media depends on altering their values and norms, then social learning or socialisation (Checkel, 2001, 2005) is needed.

Two aspects of the new political elites in CEE and SEE further complicate both these interpretations of the reasons behind the continuation of old control mechanisms. Firstly, Sparks (2008, p. 47) found *elite continuity* in many CEE countries, meaning that a significant portion of the new elite is actually the old elite, and that old connections between people in media and politics are often used, particularly for things such as getting broadcasting licenses. This perhaps gives credence to Splichal's suggestion that old conceptions of the media were still dominant, while undermining Jakubowicz's idea that new elites chose to reject dissident visions of democratic media. Secondly, in some countries a large portion of the new elite is neither old elite nor former dissidents with ideas about participatory and social management of media.

In Slovenia and Macedonia, as well as many other countries in CEE and SEE, those currently in power at the time of writing were right-wing nationalists. Although they were not part of the old systems of control and ideologically their parties are aligned with the neo-liberal free market stance, civil society groups and international organisations have accused them of attempts to control the media while in power<sup>7</sup>. There is also the issue that in some of the descriptions of political control tactics used by the new elites, there are several that would not have been part of the repertoire of the old regime such as the use of regulatory loopholes, state sponsored advertising and frequency allocation (see Sükösd & Bajomi-Lázár, 2003, pp. 13-14). This complex situation raises questions about the role of agents such as political elites in shaping or at least helping to constitute the structures with which EU rules and norms might fit or not fit.

### ***2.3.2 Mimetic approach, both conditional and convenient***

Media scholars have not embarked on an exploration of the role of EU conditionality per se, but there is ample discussion of the extent to which the countries of CEE and SEE had a choice about what they imitated from the West, especially once EU accession was underway. Above, I explained how Splichal argues that those forming policy and institutions after the fall of communism uncritically accepted certain key principles and trends from the West. I also mentioned that Jakubowicz names deregulation and PSB transformation as key policies adopted from the West, both of which are among the EU norms and rules for the media sector. However, the West includes both Western Europe and the US, which have very different media systems. As Sparks (1995) describes, there was a period of competition between European and US models during which US actors and various European institutions were heavily engaged in providing expert assistance and lobbying post-communist countries. Harcourt (2003b) studied the involvement of international actors in the drafting of broadcasting and media laws in four CEE countries and found that the

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<sup>7</sup> For example: Janez Janša was a known dissident and journalist, but came from a position of anti-communism in favour of Slovenian nationalism and the free market. As will be evidenced in Chapter 4, his 2004 government still changed the RTV Slovenia law in order to take control of PSB. Nikola Gruevski was a liberal economist and his party is aligned with centre-right parties in Europe. His government stands accused of using inspections to close down and harass media and using government advertising to “buy” media in Macedonia (European Commission, 2011b; OSCE, 2011a, 2011b).

CoE, the European Broadcasting Union (EBU), OECD and the EU were instrumental in these processes. In the late 1990s and early 2000s when these countries began accession and fulfilment of the *aquis*, the EU became the dominant player. To some extent a mimetic approach to media policy was unavoidable once these countries decided to join the Union because “thinking outside the EU box was actively discouraged” (Jakubowicz & Sükösd, 2008a, p. 18). However, it was not the only factor.

Both Sparks and Harcourt find that the European dual system of having both private and public broadcasters also suited the interests of the political elite at the time. For one thing, it gave them something to do with the large state broadcasters they inherited from the previous regime (Harcourt, 2003b, p. 337). It also suited them that the European model was characterised by high government intervention (Sparks, 1995), and the role of the PSB in the European model allowed for a more atavistic approach (see Jakubowicz, 2008). So while there was pressure on post-communist countries to imitate Western European systems of media governance and policy and they could not resist adoption of EU rules contained in the *acquis*, the systems they mimicked also allowed political elites to resist dismantling some of the old manners of control. These findings suggest that Europeanization at this stage was less a matter of goodness of fit with existing policy or norms, but instead fit with the instrumental needs of the political agents in decision making positions at the time.

### ***2.3.3 Political parallelism and media systems***

It should not be surprising that adoption of the European model allowed political elites to continue old mechanisms of control, or, as I suggest, use new ones. Hallin and Mancini (2004, 2008) identified similar tendencies in the media systems of Southern Europe, classifying them as polarised pluralist media systems. In exploring the problems they saw in their countries, scholars in CEE and SEE understandably turned to the models of Hallin and Mancini. Polarised pluralist media systems are characterised by political parallelism in which the media each represent one of several divergent political positions. In such systems “instrumentalization of the media by the state, parties and private owners with political ties is relatively common” (Hallin & Mancini, 2004, p. 139), as well as clientelism and low levels of

professionalisation. One of the ways this manifests is in political influence over regulators and PSB as it is ensured that the composition of boards and governing bodies reflect the parliamentary balance of power (Jakubowicz, 2007a, p. 306). The embedded relationships between political parties and the media in polarised pluralist systems have implications for Europeanization. For one thing it suggests that the domestic opportunity structure may have particular characteristics because of the close connection between those charged with implementing policy and those being regulated by it. It also could mean that the structures – norms, culture and practices - that EU policy confronts at the national level go well beyond those within national administrations.

Jakubowicz (2008) in his study of PSB in CEE finds a great deal of similarity between the polarised pluralist systems of Southern Europe and those of post-communist states, particularly the feature of political clientelism. He argues that like in the rest of Europe, while the institutional arrangements established in these countries for public service broadcasting are similar, they produce different results in different countries depending on the political culture. He concludes “the decisive element is not the fact of involvement by politicians, e.g. in the appointment of the governing bodies of PSB organisations or other relations with them (as this is common in all systems), but the quality of that involvement or relations” (emphasis in the original Jakubowicz, 2008, p. 108). In another study, Bašić-Hrvatinić and Petković (2007) examined the history and characteristics of the Slovenian media market in relation to Hallin and Mancini’s polarised pluralist model. They find that it fit the characteristics of this model, namely political instrumentalism, clientelism and weak development of the journalistic profession. Looking at the Polish media system, Dobek-Ostrowska (2012) finds it to be a hybrid, but closest to the polarised pluralist model. She identified specifically *instrumentalisation* of the PSB, low levels of professionalism, and relationships between media and political elites. According to Dobek-Ostrowska (2012, pp. 40-41), the concept of *instrumentalisation* of the media is particularly useful in reference to the media systems of the region and that politicians do not see anything improper in this kind of relationship with the media. Her claim implies the kind of political influence over media based norms and values referred to by Splichal rather than just the strategic motivations of political elites described by Jakubowicz discussed above.

In expressing their disappointment with the situation in Slovenia, Bašić-Hrvatín and Petković (2007) argue that there must be an opposite to the polarised pluralist system, one that “should be sought in the media and journalism that are determined to serve the public interest, and are capable of developing and promoting the system of professional criteria as a defence against the attempts at instrumentalism and clientelism” (p. 200). This opposite pole seems to resemble most the democratic corporatist model of Northern Europe (Hallin & Mancini, 2004, 2008), in which there is a strong role for PSB, developed self-regulation, and professionalism, but it also draws on the collectivism and activism of the *samizdat* (self-publishing) tradition of the later communist period in CEE and SEE. Splichal, cited above, criticised the adoption of the liberal foundations upon which the EU is based. However, achieving the ideal model is still associated with becoming part of the EU and closer to Western Europe. Under communism, media were defined solely as political, cultural and educational institutions; therefore, Jakubowicz (2007b) argues that implementing the EU *acquis* brings in the “economic and technological dimensions” important for a “media industry” (p. 250). Bajomi-Lazar (2008) found overall decreases in the intensity of political pressure on the media in countries that had become members of the EU. Jakubowicz and Sükösd (2008a) claim that the end of transition will be “when media of a post-communist country resemble those of Western democracies rather than those of a communist state” (p. 25). This means that they expect the processes of commercialisation and erosion of the public service role of media that are occurring in Western Europe as well, but without the added problems they identify as particular to post-communist systems.

#### **2.3.4 *Economic conditions in small states***

The literature I have just covered highlights political actors as factors in media governance and the state of post-communist media systems. However, as Sparks (2012) recently pointed out, political and economic factors are closely intertwined in the region because of the specific nature of the transition from a centralised economy. His political economy study of CEE states shows “a picture of media operating in small and poor markets, where there is intense competition for resources” where “it is commonplace for enterprises to seek political support of one

kind or another in order to improve their relative competitive position” (p. 59; see also CEE country profiles in Terzis, 2007). This suggests that the economic constraints of the market may encourage the political parallelism characteristic of the polarised pluralist model described above. Downey (2012) argues that the dominant position of transnational companies in many of these markets may moderate the tendency towards polarised pluralism. He maintains that transnational companies initially depend on close contacts with domestic political elites, but then for long term commercial reasons try to disentangle themselves to avoid association with any one particular political group once they have achieved dominance (Downey, pp. 133-134). Dominance may be particularly easy to achieve in small markets because as Trappel (2011) has argued, they tend towards concentration of ownership and media conglomerations. He points out that in CEE this has involved foreign, transnational owners such as the Central European Media Enterprise. CME is one of the major actors in the Slovenian media market and was a key player in the case described in the introduction involving the exit of Norkring and MTG from the terrestrial television market that raises questions about the position of transnational companies within the domestic opportunity structure.

Many of the countries in CEE and SEE, Slovenia and Macedonia in particular, are small states by most accepted definitions (Baehr, 1975; Lowe & Nissen, 2011 in relation to media; Maas, 2009; see also Thorallsson & Wivel, 2006 for discussion on definition with EU). The characteristics of small states media systems were identified in the early 1990s by Trappel (1991), Meier (Meier & Trappel, 1991) and Burgelman and Pauwels (1992). They highlight the limitations of having small advertising markets and low production capacity. It has also been claimed that media in small states are less able to make use of cross-border distribution as their products are not attractive to external audiences (de Smaele, 2004, 2007). Puppis (2009) agrees with these characterisations, arguing also that though they tend towards interventionist approaches to media policy, small states are less able to intervene in the public interest than larger countries. This is partly due to the fact that small states are limited in their ability to raise funds for PSB through license fees or other levies (Picard, 2011). Puppis (2009) further maintains that small states’ media systems are more likely to be influenced by the decisions of supranational organisations like the EU or larger neighbours. Empirical evidence of this from the region is limited, but

Jõesaar's (2009, 2011) study of the Estonian market supports claims that the liberalization of television markets demanded by EU policy exacerbated this problem, damaging the PSB and the state's ability to protect the public interest function of the media (see also Wyka, 2009). While Jõesaar provides evidence for the challenges in protecting the public interest in small media markets, in light of the other characteristics of small state media systems and other potential liberalizing influences mentioned above, the link he makes to EU policy seems tenuous.

The work of Sparks, Downey and Trappel suggests that transnational media companies may be important or even dominant players in small media systems, but the consequences for this in terms of Europeanization are not clear. Puppis and Jõesaar seem to suggest that small states will be highly influenced by EU policy and that this influence will have negative consequences for the protection of the public interest in those media systems. Europeanization scholars discussed above argued that one of the ways Europeanization leads to domestic change is by altering the domestic opportunity structure (Knill & Lehmkuhl, 2003), so do the economic limitations and market conditions of these states make them conducive to such change and easily influenced by EU policy? In the example of Slovenia's small television market, the outcome did not appear influenced by EU policy, which calls for open markets and fair competition; neither did it seem that the domestic actors, including one owned by CME, were prepared to allow the redistribution of power or resources within the system.

### ***2.3.5 Complicated environment for Europeanization***

The literature on media systems in CEE and SEE seems mainly driven by a need to explain the ills or failings that media scholars, mostly from the region, have observed. Highly normatively charged, this body of research places Europeanization among a group of parallel processes that also includes the transition from state controlled systems, globalisation, commercialisation and investment by transnational media companies. This makes it difficult to isolate within the literature the role of Europeanization as defined at the outset of this thesis. However, it does show that Europeanization should be considered in the context of these other processes. In addition, these scholars provide evidence of other external influences in media

governance in the region such as US bilateral pressure, the OSCE and CoE, and even foreign media companies that have achieved dominant positions. Together, these seem to make a convincing argument against limiting investigations or Europeanization by assuming the EU is the central source of change.

There seems to be agreement among scholars that at least on the surface, i.e. in law and institutional arrangements, the countries of CEE and SEE have generally mimicked the systems of Western Europe. Nevertheless political parties' maintenance of old systems of control over the media results in what these authors see as imperfect imitations. The comparisons to the polarised pluralist model indicate that political elites have interests in the audiovisual media sector that have little to do with EU policy, but may still have implications for its implementation. At the same time, influential private companies including foreign-owned ones may have commercial interests that interact with EU policy, although they are not usually considered by Europeanization research. These findings from media scholars complicate some of the agent-centred explanations for variations in Europeanization offered by Europeanization scholars.

Most of the authors mentioned above express some form of disappointment with the current state of media systems in the region. Their work tends to come from a highly normative position based on strong beliefs in the public service function of media and that "media should serve democracy" and provide access to those other than the political and economic elites (Splichal, 2001, pp. 52-53). Scholars do not seem agreed, however, as to whether or not the problem of political control over the media identified by media scholars is rooted in structures such as norms and culture or the strategic decisions of political parties. At the same time, the literature surveyed above indicates that media policy at the national level is also shaped by material conditions of media markets. If structural factors related to size and economic conditions are important at the national level, they may also be part of what determines *institutional fit* in the context of Europeanization. However, unlike socially constructed norms and values, material conditions are not ones that can be changed through social learning or socialisation in case of misfit.



## 2.4 Conclusion

My review of the Europeanization literature shows that much of the work on EU policy entering the national sphere has focused on explaining variations in implementation, mainly with the transposition of EU Directives (see also review in Sedelmeier, 2006). I argue that one of the limitations of this literature stems from the fact that much of it assumes that change at the domestic level is caused in some way by the EU and looks for factors that explain variations in these changes. This top-down approach neglects “voluntary adjustments to the EU” that might take place at the national level (Sedelmeier, 2006, p. 6). It also risks missing out on non-European factors that may provide alternative explanations for change such as the macro-political environment (Radaelli, 2002). The work of media scholars reviewed here indicated that the positions of political elites and the economic conditions in the small states of CEE and SEE have crucially shaped their media systems and resulted in ones that are highly imperfect imitations of Western European models.

How economic conditions and the positions or relations of market players operating the sectors to which EU policy applies interacts with Europeanization has not been adequately explored. As I pointed out, Europeanization research has largely ignored material conditions such as economic limitations and other aspects of a state’s political economy. Europeanization scholars have empirically covered a variety of policy areas and sectors; however there has been almost no research into the media sector. Audiovisual media and television specifically is important to national culture and the “creation of political legitimacy” (Collins, 2002, p. 26) with which the governments of newly independent states such as Slovenia and Macedonia would be particularly concerned. As Schlesinger (1997) has argued, across Europe “existing, state-bounded spaces of national culture, identity and politics remain potent and crucially significant” (p. 387). This makes Europeanization in the media sector uniquely interesting to examine and such investigation may lead to different findings than in other sectors or policy areas.

Nevertheless, Europeanization literature provides several places from which to start investigating the role of Europeanization in media governance. The extent of *policy fit* has been shown to be not so relevant to the implementation of EU policy at the

national level; however *goodness of fit* between EU norms and practices and those entrenched at the national level appears to be important. The idea of *fit/misfit* is based on the logic of appropriateness, in essence whether or not the implementation of EU policy is appropriate to domestic norms and practices. The rational actor institutionalists cited here, identify factors based on strategic actors involved in policy making and implementation. There was dispute within the literature as to whether or not the actual number of potential *veto players* that might oppose or champion EU policy impacts Europeanization. There were convincing arguments that the policy preferences of actors matter, particularly where policy is guided more by domestic politics than by the technocrats of national administrations. The work of Knill and others (Knill, 2001; Knill & Lehmkuhl, 2003; Luaces, 2002) indicated that one possible role for Europeanization can be in changing the domestic opportunity structure for example, by empowering groups whose policy preferences align with EU policy.

Divisions within Europeanization studies between rationalists and constructivists, or those offering agent-centred and those offering structure-centred explanations, is apparent in the literature. However, the literature reviewed here shows that empirically, these divisions have not held up. Structure-centred explanations were qualified by “mediating factors” (Cowles & Risse, 2001) that involve agents as veto points. Agent-centred explanations related to the decisions of political actors in the face of the external incentives of EU conditionality were then nuanced by “socialization” (Sedelmeier, 2008) or “social learning” (Epstein, 2005; Grabbe, 2005). There have been calls to integrate rationalist and constructivist approaches despite the apparently incompatible assumptions about behaviour, and even claims the division is false. Knill and Lenchow (2001b) convincingly argue that the core difference between these two branches in the field of Europeanization lies in the level of abstraction. This argument bears up when considering the empirical foci of the literature reviewed here. When scholars looked at individuals acting within national administrations or civil service, they found structures to be important. For instance, Epstein (2005) and Grabbe (2005) found social learning of norms or Falkner and her colleagues (Falkner et al., 2006) found administrative culture. When scholars chose a high level of abstraction for example by looking at transposition records (Schimmelfennig & Sedelmeier, 2004; Sedelmeier, 2008; Toshkov, 2008) or

at the behaviour of NGOs (Parau, 2008; Sudbery, 2010), their findings explained change in terms of actors behaving strategically according to the logic of expected consequences.

The two different perspectives or levels of abstractions nevertheless have different implications in terms of the possible role of Europeanization. At the lower level, a role for Europeanization would involve approximation of the norms, values and practices of individuals involved in media governance with those connected to EU audiovisual media policy. At the higher level, Europeanization would take place through EU level policy or rules changing or shaping the domestic opportunity structure. To continue with the Slovenian example with which this thesis started, the key question would be whether the lack of openness and fair competition identified in the Slovenian television market was a product of those involved in implementing competition policy not sharing those norms, the domestic distribution of power and resources being resistant to change, some combination of those, or something entirely different. These distinctions are important considering the dissatisfaction with the current state of media systems in SEE and CEE expressed by media scholars and recent efforts to push the EU to be even more involved in the media sector such as the European Citizens Initiative on Media Pluralism.

The top-down research so far has assumed EU impact and identified various factors affecting this impact. However with some media scholars, journalists, activists and citizens looking to the EU to address problems in the media sector within the region, I argue we need to ask broader questions about the role of the EU and its policies in this sector. In order to understand the role of Europeanization in the audiovisual media sector in SEE, I suggest a *bottom-up* approach. This is an approach that examines the various actors and structures at the domestic level and clarifies more fully the role of Europeanization within this complex environment. In the next chapter I introduce the concept of governance, which defines the object of study in this bottom-up investigation. I also elaborate on the way both structure and agents, or appropriateness and expected consequences are engaged in the institutionalist conceptual framework used.

# Chapter 3: A Governance approach to Studying Europeanization

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## 3.1 Introduction

In the previous chapter I made the case for research that asks what is the role of Europeanization rather than what is the impact of the EU or how can we explain differences in the implementation of EU rules, at least for the media sector. I pointed out several valuable contributions that Europeanization research has made, but also agreed with the argument of Radaelli (Dente et al., 2011; Radaelli & Pasquier, 2008) and others that this strain of research can suffer from institutional determinism because it is dominated by new institutionalist approaches. However, I argue the problem is less in the theories new institutionalist scholars put forward about how institutions work and more in the empirical approach of much of the Europeanization research to date. These scholars usually start with EU level change and look for institutional variables at the domestic level, thereby “ignoring complexity” (Dente et al., 2011, p. 11). In reviewing the literature by media scholars about media systems in the region, I found reason for my investigation to take a different approach. Media scholars paint a complex picture of media systems in CEE and SEE. Various actors have specific interests in the media related to political goals, and media systems are shaped by these relationships as well as by economic and cultural limitations. I claimed that a *bottom-up* approach to new institutionalist research was needed (Radaelli, 2002; see also Radaelli & Pasquier, 2008, pp. 41-44), rather than one that started with a particular EU policy and looked down to the national level. This presents a challenge in establishing the object of study. The goal of this chapter is to establish the conceptual and theoretical approach to my investigation answering the question: from where did I look up?

Previous studies that have tried a bottom-up approach to Europeanization research have taken as their objects of study NGOs working in a particular policy field (e.g. McCauley, 2011; Sudbery, 2010); others have historically tracked policy changes over time in relation to specific policy areas (e.g. Parau, 2008; Suurna & Kattel, 2010). I set as my object of study audiovisual media governance, as defined by a

conceptualisation of governance that I will explain in the proceeding pages. This investigation examines the governance of Slovenian and Macedonian media systems and attempts to isolate the role of EU policy. The term governance is often used in relation to the EU mostly as a way of describing what it is or what it does. In media studies the term is usually similarly descriptive. However, Puppis (2010) rightly argues that the term media governance should not be used as a “catch all” phrase to describe new regulatory mechanisms, such as co- and self-regulation (p. 136). He suggests that it is an important analytical concept that includes, but also goes beyond, statutory rules and encompasses a broad range of formal and informal rules operating at multiple levels. As I explain in this chapter, I use governance in an analytical capacity based on conceptual work from the broader field of public policy that includes both agents and structures.

In the previous chapter, I discussed both agent-centred and structure-centred factors that scholars have claimed influence Europeanization. One of the problems that I identified with most agent-centred factors was that they tend to conceive of domestic agents only in relation to their EU policy preferences, either as supporters or opposition. I argued that existing structure-centred explanations for variance in EU policy implementation focus overly on socially constructed structures such as norms, identity and culture, while media scholars point to material conditions as significant constraints on media policy for states like Slovenia and Macedonia. There is potential within new institutionalism for the exploration of both structure and agency, especially if an investigation operates at multiple levels of abstraction (Knill & Lenchow, 2001b). Here I further develop two theories about how institutions function: institutional fit and opportunity structure. Though I argue these too merit refinement, I suggest that using them in an examination of governance can bring in the complexity and breadth needed.

In this chapter, I first look at governance as an analytical concept and how public policy and media scholars have defined it. Then I go into more detail on the social-political governance perspective presented by Jan Kooiman (2003), which I find most appropriate. I argue that his model provides a clear conceptualisation of governance, one that includes structures and agents that he refers to as actors. Kooiman’s model therefore, establishes the object of my investigation at the

conceptual level. In the second section of this chapter, I discuss *institutional fit* and *opportunity structure*. I pay particular attention to how these theories might account for the material conditions and various actors identified as typical of media systems in SEE.

### **3.2 Governance: What is it?**

The term governance has its roots in economics and political science, but much of the conceptual work on governance comes from scholarly work in the areas of public policy and public administration (e.g. see Pierre, 2000; Rhodes, 1997, 2000; Rhodes, 2003; C. Scott, 2004). Uses range from the purely descriptive to the highly normative. In relation to the EU, scholars talk about *multi-level governance* and *new governance* and engage in debates about issues of legitimacy, accountability and the EU's democratic deficit. Media scholars have also taken up the term governance in a manner that echoes these discussions. In this section, I first cover the use of governance in general and then look at media governance in particular, highlighting models by McQuail (2005) and Puppis (2007, 2010). I then elaborate Kooiman's (2003) conceptual model of governance and apply it to the media sector.

#### **3.2.1 *Multi-level and "new" governance***

The use of the term governance has been linked to a gradual change from the absolute power of the state to broader arrangements that include both the involvement of supranational institutions or arrangements and national level independent agencies or private entities. Scholars have yet to agree on a definition of governance, or reach consensus on the set of phenomena that might constitute it (A. Jordan, Wurzel, & Zito, 2005). The broadest definition comes from Pierre and Peters (2000), for whom the term governance covers the "whole range of institutions and relationships involved in the process of governing" (p. 1). Whereas others make specific reference to the actors involved, Rhodes (1997; see also 2000; 2003, p. 1) describes the *hollowing out of the state*, which has resulted in a concept that "blurs the distinction between the state and civil society" (1997, p. 57). In Rhodes' view this leaves only "a collection of inter-organisational networks made up of governmental and societal actors with no sovereign actor able to steer or regulate" (ibid. ). For Kohler-Koch and Ritberger (2006) "governance can be considered both a

process and a state whereby public and private actors engage in the intentional regulation of societal relationships and conflicts” (p. 28). A more structure-centred definition can be found in that of Scott (2004), who refers to the “post-regulatory state” and a shift from state laws to the “wider range of norms, institutions and processes” (p. 46) that exert some kind of control. These uses seem limited to describing various non-authoritarian systems in which a certain number of public functions are not exclusively in the hands of a central government. However, a few qualifiers on the term governance give it a more analytical character, particularly in relation to the EU.

The EU is often considered one of the levels of *multi-level governance*, a term made popular in European studies by Hooghe and Marks in the mid-nineties (Hix, 1998; Hooghe, 1996; Hooghe & Marks, 2001; Marks, Hooghe, & Blank, 1996). Within systems of multi-level governance, decisions are made by actors at several levels – global, European, national, local – rather than monopolised by national governments (Hooghe & Marks, 2001, p. 3). The EU is one of those actors, as are national governments, but also civil society organisations and various independent regulatory agencies. There is not space here to go into detail about the concept (for more see Bache & Flinders, 2004; Piattoni, 2010), but I introduce it because it purports that within Europe, agents at these various levels, including non-state actors, can interact with each other directly and not necessarily in a hierarchical manner. This is a contrast to the state-centric or inter-governmental approaches to the EU that ignore actors outside of formal government frameworks (S. George, 2004, p. 10 in electronic version; Van den Berg, 2011, p. 17). Multi-level governance describes, for example, how national regulatory authorities (NRAs) or industry self-regulatory bodies at the national level can also have direct interaction with the numerous committees of the EU or European Parliament and with the Commission and influence decision-making.

The reliance on non-state actors, such as self-regulatory bodies created by the private sector or NRAs, is often referred to as *new governance* (Hix, 1998) or the use of *new modes of governance*. It creates *democratic dilemmas* about accountability and oversight (King, 2007, p. 90) because they are sheltered from scrutiny by any publicly elected body (see also Héritier & Lehmkuhl, 2011). Some find such

mechanisms to be more flexible and open to stakeholder participation (Borrás & Ejrnæs, 2011; Mosher & Trubek, 2003). For others the fact that decisions are made by bodies not directly held accountable through elected representation, such as national NRAs or even the EC is cause for concern (Føllesdal, 2011; Føllesdal & Hix, 2006). Referring to it as “soft” governance, Harcourt (2008) finds that for the audiovisual media sector within the EU, the use of EU level committees and co-ordination among NRAs on regulatory practice is widespread and lacking in “transparency, legitimacy and democratic input” (p. 23). Splichal (2009) argues that because public tasks and decision-making have been transferred to non-state actors, “issues previously subject to formal political scrutiny by more or less representative political bodies are relegated to market driven regulation” (p. 397). The *democratic deficit* he describes is not just a matter of legitimacy of the mechanisms of governance, but also about the protection of the public interest, something that market regulation alone might not provide. Mechanisms of new governance such as voluntary standards and NRAs are common in the media sector, along with all the democratic dilemmas that accompany them. For example, in the case of Norkring investment in the digital terrestrial televisions network in Slovenia and its problems with competition from the PSB network, the Agency for Post and Electronic Communications (APEK) had decision-making responsibilities in several instances. However, this thesis will show that several conditions influenced APEK’s role in that case towards its eventual conclusion, and that there were issues with how it was designed that could be considered contributors to a democratic deficit in media regulation in that country.

### **3.2.2 Media governance**

Along the lines of Scott’s definition above, media scholar Denis McQuail (2005) defines governance as “the overall set of laws, regulations, rules and conventions which serve the purpose of control in the general interest,” and points out that this refers “not only to formal and binding rules, but also to numerous informal mechanisms, internal and external to the media, by which they are ‘steered’ towards multiple (and often inconsistent) objectives” (p. 234). McQuail maps elements of governance in two dimensions, external-internal and formal-informal. His map includes actors, such as state regulatory bodies, the management of individual media,



as well as lobby groups, which would be from the civil society (McQuail, 2005, p. 235). It also includes elements such as codes of ethics, organisational culture, public opinion and professionalism. These can be seen to mirror some of the structures that Europeanization research identifies as factors in the implementation of EU policy. McQuail creates a useful typology of forms of governance shown below, but I find most interesting that he includes “market forces” as an informal external form of governance. Referring to them as structures, he suggests that the level of competition and ownership have some function in accountability (McQuail, 2005: chapter 8), but regrettably does not develop the role of market conditions in governance or consider other structural characteristics of the market. I argue that this is an area worth exploring in more depth. Although market players are considered as non-state actors that may influence policy and regulation in the discussions of governance and accountability or legitimacy described above, the conditions and characteristics of markets are neglected.

**Figure 3.1 The main forms of media governance**

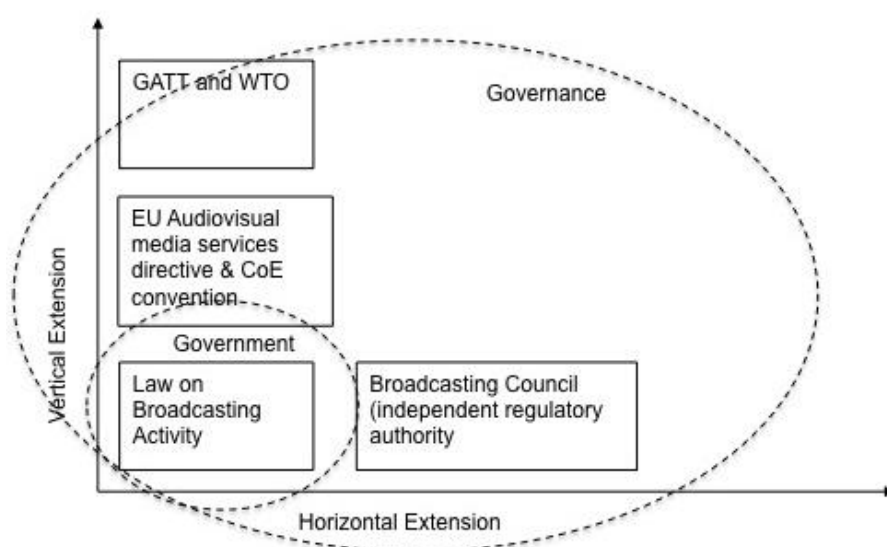
	Formal	Informal
External	Law and regulation applied via courts and public regulatory bodies	Market Forces; Lobby Groups; Public Opinion; Review and criticism
Internal	Management; Self-regulation by firm or industry; Organizational culture	Professionalism; Codes of ethics and conduct

Source: "figure 9.2 the main forms of media governance in McQuail 2005, p. 234

Puppis (2010) provides a slightly different map of media governance, which he defines as “*the entirety of forms of rules that aim to organise media systems*” (p. 138, italics in the original). He presents an *integrated view* on rules that includes what he calls *collective* and *organisational* rules. He maps them in terms of whether their scope is the society or industry as a whole or only the media organisation, and whether they are implemented inside or outside the media organisation. Although the

inside/outside distinction in his map mirrors McQuail's external and internal categories, the dimension that Puppis adds is in distinguishing between rules that apply at an industry level and those that only apply to an organisation. According to Puppis, *collective* rules include both statutory regulation from the state and supranational levels and self- or co-regulatory arrangements within the industry such as press councils or similar. *Organisational* rules are those that apply only within an organisation such as internal codes of conduct and complaints boards or ombudsmen. Puppis' model (2007, 2010) also looks at governance in a manner that is useful for identifying the different actors within a multi-level governance environment by placing the various levels in relation to state government. The figure below illustrates this model using the case of Macedonia:

**Figure 3. 2 Media governance in Macedonia as extensions of government**



Source: Based on "Figure 1 Media governance as horizontal and vertical extensions of government" in Puppis, 2007, p. 331

Though it is useful in multi-level context, the weakness of Puppis' model is in the idea that other actors are "extensions" from government. One could easily argue that self-regulatory bodies extend from the market, albeit sometimes under threat of state regulation. This model seems to represent a hierarchical model of multi-level governance rather than the interconnected one of Hooghe and Marks (2001). While it may work for the formal institutions connected to the state, it fails to represent

informal rules or market initiated mechanisms. There is also no place for the market structures to which McQuail alludes.

In casting his version of governance as an analytical concept, Puppis highlights the fact that the concept of media governance is also a normative one. It is this normative aspect of a media governance concept that Puppis argues “allows for criticizing shortcomings of existing rules and generating ideas for improvement” (Puppis, 2010, p. 145). However, he also points out that mostly the normative assumptions of governance remain undisclosed, which can lead to problematic conclusions regarding the extent to which governance structures are in the public interest. I suggest that it is not so much that the normative assumptions remain undisclosed as that they may be changing or under negotiation, for instance as part of the social learning or adoption of EU norms. This makes these normative dilemmas critical parts of an analytical concept of governance, and makes it important to examine the interactions through which they may be negotiated.

Hamelink and Nordenstreng (2007) argue that communications rights, such as those contained in Article 19 of the Declaration of Human Rights, are fundamental to the norms of media governance. They further contend that civil society has a key role to play in advocating for these rights and protecting them within a media system. For Meier (2008), the accountability of individual media organisations to the public is an aspect of media governance. Drawing upon experience from corporate governance with transparency and cooperation with stakeholders, he sees engagement with civil society as one of the ways media can be accountable to their stakeholder, the public (Meier, 2008, p. 194). Meier suggests there is also direct interaction between civil society actors and actors in the market to hold them accountable to the public interest. Following this line with the Slovenian example, this would mean that observing behaviour from market players resulting in unfair competition with potentially detrimental consequences for the public in terms of media pluralism and inaction by the NRA, there should have been a reaction from civil society actors in Slovenia to hold those other actors to account. In later chapters this thesis will show the reasons why such a reaction was not happening in this case and the limitations on such engagement from civil society in Slovenia.

The literature on governance and EU governance is vast and I may not have done it justice here in this humble review. However the goal here was not to provide a thorough critique of the literature on governance, but to introduce the concept and some of the assumptions that define it as an object of study. Investigating governance means looking at all of the different actors, including those in state bodies and the market as well as other actors and at the formal and informal rules and practices of their interaction. Within governance, norms are not just variables that may impact policy implementation or may be changed through social learning. They are points of tension among the actors that also serve to define the roles that they play, such as in the manner Meier suggests above. While the models of media governance I presented are useful, I have also pointed out some of their limitations. Therefore, I will now explain a conceptualisation of governance that can provide the kind of “analytical precision” needed to take the concept into the empirical world (A. Jordan et al., 2005), and gives form to this investigation.

### ***3.2.3 The Interactions of Governance***

There are many options from where to draw more detailed conceptualisations of governance. Some scholars talk about modes of governance (see for example Héritier & Lehmkuhl, 2008; Treib, Bähr, & Falkner, 2007), while others about networked governance (A. Jordan & Schout, 2006; Stoker, 1998). I have been talking so far about agent-centred and structure-centred factors, and about actors and structures. In my review of literature from Europeanization and media scholars, I demonstrated that there is evidence from existing literature that both should be considered. I also pointed out that among those actors and structures and those originating from within the market, in this case the one of audiovisual media, may have a role. I argued that existing models of media governance do not adequately account for the role of market conditions and market players, and therefore I chose a conceptualisation of governance that I determined could do so. Here the work of Kooiman (2003), seems most useful, and therefore I will devote some space to further elaboration on his ideas.

Kooiman first describes governance as “the totality of theoretical conceptions on governing” which he defines:

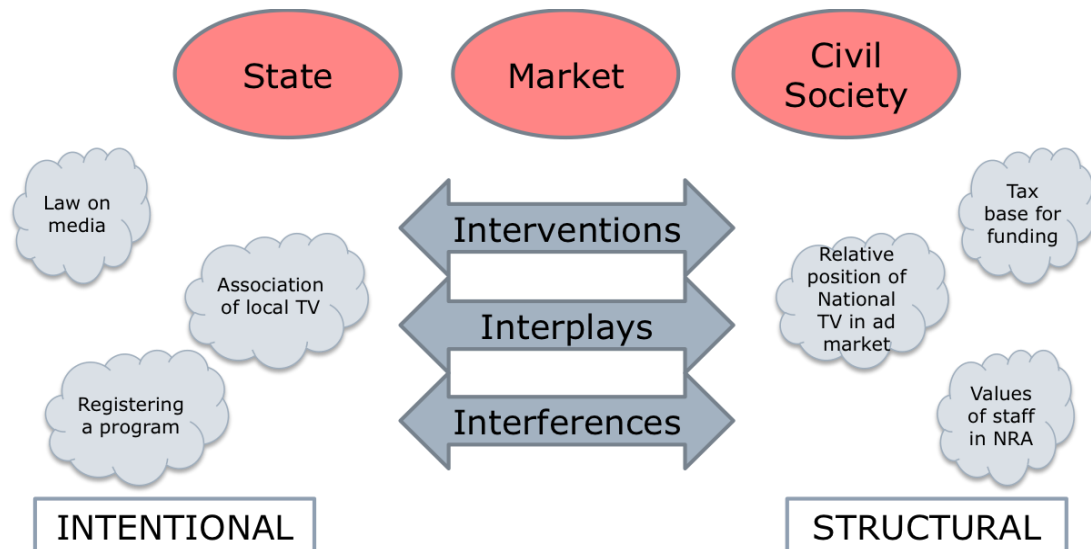
“Governing can be considered as the totality of interactions, in which public as well as private actors participate, aimed at solving societal problems or creating societal opportunities; attending to the institutions as contexts for these governing interactions; and establishing a normative foundation for all these activities.” (2003, p. 4)

In what he calls *social-political governance* or *interactive governance* the concept of interaction has a central place. In his models he describes the actors, interactions, elements and modes of governance. As this is a rather complex arrangement, I will concentrate on the interactions at the heart of his model. Kooiman gives three categories of elements: images, instruments and actions. He also delineates three modes of governance: self-governance, co-governance and hierarchy. However, there are many different types of elements within those categories and much detail on the modes. Both elements and modes are locations of interactions. As my purpose here is not to re-tell his entire work, but to set the boundaries for my own bottom-up investigation, I focus on the interactions.

Kooiman (2003) establishes three categories of actors: the state, the market and civil society. Since he equates the state with “a public task” (Kooiman, 2003, p. 5) rather than necessarily with a national government, this category also includes supranational institutions charged with public functions such as the EU. However it is the interactions among them, which he maintains provide insight into the dynamics and complexity of society. Kooiman’s (2003) interactions are mutually influencing relations (for an overview of interactions see pp. 19-24). He identifies three types of interactions. *Interferences* amount to the processes and procedures of daily life. *Interplays* are the relations and negotiations between individuals or organisations. The most formalised form of interactions are *interventions* such as rules and regulations, but also embedded social relations or resources. This way of thinking about interactions therefore includes ones originating from the agency of the actors as well as “the cultural, material and power conditions that constrain and enable the intentional or actor level interactions” (Kooiman, 2003, p. 16). These conditions are the structural interactions of governance. For example, an *intentional interaction* could be a rule or decision taken by a state body within a hierarchical mode of governance, while a *structural interaction* could be the “embedded” or “pre-

existing” social relations among firms or organisations as part of self- or co-regulation modes. The diagram below is an attempt to illustrate with examples, what might be found in the media sector in any given country:

**Figure 3.3 Illustration of actors and interactions with examples**



Source: by the author based on Kooiman 2003

The three types of interactions occur among and within the state, the market and civil society. Intentional interactions drawing on the agency of those involved can be, according to Kooiman, formal interventions such as a law made by the state, or more horizontal interplays such as the establishment of professional associations or industry groups. At the levels of *interventions* and *interplays* on the other side of the diagram are structures that “constrain or enable” (Kooiman, 2003, p. 16) such as the tax base available to provide subsidies or funding for PSB, or the size of the advertising market. One would also locate the power dynamics among market players in relation to each other and to civil society or the state. If one thinks of Kooiman’s interaction in relation to the levels of abstraction described by Knill and Lenchow (2001b), these would be subjects of study at a higher level of abstraction. At a lower level of abstraction, could be considered the *interferences* of everyday life or business, such as the process of a station registering changes to its format with the NRA or advertisers making a contract with a broadcaster. Structural interferences come at the level of the everyday and can be things such as the professional culture

within the NRA or the internal culture of media organisations. Thinking of media governance in terms of both structural and intentional interactions allows one to examine at more than one level of abstraction. Interactions involve the values, identities and practices of the individuals within the organisations of the state, the market and civil society. They also occur among the NGOs, media companies and NRAs. This conceptualisation of governance, I suggest, sets out a clear place to start clarifying the role of Europeanization in the media sectors in Slovenia and Macedonia.

### ***3.2.4 Governance in the context of Europeanization in SEE media systems***

I explained at the outset that my strategy was to use a new institutionalist theoretical framework within a governance approach. I argued that as opposed to a purely institutionalist approach, using governance to define the conceptual starting point for a bottom-up investigation can provide an “organizing perspective” and “a language through which to identify key features of a complex reality” (Stoker, 1998, p. 27). In relation to Europe in particular governance has been qualified as *multi-level* and *new*. This means interactions can occur at local, national, European and global levels and not necessarily hierarchically. Governance includes new mechanisms such as IRA’s, voluntary industry standards and others. Kooiman’s (2003) *social-political governance* successfully provides a conceptual scheme of governance. His perspective captures the “whole range of institutions and relationships” (Pierre & Peters, 2000, p. 1) of governance. Defining governance in this way includes state bodies, political organisations, private companies and other actors at a higher level of abstraction that one finds in actor-centred factors in Europeanization. It also offers a potential location for normative negotiations and changes in culture or values, such as those that may be taking place during the kind of socialisation described by Europeanization scholars.

It has been suggested that sociological institutionalism in particular, could be useful for looking at media governance at the empirical level (Puppis, 2010). However, as I demonstrated in my critique of the literature in the previous chapter, reliance on this branch of institutionalism alone risks over-emphasising structure (Schmidt, 2008). Instead, I combine theories about how institutions work from both sociological and

rational choice institutionalism following the work of Knill and Lenchow (2001b) who argue that *structure-based* and *agent-based* institutionalism can be combined in a complementary way. In the next section, I explain the two institutionalist theories that provided the framework for this investigation of Europeanization in media governance.

### **3.3 New Institutionalism as a Theoretical Framework**

Institutionalism is commonly used in comparative politics and public policy studies, but can also be found in the work of economists, anthropologists and other social scientists. It has been defined generally as “a set of theoretical ideas and hypotheses concerning the relations between institutional characteristics and political agency, performance and change” (March & Olsen, 2005, p. 4). New institutionalism developed as a reaction to the overemphasis in “old” institutionalism on law and the organs of government and on how these structures shape behaviour (Dente et al., 2011). Since its beginnings in the 1980s, three main strands have emerged in the field of public policy and governance. Although recent work by Schmidt (2008, 2010) proposes a fourth *discursive* strand, there are usually considered to be three main strands of new institutionalism: rational choice, historical and sociological (sometimes referred to as organisational or constructivist).

These three forms of *new institutionalism* share the theory that institutions, once created, have a life of their own (P. Hall & Taylor, 1996; Pollack, 1996), however they differ in terms of their starting theories about how institutions work. Another difference can be seen in the epistemological and ontological approaches of the three strands. As Aspinwall and Schneider (2000) point out, rational choice institutionalism relies on deductive strategies, often making use of cross country comparisons of quantitative data, whereas scholars from the historical and sociological branches, tend towards inductively searching for patterns through case studies. Ontologically, a difference can be seen in the assumptions made about institutions and behaviour. Rationalist institutionalist scholars view institutions as intervening variables between the preferences of agents and outcomes (Pollack, 1996, p. 431). Created by agents through bargaining or selection they provide a “situative constraint” (Aspinwall & Schneider, 2000, p. 7) on the consequences



actors can expect from their decisions or behaviour. On the other hand, those adhering to sociological, sometimes called constructivist, institutionalism view agents and institutions as co-determining (p. 3). As March and Olsen (1998) explain, within sociological institutionalism “an ‘institution’ can be viewed as a relatively stable collection of practices and rules defining appropriate behavior for specific groups of actors in specific situations” (p. 948). These institutions are considered to be “embedded in structures of meaning and schemes of interpretation” (ibid.), or in other words socially constructed. Historical institutionalism has justifiably been described as “borrowing somewhat eclectically” from both of the other two with a particular focus on history (Knill & Lenchow, 2001b, p. 189). Some scholars have argued that the historical branch is compatible and shares fundamental tenets with the rationalists (e.g. Pollack, 1996), while others have grouped it with the sociological branch (e.g. Aspinwall & Schneider, 2000).

Instead of focusing on ontological differences, Knill and Lenchow (2001b) suggest that a more useful distinction can be made between agency-based and structure-based approaches to institutionalism, as I have made in chapter 1 in reviewing the explanations generated by Europeanization research. Their key argument is that the divisions within the field have been due more to differences in the level of abstraction at which investigators are operating than their ontological difference. As I pointed out in the previous chapter, one can see that scholars examining the behaviour of individuals working within national administrations or other organisations seemed to arrive at structure-centred factors impacting Europeanization, while those looking at the behaviour of governments, political parties and other organisations tended to arrive at agent-centred factors. Knill and Lenchow (2001b) argue that harsh divisions between branches of institutionalism are false, and that distinguishing along the lines of agency and structure allows for linking in a complementary way. Bearing in mind that the intentional, or agent-driven, and structural governance interactions are mutually influencing (Kooiman, 2003, p. 13), I argue that such synthesis is required in a study of governance. After explaining why the historical institutionalist idea of path dependency is not suitable to an investigation of governance, I elaborate more thoroughly two theories that I have already introduced briefly in the previous chapter as *institutional fit* and

*opportunity structure*. I close this section by reinforcing my argument for synthesis between actor-centred and structure-centred explanations.

### 3.3.1 *Institutional fit*

Historical institutionalism defines institutions as the “formal or informal procedures, routines, norms and conventions embedded in the organization structure of the polity or political economy” (P. Hall & Taylor, 1996, p. 938). According to historical institutionalist theory, events or decisions made in certain moments in time create institutions that then constrain possibilities from that point forward (Bulmer, 2007, p. 50). Theories from historical institutionalism suggest that *critical junctures* in the form of key interventions or historical events can create *path dependence*, constraining the behaviour or decisions of actors. Literature in this field refers to *feedback effects* (K. Thelen, 1999) or *increasing returns* (Pierson, 2000) as forming the basis of a process in which patterns or practices are reinforced and virtually unchangeable into the future (see also Pierson, 2004; K. A. Thelen & Steinmo, 1992). Path dependency theory has been rightly criticised for being able to explain stability, but not being able to account for various types of change, particularly gradual change (Gorges, 2001; B. G. Peters, Pierre, & King, 2005). This makes it problematic for examining governance. Within governance, change can occur by the intention of the actors, and therefore institutions can also be shaped by action in an interactive manner (Kooiman, 2003, p. 16).<sup>8</sup>

The theory that domestic level response to EU level policy or change depends on *institutional fit* comes from sociological institutionalism. Sociological institutionalism adds to the definition of institutions used by the historical branch by including the “symbol systems, cognitive scripts and moral templates” involved in meaning production for the individuals involved (P. Hall & Taylor, 1996, p. 947). In sociological institutionalism, culture and legitimacy are both highly important and influence human behaviour (Aspinwall & Schneider, 2000). As I mentioned above, according to Kooiman, cultural conditions are key structures that constrain governance interactions. The basis for the idea of *institutional fit* is the *logic of*

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<sup>8</sup> Kooiman’s idea of structure is based on Giddens’ work and structuration theory; however as there is not space here to delve into a long discussion of structure, I simply remind the reader of the definition used above of structure as the material, social, cultural and power context.

*appropriateness*, a term coined by March and Olsen (2004; 1998). They maintain that action is often matched with one's concept of self, identity and perceived role within a specific situation rather than necessarily with interests or strategy. If there is significant "misfit", there is potential for change in response to EU policy or EU level change (Börzel & Risse, 2003; see also Cowles et al., 2001) or there could be resistance to that change.

The institutional fit theory has been critiqued for a tendency to "anthropomorphize norms, identities or ideas, and allow them to operate in direct relation to each other, without the intervention of actors or the mediation of social structures" (Jenson & Mérand, 2010, p. 79). This critique is misplaced as the theory of institutional fit does not pit norm against norm or identity against identity, but addresses how the appropriateness of decisions or behaviour connected with the implementation of EU rules and norms is decided by individuals based on their context. Socially constructed norms and identity figure highly in much of the research supporting the theory of institutional fit (e.g. Checkel, 2001; Risse, 2005), and these scholars argue that domestic level change in response to the EU occurs "through a socialization and collective learning process resulting in norm internalization and the development of new identities" (Börzel & Risse, 2003, p. 59; see also Checkel, 2005). I argue that this represents a limited view of the structures that may be included in considerations of appropriateness.

Knill has argued that established practice as well as *embedded arrangements* within the sector are key factors in domestic adaptation to EU policy (Knill, 1997). He explains that there can be relationships or practices that can exist that have become established or embedded within and among organisations. These can be the "ways of doing things" or administrative style of these organisations (see Knill, 2001). Hille and Knill (2006) have more recently argued that institutional fit with administrative style is less relevant to the NMS because their national administrations are already in a transition phase. They argue:

"We can hardly expect administrative traditions in the sense of well-established administrative styles and structures to be of explanatory relevance because these traditions themselves are subject to fundamental

changes in the context of the transformation process.” (Hille & Knill, 2006, p. 540 )

However it seems that what they now refer to as the *quality of the bureaucracy* represents a combination of administrative style and established relationships and practices. Several of the media scholars cited in the previous chapter argued convincingly that many of the practices or styles of the past have carried on into the present within the audiovisual media sector. The degree of persistence of old “ways of doing things” might have implications for how appropriateness is determined by individuals in the media sectors. For example, in previous research on PSB in Slovenia and Macedonia I found that in Macedonia’s PSB editorial positions were still granted according to political party loyalty (Broughton Micova, 2012). This could be a source of misfit with the implementation of the EU’s policy towards PSB and the use of state aid, which requires independence of PSB from political control (see European Commission, 2009a).

In summary, institutional fit has consequences for Europeanization in that the implementation of EU rules and norms is influenced by the way individuals judge the implementation’s appropriateness. They make these judgments based on the structures that form their context, rules and practices. Constructivist scholars have rooted these rules and practices in norms and identity (Checkel, 1999a, 2001), and Knill (Knill, 1997, 2001; Knill & Lehmkuhl, 1999) has described them in terms of administrative style and how embedded relationships form the “ways of doing things”. What appears to be missing in these accounts of structures are the material conditions cited by Kooiman (2003) as constraining governance interactions and considered important by several of the media scholars discussed in the previous chapter (e.g. Picard, 2011; Puppis, 2009). March and Olsen (1998), who first proposed the logic of appropriateness, themselves stated that “practices and rules are also embedded in resources and the principles of their allocation that make it possible for individuals to enact roles in an appropriate way” (p. 948). The literature to date has neglected material conditions among the structures behind institutional fit or misfit, but as contributors to the assessment of appropriateness, they can be included and the theory remains useful in considering how the structural interactions of governance may operate.

One important critique of this theory is that it undermines the notion of human agency. Schmidt (2008, 2010) has criticised the sociological approaches along this line for over-emphasising structures or structural determinism. However, this has been a problem of deductive research projects that seek to arrive at causal effects and treat norms as constructed variables (Jenson & Mérand, 2010). As Aspinwall and Schneider (2000) point out, “agent and structure are inextricably bound together – the actions of agents are impossible to comprehend without reference to the cognitive, culturally-informed ‘institutions’ within which they exist” (p. 9). This does not mean that individuals have no agency, but that actions are “context driven” (ibid., p. 7) and contexts can change. However the mutability of structures can vary.

Through socialisation or other processes individuals can change their perceptions of identity and norms (Checkel, 2001, 2005). Relationships that have become established or formal and informal rules that are integrated into the daily practice of public administration can also be influenced by human action. Like norms and culture, which can be learned or adapted, they are mutable in the course of interactions. Material conditions such as population size and economic characteristics are not socially constructed and therefore maybe less possible to change. Unlike the notion of path dependency that allows only for change as a result of exogenous extreme events, the theory of institutional fit can help explain various kinds and speeds of change – such as Europeanization – through interactions between agents and structures. However, I suggest the kinds of structures upon which appropriateness is based have implications for potential change and the role of Europeanization. Therefore, this thesis examines the various structures cited in the literature as pertaining to institutional fit as well as material conditions.

### ***3.3.2 Opportunity structure***

Within the overarching categories of state, civil society and the market, there are multiple organisations, agencies, companies, and individuals engaged in the interactions of governance. As I explained above, within Europe, they operate at multiple levels and usually include new mechanisms such as NRA’s and self-regulatory bodies. They engage in intentional interactions such as the creation of

rules and procedures, which are considered institutions by rational choice institutionalism. Actors create such institutions in order to realise some value in relation to their strategic goals, but at the same time such institutions act as an *opportunity structure* that then constrains the behaviour of all actors (Knill & Lenchow, 2001b, p. 195). The opportunity structure theory provides actor-centred or agency-based explanations for change and is rooted in the *logic of expected consequences* (March & Olsen, 1998, p. 949) (see also Börzel & Risse, 2003; Schimmelfennig & Sedelmeier, 2005). As actors engage in strategic interactions based on their preferences, “institutions structure such interactions by affecting the range and sequence of alternatives on the choice-agenda or by providing information and enforcement mechanisms that reduce uncertainty about the corresponding behaviour of others” (P. Hall & Taylor, 1996, p. 945). Conditions of the opportunity structure may also constrain their capacity to take action or power to influence the decisions of others. The domestic opportunity structure refers essentially to “the distribution of power and resources” (Knill & Lehmkuhl, 2003, p. 268) among actors that constrains their strategic decisions.

As an example, I return to the Slovenian digital terrestrial television case. Unlike in the rest of the region, the law establishing Radio Television Slovenia (RTVSLO) did not divest it of its links and transmissions division, responsible for the network operation, nor did any successive government choose to take that step. A decade and a half later, this gave the broadcaster significant material resources and power when time came for digital switchover. Lawmakers then granted RTVSLO its own MUX through the digital switchover law for the broadcast of its channels and failed to specify what it could do with the remaining capacity (Milosavljević & Smokvina, 2012; Republic of Slovenia, 2007). The rules granted RTVSLO certain resources at the start of the process, and impacted the broadcaster’s strategic choices. They also constrained the decisions of commercial broadcasters in terms of their transmission options, and the outcomes that Norkring, the operator of the commercial network, could expect.

Interactions that might create change are impacted not only by the preferences of the actors, but the alternatives they see, their expectations of outcomes, and the opportunity they may have to affect or prevent change. As Radaelli (2000) explains,

“it all hinges on who is empowered and disempowered (and how)” (p. 123). Opportunity structures can change and one of the questions that can be asked in terms of Europeanization is whether or not EU policy has changed domestic opportunity structures. Knill (2001; Knill & Lehmkuhl, 1999, 2003) argues that, in the face of European policy, domestic actors may either alter the positions they have on relevant issues or find that the power they have to influence the outcome of policy reform or implementation processes has changed.

The EU’s “negative integration” in terms of opening up national markets has been associated with changes in the domestic opportunity structure (Knill & Lehmkuhl, 1999, 2003; Radaelli, 2002). Knill and Lehmkuhl (2003) specifically linked liberalization and de-regulation in specific sectors with changes in the power and resources available to specific market players. This means that the removal of trade barriers changed the strategic and business opportunities for domestic actors, but also their ability to affect their policy preferences. The authors argued that the extent and nature of the change depended on the nature of existing opportunity structure, for instance whether there was balance or one dominant player, or whether the relationship with regulators was contested. According to them, the domestic opportunity structure may change in the face of Europeanization, but also might not depending on these characteristics. Fontana (2011) has provided further empirical evidence looking at “market-making” policies related to the establishment of the single market in Switzerland and Belgium. She found that the policies aimed at eliminating national regulatory barriers empowered certain actors, particularly the executive, eroding to some extent corporatist decision making of these countries. Her findings also indicate that the extent of change in the domestic opportunity structure was related to the use of the EU by the domestic actors to legitimate their positions.

Similar findings have been produced by scholars looking at domestic opportunity structures in relation to positive integration. This is where the EU prescribes policy models or regulation as opposed to simply “striking down” barriers and limiting the policy interventions that can be taken by national governments (Radaelli, 2002, p. 121). Empirically, there has been a focus on civil society organisations and examples come from the areas of environmental policy and gender equality (Parau, 2008; Sudbery, 2010). This research has provided more evidence for the proposition that

change in the domestic opportunity structure is less related to the content of EU policies or top down mechanisms, but to the “usage” of the EU by domestic actors. Usage takes many forms and can include legitimising a group’s position, but also making use of financial resources provided by various EU funding mechanisms, or specific policy instruments called for in EU policy (Jacquot & Woll, 2004). In some cases, civil society groups or other actors were shown to have not had the capacity or interest to make use of the EU to influence their position (McCauley, 2011). This suggests that the potential for Europeanization to have consequences for the domestic opportunity structure may depend on the overall material conditions in which domestic actors operate. Their capacity to make use of the EU may depend on the financial and human resources with which they start, and the way power is distributed within the domestic opportunity structure.

Such material and power conditions may seem like subjects of a political economy research project, and it could be argued that they should be studied from this perspective. Political economy research assumes a more overtly normative stance than new institutionalist research. Mosco (2009, p. 32), drawing on Golding and Murdock (1991), claims that a key characteristic of political economy is its engagement with issues of justice, equity and the public good and its intrinsic link with moral philosophy. Political economists conceive of media as systems for production, distribution and consumption of symbolic forms as commodities (Garnham, 2000, p. 39; Mosco, 2009, p. 2). With that concept of media systems, political economy research then “addresses the nature of the relationship between media and communications systems on the one hand and the broader social structure of society” (McChesney, 2000, p. 110). It therefore looks at power in that relationship at the points of production, distribution and consumption. Some political economists view power solely as something exercised by human agents over markets. Garnham, however, defines power in terms of structural constraints on the actions of agents. He writes that power “is concerned with the ways in which a market system . . . allocates resources and constrains behaviour in ways that are not under the intentional control of individuals or groups” (Garnham, 2000, p. 39). His ideas seem to be complementary to those of Kooiman, but Garnham does not consider material conditions as structural constraints, only the systems that have been created.



Researchers have looked at EU media policy by focusing on media market systems and power in this manner. Many argue that it is extending corporate power and facilitating ownership concentration in the audiovisual media sector (Humphreys, 2005, 2009; S. Kaitatzi-Whitlock, 2008). This approach has advantages over a media systems approach in the style of Hallin and Mancini (2004, 2008), which is mainly descriptive, because of its focus on dynamics of power and particularly economic power. Hallin and Mancini's descriptions of systems fall short of explaining why the types of systems they define are the way they are and the mechanisms that sustain those characteristics, such as the political parallelism of the polarized pluralist models. Both approaches seem to treat the characteristics of the media or market system as given, whereas the concept of opportunity structure provides a framework for examining the way the distribution of power and resources made available by the material conditions is shaped by strategic actors, through laws or the adoption of other rules.

New institutionalist research does not tend to examine market indicators or ownership structures in empirical studies. In fact, only in rare cases have researchers even included representatives from the markets being affected by EU policy in interview-based projects (e.g. Versluis, 2007). However, the material conditions in the form of financial resources impacting the capacity of national administrations or the public bodies charged with implementing EU policy has been explored to a small extent (see Falkner, 2010; Falkner et al., 2005; Hille & Knill, 2006). I argue that the concept of the opportunity structure described above provides an avenue through which to examine some of the material and power conditions constraining governance interactions, including those involving the market.

Market conditions define the domestic opportunity structure in terms of the overall resources in the sector. I suggest that not only the distribution of power and resources among actors is important, but also the overall power and resources within the market and civil society that may constrain those actor's abilities to use the EU to affect change. The concept of opportunity structure is that the rules, procedures and distribution of power and resources that constitute the structures constraining strategic actors are also themselves created by strategic actors (Knill & Lenchow,

2001b). This makes the concept it more useful in examining change and both agency and structure than that of a media market system. Therefore the “material and power conditions” described by Kooiman (2003) as constraining governance interactions are revealed in this thesis by examining the domestic opportunity structure, rather than through a political economy style investigation.

### ***3.3.3 Agent and structure centred institutionalism***

I have now outlined theories about institutional fit and opportunity structures that form the basis for the theoretical framework with which I approach my investigation of Europeanization of media governance in Slovenia and Macedonia. Despite an apparent division within the field between agent-based and structure-based explanations for how institutions function, I concur with those who recommend combining the two. Firstly, I described the theory that individuals within organisations such as national administrations, NRAs or media companies follow the *logic of appropriateness* and that therefore their institutional context, by which they determine appropriateness, may have consequences for Europeanization. The theory of institutional fit is that exogenous changes such as EU policy or EU level change will have different outcomes at the national level depending on the extent to which their implementation “fits” with domestic institutions, defined as established norms, values, identities, relationships and practices or ways of doing things. Based on this theory, understanding the role of Europeanization within media governance requires investigating the structures upon which appropriateness is judged, and considering the degree of fit and the extent to which sources of misfit may be mutable. Structures like norms, identity and even organisational culture are changeable or negotiable. They can influence interactions by enabling or constraining, or they can be changed in the course of interactions. I pointed out that other institution-shaping structures such as material conditions like populations and economic characteristics may not be so easily changed and in this thesis will also be considered in relation to institutional fit.

I then explained the theory that within each national context there is an *opportunity structure* that is characterised by the way in which resources and power is distributed among the actors. This constrains the behaviour and decisions of actors through the

consequences and outcomes they can expect. Europeanization may change this domestic opportunity structure empowering some actors and diminishing others, or it may not. Current scholarship suggests that the characteristics of the domestic opportunity structure, and particularly the ability or interest of domestic actors to use the EU to further their strategic goals, are key factors in the extent of such change. This thesis will therefore examine the characteristics of the opportunity structures within the media sectors in the two cases.

### **3.4 Conclusion**

Dente et al. (2011) astutely describe four “pitfalls” of new institutionalism that they claim are common in the practice of such research. They claim that authors get trapped in *institutional determinism* and unfounded *theoretical conjecture*, or “find[ing] powerful explanatory institutional variables because this is what they are looking for” (Dente et al., 2011, p. 11). Their critique is valid, however I suggest that the problems they identify derive from the fact that most institutionalist public policy research begins with a policy outcome or variation in policy and then look for explanations for it and causal relationships. I take a bottom-up approach defining the object of study with a conceptualisation of social-political governance elaborated by Kooiman (2003). Kooiman organises the actors of governance into three: the state, the market and civil society. He also conceives of governance as consisting of the interactions among these three actors. Kooiman’s social-political governance perspective sees a clear relationship between structure and agency by directing us to look at *structural* and *intentional* level interactions. This thesis is an investigation of media governance in Slovenia and Macedonia, conceived of in terms of interactions involving the state, civil society and the market.

Drawing mostly on the work of Knill and his colleagues, I elaborated on institutional fit and opportunity structure. In the first, the actions of individuals are constrained by structures such as norms, culture and identity, as well as embedded arrangements such as established practice, relationships or administrative style. I suggest that the nature of these constraints can help define the role that Europeanization plays, if any, in media governance. I also argue that the material conditions to which Kooiman refers as constraining or enabling governance interactions should also be investigated

among the structures that determine institutional fit.

According to the second theory, some actors create formal and informal rules that contribute to the formation of an opportunity structure. Material resources and other conditions also define the opportunity structure and therefore the relative ability of the various actors to pursue their preferences. If this idea was left only at the level of policy preferences, it might paint a picture of domestic actors resisting Europeanization, if the characteristics of the domestic opportunity structure granted them more power or resources. However, I argue that in the context of EU rules that require participation, such as the positive integration type measures aimed at encouraging European audiovisual content, the opportunity structure may also constrain actors' ability to participate or comply regardless of preference. I suggest that it is useful to explore how this theory works in this context, including looking not just at the relative power and resources of the actors, but also the material and power conditions constraining all actors.

I have outlined a conceptual and theoretical framework for a bottom-up investigation of the role of Europeanization in audiovisual media governance in SEE. I have defined governance in terms of its actors and interactions. I also pointed out that within these interactions there is a place for the negotiations of norms and tension around legitimacy and accountability. This leaves room for potential resistance to Europeanization at the national level, but also for domestic level change through Europeanization. The theories I presented from new institutionalism offer some direction as to how these interactions may play out. At the risk of concept stretching, I also suggested testing them more in the direction of the market and material conditions, both of which are integral parts of governance. How this will be done through the research design and methodology is the subject of the next chapter.

# Chapter 4: Research Design and Methodology

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## 4.1 Introduction

In the previous chapter I proposed that the way to gain a thorough and nuanced understanding of the role of Europeanization in media governance in SEE is through a bottom-up research using a new institutionalist theoretical framework. I argued that investigating the role of Europeanization in such national contexts in this manner, rather than assuming EU impact and asking questions about the factors influencing it, could help fill existing gaps in the Europeanization literature and our understanding of the process. I also made the case that this strategy may reduce the risks common to institutionalist research, namely institutional and structural determinism. I pointed to two key theories about how institutions work, institutional fit and opportunity structure, which I argued were most useful for an examination of governance. This project makes use of this theoretical framework in a comparative investigation of media governance in Slovenia and Macedonia in order to clarify the role of Europeanization. The purpose of this chapter is to outline how this approach is translated into the concrete research design of my investigation.

This study relies heavily on elite interviews, but also on secondary quantitative data from NRAs, market research companies, and other sources. It also draws on historical accounts and analysis from local media experts found in publications by domestic civil society organisations. I have used a *mixed-methodology* research design championed by methodologists such as Creswell (1994, 2011) and Tashakkori and Teddlie (2003, 2010). These authors reject the inextricability and incompatibility of philosophical and epistemological positions from methodology, a view taken by Guba & Lincoln (2005) among others. Rather than seeing this mixed-methodology as a controversial mix of quantitative and qualitative paradigms (see Bryman, 2012, p. 628; Plano Clark, Creswell, O'Neil Green, & Shope, 2008), I follow the view of Greene (2007) who sees mixed-methodology as a “stance” or “way of thinking” that accepts multiple ways of knowing (see pp. 20-24). The stance that this project takes is the *substantial theory stance* in which “what matters most in guiding inquiry

decisions is the substantive issues and conceptual theories relevant to the study” (Greene, 2007, p. 69). This is basically the same as what Hall and Howard (2008) have termed the *synergistic approach* in which the conceptual framework guides the selection of methods. The substantive issues and concepts of governance and institutionalism guided my selection of methods in a manner described below, in addition to the more traditional mixing for the purposes of triangulation (Denzin, 1978).

Case studies such as the two conducted for this investigation lend themselves to methodological pluralism (Hantais, 2009, p. 109). They rely on multiple sources of evidence and in line with the substantive theory stance, “benefit from the prior development of theoretical propositions to guide data collection” (Yin, 2003, p. 14). While the depth and complexity of case studies complements the aims of a bottom-up investigation of media governance, it makes them less amenable to comparison. Therefore this investigation is a *structured, focused* comparison in which theoretically guided questions are asked of each case (A. L. George & Bennett, 2005, Ch. 3). The cases are Slovenia and Macedonia, two countries of similar size with shared recent history and common EU trajectory. The focus of this investigation is audiovisual media governance, meaning not the entire media system, but the actors and structures of governance as conceptualised in the previous chapter. As I will describe in this chapter, I have used the same mix of methods in the same manner to examine the media governance in both Slovenia and Macedonia, guided by the same central research question and four sub-questions.

In this chapter I begin by outlining how the elements of the conceptual framework shaped the research design and the tools used. This first section therefore explains the choice of methods. It covers the use of documentary sources, the sampling for elite interviews and the choice of secondary data. In the second section, I go into detail about the process of data collection and some of the challenges I faced in conducting the fieldwork. Here I also discuss the design of the interview topic guide, the execution of the interviews and reflect on the implications of my role as researcher and the limitations of the methods. In the third section, I discuss the comparison of case studies, first explaining the choice of cases and then my analytical approach to the data. This chapter concludes with reflections on the

execution of a theoretically informed comparison of the Slovenian and Macedonian cases. I draw some conclusions about the advantages and limitations of bottom-up research in the study of Europeanization and public policy.

#### **4.2 Mixed-methodology: Multiple Sources, Multiple Angles**

This is not a project of comparing media systems, but one that asks specific questions about the role of Europeanization in media governance in SEE. Asking this question also distinguishes this investigation from the bulk of Europeanization research, which looks at the variables impacting the implementation of EU policy or adoption of European practices at the national level. Instead it starts by examining media governance. The concept of governance as elaborated by Kooiman (2003) discussed in the previous chapter, defines the actors, structures and interactions that are the subjects of this research. He describes the actors in governance as the state, the market, and civil society. It is important to note that in his conceptualization, the state is equated with “a public task” (Kooiman, 2003, p. 5), thus including also supranational bodies within multi-level governance such as the EU, as well as independent regulatory agencies that are common new governance mechanisms in the media sector. These actors interact within the constraints of structures, namely material, cultural and power conditions.

In the previous chapter, I described the different kinds of interactions and I presented two theories from new institutionalism as tools for examining these interactions. The theory of institutional fit directed me to look at the norms, established practices, role perception, values and relationships of the individuals within the state, market and civil society. The theory of opportunity structure directed me to investigating the formal and informal rules, the material resources and power relations. Within this framework I developed 4 sub-questions from the main research question.

#### **RQ: What is the role of Europeanization in media governance in South East Europe?**

- What are the rules, practices and routines of media governance? How do they interact with EU policy?

- How do the actors involved in media governance perceive their roles and positions and what norms or values are reflected in these perceptions?
- What is the nature of the relationships among the domestic level actors and between domestic actors and EU institutions?
- What are the material and power conditions within which the domestic actors operate and their consequences?

These questions cannot all be answered by one method. To assess norms, values and perceptions one needs to speak to people. Rules can be read in law and policy, but material conditions must be assessed through economic or other indicators. One of the main reasons I argued that a bottom-up approach was necessary was in order to capture the complexity that can often be ignored by institutionalist public policy research. That complexity is reflected in the mixed-methodology research design. I now explain each piece of the mix and its purpose.

#### ***4.2.1 Documentary Research: Accounts, laws and reports***

In this project, documentary research served several purposes. I made use of many different kinds of documents defining this category in the broader rather than narrower sense (May, 2011, p. 194). First of all, in order to begin to describe the history and character of the Slovenian and Macedonian audiovisual media sectors, I relied on accounts found in reports from the civil society groups mentioned above, as well as in the annual and other reports of the NRAs and PSBs. These also helped to give some indications of the nature of embedded relationships and characteristics of the domestic opportunity structure. These documents are all what Scott (1990) refers to as *open-published* documents, or in other words public. Some of these are technically authorless pieces produced collectively within one of the NRAs or PSBs. Such documents are not “transparent representations of organizational routines or decision-making processes” (Atkinson & Coffrey, 2004, p. 58), but are instead representations for a specific purpose. They are the *running records* (Johnson, Joslyn, & Reynolds, 2001) of these public bodies that have legal responsibilities to report on their activities. For the most part, these were used as sources information on dates, events and descriptive quantitative data. For example, in such documents I



was able to find how many licenses were given at what times, or the sources of revenue of the PSBs over time. Such documents should not be removed from the process of their production or social context (May, 2011, p. 199), nor can they be treated absolutely as “firm evidence of what they report” (Atkinson & Coffrey, 2004, p. 58). Nevertheless these reports and the data contained within them can be considered *credible* (May, 2011, p. 207; see also J. Scott, 1990) as much of the information within is subject to external audit and in some cases parliamentary review. The public nature of these documents also means that they are subject to public scrutiny and contested if their credibility or validity was in doubt, including by broadcasters or other stakeholders.

An example of the considerations that needed to be made in the use of such documents can be found in the differences between how I treated the annual reports on the market from the BC in Macedonia and how I treated the BC’s report on political bias in the PSB. Both reports had clearly outlined sources and the methods used in data collection. The market reports aggregated and reported data supplied by the broadcasters themselves or that they had reported to the State Revenue Office. This data was not controversial or contested by any of those included in the report. However, the reports that found significant pro-government bias in the PSB were based on analysis of the programmes of Macedonian Radio Television (MRT) by BC staff and rejected by MRT management. Knowing that the majority of the composition of the BC at that time had been appointed under the previous government and considering the potential motivations for initiating such an investigation, I corroborated the reports’ findings with similar studies by the OSCE election observation missions and the Macedonian Institute for the Media (MIM) before deciding to include them and consider them credible. These considerations are acknowledged where the data in the reports are discussed.

Among the reports used from civil society organisations such as the Open Society Institute (OSI) and the Peace Institute of Ljubljana, many were authored by people directly involved in media governance at the time. For example, Sandra Bašić-Hrvatín was a member of the Slovenian Broadcasting Council, and Vesna Šopar had been a Council Member and then served as an external expert for the Macedonian Broadcasting Council. Because of this, these reports could be considered accounts of

the events and problems of the time. For this reason and because of the “watchdog” function played by the organisations that published them, I have tried to be explicit about the nature of these sources. I have introduced them as such and then cited them as references in connection with the specific information used. In addition, where possible, I have corroborated accounts of events with the stories as told by interviewees as well. Other reports used include those from the EC and the OSCE. EC progress reports are key elements of the EU accession process. It would be naïve to accept the accounts and assessments contained in them as absolute fact. Nevertheless they represent the impression that the EC had of the reality in each of the countries at the time of the report, which is highly relevant in the context of Europeanization. The EU norms and policy principles that ostensibly serve as the benchmark against which the EC’s assessments in the audiovisual media sector are made were outlined in detail in the introduction. The OSCE’s election monitoring reports are also imperfect sources, however, the organisation’s methodology is internationally accepted particularly in the area of media monitoring during elections. I have used their findings to check claims made by interviewees about the media in the Macedonian case.<sup>9</sup>

Laws and other legal documents were used for a different purpose, and treated as documentation of formal rules enacted by political actors. Although implementation of EU Directives is a core interest of this project, the purpose of this investigation was not to assess whether or not EU Directives had been transposed by comparing and analysing domestic laws in relation to the EU Directives. Transposition compliance is ascertained and reported by the EU for each Directive for Member States and as part of the accession process. At the time of my field visits, both countries had transposed TWFD, but not yet AVMSD.<sup>10</sup> Instead, I looked the changes in media law over time viewing them as intentional interactions that establish the formal rules shaping the opportunity structure for the media sector in

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<sup>9</sup> Although elections in Macedonia have been heavily and regularly monitored for well over a decade, the first OSCE observation of elections in Slovenia was of the early parliamentary elections in December 2011 and consisted of a small team of 6 experts (OSCE/ODIHR, 2012). Therefore there is an imbalance in terms of the availability of such reports.

<sup>10</sup> Slovenia transposed AVMSD in November 2011 and a team at the University of Luxemburg has produced a consolidated text showing exactly how the Directive was transposed article by article. It can be found here:

[http://www.wen.uni.lu/research/fdef/media\\_law/audiovisual\\_media\\_services\\_directive/national\\_execution\\_measures/slovenia](http://www.wen.uni.lu/research/fdef/media_law/audiovisual_media_services_directive/national_execution_measures/slovenia)

each case. As is presented in Chapter 6, I considered transposition as determined by the EU in terms of its timing in relation to other changes in media laws. I also examined the laws in power at the time of my visits to each country in order to establish the make-up and official responsibilities of the NRAs and obligations of broadcasters discussed in Chapter 5.

In addition to understanding the formal rules of the opportunity structure at that time, I needed to be knowledgeable about the laws in each case in order to understand many of the references made during the interviews. It also was important to be able to identify any contradictions that came up between what was said in the interviews and official rules, procedure or policy. I did not critically examine these documents, as was done by Trappel (2010) or d'Haenens et al. (2009). As this project was an investigation of governance conceived of as interactions among state, market and civil society actors, formal rules set out in laws or by-laws were considered to be among the many different interactions of governance and not necessarily central. Therefore, a critique of the substance of the laws or discourse analysis of the laws themselves was not appropriate for this project. Instead, I turned to them as documents to establish formal rules and to compare them between the cases. For example, in Chapter 7 I compare the rules for content quotas and then discuss the other governance interactions such as reporting practices and communication between broadcasters and the NRAs. I used official English translations of the Slovenian laws available online and Macedonia versions of the Macedonian laws also available online. A list of the laws used is at the front of this thesis.

#### ***4.2.2 Interviews: Governance actors***

Kooiman (2003) describes the actors in governance as the state, the market, and civil society. The identification of the public and private organisations within these three overarching categories of actors provided the theoretically driven sampling for elite interviews (Flick, 2009). The purpose of the interviews was:

1. to gather information on their practices and 'ways of doing things' through their own accounts;

2. to understand their values, beliefs, priorities and the norms that constrain their behaviour;
3. to gain insight into their perceptions of their roles within governance;
4. to obtain information about their relationships among each other.

Interviews are the appropriate method for this purpose because only they can provide a more in-depth “understanding of the relations between social actors and their situation” and insight into their “beliefs, attitudes, values and motivations” (Gaskell, 2000, p. 39). In the relationship between agents, or actors, and structures as described so far, it is important to understand not just objective structural constraints, but also those experienced by the actors involved. Therefore actual “conversations” (Kvale, 1996) with individuals was necessary and not just observations. I conducted elite semi-structured interviews with individuals drawn from the actors of governance.

At the time of my fieldwork, in the Slovenian case, the Ministry of Culture was responsible for the media and was the line ministry for the Media Act and the Law on the Radio and Television Corporation of Slovenia, which covers RTVSLO.<sup>11</sup> It also had within it a Culture and Media Inspectorate charged with enforcing, among others, the Media Act. The NRA responsible for the sector is the Agency for Post and Electronic Communications (APEK). At the time of this study APEK was responsible for “overseeing the electronic communications market, managing and overseeing the Slovenian radiofrequency spectrum, performing tasks in the field of radio and television programme service activities and regulating and managing the postal services market” (Post and Electronic Communications Agency of the Republic of Slovenia (APEK), 2010, p. 7). Attached to APEK are two councils, one for broadcasting and another for electronic communications, which have advisory and monitoring roles in their respective areas (ibid., p. 8).<sup>12</sup> Interviewees were selected from the Ministry Culture and APEK, including its Broadcasting Council.

In Macedonia, the Ministry of Transport and Communications was responsible for all broadcast media and electronic communications of other kinds at the time of my

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<sup>11</sup> When the government changed in February 2012, the ministries were re-organised and the Ministry of Culture was merged with Education, Science and Sport. However, under the new government formed in March 2013, media is once again dealt with by a Ministry of Culture <http://www.mk.gov.si/>

<sup>12</sup> For further details on APEK see also [www.apek.si/en/](http://www.apek.si/en/)

fieldwork. Up until January 2012, it was the line ministry for the Laws on Broadcasting Activity and on Electronic Communications as well as the Law on Macedonian Radio Television governing MRT.<sup>13</sup> It no longer has any inspectors in these areas as all responsibilities for enforcement were transferred in 2005 to national regulatory authorities: the Broadcasting Council (BC) and the Agency for Electronic Communications (AEK). I interviewed people from within the Ministry, the BC and the AEK.

Within each of these organisations of the state, I selected individual respondents based on their position. Within the Ministries, selection was easy because there was one head of the right department in each Ministry. Within the Slovenian Ministry I also chose the Media Inspector, of which there was also only one. Within the NRAs it was more complicated. I downloaded the organisational structures of each agency and chose individual positions, for example, the head of programme standards or the head of monitoring. In Macedonia where there are several Council Members in the BC, I chose the President and then chose other members representing different ethnicities and different waves of appointment.

Both Macedonia and Slovenia have a large number of players in the audiovisual media market, despite the small size of the countries. In addition to their PSBs, both have a few key national level private broadcasters and a multitude of local and regional broadcasters, as well as both national and local level cable operators, at least one IPTV provider and several providers of satellite packages.<sup>14</sup> In both cases I interviewed representatives from the PSB and from private television companies. In Slovenia the two most popular national private television channels, PopTV and KanalA, both belong to the company ProPlus owned mostly by Central European Media (CME), a US dominated investment society (Saura & Enli, 2011), therefore I treated them as one when selecting interviewees. In Macedonia, there are strict political and ethnic divisions in the national media; therefore it was necessary to select interviewees from AlsatM, the Albanian language station, and from stations representing different political camps within the Macedonian language media. The stations were chosen based on both willingness to be interviewed and trying to

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<sup>13</sup> For more details on structure and responsibilities of the ministry see [http://mtc.gov.mk/new\\_site/en/](http://mtc.gov.mk/new_site/en/)

<sup>14</sup> Exact figures for existing broadcasters and operators will appear in the empirical chapters.

achieve balance between local and national, as well as in the case of Macedonia, ethnic balance. In Slovenia it proved difficult to reach local stations and starting with a list from the APEK database, I simply began calling until I reached one that both answered and was able and willing to be interviewed. In the case of Macedonia I was aware that my own past experience with local stations may bias selection, and therefore put the names of stations on the floor in a circle and literally spun a bottle in order to select which stations to visit.

Civil society related to the media in both cases seems very weak. Through initial desk research and asking colleagues at the Faculty of Social Science in Ljubljana during a prior visit, I identified only the Peace Institute of Ljubljana, with its media programme as being active in the area of media issues from among Slovenia's civil society groups. It conducts research on media issues and publishes studies under its OSI funded Mediawatch book series. Its members occasionally publish articles or commentary on current media issues.<sup>15</sup> I interviewed the head of the media programme at the Peace Institute as a key player in civil society. The Slovene Association of Journalists played a crucial role in defending media freedom and professionalism among journalists in the early days of Slovenia's transition (Bervar, 2001). However, it now exists primarily for the protection of journalists and plays an apparently disputed role in the self-regulation of journalists' ethics (ibid.). Neither of these is within the focus of this project and therefore I did not interview someone from this organisation.

A very similar situation with the Macedonia Journalists Association at the time means that I did not seek to interview its representatives either. From my previous work in Macedonia I was very familiar with the civil society organisations in that country. The Media Development Center (MDC) in Macedonia was the main civil society organisation playing a watchdog role, monitoring and commenting on media issues. The Macedonian Institute for the Media (MIM) was primarily an educational and training institution; however it now also follows issues related to the media and comments publicly.<sup>16</sup> The Association of Private Electronic Media of Macedonia,

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<sup>15</sup> For more information on the Peace Institute of Ljubljana see <http://www.mirovni-institut.si/Main/Index/en/>

<sup>16</sup> See [www.mim.org.mk](http://www.mim.org.mk)

which had been an advocacy group for broadcasters, collapsed in 2008. I interviewed the directors of MDC and MIM. Although civil society is under-represented in terms of the sample, this reflects the reality of the situation in both cases. The following table summarises the organisations from which I selected interviewees.

***Table 4.1 Breakdown of actors in audiovisual media governance in Slovenia and Macedonia from which interviewees were selected***

Slovenia	State	Ministry of Culture (including Inspectorate)
		APEK (including its Broadcasting Council)
	Market	Broadcasters (RTVSLO, national, local)
		Operators (one network operator)
	Civil society	Peace Institute of Ljubljana
Macedonia	State	Ministry of Culture
		Broadcasting Council
		Agency for Electronic Communications
	Market	Broadcasters (MRTV, national, local)
		Operators (one network operator)
	Civil Society	Media Development Center Macedonian Institute for the Media

In order to protect the anonymity of those who wished to remain anonymous, I cannot provide here a full list of the positions selected within these different organisations. In most cases only one person holds each position. Neither in the case of the television stations can I give the exact number and names of the chosen stations for the same reasons. In Annex 1 there is a list that has been modified as necessary to protect the identities of those who did not wish to be named.

#### ***4.2.3 Secondary data analysis: Market and enforcement data***

Secondary data analysis is the use of data gathered by another source and was used in this investigation in two ways. The first was driven by the theoretical framework and substantive issues of the investigation (Hakim, 1982, p. 16) and aimed at getting information that could not be gathered through interviews. The other was as a way to triangulate the self-reported information given in the interviews (Cowton, 1998; Denzin, 1978; Frankfort-Nachmias, 2008). In both cases, information was taken from official sources. I differentiate between the use of secondary data analysis here and what could be considered the re-presentation of secondary data from the publicly available reports mentioned above. In the latter, I used the data in the same manner in which it was originally published without re-analysis. An example of this is the number and type of licenses given in a certain year (Table 5.5) or penetration rates of subscription services (Table 5.7). Secondary data analysis was conducted when I re-processed or analysed data from others in some way. Here I distinguish between two types of analysis. The first type was the simple re-organisation of quantitative data, such as when I used the audience measurement figures from market research companies in Chapter 5. The second type differs from using the other's statistics in a new way because it involved coding and classifying information in administrative records (Hakim, 2006, p. 154). This was done with the records on enforcement procedures taken provided by the NRAs and the details of how I did the classifying is discussed where the data is presented in Chapter 6. In several instances, the data was not already published in any form, but was requested directly from the owners of the data. I go into more detail on the collection and analysis of this data further on, but first I will explain the types of data and the purposes for which it was used.

The structures that Kooiman (2003) cited as constraining the interactions of governance are material, cultural and related to power. From interviews designed to access information on behaviour, norms and values, it is possible to gain insight into cultural conditions. It is also possible to learn about how individuals may perceive their own power and that of others, as well as about the relationships of influence that may exist among them. However, material conditions must be approached in a more positivist manner. Market indicators and other demographic information can give a picture of the resources available to the market and to the state. One of the



limitations of relying on secondary data is that there may be a gap between the available data collected by others and the kind a researcher wants for his or her research purpose (Frankfort-Nachmias, 2008, p. 279). For example, in both of these cases, the exact kind of advertising market data over time that I would have like to have was not available. It was not possible for me, as a lone researcher with limited time, to attempt to gather such data myself, particularly from the past. It also seemed that the exact advertising data that I would have liked to have was not even adequately or consistently maintained by the broadcasters who would have had to be the original source of such data. However, I did find credible data that was close enough to what I wanted and collected using transparent and sound methods. I was able to rely on it as some indication of the power conditions among individual organisations within the audiovisual media market and the resources available to them.

Audiences are the main currency for television stations and the generator of advertising revenue (Doyle, 2002, p. 12) and therefore, audience measurement data is an important indicator of the relative positions of companies within the market. Advertising income as a whole shows the material conditions under which all players in the market operate. At the same time, the population and tax base are important determinants of the resources available to the state, and in these two cases for the PSBs, both of which were partially dependent on license fees drawn from that tax base. This meant using official census data as secondary data, which is very common in social science and especially comparisons between or among states (Frankfort-Nachmias, 2008, p. 277). I started with the intention of finding at least audience measurement data and if possible, data on advertising revenues or shares, which were necessary in order for me to answer Sub-RQ4. On the issue of subsidies for audiovisual works, for instance, I had not planned on examining data on production grants. However, when the issue of production capacity and achieving European works quotas came up in the interviews, I decided to see if I could get relevant data to complement the story being told in the interviews. The types and sources of market data are listed in the table below.

**Table 4.2 Types and sources of market data used**

Data	Type	Source
Reach of TV stations in Slovenia, 1996-2001	Research data from private agency	Mediana, Slovenia
Reach of TV stations in Slovenia, 2002-2011	Research data from private agency	Mediana, Slovenia
Ratings of TV stations in Slovenia, 1999-2011	Research data from private agency	AGB/Neilson Media Research Slovenia
Sources of Revenue for RTVSLO, 2007-2011	Administrative records	Annual Reports of RTVSLO
Audience share for TV stations in Macedonia, 2003-2011	Research data from private agency	AGB/Neilson Media Research Macedonia
Households using cable, satellite & IPTV in Macedonia	Research data from national regulator	Annual reports on the Broadcasting Market, Broadcasting Council of Macedonia
Audience share of foreign channels 2006-2010	Research data from national regulator	Annual reports on the Broadcasting Market, Broadcasting Council of Macedonia
Sources of Revenue for MRT 2008-2011	Administrative records	Annual Reports of MRT
General economic indicators (GDP, Net monthly wage, Unemployment)	Research data from government agency	State Statistical Offices of Slovenia and Macedonia
Gross Value of TV advertising in Macedonia 2010	Research data from national regulator	Annual reports on the Broadcasting Market, Broadcasting Council of Macedonia
Gross Value of TV advertising in Macedonia 2010	Research data from private agency	Mediana, Slovenia
Total Revenues of PSBs 2010, 2011	Administrative records	Annual Reports of MRT & RTVSLO
Total Revenues of non-PSB stations in Macedonia 2009, 2010	Research data from national regulator	Annual reports on the Broadcasting Market, Broadcasting Council of Macedonia
Total Revenues of non-PSB stations in Slovenia, 2010	Research data from private agency	Mediana, Slovenia
Total advertising revenue reported by television stations in Slovenia 2010	Research data from University	University of Ljubljana Department of Journalism
Total advertising revenue reported by television stations in Macedonia 2010	Research data from national regulator	Annual reports on the Broadcasting Market, Broadcasting Council of Macedonia

Triangulation through the use of secondary data was mainly a matter of “adding one layer of data to another to build a confirmatory edifice” (Fine, Wies, Wesseen, & Wong, 2000, p. 118) in order to validate or contradict data provided in interviews. This was mainly in relation to the enforcement practices described by those interviewed within the NRAs. Interviews have certain limitations; one of which is that they place the emphasis on verbal accounts, or what people say they do, rather than on actions (Kvale, 1996). As I wanted to learn about the informal rules and practice of governance (Sub-RQ1), I did not want to rely solely on what the interviewees from within the NRAs said that they did in terms of their interactions with the market. Therefore in addition to triangulating among interviews both within the NRAs and by interviewing those in the market, I also sought out data on the decisions and measures taken against broadcasters by the NRAs. This included APEK and the Media Inspector in Slovenia and the BC in Macedonia. This data came in different forms and required more significant analysis in order to identify trends in practice. I go into detail on the analysis done on this data below.

#### ***4.2.4 Method choices***

The mixed-methodology research design of this project consists of three methods: documentary research, elite-semi structured interviews, and secondary data analysis. Interviews were chosen in order to provide information about how individuals engage in governance interactions. Interviews with individuals working in the NRAs, the broadcasters, the operators and civil society organisations etc. took the investigation into the lower level of abstraction which is concerned with how appropriateness is determined within the domestic context. Documents and secondary data served the investigation at a higher level of abstraction, in which the interest is in the way strategic actions of organisational actors are constrained. Documentary research was used in order to establish the development of the media sectors and actors of governance, tracing changes to rules and relationships or practices that became embedded. It was also used to identify the formal rules in place at the time of the investigation. Secondary data analysis had two purposes, namely providing a picture of material and power conditions and serving to validate or not information given by interviewees about NRA practices. The next section explains the process of collecting the data for these three methods.

### **4.3 Data Collection: Field and Desk**

The process of data collection for this project was extensive. It began with desk research, which continued throughout the project. The most significant data gathering exercise was the execution of the semi-structured interviews, which involved stays of one month in each country. Before this I conducted a pilot project in both Slovenia and Macedonia related to PSBs, which was extremely useful in preparing for the interviews for this study. Assembling secondary data was done mainly after the interviews and was more of a struggle than expected, regrettably as much for the owners of the data as for me. In this section, I will go into detail on the methods of data collection, the challenges and the implications for the project.

#### ***4.3.1 Assembling documents***

A significant amount of desk research went into gathering the reports, accounts and laws mentioned above. Most were available online in a mix of English and Slovenian or Macedonian. For Slovenian documents I mostly used English translations. This was acceptable as I was not doing semiotic or other kinds of textual analysis on them, but simply using them for the information contained within. I am able to comprehend written Slovenian to a certain extent and therefore was able to make use of some documents available only in Slovenian such as the reports on European Works violations in Chapter 7. As I speak and read Macedonian fluently, I mainly used the Macedonian version of documents for that case. This difference has to be acknowledged because reliance on English in a non-English environment can introduce a selectivity bias (May, 2011, p. 215). This could mean that I had access to more documents for the Macedonian case than the Slovenian case. However, this study required specific types of documents from specific sources – the state, the market and civil society. The corpus from which to draw documents was already small. Thanks to the near universality of English in Slovenia and my basic comprehension, the chances of leaving out a desired document because of language were reduced. For example, I still found and made use of the annual reports of the Media and Culture Inspectorate despite the fact that they exist only in Slovenian. In addition, there was no need for selection or sampling of documents from these two cases as there was little available in general. All the publications of the civil society

groups mentioned and all the EC reports were used, as well as all annual reports from NRAs and PSBs.

Surprisingly there were more documents available for Macedonia for two reasons. Firstly, EC reports were available for Slovenia only up until accession in 2004, whereas they continue to be produced for Macedonia. Secondly, the BC in Macedonia has been much more prolific in generating reports than Slovenia's APEK. They have released not only annual reports on their own work, but also from 2006-2011, they produced annual reports on the broadcasting market as well as incidental reports from their monitoring. This accounts for why there are somewhat more figures and data presented in the history of the sector for Macedonia in Chapter 5. I did my best to maintain a balance and match data for data between the two cases. Because much of the information is not otherwise available anywhere in English, I did decide to include some that I could not match with similar data for the Slovenian case.<sup>17</sup>

#### ***4.3.2 Interview tools and process***

Semi-structured in-depth interviews are usually conducted based on topic guides that direct the conversation toward providing information necessary for answering the research questions. These guide the interview, but give interviewee flexibility to express what he or she thinks is important to explain patterns or behaviour (Bryman, 2012, p. 471). I took the theories from institutionalism through which I wanted to examine the governance interactions in each case and used them to create interview topic guides. As these were discussed in some detail in the previous chapter, I will not explain them again at this stage. Drawing on the theory of institutional fit I needed to look at norms, values and established practice, or 'ways of doing things'. I also needed to find out how the individuals perceive their own roles and resources as well as how they interpret formal and informal rules. I first set out the questions that I need interview data to answer.

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<sup>17</sup> It was not within the means or scope of this project to reconstruct the history of the sector through news stories over the last two decades or other extensive archival research.

As these are not questions to be asked directly of interviewees, I developed interview topic guides based on what might lead to information being useful in answering these questions. The theoretically based questions to be asked of the data were important also because of the comparative nature of the project, and formed the basis for my coding of the interview data. I made one basic topic guide that was modified only slightly for each type of actor. Because interviewees should feel relaxed and that the interview is a pleasant experience (Frankfort-Nachmias, 2008, p. 220), I was careful to place questions I thought might be more sensitive nearer to the end, but made sure to finish with something unthreatening. I also left questions relating directly to the EU, EU policy or relations with European institutions for the end in order to see whether or not anything related to the EU came up spontaneously. I tested the topic guide in a test interview with a contact at the BC in Macedonia whose position was not among those selected for interviews. This interview was not used in the corpus but helped me to see where there was a need to clarify and trim in the topic guide. The table below illustrates questions I wanted answered with the interview data. The topic guides can be found in Annex 2.

***Table 4.3 Themes and questions used to design the topic guide***

Themes	Questions
Rules & Practices	What are the practices, rules and routines that make up media governance related to audiovisual media service?
	How long have they existed and how do people feel about them?
	How do they get changed & how often?
Power & influence	What actors feel they are able to influence policy or regulatory decisions and how?
	Have actors perceived a change (since start of SAA in each country) in their respective ability to influence policy and regulatory decisions and to what do they attribute this?
	To what do they attribute power (economic strength, political influence, popularity...)
Embedded relationships	What long-term relationships exist between domestic actors (organisations and individuals within)?
	What long term relationships exists between domestic and European level actors if any (organisations and individuals within)?
Culture & Norms	What are the normative positions individuals hold in relation to the media, the EU and regulatory practice?
	To what extent are decisions or practices attributed to "the way we do things here" or national character/culture?
	How much do they differentiate between themselves or the domestic institutions and "European"?
Values & Self-	How do people perceive their role within their organisation?

perception	What values are expressed by individuals when talking about their roles, their work and their institutions?
	How often are value-based judgements referred to as the basis for decisions or actions?
	To what extent do people make a difference between "European values" and their own or those they feel dominate in their institutions?

I was fortunate to have the ability to pilot the process of conducting semi-structured elite interviews in both Slovenia and Macedonia before starting the fieldwork for this project. The pilot phase consisted of five semi-structured interviews within MRT in Skopje and three within RTVSLO in Ljubljana and Koper. The purpose of the study was to investigate how people within the PSB management interpret the mandate and purpose of their PSB.<sup>18</sup> Interviews took place in Macedonia in April 2010 and in Slovenia in July 2010. This was followed by another visit to Slovenia in August 2011, in which I met with the Director of APEK in order to ensure that access to the agency for interviews and data would be possible. Lessons learned during this pilot study, in which I explored the role of PSB in each country, were extremely useful.

For one thing this study allowed me to test the practicalities of conducting such interviews, namely accessing the right individuals and language. One lesson learned in this regard was that, although interviewing through a translator was possible and I could understand a surprising amount of Slovenian, dealing with transcription and analysis afterwards was a challenge. I decided that all my Slovenian interviews would have to be done in English and was very lucky that this turned out not to be any kind of limitation in terms of selecting interviewees. All of those whom I intended to interview felt comfortable doing it in English. In cases in which an interviewee got stuck for a word or expression or did not understand, it proved always possible to switch momentarily into the regional lingua franca of Serbo-Croatian. The use of English has some implications in terms of analysis that are discussed further below.

Secondly, the pilot gave me insight into the impact of my own role as a researcher. One of the common criticisms of interviews is that subjectivity can be introduced by the respondent or by the interviewer. One way of looking at this is that the

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<sup>18</sup> The results of this small study were published as a separate research project (Broughton Micova, 2012).

respondents are “constructing knowledge around questions and responses” (Fontana and Fey, 2000, p. 647), and that setting and power dynamics can also impact this construction. This makes it important to conceive of the interview as a conversation (Kvale, 1996) and acknowledge the roles that both interviewer and respondent play. In designing this project, I was keenly aware of the fact that my long term residency in Macedonia and the nature of my professional position while there must be dealt with. Many of those whom I interviewed either knew me or at least knew of me from my former role as Head of Media Development and Spokesperson of the OSCE Mission to Skopje. I was concerned that this might unduly influence the interviews in Macedonia. What I learned while doing the PSB study, which proved to be the case throughout the interviews in Macedonia, was that I needed to allow for more time at the beginning of the interview. Before getting into the topic guide, I had to first let each person “catch me up” on what had happened since I was last there and voice concerns about the state of things as they would have in my former role. This was made the flow of the interviews somewhat different from the Slovenian ones in which personal concerns about the state of things came up more towards the end after a certain rapport was established. In the Macedonian interviews I also had to be more persistent in explaining my role as a researcher.

All of the interviews were conducted face-to-face in the interviewees’ offices or place of work. They were conducted in April and May 2011. I spent one month in Slovenia graciously hosted by the Faculty of Social Sciences at the University of Ljubljana, and one month in Macedonia. In accordance with the LSE ethics policy and good research practice, I created a consent form and got the consent of each interviewee at the start of each interview. Each was given the option of remaining anonymous, being named, and being named but only if I check with them again before publication.<sup>19</sup> It would have been legitimately difficult to make many of the interviewees anonymous as there was only one media inspector in Slovenia and one head of the BC in Macedonia, etc. As Flick (2009) suggests, elite or expert interviews can be problematic in that the respondents are chosen because of their positions and are engaged in their professional capacity rather than as individuals. Interviewees may be concerned with protecting the image of their institutions,

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<sup>19</sup> All those who appear as named in the thesis either gave consent at the outset or confirmed prior to submission once presented with how it would be used in situ.



particularly when it comes to questions related to institutional practice. I understood this, and also that it might be exacerbated by encouraging them to go ‘on the record’. Additionally, I thought there were chances they might feel inclined to try to make a good impression and appear compliant if they perceived my research to be about implementation of EU policy. I tried to counter this in two ways. Firstly, I was careful not to frame my project in relation to EU policy implementation when I introduced it. Secondly, I tried to build a rapport in a non-judgemental atmosphere, and as Kvale (1996) suggests, use *deliberate naïveté* or a “presuppositionless stance” (p. 33). This was harder to achieve with Macedonian interviewees, but was helped by the fact that I had been away for two years.

In the end I was able to interview nearly all the people I had planned to interview. I would have liked to get one more local or regional station in Slovenia simply as an additional validation of the situation of smaller stations in the country, but was not able to find someone in the time that I had. In Macedonia the only one that I did not get an interview with was with the person from the Ministry of Transport and Communications. Unfortunately, after I had planned and scheduled my fieldwork in Macedonia the government called early parliamentary elections. The individual with whom I had intended to speak told me that he had been given strict instructions not to speak with anyone about broadcasting until after the elections. I tried to follow up with him on two consecutive visits but was avoided in a polite but unmistakable manner. I was concerned that the nearness to the elections would influence the content of the interviews. It did in some cases lead to diversions, but I was able to steer people back to the topic guide eventually.

Two of the interviews ended up being joint interviews. In Slovenia I had to interview the Media Inspector along with the Chief Inspector of the Media and Culture Inspectorate. This turned out to be useful as she had only started two months prior and her supervisor had more insight into past practice and relationships. I treated them each separately, however, in my analysis. In my interview at TV Sitel Television in Skopje, I had arranged to meet one person, but was presented with both the head and deputy producer who insisted on being together. Again I treated them separately in the analysis. All of the interviews were recorded, and I took notes. At the end of each day of interviews or immediately after each interview if there was

time, I made notes on the key points and my own thoughts in a field diary. This proved useful in the analysis stage.

#### ***4.3.3 Gathering secondary data***

The approach of this project welcomed the subjectivity of the interview as a way to understand how the individuals engage with governing interactions and constraining conditions. I turned to secondary data to help uncover the material and power conditions and character of the domestic opportunity structure (Sub-RQ4), and as another source of information on regulatory practice (Sub-RQ1). In some cases, the use of secondary data can be problematic because the information will not necessarily have been gathered for similar research purposes. This is why Hakim (2000) makes a distinction between secondary data analysis on research data and the analysis of data from administrative records. This project relies on both. When using someone else's data it is important to consider the original purpose for which it was gathered, who was collecting it and how it was gathered (Stewart & Kamins, 1993, pp. 18-20). Except for the data on subsidies, the market data I gathered was generated through research and for a similar purpose. This was to illustrate financial or commercial value or resources, or to show relative positions in the market in relation to audiences or advertisers. The first data I sought came from audience measurement. Such data was not available for the entire period from 1991-2011, because market research companies did not start collecting this data until the late 1990s in these countries. The purpose of their research is to provide quantitative data on audience attention that can be used to attribute value to the broadcasts of television stations (see Napoli, 2003). This data is sold to broadcasters and advertising agencies as the basis for media planning and advertising valuation. As such, it is a key determinant of the resources and power available to actors in the market.

In larger countries there may be several different companies providing this information, however in Macedonia only one provides regular audience measurement and in Slovenia there are two, but only one providing ratings data. In both Slovenia and Macedonia, the agencies that collect this data were willing to make it available to me for research purposes. More discussion on the methods used

by these companies appears in Chapter 5 along with the data. Though I was not able to cover the last two decades in their entirety, I used the data available in Macedonia and in Slovenia there is consistency between the two sources in the time periods that they overlapped. This data serves as the accepted “coin of exchange” (Napoli, 2003, p. 19) in the market for television advertising.

The measure generally used by marketing agencies for planning television advertising in these countries is the Gross Rating Point (GRP), which in these two cases is generated by AGB Nielsen Media Research using their Peplemeters technology that records data from household television sets. I did not consider the lack of choice in data sources to be a problem, as I was not so concerned with the accuracy of the exact numbers of viewers counted because this data is used by advertising agencies and television stations in the advertising market an important factor in determining the prices stations get for their ad time. In the following chapters there is evidence that in Macedonia, political affiliation plays a role in determining the distribution of government advertising budgets to broadcasters, so their audience data is far from a perfect indication of the distribution of resources and power within the market. Nevertheless, it does give a good indication of the relative strength of the market players in relation to each other and to foreign competition.

Data on advertising revenues proved more difficult to attain. In Macedonia, the BC had been collecting some information based on self-reported income from the broadcasters and the gross value of broadcast advertising based on published price lists. In Slovenia some data was available for gross value and I was able to obtain unpublished data gathered by a team at the University of Ljubljana on advertising revenue. There are inherent problems with both ways of measuring the audiovisual advertising markets, but they are regularly used as indicators. In Slovenia and Macedonia no alternatives exist as yet. For information on the state subsidies provided for audiovisual media production, I contacted the Slovenian Film Centre (SFC) and the Macedonian Film Fund (MFF). The SFC provided the data I needed via email from their record. The MFF data was available mostly on their website and they answered additional questions by email. Unlike the other market data, this data was what Hakim (2000) refers to as administrative records, not assembled for research purposes, but part of each organisation’s own documentation. As public

institutions spending public money, the SFC and MFF are required to maintain records on the projects funded and funds allocated. It can be accepted as credible because it is subject to audit and public scrutiny, but its purpose is simply reporting. My purpose in using this data was to learn something about the resources, as material conditions, constraining this interaction between the state and the market. This meant that I added another layer of classification and interpretation of the data on who received support and in comparing the support given that was not part of the sources' purpose for collecting the data.

The data on enforcement practice by the NRAs was also data from administrative records, but the purpose of gathering this data was triangulation with information from the interviews. The type of data that I needed in this case is what Hakim refers to as "statutory decision-making" and although she defines this type in terms of legislation or regulations related to individuals and service delivery, the same characteristics apply here where regulations related to media companies are at stake. The data related to enforcement, is kept routinely and errors are usually minimal (Hakim, 2006, pp. 132-134). However, this data is not often publicly available and in these two cases proved somewhat difficult to obtain. What I wanted to get was a list of all the measures taken by APEK, the Media Inspector and the BC from 2006-2011. I wanted to know what violation was observed, what rule it broke and what action or decision was taken.

In Macedonia this kind of data is kept meticulously by the legal department of the BC, but it took many months of reminding before I was able to get the extract from their database. Although this type of data is kept routinely, as I discovered, the routines of comparable public agencies can still vary significantly. However, as part of my investigation was into practice, this in itself became part of the story. In APEK, the system was different and records not kept in the same way. Data was given cumulatively for each year and it required a significant amount of correspondence with the Head of Monitoring in order to ensure I had the most possible information on the decisions and had understood and presented it accurately. The Chief Inspector of the Media and Culture Inspectorate in Slovenia said that the previous Media Inspector had kept meticulous records of the actions taken against broadcasters but that she could not give me the records. I was directed towards the

annual reports of the Inspectorate to the Ministry, which I was able to obtain in Slovenian by contacting the Ministry's freedom of information contact point. The data was presented as aggregates and slightly differently each year, which made analysis somewhat difficult, but they were not willing to give me a full list of all cases.

#### ***4.3.4 Matching tools and data***

In summary, three data collection processes were part of this project. The first consisted of assembling reports from civil society actors and public bodies from the period since independence. The second was conducting semi-structured elite interviews with individuals working in the state bodies, civil society groups or companies in the market. The third was gathering secondary data both from research and from administrative records from private and public sources. The entire period of data collection lasted approximately from September 2010 until May 2012, when the last secondary data was received. The interviews were conducted in April and May 2011. The reason for this extensive and varied data collection process was the choice of a mixed-methodology informed by the bottom-up approach to this investigation. Though it may appear disparate and messy, the collection of data was guided by the institutionalist theoretical framework and the need to answer the four Sub-RQs listed above. This structure was even more apparent and vital in the analysis during which the two cases were compared.

#### **4.4 Analysis: Comparing Cases**

This investigation consists of two case studies. Each was treated as an independent unit, but the same categories and types of data were gathered from each one so that they could then also be compared. Case studies allow the researcher to get deep insight and investigate complexity (Stake, 2000). Blatter and Haverland (2012) have argued that case studies, particularly in the context of "small N" comparisons are particularly suited for overcoming the structure-agency problem of whether or not social science "should start with the behaviour of individual agents or with the constituting and regulating functions of social structures" (p. 7). At this point comparative case studies are already common in Europeanization research, but it has

been argued that often these have resulted in studies that are overly descriptive and not theoretically informed (Haverland, 2008, p. 64). This project was not intended to result in deeply descriptive yet isolated cases studies.

Instead, it aims to answer specific questions about the role of Europeanization in governing media systems in SEE. The intention was to make the findings more robust by including more than one case (Yin, 2003, p. 133). Some good bottom-up studies have been done in one country on single policy areas that have produced findings offering causal related explanations for those cases. Examples include the works of Sudbery (2010) and Parau (Parau, 2008), whose empirical findings support the hypothesis that Europeanization partially depends on the capacity and willingness of civil society actors to *use* the EU as a legitimiser of their aims. My question centres on clarifying the role of Europeanization rather than identifying causal mechanisms, and my aim was to deal with the complexity of the domestic environment. Focusing on only one case limited the generalisability of findings. I wanted to be able to draw some conclusions in relation to the shared characteristics of these cases because such comparison highlights the irregularities therefore requiring explanations for them (Ragin, 1987, p. 16), so where I expected similarities and did not find them it led me to look for other explanations.

I engage in a *structured focused* comparison (A. L. George & Bennett, 2005) of the two cases in specific areas determined by my theoretical framework. This means essentially asking the same question of both cases. In a review article for the journal Political Studies, Richard Rose (1991) explains this type of approach:

*“Whereas case studies may arrive at concepts and generalizations at the end of research, comparative analysis of more than one country requires the specification of concepts at the beginning in order to identify what is to be examined in different national contexts. The narrow-gauge comparison of two countries makes it possible to test broad hypotheses against rich empirical materials. Since a single author can normally undertake all the field research for studying two countries, there is consistency in the use of concepts and in the evaluation of empirical evidence.”* (p. 455)

If these cases were radically different there would be too many possibilities for difference and explanations for such difference. The choice of Slovenia and

Macedonia is one of *comparable cases*, in other words, cases that are similar in many ways but may be different in the key area and are analysed in a manner restricted to the question at hand (see Lijphart, 1975). They are comparable meaning not that they are identical, but that they are similar in terms of specific attributes (Rose, 1991, p. 448). Slovenia and Macedonia are similar in their smallness, in their common Yugoslav history and in their EU trajectory. Their audiovisual media systems emerged from the same common system and they share other characteristics since independence on which there is more detail in Chapter 5. One important difference between the two is their stage in the process of EU accession. This had two implications. As Macedonia was still in the pre-accession process while Slovenia was no longer, it provided an opportunity to explore the consequences of EU conditionality found to be so important in the literature. It also influenced my expectations and hypotheses going into the investigation. Because Slovenia was already a Member State and having been in the region for some time, I had the impression that Slovenia was “the good child” of the former Yugoslav states, and I expected the media system to be closer to ideals held by the media scholars discussed in Chapter 2. In my systematic and structured comparison I did not expect to find as many similarities as I did.

The sections above described how I approached the two cases with the same strategy for sampling and interview guides. They also explained in relation to documentary sources and secondary data how I attempted to gather similar data in the same manner in both cases. The moment of comparison is in the analysis. In this section, I explain the coding and interpretation of the interview data and the analysis conducted on the secondary data from research and from administrative records. I also discuss the limits of this comparison, the possible outcomes and the degree to which any findings may be generalisable beyond the two cases.

#### ***4.4.1 Coding and interpreting interview data***

The bulk of the data gathered for this project was in the form of interview transcripts. The analysis of these interview transcripts was by far the biggest task of this investigation in terms of working with data. Therefore I devote some space here to explain the process in full. There are many ways to approach interview data (see

Bauer & Gaskell, 2000; A. Fontana & Frey, 2000). I conducted a structured thematic analysis. I used a mixture of theory driven and inductive ways of coding (Boyatzis, 1998, Ch. 2), with the coding guide operating on two levels. This ability to move back and forth between deductive/theory-driven coding and inductive coding is one of the benefits of thematic analysis (Fereday & Muir-Cochrane, 2008). This method is different than a purely inductive approach, in which the researcher allows themes and sub-themes to emerge from the interview data (Bryman, 2012, pp. 579-580). This was a conscious choice made in order to maintain the structure and focus of the comparison. I began with topic coding (Richards, 2005, p. 88) drawn from the five themes in column one of Table 4.3 above. As a way of testing these codes, I first used these to code my interview notes. In the process, I refined the codes to slightly simpler categories and added two more topics that seemed to come up frequently in the notes. The table below illustrates the changes:

***Table 4.4 Deductive Theory-driven codes for first level of transcript coding***

Original codes	Revised codes
Rules & Practices	Rules
Power & influence	Practices
Embedded relationships	Relationships
Culture & Norms	Power & influence
Values & Self-perception	Cultural norms
	Values
	Smallness
	Post Socialism or transition

The codes in the second column above were then applied to the interview transcripts. I directly transcribed the Slovenian interviews, which took place in English. I could do so quickly as most interviewees spoke slowly and it also gave me the chance to fill in any of the moments where we had clarified using Serbo-Croatian. The Macedonian interviews were more difficult for me to handle alone. I type much more slowly in Macedonian and generally the interviews were longer, containing large periods of unrelated conversation because of my history in the country explained above. The recordings of interviews with people who had given me blanket permission to use their names I gave to a professional in Skopje who did the transcription. Those who had asked to remain anonymous or to give permission to



use their name only after seeing the data in situ I could not give to anyone else. Within Macedonia's small population, people are often connected in unexpected ways and interviewees might have been recognised. Most of these I transcribed completely as well directly into Macedonian. However others were partially transcribed. Where there are chunks of conversation that are not useful, it is acceptable not to transcribe those parts as long as they are listened to again after coding to make sure they are irrelevant (Bryman, 2012, p. 486). My strategy was to make short summaries in English or Macedonian of the part that was not verbatim transcribed and listen to them again after coding.

Coding was done manually with coloured markers and then the excerpts were physically reorganised according to codes with duplications made where necessary. From this point on, the coding was inductive. Within each of the categories, I looked for themes continuing to treat the Slovenian case and the Macedonian case separately. Because comparison starts with the logic of the matrix (Rose, 1991, p. 454), I then created a table for each category identifying commonalities and differences within each theme between the two categories. In the table, the numbers of the transcripts in which the theme could be found. This can be seen as a form of the "word tables" based on a uniform framework that Yin (2003, pp. 133-134) recommends for synthesising in two-case comparative studies. The use of common interview guides and asking the same questions of the data from Table 4.2 above proved useful to this process. The table formed the basis for many of the findings discussed in the chapters below and the similarities and differences are explicitly pointed out.

#### ***4.4.2 Analysis of secondary data***

As I mentioned above, secondary data in this project was used for two different purposes and consisted of two types of data. For the first purpose, the characterisation of material conditions and the domestic opportunity structure for both types of data were used. Data from market research companies was from research collected according to internationally recognised methods, such as day after recall or the use of Peplemeters. This type of data was used largely in its original form. Analysis consisted of establishing trends over time by comparing multiple

years, and in some cases, converting absolute values to percentages for easier comprehension. Similarly used was basic demographic and economic data from national censuses or other surveys conducted by the respective national statistics offices. The other kind of data was administrative data, namely the financial reports of the PSBs from each country. It is important to remember that this is self-reported data and the context of it is the PSBs' public obligations of transparency and accountability. I argue the fact that this data is subject to additional scrutiny from other public bodies adds to its credibility, which can otherwise be a problem in the use of some kinds of administrative data. Like the market research data, the analysis consisted of collating multiple years to identify trends and calculating percentages from absolute values in order to ease comparison.

The other purpose in using secondary data was in order to triangulate reports of regulatory practice from interviews with people from the NRAs. For this purpose only data from administrative records was used and as I described above, this data was in different forms. The data I received from the BC in Macedonia was a list of all decisions taken by the Council against broadcasters from January 2007 through October 2011. Each entry contained the following information: the name and type of broadcaster, the article and law violated, the nature of the violation, the decision taken by the BC, whether a court case was raised by the BC or the broadcaster and the outcome. As the number of individual types of violations was great, I created categories and coded the individual cases. For example, both the showing of a film at an inappropriate hour and failing to adequately display the rating of a programme were coded in the category called "protection of minors". I also coded for the rule broken and the type of enforcement measure chosen, entering all of the codes into SPSS along with the year and kind of broadcaster. The codebook for this process can be found in Annex 5. Using basic cross-tabulation, I then was able to see what categories of violations and measures were used over time.

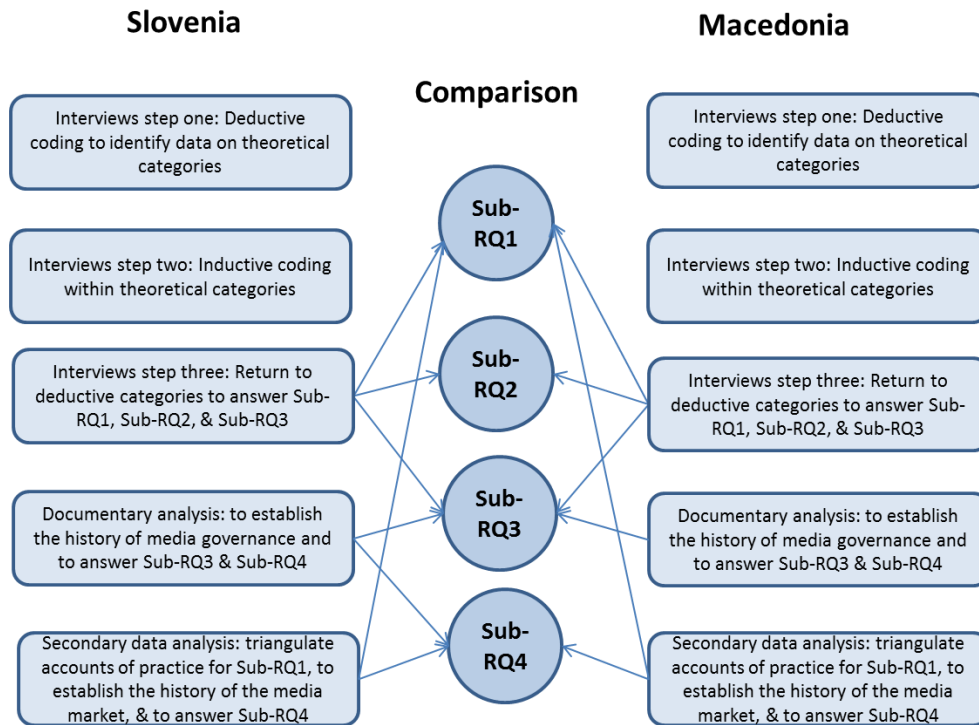
In Slovenia, the data I received from APEK and that I found in annual reports from the Media Inspector did not consist of lists of individual cases of violations, but aggregated data for each year. This meant that it was not possible to isolate for what type of violations measures were taken. In addition, the options for both APEK and the Media Inspector in terms of measures that could be taken against broadcasters

were much fewer than for the BC in Macedonia. No coding or processing in SPSS was necessary or possible. I simply reorganised the data in order to compare the decisions or actions taken across the years and identify the recorded referrals between APEK and the Inspectorate. The differences in the enforcement measures possible and in the manner of record keeping between the regulators in Slovenia and Macedonia meant that direct comparisons of the data were not possible. Instead, the tendencies of enforcement practice were identifiers for each case and the cases compared at the level of the answers to Sub-RQ1 about rules and practices and Sub-RQ3 about relationships.

#### ***4.4.3 Comparison: Focus and limits***

At the first level of analysis the Slovenian and Macedonian cases were each treated separately. Interview transcripts were analysed thematically in a two-step process that combined deductive coding and inductive coding. Secondary data from both research and administrative records was analysed within each case in order to answer the Sub-RQs and triangulate information from the interviews. I have not gone into detail on the analysis of documentary data, but this was used in conjunction with the other kinds of data to re-construct the histories of media governance in the two cases. Using the contemporary accounts from civil society and public actors as well as the laws themselves, I formulated the timelines and the narratives found in Chapter 5. In a structured focused comparison, the interview data was compared at the level of the deductive categories of practices in answer to Sub-RQ1, norms and values in answer to Sub-RQ2, and relationships in answer to Sub-RQ 3. Fundamentally the two cases were compared in terms of the answers arrived at for the four Sub-RQs. This resulted in the identification of similarities and difference upon which the findings presented in this thesis are based. The diagram below illustrates the process and points of comparison.

**Figure 4. 1 Illustration of points of comparison**



## 4.5 Conclusion

Though there have been several calls for bottom-up approaches to Europeanization research (Bulmer, 2008; Dente et al., 2011; Exadaktylos & Radaelli, 2009; Radaelli, 2002; Radaelli & Pasquier, 2008) it is hard to find examples of this type of approach operationalised into an empirical project. Those that do mostly use a process tracing methodology that follows a particular policy issue and looks for the causal factors at moments of domestic level change over time (Exadaktylos & Radaelli, 2009). Good examples of this approach can be seen in Natalini's investigation of Europeanization in Italy (2010), in Parau's study of environmental conservation advocacy in Romania (2008) and quite recently, Zartaloudis' research on employment policy in Greece and Portugal (2013). These researchers have admirably placed Europeanization alongside other potential causes for domestic level change without assuming its influence. However, I have not taken as my object of study particular policy change.

Instead, I have defined the starting point of my investigation as media governance. Media governance as an object of study and therefore basis for comparison is a

theoretically defined category (Ragin, 1987, p. 7), as described in the previous chapter in terms of interactions among actors and structures. This approach necessitated a mixed-methodology research design that incorporated qualitative and quantitative methods as different ways of knowing. The mixture of methods also allowed me to investigate at the level of individuals and at the higher level of abstraction involving interactions among companies, organisations and other actors. I have taken a substantive theory stance to mixed methodology. Therefore, the methods chosen for data gathering and the analysis were all guided by the conceptual and theoretical framework outlined in Chapter 3. Using the Sub-RQs derived from this framework, I first analysed each case and then conducted a structured focused comparison in the hope of finding and generating a hypothesis about the role of Europeanization in media governance in SEE.

Generalisability is an issue with this kind of in-depth case study. A comparison of two states is not generalisable to a very large number of states. The findings of this research cannot be claimed about all European states or probably even all small states in Europe. My study on PSB in Slovenia and Macedonia already found strikingly contrasting situations to those found by Trappel (2010) in his study of PSB in Austria and Switzerland. Some degree of generalisability to small states in the region of South East Europe, particularly of ex-Yugoslavia or perhaps even other parts of Eastern Europe may be reasonable.

The mixed-methodology approach and the diverse sources of data means that I may have cast the net wider than was necessary for answering my specific research questions, however this was done so consciously. The media systems of these two countries are highly under-researched. The country surveys produced as part of the Open Society Institute's Television Across Europe and Mapping Digital Media projects provide useful information. The Peace Institute of Ljubljana has produced several publications on specific issues in the Slovenian media. These are important resources and will be referred to in the chapters to come. However, they are in effect snapshots of the specific period or issues taken through the normative lens of those organisations. As I mentioned above they can be seen as accounts of the events and issues of the time with acknowledgment of the respective viewpoints. Therefore, although my research design was primarily focused on answering the main research

question, I was also conscious of the need to fill a gap in available information about media governance and media systems in the two countries. It was a challenge to decide at what point to stop gathering data, especially for secondary data. Essentially that point came when it appeared that data sources were exhausted.

As I mentioned above, more secondary data and reports were available in the Macedonian case. At the same time, my own previous knowledge of the situation in Macedonia was greater because I had worked there on media issues for many years prior to conducting this investigation. This was both a challenge and an advantage. The main challenge I had to deal with was the potential bias that might be introduced due to my deeper knowledge of the media system in Macedonia. I attempted to compensate by mainly starting my analysis with the Slovenian case, a strategy reflected in the organisation of the proceeding chapters. The slight unevenness in the available data and in my previous familiarity with the cases as well as the general plethora of varied sources of information made it vital to stick to the structure and focus of the comparison and the research questions.

Another challenge was in the way I handled the analysis of data in the Macedonian case. In the interviews with those from Macedonia there were a few occasions when the interviewee discussed something that I had been a part of in my previous work. In these situations I relied on the interviewees accounts. In general those accounts matched my own recollections and often what people told me reinforced my own understanding or prior knowledge of how things worked. However, I was cognizant of the need to allow myself to be surprised and this did happen on several occasions, especially as I got deeper, or behind the scenes, of what I had observed previously. For example, although I had worked with the BC in Macedonia for several years and the organisation I worked for provided support to it in the form of monitoring equipment and external experts to help with strategy documents, I was never familiar with the internal daily practices of monitoring and decision-making within the Council.

I had also expected more instances in which practices or relationships that I knew about from my previous experience in Macedonia, such as those between political parties and broadcasters, were not evidenced in the data. To the contrary, I was

surprised at some of the things people freely talked about in the interviews. Being a familiar face, and perhaps the impression that interviewees might have had that I was already acquainted with the situation, I think contributed to them being remarkably uninhibited in discussing their own decisions and practices. Having previous experience in the region also helped me access and engage with people in the Slovenian case. I had common acquaintances with many of the people I needed to interview and did not have any difficulty accessing people there. Common acquaintances and cultural and historical references, helped in understanding what people were talking about and move conversations along in the interviews. For example many interviewees made reference to certain programmes popular in the region, such a reality show from Belgrade's TV Pink, as examples or used the Croatian public broadcaster HRT as a reference point for comparison, and the fact that I knew what they were talking about was a distinct advantage. It was also beneficial to have some knowledge of where to go to find secondary data, and my connections in the region helped me access sources that otherwise might have been difficult. For example, my connection at AGB Neilson Market Research Macedonia was able to put me in touch directly with the right person to speak to about getting access to the audience data from AGB Neilson Market Research Slovenia.

For data gathering, my familiarity with the region and connections from the decade I had spent there prior to undertaking this research was a definite advantage. Nevertheless, it was a tremendous task to gather and analyse the many different kinds of data used in this investigation. This kind of bottom-up investigation needs a broad reach in terms of methods and data and in-depth theory driven analysis. To conduct such a project on a large N comparative project would require a significant amount of time and vast resources. If undertaken by multiple researchers, it may lose the consistency in the use of concepts referred to by Rose (1991) in the quote above that is possible with a single researcher. The conclusion from my experience in conducting this investigation is that bottom-up research on Europeanization is appropriate for single or small N case study based projects. Starting with a clear conceptualisation of governance can be a good place to begin that I argue is also suitable because it encompasses the rules, practices, norms and 'ways of doing things' that are the subject of Europeanization. However, I warn that there is a high risk of messiness in such a project, of being drawn in too many directions chasing

new angles. I cannot say that I achieved it perfectly, but I can say that I learned that strict adherence to theoretically driven questions – structure and focus – are fundamental to ensuring a bottom-up investigation can make a substantive contribution and most importantly ever be completed.



# Chapter 5: Media Environment and Regulatory Framework

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## 5.1 Introduction

After the collapse of Yugoslavia, Slovenia and Macedonia as newly independent states had the responsibility and the opportunity to redefine their respective media systems. Under Yugoslavia, the audiovisual media were synonymous with Yugoslav Radio Television (JRT), which was essentially a network of eight regional radio television centres. Though each centre produced its own programming and had its own channels, there was a great deal of shared content and most production was centred in Belgrade and Zagreb. Like most other European countries emerging from communism or socialism, Slovenia and Macedonia did not attempt to devise completely new models. Instead, as Splichal (2001) argued, they were part of a trend of generalisable imitation of Western practices. This was characterised by rapid liberalisation in the media sector, with slower changes in the public bodies and regulations at the heart of governance of these media systems.

Across Central and Eastern Europe and the Balkans, the freedom to launch private media was not so much granted by the new governments as it was seized independently once it was clear there were no longer barriers (Mungiu-Pippidi, 2003). This was certainly the case in Slovenia and Macedonia, where policy makers later had to institute regulation and governance systems for markets already full of players. It was shortly after this period that authors such as Splichal (1994, 2001), Jakubowicz (2004), Sparks (1995) and others began to point out the problems they saw in these media systems such as persistent political control over media and unfettered commercialisation. Splichal (2001) pointed a finger at the West's liberal market approach arguing it contributed to commercialisation (see also Jõesaar, 2011), while others suggested that EU integration may help erode old mechanisms of political control over the media (Bajomi-Lázár, 2008; Jakubowicz, 2007b, p. 250). The purpose of this chapter is to give a brief history of the audiovisual media sectors in each country and describe the rules and state actors in media governance at the time of my investigation. This chapter primarily draws on the theory of opportunity

structures and considers the possibility that, as suggested in the literature, Europeanization may play a role in changing the domestic opportunity structures, particularly through negative integration (Knill & Lehmkuhl, 2003). As I will show, I found little evidence of Europeanization contributing to the opportunity structures that exist in these audiovisual media sectors. Instead, I present evidence that liberalization began well before steps were taken towards EU membership and largely independent of EU policy. At the same time, I demonstrate that in both cases, political decision-makers have adopted formal rules distributing power and resources among state bodies involved in media governance in a way that may complicate the “diffusion and institutionalization” of EU rules and norms (Radaelli, 2002, p. 108).

In the next section, I describe the evolution of the two audiovisual media sectors. I show how certain rules – or sometimes lack thereof – in each case, as well as other conditions or decisions, have shaped the opportunity structures of the media sectors. I begin to identify the actors in media governance in each case and the distribution of resources and power that constrain the outcomes that these actors can expect from their strategic actions. For example, this section will start to provide evidence on the rules and material and power conditions that contributed to RTVSLO and ProPlus being in positions to eliminate the competition of MTG’s TV3 and create an untenable position for DTT operator Norkring. In keeping with the concept as explained in Chapter 3, looking at the opportunity structures in these cases rather than just the existing market system or media system draws attention to the actors that have shaped these structures and their strategic goals in doing so. There are significant differences between the two cases in the way the audiovisual markets developed, yet some common trends emerge. Rapid liberalisation after independence, instability in legal frameworks and fierce competition, including from foreign channels, are common to both.

Perhaps the biggest difference between the two cases is in the position of their PSBs. In the third section, I explain the laws related to governance of the audiovisual media sector in force at the time of my fieldwork in April and May 2011. Here I identify some of the key formal rules shaping the opportunity structure in each media sector at the time, providing an overview of the responsibilities and powers of the relevant public bodies and arriving at some answers to Sub-RQ1 about rules and Sub-RQ4

about material and power conditions. Changes to these arrangements made by the Law on AVMS in Slovenia in October 2011 and by the Amendment to the Law on Broadcasting Activity passed in July 2011 in Macedonia are not included. I briefly describe these changes and make some suggestions as to their implications in my conclusions. Understanding laws as intentional interventions that shape the domestic opportunity structures, I find that the legal frameworks in each country left significant room for political influence over the regulatory system, and in the Slovenian case limit the power NRAs have to regulate the market.

## **5.2 Two Decades of Independent Media Systems**

Within Yugoslavia, broadcasting was in the hands of the state and of the party. Very quickly after independence, both Slovenia and Macedonia went from essentially having one broadcaster that operated a few different channels, to having a multitude of broadcasters. I do not use the word multitude frivolously. Each country has a population of just over 2 million, yet as of June 2012, Slovenia had 81 television and 90 radio stations and Macedonia had 75 television and 87 radio stations, including PSBs.<sup>20</sup> Despite this abundance, just a few players have captured most of the audience share and advertising income. The sharp difference between the two cases is that in Slovenia this elite group includes the PSB, whereas in Macedonia, the PSB has been relegated to the margins of the market. In addition, the level of concentration in Slovenia appears more severe than in Macedonia, and Slovenia has had significantly more foreign capital investment in its market than Macedonia.

This section provides a unique history of the last two decades of the audiovisual media sectors in these two countries. It draws on accounts from reports made by civil society groups, some of whose authors were also interviewed for this project. Many of these reports present views coloured by the normative positions of these organisations and therefore express disappointment or frustration with increasing commercialisation and persistent political involvement in audiovisual media. Conscious of this position, I have tried to distil from these accounts the events and

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<sup>20</sup> The most recent information for Slovenia can be found at <http://www.apek.si/registri> and for Macedonia at [http://www.srd.org.mk/index.php?option=com\\_content&view=category&layout=blog&id=38&Itemid=27&lang=en](http://www.srd.org.mk/index.php?option=com_content&view=category&layout=blog&id=38&Itemid=27&lang=en).

issues of the time. I have also combined them with secondary data from market research companies and reports from APEK, the BC and the PSBs, as well as some recollections from those interviewed. The interview data used here is minimal. The few references in this chapter to interview data come from the category of responses coded as “practices” that referred to past practice and are used only to fill in detail on or corroborate events evidenced in the documents.

### ***5.2.1 Slovenian audiovisual media***

At the time of independence, the Slovenian broadcasting market consisted of RTVSLO, the successor to the former Yugoslav State Broadcasting system, and Yugoslavia’s first commercial broadcaster Kanal A, which began broadcasting just before dissolution, as a television station covering the capital. It also had 19 small local or regional radio stations founded and operated by local branches of the Socialist Alliance of Working People and essentially formed a second public broadcasting network (Bašić-Hrvatin & Petković, 2007, pp. 23-24). Albeit minimally, cable networks had already begun to operate, offering multi-channel packages with many foreign channels. Some people had satellites and people in some parts of the country had access to Italian or Austrian free to air television, simply because of geography. Very shortly after independence, the state began offering local licenses for television and radio and the number of stations grew rapidly. Legislation and regulatory frameworks came later and appear to have been trying to catch up ever since.

### ***Post-independence Slovenia 1991-2001***

The post-independence boom in commercial broadcasting in Slovenia was almost exclusively local. Without any national strategy in place, the Telecommunications Office began granting licenses for the use of frequencies in 1993, for free, and for an unlimited period of time. According to civil society observers, this was done in the name of democracy and under public pressure, but the result was that all the important frequencies were given out to commercial broadcasters before the first media law was in place (Bašić-Hrvatin et al., 2004, p. 18). They were all local except for radio Ognjišče and TV3, stations connected to the then Christian Democrat Party

that received their licenses only days before the first Mass Media Act was passed in 1994 (Bašić-Hrvatin & Milosavljević, 2001). During this period the essentially public local and regional radio stations, continued to exist owned mostly by state funds such as the Pension and Disability Fund or Development Fund (see Bašić-Hrvatin & Petković, 2007). The Mass Media Act of 1994 established the Broadcasting Council and a legal basis for licensing but did so in the midst of an already fragmented market full of small local broadcasters. Sandra Bašić-Hrvatin, one of the members of the first Slovenian Broadcasting Council, and her then colleague at the University of Ljubljana, Marko Milosavljević, wrote in 2001:

“The newly established supervising authority, the Broadcasting Council, which in accordance with the [Mass Media Act] became responsible for license allocations, thus ‘inherited’ a depleted frequency fund, a chaotic ownership situation in the newly founded media companies, and inadequate (or even non-existent) program plans which served as the basis for allocating broadcasting license[s].” (Bašić-Hrvatin & Milosavljević, 2001, p. 15)

Frequencies are a national resource and the license rules determine the division of these resources. The fact that, in Slovenia, the rules allowed for licenses to be bought and sold easily, and licenses were given for an unlimited time, had consequences for the opportunity structure in the media sector. The process of consolidation within the market began very quickly. ProPlus’ PopTV, now the country’s most popular television station began in 1995. It took off with an investment by American-owned Central European Media Enterprises (CME) in ProPlus, which acquired 78% of the company alongside two Slovenian companies (Sparks, 1999). ProPlus started to build a national network through agreements to provide programmes and sell advertising on behalf of local stations (Bayer, 2002, pp. 21-22). ProPlus acquired Kanal A in 1999 from its local owners and the Scandinavian Broadcasting System, which had acquired approximately a third of the company in 1997 (Terzis, 2007). Kanal A had struggled since its inception, and according to observers from The Peace Institute, ProPlus turned it into a dumping ground for re-runs and second rate foreign programmes (Bašić-Hrvatin & Milosavljević, 2001). The radio market displayed similar trends, with larger companies buying out smaller stations to form national networks, but without foreign investments (see APEK, 2009, pp. 14-15).

These started with the unofficial practice of broadcasting the same programme on multiple local stations, but have since been allowed to register as networks.

One of the problems with the 1994 Act identified by Bašić-Hrvatín and others in civil society and academia was the lack of sanctions or penalties connected with the provisions in the act, particularly in the area of media ownership (see Bašić-Hrvatín & Milosavljević, 2001, pp. 40-49). The Broadcasting Council proposed changes to the Mass Media Law in 1997. This initiated a four-year process that included several proposals and a change in government, before it finally ended with a new Mass Media Act in 2001. An earlier draft received was criticised heavily when reviewed by experts for the CoE in 1999 (Bayer, 2002; Thompson, 2000), however the 2001 Act basically implemented the rules derived from the TWF Directive and Convention was considered largely in line with the *acquis* by the EC (European Commission, 2002). It also included the option for local stations to be classified as non-profit or stations of special importance that were then able to apply for funds from the Ministry of Culture to support public interest productions. Most significantly however, the 2001 Act eliminated the Broadcasting Council as it was, ostensibly to combine the telecommunications and broadcasting regulators into one agency. The agency had been established under the Telecommunications Act adopted in May of that year. The new institution, the Agency for Post and Electronic Communications (APEK),<sup>21</sup> still had a statutorily independent Broadcasting Council attached to it bearing some responsibility for that sector. These changes meant the abolishment of the old council and appointment of new members as well as the transfer of former Broadcasting Council staff to the new Agency. As I elaborate further below, the new rules not only changed the distribution of power at the time, but also facilitated government influence over regulatory bodies into the future.

The position of RTVSLO in the market changed drastically over this early post-independence period, as it no longer had a monopoly. Internally, it continued to function largely unchanged, although without the backbone of the larger Yugoslav system, until 1994 when the RTV Slovenia Act was passed, establishing a governing council made up largely of representatives appointed by civil society. According to

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<sup>21</sup> Until 2004, it was called the Telecommunications, Broadcasting and Post Agency of the Republic of Slovenia (ATRP)

observers from The Peace Institute, this proved to be the beginning of a turbulent period that saw the governing council often at odds with the trade union and even in battle with the National Assembly over the appointment of a managing director (see Bašić-Hrvatin, 2002). Amidst these troubles and accusations of corruption and as the local commercial stations consolidated through networking, RTVSLO's position withered. Though it remained one of the biggest players in the market, it gradually lost both audience share and advertising revenue to the new networks, primarily ProPlus' PopTV. The following table shows the reach of the national television stations based on day after recall surveys from 1996 until 2001.

***Table 5.1 Reach of national television stations in Slovenia 1996-2001 based on day after recall - percentage of total sample answering to the question "what did you watch yesterday for at least 15 minutes?"***

National television	1996	1997	1998	1999	2000	2001
Pop TV	38.4%	49.9%	52.6%	52.5%	56.0%	59.3%
Kanal A						25.8%
Slovenija 1 (RTVSLO)	60.2%	52.0%	45.6%	45.4%	41.8%	43.6%
Slovenija 2 (RTVSLO)	20.0%	16.3%	15.3%	11.1%	12.7%	13.8%

*Source: Mediana, Slovenia*

This shows the gradual growth in the popularity of PopTV and the slow decline in the audiences of the public channels of RTVSLO over this period. Kanal A existed throughout this period, but begins to appear in the audience figures only after its acquisition by ProPlus and subsequent reformatting. The licensing rules and the way the frequency resources were distributed, helped define an opportunity structure in the Slovenian audiovisual media sector that empowered large commercial players and enabled the concentration of resources into the hands of a few actors in the market. By the end of this period, the domestic market was concentrated into the giant ProPlus and the PSB RTVSLO while marginalising a large number of smaller broadcasters. Historical institutionalists might explain this as a path dependent process stemming from the licensing rules. However, I argue this explanation misses out the political interests involved in shaping the structure in this manner. The licensing rules could have been changed many times, as during this period political leaders did not shy away from changing formal rules in order to change the

Broadcasting Council and move its powers to the newly established APEK or to change the management of RTVSLO.

### ***Slovenian broadcasting 2001-2011***

A centre-right government took power in Slovenia for the first time in 2004. The new coalition quickly proposed amendments to the Law on RTVSLO to have a higher percentage of the broadcaster's governing council appointed by the National Assembly, and with some direct party representatives. This passed with a very narrow margin in a 2005 referendum, and civil society observers argued that this meant that the new RTVSLO council had complete control over the appointment of the managing director who was given additional powers over programming (see Bašić-Hrvatinić & Petković, 2007, pp. 144-148). The result of this was yet another shake up of upper management in RTVSLO, after which a large number of prominent journalists left the main news team. Despite all the shake-ups at the top, RTVSLO has largely held its ground in terms of the Slovenian viewers. PopTV remains more popular than either of the public national channels and there has been a slight decrease in RTVSLO's popularity in the past three years. However, the channels of RTVSLO remain the only serious domestic competition for ProPlus' channels. The table below shows the reach of the major television channels available to Slovenian audiences from 2002 to 2011 based on day after recall surveys.



**Table 5.2 Reach of television stations 2002-2011 in Slovenia based on day after recall - percentage of the total sample to answer "yesterday" when viewers were asked, "When did you last watch..."**

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Pop TV	59.9%	68.5%	68.6%	70.1%	69.2%	73.1%	72.5%	66.4%	66.6%	66.0%
Kanal A	31.0%	54.8%	54.2%	55.8%	56.2%	62.1%	63.5%	59.6%	59.0%	60.9%
Slovenija 1	54.0%	64.5%	62.8%	62.5%	61.8%	62.4%	60.0%	52.2%	52.4%	51.9%
Slovenija 2	29.0%	52.0%	52.5%	50.8%	50.6%	52.1%	49.5%	43.9%	43.3%	40.7%
TV 3	9.3%	17.7%	18.8%	23.5%	22.2%	22.3%	27.0%	26.6%	28.1%	29.7%
Discovery Channel		18.5%	18.6%	19.6%	18.6%	19.1%	17.8%	19.3%	20.4%	19.7%
National Geographic		11.7%	14.8%	16.0%	17.3%	17.7%	17.2%	19.1%	20.1%	18.5%
HRT 1		21.8%	21.7%	22.7%	23.1%	21.4%	19.0%	17.4%	15.0%	14.4%
HRT 2		18.8%	19.5%	19.8%	20.3%	20.3%	17.7%	15.5%	13.0%	12.2%
TV Koper Capodistria		6.6%	5.9%	6.2%	6.7%	4.9%	4.2%	4.0%	3.7%	2.6%
<b>N (respondents)</b>	<b>9,732</b>	<b>9,267</b>	<b>8,812</b>	<b>8,716</b>	<b>7,738</b>	<b>7,623</b>	<b>7,557</b>	<b>5,721</b>	<b>6,084</b>	<b>5,747</b>

Source: Mediana, Slovenia

This table shows that Kanal A enjoyed a nearly two-fold increase in reach over this period, and the reach of TV3 also grew consistently. This data also shows the reach of the big international channels here as remaining pretty stable and the Croatian channels losing ground. The figures for audience share based on data collected through in-home Peoplemeter devices attached to televisions, tell a slightly different story in terms of Kanal A and the foreign channels, but the same gentle decline of popularity for the main PSB channels.

**Table 5.3 Share of total television audience for stations in Slovenia 1999-2011 based on data from home Peoplemeter boxes in a sample of households**

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
TV Slovenija 1	22.86%	22.21%	23.30%	24.38%	24.68%	25.95%	25.57%	22.91%	22.86%	22.60%	20.72%	19.09%	17.05%
TV Slovenija 2	9.18%	10.68%	11.07%	10.73%	10.01%	10.39%	8.75%	8.91%	8.21%	8.10%	8.08%	9.28%	6.21%
TV Slovenija 3										0.08%	0.43%	1.85%	3.04%
TV Koper-Capodistria	0.24%	0.32%	0.34%	0.29%	0.39%	0.35%	0.27%	0.27%	0.29%	0.20%	0.17%	0.13%	0.14%
TV Maribor				0.08%	0.37%	0.40%	0.30%	0.30%	0.37%	0.35%	0.43%	0.53%	0.46%
Kanal A	11.27%	11.79%	10.02%	9.99%	9.45%	7.73%	8.26%	8.87%	11.23%	11.92%	10.97%	10.69%	11.23%
POP TV	30.62%	29.98%	28.64%	28.47%	29.13%	27.04%	26.80%	28.21%	25.82%	24.64%	24.36%	23.57%	24.36%
POP BRIO									0.18%	0.88%	1.04%	1.36%	1.16%
Gajba TV	1.80%	1.76%	1.40%	0.72%	0.50%	0.38%	0.08%						
TV3	1.31%	1.73%	2.65%	2.47%	1.77%	1.89%	2.00%	2.19%	3.60%	5.21%	5.74%	4.97%	4.96%
TV Pink 3												0.61%	1.36%
Croatian TV stations	5.35%	5.96%	6.31%	5.92%	5.60%	6.42%	7.87%	7.94%	7.07%	5.98%	5.05%	3.33%	3.17%
Other TV stations	17.37%	15.59%	16.27%	16.95%	18.15%	19.45%	20.09%	20.42%	20.47%	20.06%	23.02%	24.60%	26.58%

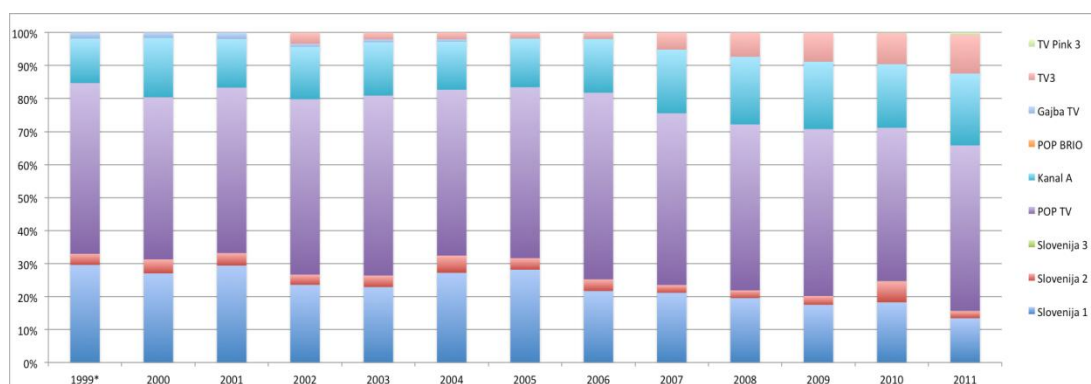
Source: AGB Nielson Media Research Slovenia

Table 5.3 shows that the combined audience shares for the three RTVSLO channels together and the two Proplus channels together have both been decreasing. Similarly, in Table 5.2, the position of TV3 has been mostly increasing, hovering at about 5% in the last four years. As described at the outset of this thesis, despite these figures, TV3 stopped broadcasting in February 2012 after Modern Times Group, which had bought the station in 2006 decided to close the station (Slovenian Press Agency, 2012; STA, 2012a). While the audience share figures for the Croatian channels mirror those for reach in Table 5.2, the data in Table 5.3 also shows a steady increase in the share of “other TV stations”. This group includes the regional and local stations, but primarily the multitude of foreign channels in addition to National Geographic and Discovery available through subscription services. The telecommunications sector in Slovenia was not considered liberalized by the EU until 2001, because of the monopoly that Telekom Slovenia held in fixed and mobile phone markets until January of that year (European Commission, 2001a, 2002). However, as can be seen in the audience share registered for channels available on subscription services in Table 5.3, this did not seem to present a barrier to the spread

of cable and other multi-platform services. By 2003, already 56% of households had cable subscriptions (Milosavljević, 2007, p. 436). By 2012, the penetration of multi-channel subscription services was over 80%, though cable providers had lost some market share to IPTV, with penetration at about 40% each for cable and IPTV (SEE Digi.TV, 2013, p. 16). Many of these channels offer Slovenian subtitles operating almost as “local affiliates” of the transnational versions (Milosavljević, 2007, p. 437), and several also have localised advertising in the Slovenian language or even from Slovenian firms.

Tables 5.2 and 5.3 show that ProPlus’s channels maintain the strongest position in terms of viewership, despite an overall decrease, but also that the RTVSLO channels come in a relatively close second. The size of ProPlus is much more sharply reflected in the advertising market.

**Figure 5.1 Breakdown of the total annual GRP Slovenian national television stations (not including GRP attained by smaller or foreign channels)**



Source: Based on the absolute values provided by AGB Nielson Media Research Slovenia. Note: 1999 figures begin with 1 May 1999.

Figure 5.1 illustrates that ProPlus’ holds by far, the bulk of the television advertising market to the extent that it can be calculated. The figures above represent the percentage of the total number of Gross Rating Points (GRP)<sup>22</sup> achieved by these stations in each year. This means it does not indicate actual advertising revenue, as various discounts and deals may impact the real income generated by GRP. In the last 4 years, TV3 showed steady increases, but seems to have done more to erode the

<sup>22</sup> The absolute values for GRP used do not include public service announcements or self-promotion by the channels in order to give a picture for commercial advertising.

position of the RTVSLO channels than those of ProPlus. Audience shares and GRP shares can be seen to describe the way a large portion of the financial resources available in the television market is distributed among the various actors in the market. They illustrate how important the rules on advertising are in shaping that distribution and how political leaders can interact with the market by changing those rules. For example, despite TV3 being out of the market as of early 2012, its share of advertising budgets is not likely to return to RTVSLO since the law on AVMS reduced advertising allowances for the PSB in October 2011. Advertising revenue is not the only financial resource in the market and the rules shaping the Slovenian opportunity structure still ensure a stable income for RTVSLO.

The core of RTVSLO's funding remains the license fee, which at the time of writing was still consistently collected, unlike in Macedonia as will be explained below. Advertising has been making up less and less of RTVSLO's overall revenue, but with three national and two regional television stations and the same in radio, it remains the second largest player in the television market and one of the top three in radio.

**Table 5.4** *Three main revenue sources for RTVSLO as a percentage of total revenue*

	2007	2008	2009	2010	2011
License fee	62.6%	64.4%	65.9%	64.9%	62.3%
Advertising	17.4%	16.3%	13.0%	14.8%	11.7%
Other commercial	10.2%	10.4%	10.2%	10.9%	8.3%

*Source: Compiled by the author from data presented in the Annual Reports of RTVSLO from 2007, 2008, 2009, 2010, and 2011*

Slovenia may have 81 registered local, regional and national television stations operating on various platforms. However, considering the license fee and the distribution of GRP shares shown in Figure 5.1, it is clear that RTVSLO and ProPlus hold the lion's share of the financial resources in the country's television market. By the time of writing CME owned 100% of ProPlus, which operates the national free to air channels PopTV and Kanal A as well as several cable or IPTV only channels,

having bought the 3.15% that had remained in Slovenian hands from the company's Director of Adriatic Regional Operations in 2006 (Central European Media Enterprise, 2007, p. 120). As mentioned in the introduction, Swedish MTG owned 100% of Prva d.o.o, which had the national free to air license for TV3, but closed down its operations and ceased broadcasting in March 2012 (Modern Times Group, 2012, 2013). Shortly after, Pink SI, a Slovenian subsidiary of one of Serbia's Pink TV, rebranded itself as TV Pink 3 (Agencija Medias, 2012) in what seems like an attempt to assume the position of the collapsed TV3. Pink TV's version of TV3 is not free to air, however, and at the time of writing, it remained to be seen if the rebranding would move the station onto the charts from its previously negligible position in the market. Therefore the channels broadcasting nationally and free to air are those of RTVSLO and those owned by CME through ProPlus. Regional private stations with the special status of non-profit public interest channels receive some small state subsidies that are discussed further in Chapter 7, but have minimal audiences and advertising revenue.

The rules shaping the opportunity structure in Slovenia have privileged the PSB and allowed easy concentration formation that the first foreign investors, CME, were able to use with their local partners to establish a dominant position in the market in the form of ProPlus. At the same time, the spread of multi-channel subscription services has led to an expansion of audiences for foreign channels with consequences for the already minimal resources, in the form of audience attention and advertising income, available in the domestic market. The evidence indicates that this was well underway before the country came into line with the EU's liberalizing TWFD and Telecommunications Package Directives. Based on the history presented here, I argue that the trends identified – domestic concentration forming and increased competition from foreign channels – have occurred independent of the process of EU integration. No major changes can be seen in the Slovenian audiovisual sector specifically associated with the adoption of TWFD or EU accession.

### ***5.2.2 Macedonian audiovisual media***

Macedonia got an even later start than Slovenia in providing a legal basis for the regulation of its audiovisual media market. Though it separated peacefully from

Yugoslavia in 1991, the country was affected by the blockade against its largest trading partner, Serbia, during the Yugoslav war, and by diplomatic conflicts with its neighbours. In the early period of the Macedonian audiovisual sector, the opportunity structure was characterised by a lack of formal rules. Private broadcasters popped up like mushrooms with only frequency permissions for their individual transmitters from the Department for Telecommunications in the Ministry of Transport and Communications. Some estimated that the number of broadcasters reached as many as 250, including radio and television (Ciunova-Suleska, 2007, p. 145). This was paralleled by a rapid increase in the number of local cable operators providing multi-channel subscription services. A few strong players emerged and as the market data presented in the section will demonstrate, the material resources of the Macedonian audiovisual media sector are mostly in their hands, while the public broadcaster MRT has lost out the most.

### ***Post-independence Macedonia 1991-2001***

Most of those who started broadcasting in the period of the legislative vacuum were local or covering only parts of the country. However, two national television stations, A1 TV and TV Sitel, and two national radio stations, Antena5 and Kanal77, cobbled together national networks. These were already well established by the time a law on Broadcasting Activity was finally passed in April 1997. The law established the Broadcasting Council (BC), but the government retained the power to grant concessions to broadcasters, meaning the BC's role was essentially advisory. One estimate was that by 1997, there were 95 television and 200 radio stations operating, but no one knew exact numbers (M. Jordan, 1997). Biljana Ilievska of the Agency for Electronic Communications (AEC) worked in the Ministry of Transport and communications at that time. According to her, the practice of the Ministry at the time was that frequencies were granted on the basis of the transmitter or repeater devices, in the same manner to broadcasters as to radio taxi operators.

The figures for allocated frequencies, therefore, were not indicative of the number of radio or television stations. Concessions for broadcasters with associated frequencies began being granted in September 1997. The number of interested parties suggests that the estimates above for broadcasters existing in 1997 were not far off. The first

call received 190 applicants including 6 for national licenses, and the second call received 49 additional applicants including one for a national license (Broadcasting Council of Republic of Macedonia, 1998). The BC managed the tender process and made proposals, but in accordance with the law, it was the government that made the final decision on the allocation of frequency resources. More than half of the applicants received concessions.

***Table 5.5 The first broadcasting concessions granted in Macedonia in 1998***

Level	Type	Concessions
National	Radio	1
	Television	2
Local	Radio	80
	Television	57

*Source: Broadcasting Council of Rep. of Macedonia*

The figures above represent the concessions granted to private broadcasters. The country was still left with an excessive number in relation to its population (Ciunova-Suleska, 2007). The 1997 law also established a governance structure for MRT and a funding mechanism based mostly on a license fee collected through electricity bills. Unlike in Slovenia, where they were privatised, in Macedonia a small percentage of the license fee was allocated to support local public broadcasters, most of which were those that had been run by the Socialist Alliance of Working People of Yugoslavia. Therefore at this time, the PSB system included MRT's three television and three radio channels as well as 29 local public radio stations, twelve of which by 2000 were also broadcasting television (Broadcasting Council of Republic of Macedonia, 2000). Also unlike in Slovenia, in 1998 the Macedonian government separated the links and transmissions department of MRT into a new public company Makedonska Radiodifuzija (MRD) with a separate law creating a publicly owned network operator whose main task was to transmit the channels of MRT.

Throughout this period, commercial broadcasters grew steadily in the market. The few national stations and those local stations based in Skopje dominated, but some local stations also grew in terms of production capacity and programme content.

According to civil society reports, much of the development of these local stations was due to assistance programmes and various projects from the international community, which decreased rapidly after 2002 (Šopar, 2005, 2008). The 1997 law also established a fund for production projects of public interest. Under this law, the BC made a proposal based on the results of a public call for proposals to the Government, which made a final decision on the recipients. Though civil society monitors claimed this fund produced low quality outputs and was politically influenced (Šopar, 2005, p. 1214), as a formal mechanism for the distribution of resources for production, it was key to the survival of many small stations.

Initially, the opportunity structure of the audiovisual sector in Macedonia was defined by the lack of formal rules governing relations between the state and the market. When political leaders established these rules they ensured that the power over the distribution of crucial material resources, namely frequencies and license fee revenues for private production, remained in the hands of the government. The material conditions of the domestic market were changed by external inflows that helped boost the position of some market players. However, unlike in Slovenia where this took the form of large-scale foreign commercial investment, in Macedonia it came in the form of short term assistance or project grants, and therefore did not result in a long term foreign presence in the market.

### ***Macedonian broadcasting 2001-2011***

Already by 2003, one of the first two national concession holders, A1, had more than twice the audience share of MRT's first channel. A1's position was eroded slowly, especially after Kanal 5 and Telma, previously local Skopje stations, became national and the Albanian language station AlsatM was launched at the national level. A few local stations did not survive. Nevertheless in 2004, there were 5 private national television stations and 53 local television stations (Broadcasting Council of Republic of Macedonia, 2008). As the commercial stations grew, MRT declined. By 2006, there were five private national television stations, the three channels of MRT, and 50 local television stations with 11 of the former local public stations continuing to broadcast illegally (Broadcasting Council of Republic of Macedonia, 2008). There was no regular audience measurement in Macedonia throughout the 1990s, so it is



difficult to assess the relative positions in the in that period. However from 2003, the data on average annual audience share shows MRT's popularity declining steadily. Increasingly, people resisted paying the license fee, and even well before it was privatised in 2005, the electricity company began openly giving people the option of paying the fee separately, i.e. not paying it at all (see data Broadcasting Council of Republic of Macedonia, 2008, p. 37 ). MRT sank steadily into debt and financial crisis as it continued to lose audiences to commercial broadcasters.

**Table 5.6 Average audience share of total viewership for national terrestrial television stations in Macedonia 2003-2011<sup>23</sup> based on data from a sample of households**

	% Audience Share									
	Diary method					Peoplemeter method				
Channel\Year	01.06 - 31.12. 2003	2004	2005	2006	01.01 - 13.11.2007	14.11 - 31.12.2007	2008	2009	2010	2011
MTV 1	14.87%	13.08%	9.18%	9.43%	7.09%	8.05%	7.63%	6.84%	5.85%	5.39%
MTV 2	3.89%	4.20%	2.64%	2.31%	2.15%	1.90%	1.81%	1.35%	1.25%	1.40%
MRT	4.22%	3.41%	1.09%	0.49%	0.52%	2.23%	2.17%	1.61%	1.10%	1.12%
A1	32.70%	32.77%	28.48%	23.74%	23.73%	21.85%	21.07%	20.98%	24.66%	14.80%
SITEL	13.05%	13.18%	13.64%	12.24%	13.29%	11.32%	11.60%	13.95%	17.87%	21.54%
KANAL 5	2.36%	3.18%	5.92%	7.62%	7.72%	10.82%	7.37%	4.94%	5.14%	9.15%
ALSAT M	0.00%	0.00%	1.23%	1.51%	2.79%	3.33%	3.28%	3.50%	6.21%	7.07%
TELMA	1.58%	1.53%	3.06%	3.94%	4.07%	4.64%	4.78%	3.91%	3.25%	3.30%

Source: AGB Nielson Media Research Macedonia

The process of drafting a second Law on Broadcasting began near the end of 2000 with an initiative by the National Media Working Group of the Stability Pact for Southeastern Europe (Šopar, 2005). Having signed the CoE's Convention on Transfrontier Television and the Stabilisation and Association Agreement with the EU obliging it to implement TWF, the Government of Macedonia officially began the process of making a new Law on Broadcasting in 2004. At the same time, a new

<sup>23</sup> In the diary method, a sample of households are chosen and asked to keep a diary of what they are watching at 15 minute intervals for a week. When Peoplemeters are used, the devices are installed on the main television in a sample of households and record data on what channel is being watched.

Law on Electronic Communications was drafted with assistance from the US Agency for International Development (USAID) as part of its support for World Trade Organisation compliance (USAID, 2013).<sup>24</sup> Both laws finally passed in 2005. The Law on Electronic Communications radically liberalised the telecommunications market, eliminating the local cable monopoly system and the monopolies in fixed and mobile telephony. It also finally moved the regulation of this sector out of the Ministry of Transport and Communications, establishing the Agency for Electronic Communications (AEC). This change in the formal rules ostensibly represented a major change in the distribution of power in the sector, but as I will elaborate in the next section, the government retained a high level of influence over the new regulator.

The 2005 Law on Broadcasting Activity finally gave the BC complete statutory independence and the power to grant and revoke licenses. It also gave the BC some sanctioning powers and eliminated the fund for productions in the public interest that had previously been used to distribute resources to private broadcasters. Before the final version was sent to Parliament, drafts of the law were reviewed three times by experts from the EC and appointed by the CoE and Stability Pact.<sup>25</sup> The law was deemed to be largely in line with the *acquis* with the Commission warning of the need to insure stable independent financing for the PSB (European Commission, 2006, p. 32) However as in Slovenia, the new law meant that a new council had to be appointed and as I will show below, the political parties in government still retained influence over the selection.

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<sup>24</sup> Also reported in the following internal USAID documents:

[http://pdf.usaid.gov/pdf\\_docs/Pdacf743.pdf](http://pdf.usaid.gov/pdf_docs/Pdacf743.pdf)

<http://tcb.eads.usaidallnet.gov/docs/car/2005/macedonia.pdf>

<sup>25</sup> The expert on behalf of the Council of Europe and Stability Pact was Karol Jakubowicz who reviewed three versions of the law. The last review was done by him at the experts of the EC's DG Information Society "Analysis and Review of the draft law on broadcasting activity of 'the former Yugoslav Republic of Macedonia' prepared by the Ministry of Transport and Communications" Strasborg ATCM (2005)005 can be found here [http://ec.europa.eu/avpolicy/docs/ext/fyrom\\_en.pdf](http://ec.europa.eu/avpolicy/docs/ext/fyrom_en.pdf) while the previous ones were: "Comments on a draft Broadcasting Law of 'the former Yugoslav Republic of Macedonia'", ATCM(2003)017, Strasbourg: Council of Europe, Stability Pact for South-Eastern Europe, 28 July 2003; "Analysis and review of Draft Law on broadcasting activity of 'the former Yugoslav Republic of Macedonia'" Working version prepared by a working group ATCM(2004)031, Strasbourg: Council of Europe, Stability Pact for South-Eastern Europe, 23 November 2004)

One of the first things that the new BC had to deal with was the transfer from concessions to licenses. This was a golden opportunity for a culling of broadcasters based on technical standards or some strategy for the market. However, according to Zoran Stefanoski, who was a BC Council member at the time, the period in which the transition had to be made was short and was also interrupted by BC's obligation to monitor the 2006 elections. He recalled that in order to save themselves the trouble, the Council Members decided to essentially transfer all concessions to licenses by inviting all concession holders to apply and granting licenses to all who did. This meant that the distribution of frequency resources made under the period in which it was done by government decision was maintained. The only reduction in the number of broadcasters came from the elimination of the local public broadcasters, which were forced by the 2005 law to either privatise or close. In 2008, the Council granted another eighteen national television licenses by giving license for broadcast on satellite to stations aimed at the domestic market via re-broadcast through cable (Broadcasting Council of Republic of Macedonia, 2009b). Despite the wealth of new national stations, A1 and Sitel televisions remained dominant through 2010 as shown in the Table 5.6 above. In 2010 a financial investigation of all the companies owned by A1's owner led to the eventual bankruptcy of the company. A1 lost its frequency as a result of the bankruptcy and ceased to broadcast in July 2011. From the data for 2011, it appears that TV Sitel and Kanal 5 benefited the most from this closure as they each gained 3.67% and 4.01% of the audience share respectively.

As the largest commercial stations battled it out among themselves, cable and IPTV expanded rapidly. The Law on Electronic Communications liberalised the market, broke down local cable monopolies and allowed bundled services. Research commissioned by the Broadcasting Council in May 2007 and June 2009 showed that a majority of the population subscribed to multi-channel services. By the end of 2012, 84.5% of households used some kind of multi-channel service including satellite (SEE Digi.TV, 2013, p. 13).

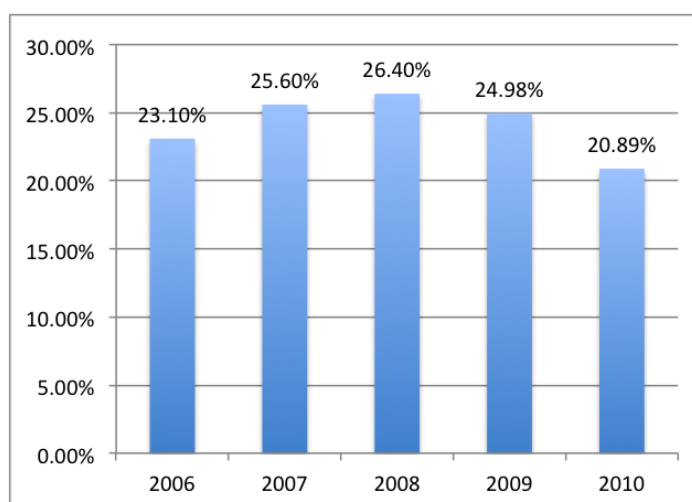
**Table 5.7 Penetration of subscription services in Macedonia – percentage of total households using each**

Platform	May-07	Jun-09
Cable	52.1%	66%
Satellite	8%	9.7%
IPTV	0%	0.6%

*Source: Compiled by the author from Annual Reports on the Broadcasting Market 2007 and 2009 from the Broadcasting Council of Rep. of Macedonia*

Despite the expansion of multi-channel services, the audience share for foreign channels in most recent years has been falling, from more than a quarter of audience share in 2007 and 2008 to just over one fifth in 2010.

**Figure 5.2 Percentage of audience share of foreign channels in Macedonia 2006-2010**



*Source: Compiled by the author from Annual Reports on the Broadcasting Market 2007, 2008, 2009, 2010 from the Broadcasting Council of Rep. of Macedonia*

The new laws of 2005 may have upset the balance among commercial broadcasters only slightly, but the Law on Broadcasting proved disastrous for MRT. Despite warnings from the OSCE, CoE experts and the EC, that such a model was likely to fail<sup>26</sup>, the political leaders dictated through the law that MRT must take control of the collection of the license fee itself, something that successive directors failed to do

<sup>26</sup> See the comments on draft laws cited in the previous footnote, particularly the last analysis AATCM(2005)005 pages 22-23. See also the report from the OSCE Representative of Freedom of the Media (OSCE Office of the Representative on Freedom of the Media, 2006, pp. 142-143)

effectively (Belićanec, 2009; Broughton Micova, 2012). From 2006 to 2010, the largest portion of MRT's income had come from the state budget because of the problems with the license fee and extremely low amounts of advertising income. An amendment to the law in 2008 decreased the fee by more than 50%, but that did not help. Some improvement can be seen in 2010 when MRT began cracking down on legal entities such as hotels and restaurants. However, another amendment to the Law on Broadcasting in 2011 finally obliged the Public Revenue Office to collect the license fee, which had a significant impact.

**Table 5.8 License fee, budget transfers and advertising as percentages of the total revenue of MRT**

	2008	2009	2010	2011
Budget transfer	90	74	57	24
License fee	1	12	27	50
Advertising income	7	6	7	1

*Source: Calculated by the author from the absolute values contained in the annual financial reports of MRT for 2009 and 2011*

It is clear from the data above that advertising contributed little to MRT's revenue between 2008 and 2011, which is likely related to its low ratings. As shown in Table 5.6 above, by 2011 the total share of the 3 MRT channels was not even 10%. Private broadcasters dominate the advertising market, however, it is challenging to assess their financial situation or establish shares of the advertising market. According to civil society reports, discounts are common and often stations advertise the other businesses owned by their owners, or even external companies, on the basis of compensation with goods or services instead of cash (Belićanec & Ricliev, 2012, p. 66). In the last few years, the BC has attempted to assess this based on self-reported data provided by the broadcasters, cross-checked against their annual reports sent to the Central Registry.<sup>27</sup>

<sup>27</sup> One can see from the figures here that not all licensed local stations have reported income, implying that either they have not had any income fulfilling the reporting requirements or are not compliant with reporting. Although this may mean the data is impacted in that some local station income is missing, it can be assumed to be minimal as the missing stations falling into this category would be very small to be reporting no income or not even tracked by the Central Registry.

**Table 5.9 Breakdown of reported advertising income of private television stations in Macedonia**

	2007		2008		2009	
	# stations reporting income	% of reported ad income	# stations reporting income	% of reported ad income	# stations reporting income	% of reported ad income
National Terrestrial	5	91%	5	89%	5	85%
National Sattelite	0	0	6	3%	8	5%
Regional (Skopje)	10	3%	10	3%	10	5%
Local	36	6%	47	5%	47	6%

*Source: Calculated by the author based on absolute values reported in Annual Reports on the Broadcasting Market 2007, 2008, 2009 from the Broadcasting Council of Rep. of Macedonia*

Only in 2009 did the BC's data breakdown the individual absolute amounts for the national terrestrial stations of advertising income and these figures showed that A1 reported 42% of the total and TV Sitel and Kanal 5 each reported 17.3% of the total. This means that in 2009, the top 3 national channels received 76.6% of the reported advertising, which would indicate a concentrated market with A1 as the dominant player. The BC's 2010 report did not include data from A1 because by 2011, A1's records were seized as part of the investigation by the financial inspectors and bankruptcy process mentioned above. Although the closure of A1 is likely to have a significant impact on the market, at the time of writing it was not clear yet how its market share would be redistributed.

Neither the changes to the rules on licensing nor those on the status and structure of the BC from 2005 resulted in little change in the distribution of resources or power among the major market players. Smaller commercial media saw their resources cut by the elimination of the fund of productions, but their reported advertising income remains steady. Even the liberalization of the telecommunications sector, which represented a major change to the rules defining opportunity in the sector, has not resulted in an overall increase in the audience share for foreign channels. The major change in this period was that the 2005 rules on the license fee created an opportunity structure in Macedonia in which the PSB was severely disadvantaged with major consequences for it in terms of material resources. Although the rules

were changed again in 2011, the relative positions of the market players may take some time to adjust, if at all. In general, the data shows a greater diversity of players in the Macedonian market than the Slovenian, however, the imbalance in audience and advertising shares between national and local is similar. I found no evidence that the trends in the market were impacted by the adoption of TWFD in 2005 or the achievement of candidate status.

### ***5.2.3 Liberalization and concentration***

For both Slovenia and Macedonia, the story of the last 20 years is one of frequent changes to the rules defining their domestic opportunity structures in the audiovisual media sector. Each has seen three different institutional arrangements for the regulation of audiovisual media, and liberalization in broadcasting and telecommunications have been key processes of the period. Both started with only a ministerial department licensing frequency use, subsequently forming Broadcasting Councils, and then changing into yet a third variation. In both cases, the audiovisual sectors were first characterised by a lack of rules, the immediate breakdown of former state monopolies and rapid expansion of commercial stations. The Slovenian opportunity structure was then shaped by licensing rules that enabled easy concentration formation and rules that protected the privileged position of the PSB. The Macedonian licensing rules were changed twice, but with little consequence for commercial stations; however the PSB's material resources were drastically impacted by changes to the rules on its financing. While RTVSLO enjoyed steady revenue from the license fee and a solid position in the advertising market, MRT saw its audience shares plummet and was dependent on direct transfers from the state budget. The numerous local broadcasters in both Slovenia and Macedonia maintain almost negligible percentages of audience share and receive minimal advertising income.

One thing that can be observed in both cases is that the developments in the markets show steady trends that appear unaffected by EU related developments, such as the adoption of TWFD or progress in the accession process. It has been argued that the liberalising and market opening policies of the EU are particularly damaging to small state's media systems, making them vulnerable to inflows of foreign channels (Meier

& Trappel, 1991; Puppis, d'Haenens, Steinmaurer, & Künzler, 2009; Trappel, 1991). This argument implies that Europeanization plays a role through EU rules influencing the domestic opportunity structures so as to disempower domestic broadcasters in relation to foreign ones. However the evidence here does not support this explanation. In Slovenia, the data shows foreign channels increasing in audience share and eating into the domestic advertising market. However it also shows that this process began long before the country's laws were aligned with EU rules indicating that it cannot be convincingly linked to Europeanization.

The provisions of AVMSD provide a mechanism through which Member States can appeal against the direct and obvious targeting of their jurisdiction by stations located outside of it (Council of European Communities, 2010, art. 4); however, at the time of my fieldwork no action was planned to make use of this mechanism.<sup>28</sup> EU rules that shape the European opportunity structure ostensibly empower domestic actors to redistribute resources within the market by establishing a mechanism for appealing against and removing this form of disloyal competition, but domestic actors lacked the capacity to make use of this for reasons discussed more in the next chapter. In Macedonia, the spread of foreign channels through multi-channel services also pre-dates the country's 2005 alignment with EU policy on television and telecommunications. Also countering any potential claim that EU rules had the influence suggested in the arguments above was the evidence presented here from the Macedonian case that changes in the opportunity structure stemming from further liberalization in the telecommunications sector were heavily influenced by US bilateral efforts, and that in recent years the position of foreign channels in the market has actually decreased.

In this section I have given brief histories of the audiovisual media sectors in Slovenia and Macedonia and provided a picture of the media environments in which Europeanization processes might be taking place in these two cases. I have just argued that there is little evidence of Europeanization playing a role in the

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<sup>28</sup> Both Vojko Stopar, Head of the Media Directorate at the Ministry of Culture and Tomaz Gorjanc, Head of Monitoring at APEK talked about the problem of foreign channels targeting the Slovenian market and carrying Slovenian advertisements, however when asked if any action was being taken, both were aware of the AVMSD provisions, but confirmed that the government had no plans to make use of it.



development of these environments. The next section focuses in detail on the formal rules establishing the regulatory frameworks for audiovisual media in Slovenia and Macedonia at the time of my field research. It looks at the responsibilities and powers assigned by law to the various public bodies charged with regulating the market players operating in the environments described above. This examination outlines the formal rules defining the regulatory bodies and their functions and discusses how these constrained their ability to intervene in the market and the expectations that regulators and market players could have of the outcomes of their actions.

### **5.3 Rules Designating the Powers and Resources of NRAs**

This section explains how responsibilities and powers are distributed among the state bodies dealing with the audiovisual media sectors according to the laws in each state. This section will identify the various regulatory bodies and explain how they were organised at the time, when I spoke to those involved in April and May 2011. The examination of these formal rules at this time is important for two reasons. Firstly, it is crucial to understanding the consequences and outcomes actors such as media companies or NRAs could expect from their actions within each opportunity structure. Secondly, these formal rules partly define the context for individuals working within these state bodies, within which they determine the appropriateness of their behaviour and decisions. The information presented here is based primarily on the laws that were in force at the time. In Slovenia that was the 2001 Telecommunications Act and the Mass Media Act of 2001, as amended in 2006. In Macedonia it was the Law on Broadcasting Activity and Law on Electronic Communications, both from 2005. References to the specific articles are noted throughout the section.

Both Slovenia and Macedonia had regulatory arrangements involving several institutions. It was pointed out above that these arrangements and the divisions of power have changed often in the last 20 years. In my examination of the laws in both cases, I found that the independence of the regulatory bodies could be questioned based on the formal rules.

### ***5.3.1 The rules and actors of Slovenian media governance***

The situation I describe in Slovenia dates back to the 2001 Mass Media Act with minor changes brought by the 2006 amendments. Additional changes were made with the Law on AVMS in October 2011, however they fall outside of the scope of this section because they took place after the interviews and will be only touched upon at the end of the chapter. The 2001 Act merged the regulation of postal services, telecommunications and broadcasting into one body, the Agency for Post and Electronic Communications (APEK), but not completely. There was still an independent Broadcasting Council with authority in some matters attached to APEK, and the power to impose penalties rested with an Inspectorate under the Ministry of Culture. Other institutions also played various roles in relation to the regulation of broadcasters.

#### ***APEK and the Slovenian Broadcasting Council***

APEK is the largest of all the bodies regulating Slovenian audiovisual media, led by a General Director (GD) appointed by the government after a public call for applications. At the time I was in Ljubljana for my fieldwork, an Acting General Director had been in place for nearly one year. The process of selecting a permanent GD was being run by the Minister for Higher Education, Science and Technology who had just re-advertised the post. The 2001 Mass Media Act made the Broadcasting Council statutorily independent from APEK, however it received its budget from APEK and relied on APEK for “technical, expert, financial and administrative support” (Republic of Slovenia, 2001, art. 103). The seven members of the council were appointed directly by the National Assembly based on a public invitation for a term of five years (*ibid.*, art. 100). Although the government and the Assembly have direct control over the appointment of the GD and the Broadcasting Council, the five-year term means that there can be overlap in terms of political influence. This did not stop APEK from being ranked lower on independence by the INDIREG study for its lack of an independently selected board (Hans Bredow Institute for Media Research et al., 2011, p. 291).

The Broadcasting Council was not set up as a board of APEK. The law limited its role largely to giving *opinions*, which are non-binding to the institutions that receive them. The Broadcasting Council gives opinions or makes proposals either to APEK or the Ministry of Culture on:

1. “the issue, transfer and revocation” of licenses for broadcasting;
2. the selection of broadcasters to get frequencies;
3. the limitation of concentration in change of ownership questions;
4. criteria for the types of broadcasters and in-house production;
5. the list of events of public importance. (Republic of Slovenia, 2001, art. 100)

The 2001 law gave the Broadcast Council the power to approve or give *agreement*, in the tendering of frequencies for the purposes of broadcasting (ibid., art. 104a) and for the “regulations laying down the procedures” for issuing and changing licenses (ibid., art. 100).

Since the 2001 law, APEK makes the decisions that can be challenged in court. Although it is also responsible for postal services and, since April 2011, railroads, at the time of writing most of APEK’s resources were devoted to the supervision of telecommunications and broadcasting. In addition to a department charged with monitoring the use of spectrum, it also had inspectors with the power to fine anyone using the spectrum in a manner contrary to law. It managed the registration of network operators such as cable companies, which is an administrative procedure. The licensing of broadcasters was done irrespective of frequency, whereas licensing for terrestrial broadcast followed a different procedure requiring a tender. According to the law, interested parties submit an application and APEK “shall” issue the license if they fulfil the criteria (Republic of Slovenia, 2001, art. 105). This could imply a absence of discretionary power to say no other than for incomplete applications. APEK was responsible for monitoring the programme of broadcasters in terms of compliance with standards, advertising limits, content quotas and license format. In the 2001 Mass Media Act, it had the following sanctions at its disposal to use when violations were noted:

1. issue a written warning with an order to correct the problem within a stipulated period of time between one and six months
2. suspend a license for a maximum of three months
3. revoke a license (ibid., art. 109)

Many of the violations are connected to monetary fines in the penalty clauses of the Mass Media Act. However, unlike for telecommunications or postal services, APEK did not have inspectors with the authority to fine broadcasters for violation of the Mass Media Act.

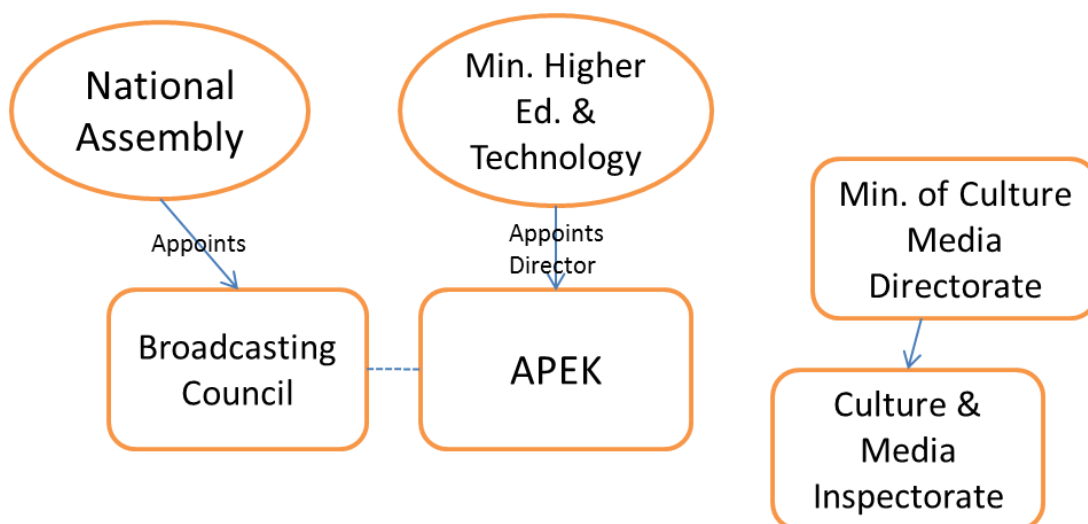
### ***Ministry of Culture, Media and Culture Inspectorate, and others***

The power to penalise audiovisual media according to the monetary fines in the penalty clauses of the Mass Media Act was granted by law to the Culture and Media Inspectorate.

“Administrative and inspection supervision of the implementation of the present Act shall be conducted by the ministry responsible for culture. . . Expert supervision of the implementation of the provisions of the present Act shall be conducted by the Agency.” (Republic of Slovenia, 2001, art. 108, 109)

In 2011 the Inspectorate was organisationally within the Ministry of Culture and under its budget, but operated independently and from a different location. The Inspectorate had a Chief Inspector and one Inspector for Media among others. Based on evidence, the Inspector could issue a fine directly and immediately to a media company. These fines could be appealed in court, and in such cases APEK could be called upon to provide evidence as the expert body.

**Figure 5. 3 Diagram of the regulatory bodies in Slovenia April 2011**



*Source: The author, based on the Slovenian Mass Media Act of 2001*

The Ministry of Culture also had a Media Registry and a Media Directorate, which at the time of my visit consisted of a Director and three others. All media had to register in the Mass Media Registry in order to operate in Slovenia. They had to provide evidence of entry in the court register and information such as contact details, ownership, coverage area and editor's name (Republic of Slovenia, 2001, art. 12). While an applicant could be required to re-submit if there is information missing, a medium cannot be refused registry if it fulfils the conditions (ibid., art. 13) making it purely an administrative procedure. The Directorate, which was an integral part of the Ministry, was responsible for decisions on the distribution of funds from the state budget for the support of public interest production. In the 2001 Act it was also given the power to approve, or not, changes in ownership and although it had to get coverage data from APEK and an opinion from the Broadcast Council, neither obliged it in any way in regards to the decision (ibid., art. 58). Those adopting the law therefore gave the ministry power over the distribution of resources for production and to intervene in relation to the concentration of material or power resources in the market.

**Table 5.10 Table of responsibilities and powers of Slovenian regulatory bodies April 2011**

	<b>APEK</b>	<b>Broadcasting Council</b>	<b>Media Inspector</b>	<b>Min. of Culture</b>	<b>Courts</b>
<b>Broadcasters</b>	<ul style="list-style-type: none"> <li>Monitors programme</li> <li>Can issue warnings, temporarily/permanently revoke license</li> <li>Grants license</li> <li>Manages tender for terrestrial broadcast</li> <li>Provide coverage or programme content info for decisions on ownership or special status</li> <li>Proposes a strategy</li> </ul>	<ul style="list-style-type: none"> <li>Gives approval for tenders for terrestrial broadcast</li> <li>Gives opinion on selection in tenders</li> <li>Gives opinion in ownership or special status case</li> <li>Approves a strategy</li> </ul>	Decides on and issues fines in cases of violations of Mass Media Act	<ul style="list-style-type: none"> <li>Drafts laws</li> <li>Manages Media Registry</li> <li>Give agreement in ownership cases</li> <li>Grants special status</li> <li>Manages funds for programmes of public interest</li> </ul>	Handles appeals on APEK decisions or penalties issued by Inspector
<b>MSPs (cable, IPTV, DTT)</b>	<ul style="list-style-type: none"> <li>Registers cable &amp; IPTV operators</li> <li>Tenders and grants frequencies for terrestrial broadcast</li> <li>Monitors Frequency use &amp; issues related fines</li> <li>Establishes technical standards</li> </ul>	<ul style="list-style-type: none"> <li>Approves issuing of tenders for frequency use for broadcast</li> <li>Gives opinion on selection in tender process</li> </ul>	None	None	Handles appeals on decisions or penalties issued by APEK

Source: The author, based on the Slovenian Mass Media Act of 2001

In relation to potential media concentration in the audiovisual sector, the Competition Protection Office (UVK) within the Ministry of Economy had the power to act on complaints as it does in any other business sector. An examination of their case record showed that though most cases related to media have involved print media, the UVK did rule in favour of ProPlus in 2007 in a case challenging its position in the advertising market (*Produkcija Plus v Televideo*, 2007). As with any business, financial inspectors, labour inspectors and others also had authority over any audiovisual media company. Although there was an Intellectual Property Office, it had no enforcement powers, and issues of copyright infringement in the audiovisual media sector were dealt with by the courts either as civil cases pressed by rights holders or as criminal cases handled by the police and Public Prosecutors Office (Slovenian Intellectual Property Office, 2006-2011).

### ***5.3.2 Rules and actors of Macedonian audiovisual media governance***

The Law on Broadcasting Activity and the Law on Electronic Communications of 2005 established the statutory arrangements governing the audiovisual media sector in Macedonia current at the time of my fieldwork. As pointed out above, many amendments to the rules have been made since. Most of the changes related to the financing of MRT, and none have changed the responsibilities or powers of the regulatory bodies. However, the most recent amendment passed in July 2011, changed the rules on the appointment of BC Council Members. This change allowed six new Council Members to be appointed under the government at the time. As with Slovenia, a review of the legislation raises questions about the independence of the regulatory bodies.

#### ***Broadcasting Council and the Agency for Electronic Communications***

At the time of this research, the main aspects of broadcasting regulation were divided between the BC and the Agency for Electronic Communications (AEK) with most of the responsibility for broadcasting placed on the BC. According to the 2005 Law, the BC had 9 Council Members all appointed by Parliament upon nomination by the Academy of Arts and Sciences, the Inter-University Committee, the Journalists Association, and the Parliamentary Nominations Commission (Republic of Macedonia, 2005b, art. 26). Though the first selection had staggered mandates, all members were appointed for 6 years (ibid. art. 28). The Council Members of the BC were fully employed in the BC and were served by a professional staff led by a manager (ibid. art. 30 & 34). The 2011 amendment increased the number of members to fifteen, adding the President, the Commission for the Protection of Competition, the State Commission against Corruption, and the Association of the Units of Local Self-Government to the list of nominators (Republic of Macedonia, 2011). This meant the inclusion of three state bodies and the association for municipal mayors in the list of nominators, and therefore put more power over nomination into the hands of the ruling majority.

This was already an issue with AEK, which had two levels of management: a Commission appointed by Parliament for five-year terms, and a Director appointed

by the Commission (Republic of Macedonia, 2005a, art. 12-16). Decision making power rested with the Director, and the Commission served as the second instance in cases of appeal. With regard to audiovisual media, AEK was only responsible for frequency management, setting technical standards for transmission equipment and the registration of network operators providing multi-channel services (ibid. art. 28, 56, 59 & 76). Though AEK constructs the frequency plan and identifies free frequencies for radio and television broadcasting, it was the BC that tenders their use. AEK monitored the use of frequencies and has inspectors that have the power to seize equipment and issue fines in cases of violations.

The BC was the body that grants licenses to broadcasters and can do so only on the basis of a tender, regardless of whether frequency use is in question (Republic of Macedonia, 2005b, art. 43). It was responsible for monitoring the programme of broadcasters in terms of compliance with standards, advertising limits, content quotas, and license format. In the case of violations it could take the following measures:

1. written warning;
2. written warning with the requirement that it be put on air;
3. temporary ban on advertising and teleshopping from one to seven days;
4. temporary ban on broadcasting of not more than three months. (ibid. art. 38)

The law to some extent specified which measures were to be used for which types of violations. The BC could also choose to revoke a broadcaster's license (ibid. art. 64). The BC had some authority over multi-channel service providers. These services had to register their programme packages with the BC, with confirmation from the Ministry of Culture that they had the rights to the channels included in their packages (ibid. art. 109). They could be fined for failing to register or changing their offer without registering the change, but not by the BC.



**Table 5.11 Table of responsibilities and powers of Macedonian regulatory bodies**

	Broadcasting Council	AEK	Courts
<b>Broadcasters</b>	<ul style="list-style-type: none"> <li>• Manages tenders for and issues all licenses</li> <li>• Monitors programme</li> <li>• Can issue warnings &amp; penalties such as ad ban up to 7 days or broadcast ban up to 3 mos.</li> <li>• Produces strategy</li> </ul>	<ul style="list-style-type: none"> <li>• Identifies frequencies for terrestrial broadcast</li> <li>• Establishes technical standards for transmission</li> </ul>	<ul style="list-style-type: none"> <li>• Handle appeals on BC decisions or penalty measures</li> <li>• Decide upon and issues fines upon prosecution by the BC</li> </ul>
<b>MSPs (cable, IPTV, DTT)</b>	<ul style="list-style-type: none"> <li>• Registers channel packages on MSPs</li> <li>• Monitors compliance with registered packages</li> </ul>	<ul style="list-style-type: none"> <li>• Tenders &amp; issue license for DTT</li> <li>• Monitors Frequency use &amp; issues related fines</li> <li>• Registers cable &amp; IPTV operators</li> <li>• Establishes technical standards</li> </ul>	<ul style="list-style-type: none"> <li>• Handle appeals on fines issued by police related to MSP content</li> </ul>

Source: The author, based on the Law on Broadcasting Activity and the Law on Electronic Communications both of 2005

### ***Other institutions and their roles***

For many types of violations there were fines foreseen in the penalty clauses of the Law on Broadcasting Activity. Like APEK in Slovenia, the BC did not have inspectors that could act on that law and issue such monetary penalties, yet unlike in Slovenia, which had a separate Inspectorate, no other body did either. The BC had to charge the broadcaster with a misdemeanour in the misdemeanour court.<sup>29</sup> This meant that the courts play a significant role in the enforcement of the Law on Broadcasting, whereas for the enforcement of the Law on Electronic Communications, AEK had the power in both first and second instance.

In 2011, copyright protection was still a problem in Macedonia (see European Commission, 2011a), especially among smaller broadcasters and multi-channel service providers. The State Market Inspectorate had inspectors responsible for *authors' and related rights* and the Ministry of Interior had recently formed a special

<sup>29</sup> Based on changes in 2006 to the Law on Misdemeanours, first instance powers of decision and in most cases second instance have been passed to the relevant agencies responsible for the sector. Changes to the Law on Electronic Communications were made in 2007 to account for and reflect this.

section on copyright. As in Slovenia, the Commission for Protecting Competition (KZK) in Macedonia also had some authority over broadcasters. Its list of decisions shows that it has ruled in one case of change of television ownership in favour of the broadcaster (*Decision: On the concentration between Pink International Company, Belgrade and K15 Television, Skopje*, 2010) and against several radio stations for the combined selling of advertising (*KZK v. Radio Ros-Metropolis, City Radio, Club FM*, 2009), as well as in some cases related to cable operators. All audiovisual media companies were also subject to inspection by financial inspectors, labour inspectors and others. The role of these other inspectors was crucial in the recent closure of A1 television described above.

### ***5.3.3 Limited powers and political influence***

This section has outlined the formal rules for the state bodies that participated in the governance of the audiovisual sectors in each case at the time of the field research for this investigation. In Macedonia, technical issues related to the infrastructure of transmission were the domain of AEK, and all issues of content and substance were the responsibility of the BC, whereas in Slovenia those two functions were combined within APEK. However, neither APEK nor the BC had inspection powers over broadcasters despite the fact that APEK had them for technical and infrastructure issues as did the AEK in Macedonia. In Macedonia, the BC had more options in terms of the measures that it could take against broadcasters, but had to turn to the courts for enforcement of serious or persistent violations and the use of misdemeanour law. In Slovenia the inspection powers to issue fines under the misdemeanour law for broadcasting were clearly housed in the Culture and Media Inspectorate.

APEK was not completely independent in Slovenia because of the rules for its Director's appointment, and the Culture and Media Inspectorate was part of a government Ministry. In Macedonia the rules provide significant room for political influence over appointments in both AEK and the BC, especially since the 2011 amendments to the Law on Broadcasting. This examination indicates that the rules in each case enabled political influence over the bodies charged with regulating the market either by containing them directly within Ministries giving government the

power to appoint Directors as in the case of Slovenia, or ensuring appointments reflect parliamentary make-up (see also Jakubowicz, 2007a). The evidence also shows that the rules distributing power and resources to the NRAs could constrain their ability to intervene in the market and the outcomes they could expect from their actions. In neither case was the NRA most equipped to identify violations by or problems with market players given the power to make use of the penalties provided for by law, though Macedonia's BC had more options than APEK in Slovenia.

In the theoretical and conceptual framework of this thesis, laws are considered intentional interventions of governance (Kooiman, 2003) through which strategic actors, namely lawmakers, shape opportunity structures. They constrain the expectations that strategic actors can expect from their actions and my examination of the laws in Slovenia and Macedonia establishing the powers, make-up and responsibilities of the regulatory bodies indicate two apparent constraints. Firstly, in each case, though more so in Macedonia, market players could expect politics to play a role in regulatory decisions. Secondly, in both cases they could expect minimal consequences for actions that are in violation of the law, and this was more evident in the Slovenian case than the Macedonian one as the Macedonian BC did have more resources and measures at its disposal than the Slovenian NRAs. The issue of enforcement practice is taken up further in the next chapter.

## **5.4 Conclusion**

This chapter set out the history of the audiovisual media sectors in Slovenia and Macedonia and presented the formal rules that define the state level actors in governance and constrain their interactions with the market. In doing so, it also began to answer some of the research questions posed in the previous chapter. In the first section, I identified the rules shaping the opportunity structures in each country's audiovisual media sector in the past two decades (Sub-RQ1) and some of the consequences they have had for the distribution of material resources and power among the actors (Sub-RQ4). In the second section, I outlined the formal rules that determined the organisation and responsibilities of state bodies charged with regulating the audiovisual markets at the time of my field research (Sub-RQ1). There were differences between the two cases in the rules and the ways the sectors have

developed, but there was little evidence that Europeanization played a role in defining either.

In the histories presented here, one can see that the liberalization of broadcasting and telecommunications markets were the defining processes of this period. As the liberalization of both markets is part of EU policy, a top down approach might make a link between EU rules and the liberalization that took place in these two cases. However looking instead at the development of the audiovisual sectors in these two markets as part of a bottom-up approach, one does not see Europeanization playing an evident role. In both Slovenia and Macedonia, liberalization of the broadcasting market began organically before there were formal rules in place and frequencies – a key resource in broadcasting – were distributed widely with little control. In Slovenia those in power in the early years established rules that distributed frequency resources among many small local players, granting a national license only to one station aligned with the church. It can be seen as within the spirit of the self-publishing tradition recently liberated from a centralised system to grant lasting licenses to local media. However, in Slovenia the governing elite remained much the same in the early years and it can also be seen to have been within their strategic interest to preserve the position of the favourable PSB and other existing media. Nevertheless, media markets especially tend toward concentration because of low replication costs (see also Doyle, 2002, 2013; Freedman, 2008), and later in Slovenia the licencing rules encouraged concentration formation because commercial actors, some backed by foreign capital, made use of the easy transferability of frequencies.

In Macedonia, the rules adopted by the political parties in power kept frequency distribution in the hands of the government until 2005 and even after this power was transferred to the NRA, its decision makers initially maintained the distribution of resources by simply issuing licenses to concession holders. In Slovenia, audience and advertising shares are concentrated into the hands of ProPlus, the CME-owned commercial broadcast company and RTVSLO, the PSB. In Macedonia, the audience and advertising shares are mainly split among a handful of national terrestrial stations. MRT, the PSB, has been marginalised after being bankrupt by crucial changes made in the law related to its financing that radically altered the domestic opportunity structure. In both countries, local and regional stations are severely

disadvantaged in the distribution of material resources in the market. Also in both countries cable and other multi-channel subscription services have spread consistently since independence reaching high rates of penetration. This has brought in heavy competition from foreign channels into both markets. Telecommunications liberalization is part of the *acquis*, but I did not find evidence of EU influence in the expansion of foreign channels as this trend began well before alignment with EU rules.

After examining the formal rules constituting the NRAs in each country and allocating their powers and responsibilities, I conclude two things. In both cases, but more so in Slovenia, the evidence shows that the formal rules limited the powers of the NRAs. The power and even the human resources for regulating the actors in the market were distributed such that in neither Macedonia nor Slovenia did the main regulatory body monitoring broadcasters' behaviour have the power to use the penalties foreseen for violations of the laws. In the Slovenian system, the authority to monitor frequency use and programme content was housed in APEK, however APEK lacked the *inspection* power to make use of misdemeanour law and therefore, most penalties related to programme content. This was given to an Inspectorate attached to the Ministry of Culture in which one person was responsible for media.<sup>30</sup> In Macedonia technical standards and frequency use were supervised by AEK, which had direct powers of enforcement. The authority to monitor programme content was given to the BC. While it had some measures it could use against broadcasters, the *inspection* power to use monetary penalties was not granted to any agency or state body, but could only be used through the courts.

NRAs are key actors in audiovisual media governance. Constrained by the opportunity structures in their sectors they interact with market players, other state bodies, civil society and other actors. The evidence presented in this chapter indicates that the opportunity structures in the Slovenian and Macedonian cases had been shaped through laws such that political influence over the NRAs was

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<sup>30</sup> This was changed in October 2011 with article 39 of the Law on AVMS, which said that APEK must carry out the "administrative supervision and inspection" for that Act. This means that APEK does now have the power to issue fines under misdemeanour law in relation to the provisions in that law, but not the entire Mass Media Act. At the time of writing, APEK was still implementing these changes, as its staff members are required to have certain qualifications in order to act upon misdemeanour cases.

maintained and the NRAs had limited power to interact with market actors. These findings provide concrete examples of the mechanisms of control by political elites lamented by Jakubowicz, Splichal and other media scholars (Bašić-Hrvatini et al., 2004; Jakubowicz, 2007b, 2008; Jakubowicz & Sükösd, 2008a; Splichal, 1999, 2001). As will be discussed further in the next chapter, these constraints on the NRAs also have implications for the implementation of rules and norms in the sector that go beyond the socially constructed structures in national administrations identified by some Europeanization scholars (e.g. culture of compliance in Falkner et al., 2007).

At the same time, the markets evolved such that the vast majority of material resources within the market were held by a few main players; in Slovenia ProPlus and RTVSLO and in Macedonia the national commercial stations. One can see in the development of these markets how the position achieved by ProPlus in the Slovenian market and the rules privileging RTVSLO with control over transmission networks might have contributed to the situation described above that resulted in the market exit of two major European companies, Norkring and MTG. At the same time the rules establishing the powers and resources of the NRAs in Slovenia would have consequences for the outcomes that strategic actors such as Norkring and MTG could expect (see P. Hall & Taylor, 1996, p. 945). Are these opportunity structures resistant to Europeanization? In the evidence presented in this chapter I did not find evidence that European policy contributed to the rules and distribution of power and resources defining the opportunity structures in these two cases. However as I discussed in the introduction to this thesis, within the common market for audiovisual media services, the same rules and standards should apply to all market players. In the next chapter, I look specifically at the application of common rules and standards within the Slovenian and Macedonian audiovisual media sectors, first in terms of their reflection in formal rules through laws and then in terms of their implementation by those charged with enforcing them.

# Chapter 6: The Fate of Common Rules and Standards

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## 6.1 Introduction

As I explained at the outset of this thesis, one of the core tenets of EU media policy is that there should be common rules and standards for all audiovisual media service providers across the market, such as the common minimum programme standards contained in the AVMSD. Slovenia is an EU Member State with an otherwise excellent record of compliance with the transposition of EU Directives (Knill & Tosun, 2009; Sedelmeier, 2008, 2012), yet was the last Member State to transcribe AVMSD and did so only under threat of infringement proceedings. Compliance with transposition tends to be higher among Candidate Countries (Grabbe, 2006; Schimmelfennig & Sedelmeier, 2004; Toshkov, 2008); however, Macedonia was still being urged to implement AVMSD in recent EU Progress Reports (see European Commission, 2011a, 2011b), and, at the time of writing, had yet to do so. Top down approaches to Europeanization research start with a Directive such as AVMSD and look for variables explaining these delays. Those of the rational actor camp would look for influential domestic actors whose policy preferences were in opposition to the Directive (e.g. Haverland, 2000; D. Peters, 2001) or in the context of the accession process might turn towards an analysis of the credibility of conditionality mechanisms and the cost/benefit calculations of domestic actors in relation to the policy to be transposed (e.g. Schimmelfennig & Sedelmeier, 2004). Those in the sociological camp would seek explanation in how transposition of the Directive fits with the norms, values or compliance culture of the administrations responsible for moving transposition along (e.g. Checkel, 2001; Falkner et al., 2007). I had expected to find opposition to the EU's policies or even the EU in general.

Contrarily, in the first part of this chapter I show that the substance of EU Directives in this sector is not central to the stories of transposition delays in these two cases. Instead, I find that transposition is delayed when it does not line up with the strategic use of media law by political parties. The act of changing a law or rule is one of the ways actors or agents shape opportunity structures, determining the distribution of

power and material resources (Knill & Lehmkuhl, 2003). Within this bottom-up study of media governance, the transposition of Directives is examined among the other intentional interventions of government (Kooiman, 2003, pp. 13-14) that change the rules for other strategic actors. Even in the instance in which the EU's threat of infringement proceedings against Slovenia seemed an apparent case of the conditionality of EU membership obligations forcing transposition, I make the case that it was also used to legitimate changes in the distribution of power and resources among actors in line with the interests of outgoing political leaders. These tendencies could solely be attributed to the relationships between political parties and media deemed typical of Southern European countries (Hallin & Mancini, 2004, 2008). However, the approach of this investigation directed me also to examine the "material constraints" on governance interactions (Kooiman, 2003, p. 16), where I found the small populations in these two countries generated few human resources for policy making with consequences for the processes of changing media laws.

After transposition, another aspect of the institutionalisation of common rules and standards can be considered their enforcement. As pointed out in Chapter 2, this area beyond transposition has been little explored by Europeanization scholars. In the second part of this chapter, I submit evidence that there is generally weak enforcement of rules and standards in broadcasting in both countries, but that this cannot be only attributed to inefficiency or administrative capacity (Falkner et al., 2005). Building on the elaboration of the distribution of powers and resources described in the previous chapter, I show that one explanation for the lack of enforcement in Slovenia is that the system was designed by political leaders for weak enforcement. However, in Macedonia, the data indicates that established relationships between political parties and the media create an environment in which leniency towards all becomes the most *appropriate* choice for those charged with enforcement. In both cases, I find evidence that a tendency towards leniency can also be linked to the values and self-perceptions of those within the regulatory bodies. These findings indicate that in these two cases, there is resistance to Europeanization in the form of institutional misfit with the implementation of common rules and standards within the audiovisual media sector.



This chapter relies on various sources of data and examines governance interactions at both higher and lower levels of abstraction (Knill & Lenchow, 2001b). The next section remains at the higher level, looking at the changes of laws over time in each case and juxtaposing these with major political changes. This section draws on the laws themselves as evidence of how formal rules were changed, on reports from civil society groups and international institutions, as well as on interviews with some individuals who were involved in legislative processes. Interviewees were asked about their role, if any, in policy making, who makes decisions and how decisions are made. The interview data in this section draws primarily on answers to those questions. This is not a study of compliance, but of changes to formal rules as governance interactions. Therefore, as pointed out in Chapter 4, laws are not examined for compliance with EU rules, but compliance is accepted based on the reports of the EU. One of the limitations of this investigation is that I was not able to interview political party members who actually voted on the changes at various points in time, but in treating political parties as strategic actors in governance, I assume their overall motivations are either to get into government or to stay in government.

After this, the chapter moves into the lower level of abstraction examining the practices, values, priorities and relationships of individuals. This section relies on interview data and draws on the answers respondents gave to questions about the rules applicable to the sector as well as their personal everyday practices and those within their organisation. It also uses the administrative records of the NRAs on enforcement measures taken to triangulate the self-reported behaviour in the interviews from NRAs with the official records of action taken and reports of those on the receiving end. The practices that I describe indicate that there is also resistance to the enforcement of common rules and standards in the market. However, I then present instances from each of the cases in which there was a push from domestic actors to implement EU rules.

Based on this evidence, in conclusion I argue that although I found almost no evidence of opposition to EU rules for the audiovisual media sector, the opportunity structures in each of these countries are resistant to Europeanization as the diffusion and institutionalisation (Radaelli, 2002, p. 108) of formal rules and standards, except

when this aligns with the interests of lawmakers. I further conclude that, in Slovenia, the national rules determining the powers and resources of the NRAs also contributed to resistance at the level of post-transposition enforcement. This resistance I also attribute to institutional misfit in both cases, though more so in Macedonia where the *appropriateness* of decisions or actions were also determined based on the entrenched political relationships of individuals and media. I conclude that Europeanization does play some role in influencing the domestic opportunity structures where it aligns with the strategic interests of domestic actors and these actors make use of the EU to further them.

## **6.2 Media Law and Politics: Shaping domestic opportunity structures**

I reviewed previously a large body of Europeanization literature that focused on variables explaining variations among states in transposition compliance. Many of these relied on the policy preferences of actors or the costs and benefits of transposition in light of EU conditionality. However, by taking a bottom-up approach I found that in each of these two cases, the domestic opportunity structures were resistant to the adoption of common EU rules not because of opposition to them, but because of the importance of media law to political leaders and because of the size of the countries. Before I start to present the evidence indicating the connection between media laws and politics in each case, it is important to introduce the respective political environments. Slovenia has been described as a ‘partitocracy’ in which highly centralised political parties seek to control various aspects of the social system (Kuzmanić, 2002; Tomšič & Prijon, 2010). This description is fully applicable to Macedonia as well.

In Slovenia the division is between “left-liberal” and centre-right”, which roughly reflects also a division between those who were part of the “old” political elite and those who are “new” or were not part of the former Yugoslav system (see Makarovič & Tomšič, 2009; Tomšič & Prijon, 2010). The Social Democratic Party (SD) and the Liberal Democracy of Slovenia (LDS) are the main forces in the left-liberal camp, led currently by former Prime Minister and SD leader Borut Pahor, while the centre-right groups are, among others, the Slovenian Democratic Party (SDS) and Slovenian People’s Party (SLS) with SDS’ Janez Janša as their lead figure (Tomšič & Prijon,

2010). Since independence Slovenia has mostly been governed by left-liberal led coalitions. The centre-right lead by Janša held power only for one term from 2004-2008, and held power again briefly when it emerged to form a government after the 2011 early elections.

Macedonia's political environment is similar, but with the added element of ethnic divisions to go with the old/new or left/right divisions found in Slovenia. The Social Democratic Party (SDSM) is the successor party to the "old" communist political elite, with its leader Branko Crvenkovski leading the left political block. The right is dominated by VMRO-DPMNE, led by current Prime Minister Nikola Gruevski. The multiple political parties of Macedonia's smaller ethnic communities are aligned with one or the other of these two options, most in long term coalitions that run together in elections. The Albanian political parties on the other hand, are independent from the two main Macedonian coalitions and are themselves divided into two main parties, one of which must be wooed into coalition with the winning Macedonian party after each parliamentary election.

As the left and right have battled it out in each of these countries over the last 20 years, there have been few years without a draft media law in progress. I argue the reason for this is the strategic importance of media law for political parties and the material constraints on governance actors for policy-making in these small states. In this section, I first demonstrate that media law is a tool through which political parties manage their relationships with domestic media. I then present evidence that within these small states other governance actors, namely market players, civil society organisations, and the NRAs and civil administration as state bodies have limited material resources and power to engage in policy-making or rules changing within the sector.

### ***6.2.1 Media Law as a Political Tool***

One of the characteristics of "partitocracy" described above is that following each change in government, there is a struggle for control over major institutions. Successive governments attempt to gain control of the NRA and the PSB, and to do so in a way that may last past the next election. This is one of the first ways media

law is used as a tool and creates a diversion from other changes, such as implementation of EU Directives. In Slovenia, I found that PSB was the target rather than the NRA, but this is most likely because as mentioned in the previous chapter, a government minister already appointed APEK's director and the Media Inspector was a civil servant within a Ministry. Similarly, in Macedonia, PSB was the first target, but laws were also changed in order to gain control of the NRA.

### ***Media law to gain control***

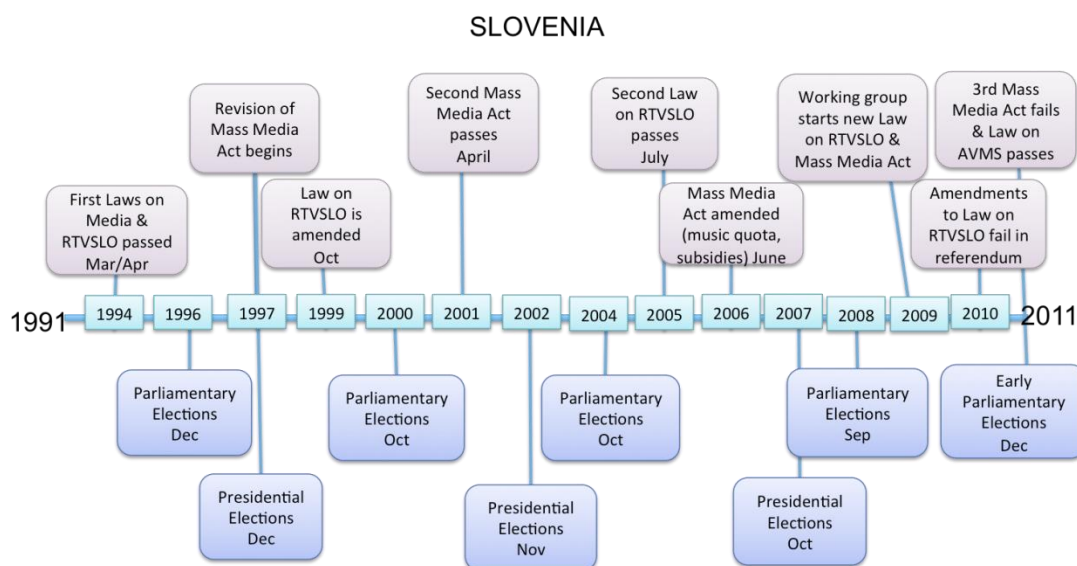
The 2005 Law on RTVSLO was passed just months after the centre-right coalition came to power in Slovenia for the first time since independence. This law restructured the governing bodies and both replaced and extended the powers of the Director. According to a report by the Peace Institute of Ljubljana, this resulted in several centre-right supporters being appointed to these bodies and even drastic changes to editorial and journalistic personnel particularly in the newsroom (Bašić-Hrvatina & Petković, 2007, pp. 147-148 & 154-155). A similar thing was attempted by the next government, a left-liberal coalition, delaying the transposition of AVMSD. Four of those interviewed for this thesis were part of the expert commission recruited by the Ministry of Culture to work on a new Mass Media Act by this new government. All explained that they first found themselves given the task of working on an amendment to essentially undo the changes made with the 2005 Law on RTVSLO. One of these commission members recalled:

“When they started to work seriously on the media legislation they realized that they should first, for purely political reasons, first change the law on RTV Slovenia in order to make it possible to influence the leadership - to put the right persons in the right places and so on. So they first started the procedure of changing the Media Act and then they stopped it after the first phase and instead of presenting a new draft, they presented a new draft of RTV Slovenia act . . . many of us were really surprised when we all of a sudden we have in front of us the RTV Slovenia act and not the media act.” (interview, Anonymous 1, April 2011)

This indicates that in Slovenia, the efforts to gain control over the PSB meant that changes to the Law on RTVSLO took precedence over the Mass Media Act, which included AVMSD-related provisions. In the timeline below, one can see that changes

often closely follow parliamentary elections such as the Mass Media Act in April 2001, the Law on RTVSLO in July 2005, and the working group tasked to revise the law on RTVSLO in spring 2009. The last two in particular followed changes of government between right and left.

**Figure 6. 1 Timeline of media law changes and elections in Slovenia since first laws**

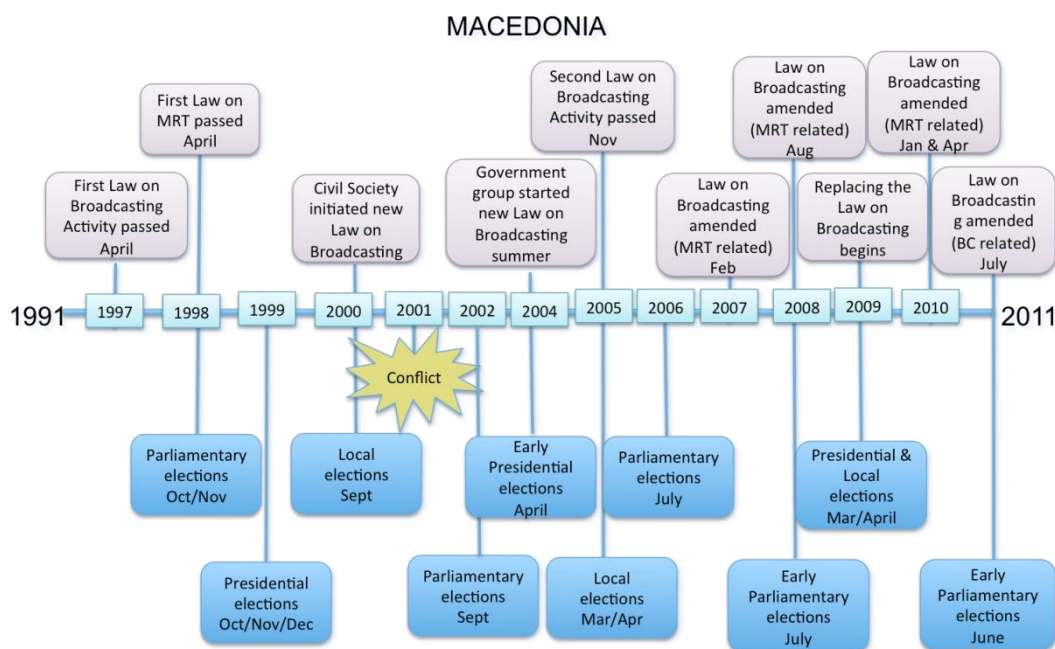


Source: The author

In Macedonia the practice of using media law to gain control of the BC and the PSB is more apparent. The 2005 Law on Broadcasting Activity changed the status and appointment process for members of the BC, resulting in a new set of Council Members being appointed. Roberto Beličanec of the Media Development Centre (MDC), who was involved in the drafting of the 2005 law, recalled that in the appointment processes that followed, two proposed members were directly connected to SDSM, the governing party at that time. Following the 2006 elections during which VMRO-DPMNE gained absolute control of the Parliament, the government amended the Law on Broadcasting Activity, changing the management structure of Macedonian Radio Television (MRT) and reducing the license fee (Republic of Macedonia, 2007), thereby deepening the PSB's financial dependence on the government (see also Broughton Micova, 2012). In the timeline below, one can see that the most recent changes have even occurred within a month of parliamentary elections. In 2008, there were changes to MRT, and immediately

following the 2011 elections, the number of BC Council Members was expanded from nine to fifteen (Republic of Macedonia, 2011).

**Figure 6.2** *Timeline of media law changes and elections in Macedonia since the first law*



Source: The author

### ***Media law as carrot, stick and hot potato***

The other thing that one can notice from these two timelines is that media laws rarely get changed before an election. As I explained in Chapter 3, national laws are part of what defines the domestic opportunity structure, and one of the ways the state interacts with the market and civil society is through the intentional interventions of laws. I offer two complementary explanations for this that, although requiring a mix of metaphors, both point to the political sensitivity of media laws in these two cases. The first reason is that in some ways, it is useful for political parties in power to have media laws underway, but not resolved, providing them with both carrots, such as potential subsidies and sticks such as advertising limits. The issues dealt with by media law provide both an opportunity either to currying favour with or remind private and public media who is in charge. For example, in each of these cases, provisions related to the fate of local broadcasters and the question of how much advertising will be allowed on the PSB were key topics and open for change. At the

same time, media laws can be dangerous to handle prior to an election as in these environments they deal with difficult issues such as language and identity.

In Slovenia, according to all five of those interviewed who had been directly involved in the drafting process, the fate of local broadcasters was one of the main points of conflict and negotiation in the drafting of the new Mass Media Act. Many local and regional broadcasters have special non-profit status and the right to apply for funds from the Ministry of Culture. The drafting process was marked by the struggle over whether this status would be maintained, what level of funding would be available, etc. In Macedonia, battles over subsidies for local broadcasters and the fate of local public broadcasters characterised the last drafting process, and according to Beličanec who participated at the time, so was the amount of advertising allowed on the PSB. It was very difficult to find out to what extent these issues were part of the process to revise the Law on Broadcasting Activity underway during this investigation, as the person leading the process was not allowed to consent to an interview.

In addition to the controlling mechanism of leaving issues relevant to the financial health of media unresolved, I suggest that media laws can also be hot potatoes for incumbent parties in these two cases because language and identity come into play. In early 2011, the Macedonian Ministry of Transport and Communications released a partial draft of a new law, which included the implementation of AVMSD. This was harshly criticised by some media and civil society groups because the draft seemed to backtrack on the language rights of minority groups (Foundation Open Society Macedonia & Macedonian Centre for European Education, 2011; R., 2011). The Minister was a Macedonian from VMRO-DMNE and the incident created tension with the party's main coalition partner, the Albanian DUI, as well as an outcry from opposition parties of various ethnic groups. In May 2011 during the immediate lead up to parliamentary elections, strict orders had been given by the Minister not to even discuss the law until after the elections.<sup>31</sup> During the 2005 drafting process, it had been the issue of Albanian language representation on MRT and quotas for

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<sup>31</sup> I had intended to interview someone within the Ministry and was told that an interview would not be possible until after the elections as the person had strict instructions not to discuss broadcasting with anyone.

domestic language production, particularly for music, that sparked protest in the press and in the parliament.

The quota issue is also quite familiar to the Slovenians. When the AVMSD was adopted in Brussels, Slovenia was just under a year away from general elections. According to one person involved in the process at the time, the then centre-right government was not interested in tackling such a sensitive issue as the media law before the elections. It seems they were not naïve in leaving it for the next government. Vojko Stopar, the Director of the Media Directorate in the Ministry of Culture who was tasked with leading the process, recalled what happened when suggestions were made to reduce quotas:

“There were organised protests with hundreds of musicians that said that these quotas must be higher because our government must protect domestic music production. We must fight against firms from Austria and Germany who are implementing music in our programmes. And on the other hand we have media, especially radio owners, who said domestic music is of poor quality, we will lose our audience if the quotas go up.” (Interview, April 2011)

Debates about national level content quotas often involve nationalist sentiments, identity, and arguments about protection of or loyalty to domestic production and artists (Bekkali, 2006; Broughton Micova, 2013; Iosifidis, Steemers, & Wheeler, 2005). One can surmise that Slovenian and Macedonian politicians are not interested in getting stuck between domestic media and popular artists on national identity issues in the lead-up to an election. Quotas for the broadcast of domestic music appear to get the most attention during such debates, including those in 2011 on the unsuccessful draft Mass Media Act (Smokvina, 2011).

### *A Slovenian exception*

The story of Slovenia’s failed Mass Media Act and the early elections in 2011 initially looks like an exception in that a law was proposed right before an election, and therefore merits closer examination. I find convincing evidence that this exception does not negate the argument that media law is used as a political tool. As this happened after I had been in Slovenia to conduct the interviews, I rely here on



accounts provided in reports for the European Audiovisual Observatory and news of the time. The SDS-led government sent a draft new Mass Media Act, which incorporated the transposition of AVMSD, to the National Assembly in July 2011. This should have been the middle of its term, but it was already a minority government, having suffered a split in the coalition earlier in the spring. The law was rejected. The government quickly produced a new draft law for the purposes of implementing the AVMSD (Smokvina, 2011). A vote of no confidence in September led to the President calling for early elections (Voice of America, 2011), so a lame duck parliament adopted the Law on Audiovisual Media Services in October 2011.

Though only ostensibly aimed at avoiding infringement procedures over AVMSD, the new law also gave more power to the regulator and reduced the advertising allowance on RTVSLO (Republic of Slovenia, 2011, pp. art. 28,29 & 32; Smokvina, 2012). Neither changes to the powers of the regulator or a reduction in the advertising allowance for the PSB were part of AVMSD transposition. However this law, which had to be passed lest the country face penalties, provided a last opportunity for an outgoing political elite to use the media law tool. In the process leading up to the Law on AVMS there had been flip flops on the issue of advertising on RTVSLO. In April 2011, the person interviewed from RTVSLO was incensed that the draft Mass Media Act reduced RTVSLO's ad time and did not extend to it the AVMSD's relaxation on product placement. The initial draft of the Law for AVMS did not initially include further limitations for RTVSLO (see Smokvina, 2011). Nevertheless, the final law did reduce the advertising time allowed to RTVSLO and it also transferred inspection powers and the ability to issue penalties from the Media Inspector to APEK (Republic of Slovenia, 2011, p. art. 39; Smokvina, 2012). I suggest that it is not surprising that two months before snap elections, the strategic interests of the largest commercial broadcaster were given priority.

Why did the Slovenian government break the pattern and push through a media law right before parliamentary elections? The obvious answer is that the country was about to face charges in the ECJ for infringement of the AVMSD, which points towards EU conditionality. The threat of penalties cannot be ignored, but the transposition was done by a minority left-liberal government that knew it was going

to lose, and could theoretically have left an ECJ case for a successor to handle. I suggest that after failing to pass a new Mass Media Act and facing early elections, the SDS government used conditionality as an excuse to transfer additional power to APEK whose director it had just appointed to a fixed term and diminish the position of RTVSLO, which by tradition would fall under the influence of their successors. I find evidence for this in the way that the Law on AVMS goes well beyond implementing AVMS within the particular political context. It seems the outgoing SDS government made use of the credible threat of EU infringement procedures to pass a law that would leave the opportunity structure in a more favourable condition for its time in opposition.

I have argued here that in Slovenia and Macedonia, political parties use media law to gain control of NRAs and PSBs, to preserve their influence over local media, or otherwise affect the domestic opportunity structure in their favour and maintain their relationships with domestic media. I explained that, in these two cases, media laws can also be politically dangerous because of the chances of touching on issues of national identity, so parties in government will avoid them in vulnerable pre-election periods. I suggested that the apparent act of desperation by the previous Slovenian government is an exception to the pattern of media law making, but does not disprove the claim that the pace of transposition of EU rules in the media sector has little or nothing to do with EU policy and much to do with the strategic use of media law by political elites. But why is it that issues such as the organisation of the NRA or PSB governing bodies, or even how much advertising can be on the PSB, can be so easily reduced to political deals?

### ***6.2.2 Too Small for Law and Rule-making***

Policy makers and other stakeholders are faced with multiple dilemmas and negotiations in the course of rule-making. This requires the work of individuals. At this point, I do not go into the structure-centred explanations for the behaviour of these individuals in the context of institutional fit. Here, I treat these individuals as a resource for state actors, as one of the material conditions that constrain the interactions among the state, the market and civil society (Kooiman, 2003). As mentioned in Chapter 3, when coding the answers in interview transcripts to

questions about involvement in policymaking and decision making into the theoretical categories of “relationships” and “practices”, I found so many spontaneous references to the size of these two countries that I created another category called “smallness”. The interview data shows the relationships and practices described by those individuals within the three governance actors and the references to the small size of these countries, many of which overlap with the other two categories. ProPlus’ Cene Grčar summed up many of the statements about size succinctly: “you know Slovenia is not a big country and there are not a lot of people who know a lot of things about certain fields” (Interview, April 2011). According to him and to Brankica Petković of the Peace Institute Ljubljana, there are between 10 and 20 people in Slovenia who can talk about issues of media policy or strategy. In Macedonia no one gave a precise figure, but the number is probably about the same, as I found this limitation myself when determining whom to interview.

### ***The size of state bodies: NRAs and public administration***

In fitting with the conceptualisation of governance used in this thesis, “the state” as an actor, comprises several bodies. Firstly, in each case there was a ministry responsible for the audiovisual media sector. In Slovenia, this was the Ministry of Culture and in Macedonia, the Ministry of Transport and Communications.<sup>32</sup> At the time I conducted the field research for this project in each of these Ministries, there was a department or sector responsible for the sector consisting of one head and two or three assistants. In Slovenia, the Media Directorate also handled all matters related to print press and other media. In Macedonia, the sector for Broadcasting and Telecommunications did not deal with print press, but handled all matters related to telecommunications. Beličanec in Skopje said: “When the whole audiovisual policy and policy for electronic communications falls on one person who has two assistants - end of story” (Interview May 2011). Even if the one person is as Beličanec described, “knowledgeable and relatively high quality”, this is still a limitation.

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<sup>32</sup> In each case the sector responsible has since been moved. In Slovenia the Ministry of Culture was replaced by the Ministry of Science, Education, Culture and Sport in February 2012, but was later moved back. In Macedonia the Sector was moved to the Ministry of Information Society and Public Administration.

According to its Acting Director Miha Krišelj,<sup>33</sup> APEK is an administrative body without the competence to take a position or be very active on policy or strategic matters. He argued that the Broadcasting Council attached to APEK<sup>34</sup> does have this power and should play such a role. President of the Slovenian Broadcasting Council Dejan Jelovac, explained that his Council was very limited in the extent to which it can engage because it lacks its own administrative support. He said, “the main problem is that I haven’t my own, it means people engaged by the council and they are devoted to help the council with expert analysis and so on” (Interview April 2011). APEK did not have a division for research or the capacity for analysis outside of its monitoring and other regular duties. APEK’s Head of Monitoring Tomaz Gorjanc found this a challenge in his work:

“I think Western European countries are quite different. Especially bigger countries, they have bigger offices they are dealing with more analysis more monitoring more regular monitoring. They are ahead of us when we are talking about regulation. They have more detailed regulation, especially on protection of minors. They have more different documents or executive acts. They have more analysis on some fields so they can make some more general decisions from some product that arises in media practices.” (Interview, April 2011)

APEK and Slovenian Broadcasting Council had little capacity for the kind of research and analysis that could lead to long term strategic contributions or the kind of detailed policy that, for instance, Gorjanc found missing in terms of programme standards. One individual from APEK was involved in the working group on the new law convened by the Ministry of Culture, but as an individual expert and not as a representative of APEK.

The BC in Macedonia did have two people working in research, and published regular reports on the broadcasting market as well as a few ad hoc reports. The Programme Department headed by Emilija Janevska also produced detailed instruction documents and acts on programme standards and other content related issues that were then adopted by the Council Members. However, Cvetanka Mitevska, Head of the Legal Department, said that her small team did not have time

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<sup>33</sup> Miha Krišelj has since left APEK for personal reasons and was replaced.

<sup>34</sup> See chapter 5 for structure of Slovenian NRA

to engage with policy issues or changes to legislation as its time was taken up by administrative functions related to HR and procurement as well as court cases in which the BC is involved. Janevska and Chief of Staff Andriana Skerlev-Čakar participate on behalf of the BC in the group that had been convened a few times<sup>35</sup> to work on a law to replace the Law on Broadcasting Activity and implement AVMSD. Skerlev-Čakar stated that the BC had been given the task of working on the programme standards because the Ministry lacked the capacity in that area, but that they had not been given or were involved in other areas of the draft text. The BC had more capacity than APEK for research and analysis of the market and contributing to policy detail on programme standards. Nevertheless, just as in Slovenia, the capacity of the NRA for engaging with larger policy issues and legislative changes boiled down to the expertise of a few individual staff members, who had been working on the broadcasting sector for many years.

### *The size of market players*

In both cases there is evidence of limited capacity within the industry to engage in policy debates or strategic discussions. Janevska reported that getting broadcasters in Macedonia to contribute to the development of detailed policy on programme standards or new rules is difficult, an experience shared by Biljana Ilievska, responsible for the broadcasting spectrum at AEK. The lawyer for one broadcasting company participated in several such meetings and said that a journalist or even technical staff would sometimes come from other stations. When asked what the effect of that was, this person answered:

“Well the Broadcasting Council has been transparent. They called everyone in, got feedback and did their duty. It’s not their fault nor can they do anything about the fact that the broadcasters don’t send appropriate people or have no clue. . . Often they ask my opinion and they’ll back me because they see me as being on the side of the broadcaster, so they’ll agree with me rather than the arguments of the BC.” (Interview, May 2012)

In Macedonia none of those with whom I spoke from broadcasters were aware of AVMSD or involved in the process of changing the Law on Broadcasting in any

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<sup>35</sup> The respondents could not recall if it had been 3 or 4 times.

way. This was surprising as except for the two producers from TV Sitel, all, including those from local stations, had personally been involved in the process leading up to the 2005 law through the Association of Private Electronic Media, which has since collapsed. The Head of the Legal Department of MRT, Todor Malezanski, was aware of the new EU directive, but not involved directly in the working group for the new law. He said that his role also covers HR and all other legal matters for MRT leaving him little time to engage in policy discussions or drafting. This was a sharp contrast to the conversation with Dejan Siljanovski from the IPTV, telephone and internet provider Makedonski Telekomunikacii, which is owned by Deutsche Telekom. He was well informed on the drafting process and claimed to be directly involved. He was also head of an entire team devoted to regulation and law within the company, which shows that the foreign-owned telecommunications company had much more resources to devote to policy engagement than the broadcasters.

In Slovenia, the situation was similar. Krišelj explained that the lack of contribution from the market hinders the regulator's ability to develop more detailed policy or creative policy solutions:

“We are fighting all the time to reach and to have more expert solutions, but the problem is really the lack of expertise in the media market. I mean it's a problem. The big stations they know very well about the media law and the situation but the small broadcasters they really don't know much. It's a common problem of the small market we have.”(Interview April, 2011)

He said that when they try to develop a new by-law or act the only ones to respond are PopTV and RTVLSO. When asked with whom he would consult about how to implement new product placement provisions, for instance, he answered Cene Grčar, the in house council for ProPlus. Grčar, who has been active in lobbying efforts at the European level in the Association of Commercial Television and was well versed on the AVMSD, also spoke of the fact that he and people from APEK consult on strategic matters. He also participated in the working group organised by the Ministry of Culture. Štipe Jerič of RTS Maribor demonstrated awareness of the provisions of AVMSD and said that local television stations were represented by one person in the broader group and consulted on the draft law by a member of their

association. Nevertheless, Milosavljević who participated in the smaller drafting group said that although they can put pressure on decision makers, local stations are weak in terms of expertise. He explained. “They know how to put pressure on those that decide about the money, but they don’t have any sort of legal department or research teams or expert teams or this sort of thing; it’s more intuitive” (Interview, April 2012). The person from RTVSLO’s legal department was unhappy that no one from RTVSLO was involved and that the PSB was only nominally represented by an individual who had long since retired from RTVSLO, but could not say who should have been. Like in Macedonia, the resources of market actors for engaging with policy processes in Slovenia appears concentrated in the knowledge of a few individuals tied to the main commercial broadcaster and there is very little expertise among the rest. In both countries, this has consequences for the ability of market actors to impact the rules shaping the opportunity structures in the audiovisual media sectors.

### *The size of civil society*

Whereas in larger countries there may be many associations, organisations, and advocacy groups that specifically follow media issues or are large enough to get involved in media policy processes in so much as it might relate to their specific interest,<sup>36</sup> this was not the case in Slovenia or Macedonia. In each case there was a journalists’ association descended from the one that existed under Yugoslavia, along with some newer breakaway groups, but at the time of my field research, no one group had emerged as a significant player in policy making or drafting processes.<sup>37</sup> In both cases, resources within civil society are minimal and based on the expertise of a few knowledgeable individuals.

In Slovenia, the main organisation following media issues was the Peace Institute of Ljubljana, which is involved in several international networks and participates in the domestic policy debate. At the time of my research and writing Brankica Petković was Head of Media Policy and the editor of the organisation’s MediaWatch series.

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<sup>36</sup> Note, for example the number and broad array of organisations responding to the UK Communications Review: <http://www.culture.gov.uk/consultations/8636.aspx>

<sup>37</sup> This has since changed in Macedonia, where the Association of Journalists has reformed under new leadership and is now engaged in dialogue with the government over violations of press freedom.

She reported that the organisation works closely with academics such as Milosavljević of the University of Ljubljana and Bašić-Hrvatini of the University of Kopar/Capodistria, who have both authored work published by the Institute. Pektović participated in the working group assembled by the Ministry of Culture as did the two academics. Stopar, who referred to them as the “media experts”, said he was very pleased with their contribution and knowledge. Petković, however acknowledged that legal and economic expertise was lacking in this combination:

“The expert group this time and in general the expert community is dominated by social and political scientists who have no clue what it means to have a media business and what it means to develop a piece of legislation that could be applied by judges or lawyers . . . If we take the part of the legislation on state subsidies or on concentration or those on advertisements - those affecting the media economy - we could always hear from those in the industry that you cannot do it, because there was a guy saying that most of the people sitting around the table had never in their lives had to take care of the salaries and stuff . . . The accusation is rather relevant.”(Interview, April 2011)

Slovenian civil society that is included and engaged in media policymaking processes is therefore limited in the contribution it can make not only by the fact that the numbers are few, but also by the profile of the individuals involved.

In Macedonia, there were two main organisations active on media policy issues in Macedonia: the Media Development Center (MDC) and the Macedonian Institute for the Media (MIM). The Foundation for Open Society Institute in Macedonia has also generated some reports, but primarily acts as a donor supporting minority media, collaborative projects and other activities.<sup>38</sup> According to the MDC’s Beličanec, his organisation had been quite active in the development of the 2005 Law on Broadcasting and then following the BC’s implementation, but since then had been less active. The organisation consists of Beličanec and his colleague Gazmend Ajdini with one or two assistants for varying periods of time. Although they remain involved in international networks, Beličanec’s involvement in an anti-government campaign and the appointment of Gazmend Ajdini to the board of the Agency of Electronic Communications has created some “conflicts of interests” according to Beličanec. MIM had been primarily an education and training institution for

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<sup>38</sup> See <http://soros.org.mk/default.asp?lang=eng&menuid=10>



journalists. Biljana Petkovska, Director of MIM, said the organisation began publicly engaging in discourse about media policy issues both in order to fill the gap left by the withdrawal of MDC, and because one individual who had previously worked for the BC had joined their teaching team giving them the human resources to do so. Since then MIM has conducted research on MRT, making recommendations for future PSB policy that went to Parliament and, according to Petkovska, was preparing to make comments on any draft law that may be circulated.

Within civil society, the industry and the state bodies, the resources for engagement in policy process, for research and analysis aimed at developing policy or contributing to strategy or vision for the sector, are limited to a handful of knowledgeable individuals. There are notable gaps in each of these two groups of “people who know things” that are similar. The respective private sectors were represented almost exclusively by large national players, and the PSBs also lacked the capacity to contribute. The “media experts” from the civil society groups and academia may have been knowledgeable in key areas, but lacked legal or economic expertise. The government departments in both Slovenia and Macedonia were very small, and the NRAs ill equipped to produce the kind of research and analysis that could be useful to policy and strategy formation.

### ***6.2.3 Resistance, but without opposition, to EU rules***

The resistance to transposition of EU rules that I have described above is not a form of “resistance through the back door” (Falkner et al., 2004) because of an objection to the policy by domestic policy makers. Nor is it a matter of “veto points” such as opposition groups objecting to the policy (Haverland, 2000). In Slovenia, Stopar said the directive was not controversial at all. Grčar, the lawyer for the most powerful television company in Slovenia, was eager for the implementation of AVMSD, whereas in Macedonia representatives of television stations interviewed showed no awareness of it, much less policy preferences in opposition to it. Instead, the evidence presented here indicates that the delays in the transposition of EU common rules and standards fell by the wayside because the domestic opportunity structures in each case were resistant to rule changes that did not match the strategic interests of political parties in their use of media law to influence the domestic media.

Based on the evidence above, I conclude that media laws in Slovenia and Macedonia are tools for exercising political party interests, and this limits the role that EU laws related to media can play. This could be explained by the *political parallelism* used by Hallin and Mancini (2004, 2008) to describe the media systems of Southern Europe. However, in these two cases I argue the size of these countries and small numbers of individuals within the various actors also contributed. The size of these countries and their populations are significant material constraints on the actors of governance, namely the resources in terms of knowledgeable individuals. The evidence here indicates that market players are little able to contribute at the level of expertise, except for the main national broadcasters. NRAs and national administrations lack resources, and there are few voices in civil society. Although for the reasons described above the AVMSD was not transposed at the time of my field research, both countries had legislation in line with the TWFD that came before it. The next section looks at governance interactions involved in the enforcement of common rules and standards in the market, among them those derived from the TWFD.

### **6.3 Ineffective Enforcement**

In the previous section, I described resistance to the transposition of common EU rules and standards for the audiovisual media markets. Nevertheless, in both Slovenia and Macedonia the precursor to AVMSD, the Television without Frontiers Directive (TWFD), was transposed in domestic legislation by 2001 in Slovenia and 2005 in Macedonia. This allows for an investigation into what happens after transposition. Looking at implementation of directives related to labour laws, Falkner and Treib (2008) found evidence of weak enforcement due to problems with institutional capacity, including within the judiciary and civil society. In examining enforcement as interactions of media governance in Slovenia and Macedonia, I also found evidence of weak or ineffective enforcement, however, the roots of this appear to be more complex. In Slovenia the way powers and responsibilities are distributed by law to the bodies within the regulatory framework as described in the previous chapter was a significant limitation on the enforcement actions of the NRAs. Looking at the level of individuals within governance actors, I also found that

prevailing attitudes towards the media and the perceptions that individuals within the NRAs had of their roles contributed to weak enforcement. This section presents evidence from the interviews in the coding categories of “practices”, “values”, and “relationships”. Within these codes, the statements related to enforcement and everyday operations of the NRAs were extracted. In addition, statements related to the values and priorities for the audiovisual media sector are compared across the NRAs and between the two cases.

A tendency towards leniency is more clearly evident in the Macedonian case, where the resources of the NRA for identifying violations and the powers granted to it by law were greater than in Slovenia. In Macedonia, the weakness of the regulator was associated by those within the NRA with a perception of its role as educative rather than punitive, but I suggest that considerations of *appropriateness* (March & Olsen, 2004) in the context of entrenched relationships with political parties also played an important role. As I explained in Chapter 3, the way individuals perceive their roles, the established relationship, and the administrative cultures or ways of doing things are part of what determines institutional fit in the course of Europeanization. In the end, I argue that there is resistance to the enforcement of common rules and standards in the market because of institutional misfit, and in the Slovenian case, the material and power constraints on the NRAs as governance actors. This does not apply only to those rules stemming from EU Directives, but to rules and standards in general.

### ***6.3.1 Formal Rules, Resources, and Institutional Practice***

The regulatory structures in Slovenia and Macedonia differ significantly. Slovenia has a converged NRA, the Agency for Post and Electronic Communications (APEK). However, as described in Chapter 4, the power to enforce the Mass Media Act, in which TWFD was implemented, was actually divided between APEK and the Media Inspector housed in the Ministry of Culture. This means that the “inspection powers” to impose fines and enact penalties on broadcasters was in the hands of the Media Inspector, until the amendments aimed at implementing AVMS passed in October 2011, and moved some of them to APEK. The process of transition was still underway at the time of this writing, so it was not yet clear what it would mean for

enforcement. I can only refer to the system that was in place for the decade prior. That system was established by the Mass Media Act in 2001 and replaced the Broadcasting Council that had existed since 1994. One respondent who had worked for the first Broadcasting Council explained that it had been very vocal and active, something also mentioned by Grčar from ProPlus, and that the Council was actually replaced with a converged regulator because it had gotten too strong.

According to Gorjanc and Krišelj, APEK only has had sufficient recording equipment for monitoring broadcast content in place since the beginning of 2011. Gorjanc complained of being understaffed and said that APEK had moved mainly to complaints based monitoring as it was more manageable and effective given their resources. They used outsourcing to monitor advertising time and for the programme schedule data required to double check the self-reported information on European quotas. There are also limits to their power to act once a violation has been identified stemming from the formal rules established by law. According to Gorjanc, they are bound by lengthy procedures that stem from generic administrative law:

“We have procedures and we are not capable to make shorter procedures because everything is prescribed by the law. We should give him [broadcaster] our results and he should comment and then there are also these procedure problems. He can avoid picking up our post for days. You know we send it to him and demand a response in 8 days, but he can just not pick up the post for 15 days. After 15 days it is automatically received from his side. That’s three weeks immediately . . . but we have to wait. We can’t go on with the procedure because we have to wait for his comment.” (Interview, April 2011)

APEK had recently tested this by using a shorter procedure in the case of content unsuitable for minors in a reality TV show. However, as Gorjanc and Krišelj each explained, they then lost an appeal against the decision in court because the full procedure had not been followed. The second limitation was in the measures APEK could take. Without the “inspection powers”, APEK had only administrative measures at its disposal, namely warnings and temporary or permanent revocation of licenses. Gorjanc forwarded all violations to the Media Inspector who had the power to impose the penalties. There was only one individual serving as Media Inspector. The Media Inspector, who had recently moved to the position from a different inspection role, explained that the caseload was extreme because the procedures that

she must follow under the misdemeanour code are also extensive. These accounts indicate that the enforcement practices of APEK and the Media Inspector were largely shaped by the limited resources and powers granted to the NRAs by law.

The formal regulatory arrangement in Macedonia was very different, and the BC, which was responsible for enforcing the Law on Broadcasting Activity, had for many years had extensive technical capacity for monitoring. The three employees of the BC as well as Vice President of the Council Milaim Fetai, with whom I spoke separately, described well-practiced routines for monitoring and identifying violations involving standard templates. The procedures up to the moment of taking a measure against a broadcaster can be fast. Similarly to APEK at the time, the BC was also not able to impose fines directly. However, it had significantly more other measures at its disposal, some with clear financial implications for broadcasters.

***Table 6.1 The measures that each NRA can use in cases of violations by broadcasters***

APEK (SI)	Broadcasting Council (MK)
<ul style="list-style-type: none"> <li>• issue a written warning with an order to correct the problem within a stipulated period of time between one and six months</li> <li>• suspend a license for a maximum of three months</li> <li>• revoke a license</li> </ul>	<ul style="list-style-type: none"> <li>• written warning</li> <li>• written warning with the requirement that it be put on air</li> <li>• temporary ban on advertising and teleshopping from one to seven days</li> <li>• temporary ban on broadcasting of not more than three months</li> <li>• revoke a license</li> </ul>

*Source: The author from the Mass Media Act of Slovenia and the Law on Broadcasting Activity of Macedonia*

Both APEK in Slovenia and the BC in Macedonia seemed able to monitor for violations of the Mass Media Act or the Law on Broadcasting respectively, though APEKs complaints based system was likely to identify fewer (see tables below), and

its technical capacity was only recently developed. However, APEK's capacity to enforce the law was, at the time of my visit, limited by the rules on its internal procedures and those that defined the measures it could take. The Media Inspector had various financial penalties at his or her disposal, but effectiveness was limited by the fact only one person was dedicated to that position. In contrast, Macedonia's BC had a number of measures that it can take against broadcasters, even though it was also not given the power to impose fines directly but had to go through the courts. While the explanations found by Falkner and Trieb (2008) in terms of institutional capacity seem to work for the Slovenian case at least at some level, they appear inadequate for the Macedonian case. This does not mean that there was better enforcement of the law and therefore EU Directives in Macedonia, however. Successive EU progress reports (European Commission, 2009b, 2010, 2011a) have cited a lack of implementation of the Law on Broadcasting, but even more telling is that all respondents from television stations<sup>39</sup> spoke of ineffective, lax or inconsistent enforcement by the BC and did not perceive the institution as a strong regulator. Unlike in Slovenia, weak enforcement practices can only be slightly attributed to the formal rules establishing the NRA's power and resources within the opportunity structure.

### ***6.3.2 Informal Rules, Relationships and Perceptions***

In each of the cases, I found that, in addition to the formal rules and the technical or human resources available to governance actors, there were a variety of informal rules, established relationships, values or perceptions of roles and identity also connected to the practice of enforcing rules and standards for audiovisual media. These are the structures that form the context in which individuals making decisions within the governance actors determine what decisions and behaviour are appropriate (March & Olsen, 2004). Here again there are differences between Slovenia and Macedonia, but leniency seems to be a characteristic of both. The evidence for this I found both in the interviews, and the data that I was able to access on the actions taken in response to violations by both APEK and the BC.

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<sup>39</sup> One caveat is that the representative from MRT felt that the BC was hard on the PSB, but not on anyone else.

In Slovenia, enforcement power was divided between APEK and the Media Inspector, but the Mass Media Act did not specify how the process should work.<sup>40</sup> A relationship was established such that the Inspector did not act on a violation related to broadcast media without a final formal decision from APEK. According to Krišelj and Gorjanc, this began after PopTV won a court case with the argument that the Inspector should not have acted without “expert” confirmation from APEK that a certain violation took place. This was confirmed by Grčar, who had argued the case for PopTV. Gorjanc hoped that this arrangement would change with the new Inspector who started in early 2011, however when I interviewed her and her Chief Inspector, she expressed the same understanding as her predecessor. Stopar of the Ministry of Culture described the problem: “they are just sending cases to each other and say: it’s not our jurisdiction it’s yours and the inspector says no I cannot do anything without your opinion. And so nothing happens” (interview, April 2011).

This description may be an exaggeration, but the relationship between APEK and the Inspectorate as described by both sides seemed to be based primarily on formal communications in the form of notifications and requests, with the occasional phone call. The mismatch between identification of violations by APEK and action by the Inspector can also be seen in APEK’s data on measures taken.

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<sup>40</sup> The Media Inspector was also responsible for other aspects of the Mass Media Act that do not overlap with APEK such as the right of reply or any rules related to print media and acts independently on these issues.

**Table 6.2 Data reported by APEK on measures taken based on monitoring**

YEAR	Cases undertaken by APEK monitoring			
	Violation constituted, warning to correct	Decision to revoke special status	Procedure halted (no violation)	
2006	12	2	12	
2007	17	2	36	
2008	3	0	13	
2009	20	1	5	
2010	7	2	10	
	Cases sent by APEK to Media Inspector			
	Total sent	Resulted in sanction	Resulted in warning	Decision, no sanction
2006	7	1		
2007	0			
2008	5	3	1	
2009	11	8	1	1
2010	30	18	5	7

*Source: Compiled by the author based on data provided by APEK*

Although Gorjanc said that all APEK's decisions were forwarded to the Media Inspector, they do not appear to have all resulted in action. The annual reports of the Culture and Media Inspectorate (IRSKM) give some data on the cases handled by the Media Inspector. The data shows that cases related to broadcasting and the remit of APEK were only a part of the load handled by the one Media Inspector. Both the data from APEK in Table 6.2 and that of the Inspectorate from Table 6.3 below indicate that, despite the formal nature of their relationship, an increasing number of cases were being handled in combination.



**Table 6.3 Cases handled by the Slovenian Media Inspector**

		2007	2008	2009	2010
Total Inspection procedures		33	22	22	26
Total Misdemeanor procedures		53	50	110	99
	Resulted in fines	12	11	25	N/A
	Resulted in official reprimand	12	6	35	N/A
	Resulted in written warning	5	2	5	N/A
A P E K	Cases taken on referral from APEK monitoring for violations			8	31
	Cases taken on referral from APEK for not providing required reports				12

*Source: Compiled by the author based on data from annual reports of IRSKM 2007, 2008, 2009, 2010*

The data in Tables 6.2 and 6.3 also shows that neither APEK nor the Inspector had been particularly aggressive in the use of the measures available to it, more often choosing warnings rather than penalties. In this period APEK only twice used the stronger measure of temporarily revoking a license for a few hours. Table 6.3 shows the Media Inspector more often made use of the official reprimand or warning rather than fines. Cases receiving none of those 3 measures were either discarded because no violation was found or the case expired, or were still in process. Although exact data was not available, fines issued by the Media Inspector do not seem high enough to be a deterrent for the large broadcasters. Grčar stated that his station often just pays the fine rather than try to fight a case, because it is only “a few thousand euros”. The new Media Inspector said she was aware of this problem, and speculated that the large stations just calculate the fines into the cost of the advertisement.

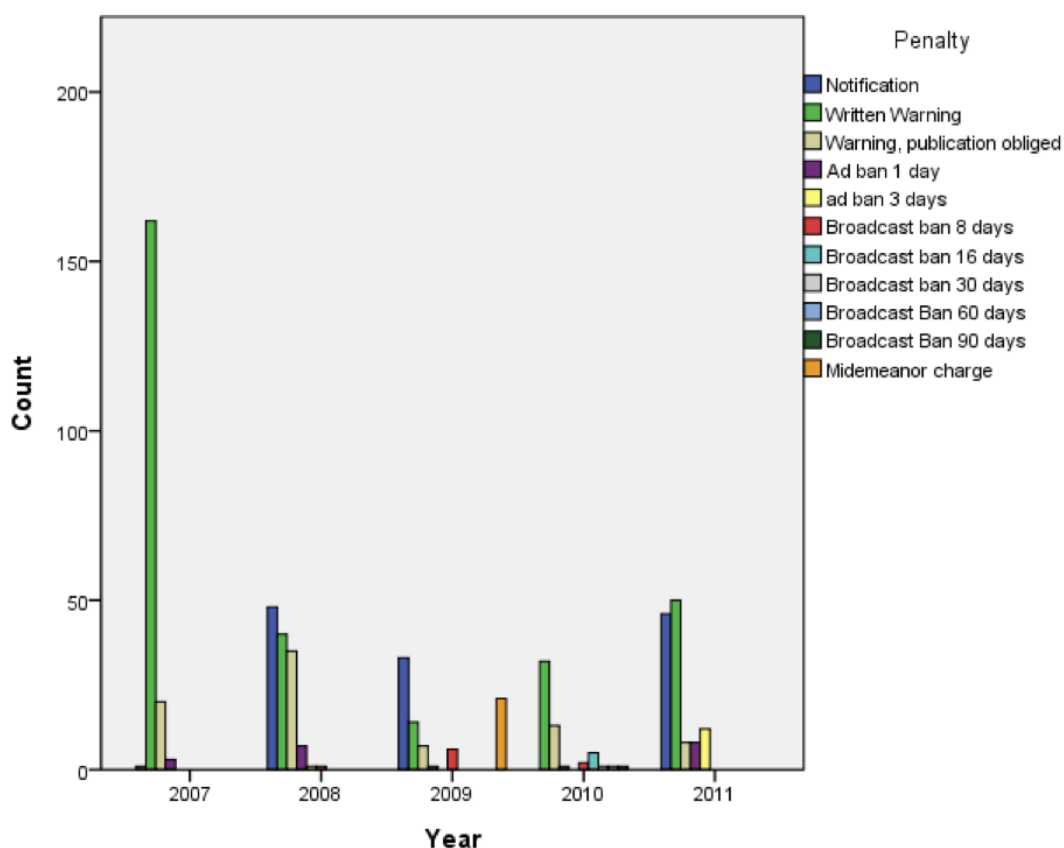
In addition to being limited by the formal rules determining their powers and procedures, the effectiveness of the two bodies charged with enforcement also appears to be have been complicated by the established relationship between the two. At the same time, both tended to use the lesser of the measures available to them. I argue that this can be at least partly explained by the values and priorities of the

individuals involved, however as this argument also applies to the Macedonian case, I will first describe the enforcement practice there as well.

In Macedonia, the tendency towards leniency within the BC was much more pronounced. Unlike in APEK, where measures are decided at the level of the Head of Monitoring, in the BC the Council Members decide what action to take based on evidence of violations presented to them by the staff. At time of the interviews, the Council Members had voted several months earlier and withdrew the “rulebook” that set out the order in which measures should be used. BC President Stefanoski explained they had reached the point where they had to give severe penalties for what they considered small violations, such as overstepping advertising limits or not publishing the ownership details of the station.

The data illustrated in Figure 6.3 below on the measures taken since 2007 shows a decline in the number of overall actions taken until this change was made. The records also confirmed that the most severe punishments, dealt out in 2009 before the change, were to local stations for administrative violations. Small stations may not have the human resources and skills to stay on top of administrative obligations, but there were also indications that the BC was less inclined to hit the larger stations with severe penalties. One interviewee from the BC staff related an incident during this period in which the owner of one national television close to the government came to the BC offices and threatened Council Members until an advertising ban for his station was withdrawn.

**Figure 6.3 Types of measures taken against broadcasters for violations 2007-2011**



*Source: Calculated by the author based on list of all decision provided by the BC*

As the data on 2011 in Figure 6.3 show, with the freedom to once again use the softer measures, the BC quickly resorted to issuing notifications and warnings again. The misdemeanour charges made in 2009 that appear here in orange were all related to the 2009 election campaign. As one can see from Table 6.4 below, the greatest number of violations are generally in relation to advertising limits and the protection of minors, both covered by TWFD. The fact that, by the end of September 2011, the figures already exceeded those from 2008 suggests that the warnings and notifications issued earlier had done little to encourage changes in behaviour.

**Table 6.4 Categories of non-election related violations acted upon by the Broadcasting Council 2007-2011**

<b>YEAR</b>	<b>Protection of Minors</b>	<b>Protection of Language</b>	<b>Advertising</b>	<b>Administrative</b>	<b>Other</b>	<b>Total</b>
2007	11	25	143	3	4	186
2008*	19	3	25	20	1	68
2009*	4	0	1	23	2	30
2010	8	1	14	29	4	56
2011**	37	19	53	12	3	124

\*election year, election related cases excluded

\*\*figures only until 1 October 2011

*Source: Calculated by the author based on list of all decisions provided by the BC*

Despite the repetition of the same types of violations and repeat offenders, the Council Members of the BC were clearly choosing to make use of minimal sanctions. I offer one explanation for this that I find also applies to the Slovenian case.

As March and Olsen (2004; 1998) have argued, within public bodies such as the NRAs, decisions and behavioural choices depend on the extent to which the individuals concerned deem them appropriate depending on their values and perception of their own role and that of their organisation. Therefore, one possible explanation for the tendency towards leniency could lie in the values and priorities expressed by the individuals. My examination of these shows an interesting picture that also explains some of the problems with enforcement.

In APEK, each of the individuals with whom I spoke stressed the administrative function of the institution and purpose of providing information or data to the Ministry noting that APEK had no discretionary powers. It was mentioned often that certain procedures such as granting of licenses, changing of licenses or status or format were purely administrative and as long as the process was followed and documentation was in order, APEK had no reason to say no. In other areas such as the granting or revoking of special status or changes in ownership, the role of APEK was simply to provide the Ministry with information and this was described by three people as simply a question of numbers and percentages. The majority of respondents expressed a view that their job was to protect the public, particularly minors. Nevertheless, four out of five of them also spoke of protecting domestic

broadcasters. Even the Media Inspector, though she did not clearly express protecting domestic media as a priority, said that what she thought she should be doing more of in her role was prevention activities, so that broadcasters would not make mistakes leading to violations. The table below shows the value and priority statements made in response to questions about the most important thing they do or should do.

**Table 6.5 Values and priorities expressed by individuals in the NRAs in Slovenia and Macedonia**

SLOVENIA		MACEDONIA	
APEK	Media Inspector	BC Council Members	BC Staff
Protecting the public – mainly minors	Protection of minors	Stopping hate speech	Stopping hate speech
Ensuring diversity of genres & content Giving public access to ideas, diverse entertainment, information (Currently they cannot do this, but three people would like to be able to)	Preventing violations by broadcaster – ex. warning them of international ads that may be a problem due to lack translation or inappropriate content	Independent and “undisturbed” functioning of the media; freedom of media and expression	Protections of minors
Protect local broadcasters – ex. Ensure Must Carry, don’t force them to comply with out of date rules		Encourage local production & local broadcasters; need to enable serious local players to thrive	
		Enforcing copyrights – because Europe expects it and important to show the country respects international standards	

*Source: The author based on interview responses in April and May 2011, all mentioned by at least two individuals within the group, except in the case of the Media Inspector who was only one person*

BC staff in Macedonia mentioned the protection of minors and the elimination of hate speech together as of equal importance. This suggests a similar assumption of the role of protecting the public as was expressed by the civil servants within APEK

and the Media Inspector. However, among the four Council Members of the BC, except for hate speech, their concerns were more for the media or for the image that the country projected to the outside in terms of copyright.

In Macedonia, the BC's Council Members adamantly stressed the BC's role as an educator rather than an enforcer of law. When asked how they decide what sanctions to use, BC Vice President Fetai explained: "Here we are careful, very careful . . . there exists a view that we should be more in the function of education than punishment" (interview, May 2011). Council Member Stole Naumov insisted that many violations occur because of lack of knowledge and that the BC's priority should be education, a view also echoed by BC President Stefanoski. There was some evidence that the BC was perceived this way by broadcasters. Both Mitrevska and Janevska of the BC staff described the assistance and advice they give to broadcasters on the procedures and standards or rules with which they must comply. As I interviewed Janevska she received calls from stations about the election coverage rules, one from a local station owner who she said had called daily since the pre-election campaign started because he had received a penalty during the previous election. Both Selver Ajdini from TV Hana and the two producers with whom I spoke from TV Sitel also stated that they frequently call the BC staff or even Council Members with questions about compliance, especially in elections. Only Irena Arnaudova from TVM expressed frustration rather than appreciation for the BCs approach, citing its leniency as one of the major problems for local stations because non-compliant competitors are never punished.

Arnaudova explained that this leniency towards stations that do not meet standards or comply with the law, allows stations to exist at the local level that are active mainly during election campaigns for political purposes, but have little other function. Although he himself was appreciative of the BC's "educative" approach, Ajdini of TV Hana also complained of the same problem, saying that there are "one man show" televisions that serve only to carry political messages and meet none of the other requirements as a broadcaster. While it may be that there was a sincere belief in the BC's role as an educator among Council Members, this information raises some questions about the BC's lenient approach.

In the Macedonian case I also offer another explanation for the leniency of the BC, which may have existed parallel to some genuine beliefs that it was the best approach. The Council Members of the BC were appointed in staggered terms by Parliament, some directly and some after nomination by the Association of Journalists or Inter-University Council. This means that the Council can be made up of individuals appointed under different governments. Political divisions within the council were clear at the time of the interviews with two Council Members accusing each other of being political pawns (for different parties), and another freely admitting his loyalty to the party that arranged his appointment.<sup>41</sup> Considering that as Ajdini and Arnaudova explained, many of the media are politically affiliated (see also IREX, 2009; IREX, 2010, 2011; Šopar, 2008), this seems to have led to a situation in which it was safer for no one to be punished. One Council Member described how decisions on sanctions were made:

“If it comes to, let’s say, temporary ban on advertising, there are those in the Council who say ‘if we do that then we should also punish these guys, otherwise the media will come out and say why didn’t you punish the neighbour – that’s the mentality here – why am I punished and not the neighbour. So it ends up that we make certain concession so we don’t have to punish also the neighbour.”(Interview, May 2011)

In order to avoid punishing the stations connected to political allies, it was judged to be better not to punish anyone. Perceiving and presenting the institution as the benevolent educator while avoiding strict enforcement seemed to be the safest and most appropriate behaviour for the Council Members; and the outcome of that position is reflected in the enforcement data.

In APEK the Director is appointed by a minister, however, those making enforcement decisions, namely Gorjanc and his team, were civil servants whose positions are secure and were not dependent on the will of political parties. While the actions they deemed appropriate may have been determined by their own values and perceptions of their roles, there was no evidence that they were further constrained by entrenched relationships with political parties, despite the indications discussed further in Chapter 7 that many stations in Slovenia have strong political ties as well.

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<sup>41</sup> For obvious reasons the individuals names are not cited here.

### ***6.3.3 Market driven enforcement exceptions***

In looking at the enforcement practices of the regulators in each of these cases, two instances were uncovered that can be considered exceptions to the patterns identified above. In the first instance, the combination of a market driven initiative and leniency on the part of the regulators was actually contributing to the application of common rules and standards, and in the other, a similar initiative was encouraging more energetic enforcement by the regulator. In both of these instances there is evidence of market players using the EU to legitimate action (M.-C. Fontana, 2011; Jacquot & Woll, 2004) that supports their strategic aims.

In Slovenia, although it was not transcribed yet in law for the reasons discussed above, parts of AVMSD were essentially already being implemented in spring 2011. Implementation was being led by CME-owned ProPlus as the company decided that its stations would comply with the new rules contained in the Directive. The lawyer from ProPlus explained that he was aware of the new rules and considered EU law to be a higher authority than domestic law. According to Jerić, the smaller stations including his had followed suit. The regulators then chose not to enforce provisions in domestic law that were going to be relaxed once AVMSD was transposed into domestic law, particularly those related to advertising limits. The arguments of three of those interviewed from APEK were that it was not fair to the Slovenian broadcasters to make them follow the old rules when the new rules were beneficial to broadcasters. In this case, the existence of EU level rules and the domestic actor's knowledge resulted in changes in the expectations domestic actors could have for the outcome of their actions. Essentially, they could air advertisements more frequently, and use product placement in certain programmes, just like the channels coming in from other European countries on subscription services, without the expectation of repercussions for violating national law.

In Macedonia, the one thing that seemed to be energetically enforced by the BC was protection of copyright. In the Law on Broadcasting Activity, article 77 states that broadcasters provide programming with author's rights regulated and must be prepared to provide documentation, and articles 109 and 111 obligate operators of subscription services to provide packages based on regulated author's rights



(Republic of Macedonia, 2005b). Although in comparison to the long list of programme standards and other obligations on broadcasters this does not figure heavily in the law, the Council Members expressed it as a top priority (see Table 6.5). Three of them went into great detail describing the measures being taken in co-ordination with the police, market inspectors and other agencies against cable operators re-broadcasting channels illegally. Arnaudova, from one of the local stations, said that she had been calling for stricter enforcement of copyright for years because of the unfair competition she faced, but to no avail. The reason behind the sudden crackdown was difficult to isolate, but the EU accession process did seem to play a role. The BC's Fetai explained that "intellectual property is one of the basic principles that within Europe is strictly respected...and one of our main obligations is respecting copyright" (interview, May 2011). Copyright infringement was referred to as a problem in several EU progress reports (European Commission, 2010, 2011a, 2011b).<sup>42</sup>

The BC's efforts to police the copyright violations by cable operators are helped significantly by monitoring done by Makedonski Telekomunikacii, the IPTV provider. Siljanovski, its Director of Regulatory Affairs was most involved, and for him copyright protection was also a top priority. Owned mostly by Deutsche Telekom, it is one of the largest rights-holders for premium content channels. According to him, the actions taken in co-operation with the BC and other institutions to protect copyright were important because they were norms in the *acquis* and important for the image of the country. He explained: "we as country must prove that we can care for and respect copyright" (interview, May 2011). The BC may have been looking for a politically safe cause to affirm their position as regulator, and Telekom could have a variety of other reasons for making an ally of the BC, in addition to the stated goal of improving the image of the market in which it was heavily invested and the obvious benefits of eliminating unfair competition. Nevertheless, they both called upon EU rules and the instrument of the Progress Report as the justification for stricter enforcement. The evidence suggests that the BC and Makedonski Telekomunikacii used the existence of EU rules to change the outcomes that market players could expect from actions in the market in a similar

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<sup>42</sup> Copyright is covered under Chapter 7 of the *acquis* on Intellectual Property Law and therefore covered in Progress Reports.

manner to the way broadcasters in Slovenia used EU rules to justify non-enforcement of national law.

#### ***6.3.4 No one plays the “Bad Guy”***

In the Slovenian case, the evidence indicates that weak enforcement until now of all rules and standards applying to the audiovisual sector stemmed primarily from the formal rules establishing the powers and obligations of the two different bodies charged with enforcement. I argue that the system was designed by political leaders for ineffective enforcement and helps create an opportunity structure in which the NRAs have little power or resources. In addition to what appears to be an intentional design flaw in the Slovenian regulatory system, I also found evidence in the practices described by individuals and shown in the administrative records of enforcement decisions that the potential of the system was not maximised. The values and priorities expressed by those involved in these practices indicated that those responsible for regulating the behaviour of market players did not view themselves as enforcers and were not inclined to be strict with domestic broadcasters, except perhaps in relation to the protection of minors. Enforcement was further constrained by the established relationship between APEK and the Media Inspector, which seemed to exacerbate the limitations of the legal division of powers between the two bodies.

The people working in APEK generally said they did want the institution to have some more power than it had, but this was more in relation to ensuring diversity in the market and the provision of varied content. Based on this evidence, I argue that there was a degree of institutional misfit between the implementation of common rules and standards in the market and the values, practices, self-perceptions and established relationships within the NRAs in Slovenia. However, in the instance of some of the most recent changes to EU rules contained in the AVMSD, the tendency towards leniency because of their limitations and the structures within these institutions contributed to the application of the common rules and standards. This occurred when private broadcasters called upon the EU rules in relation to advertising limits as more authoritative than the domestic legislation that was not up to date with the rest of Europe.

In Macedonia the evidence shows a more pronounced and self-declared tendency for weak enforcement of all rules and standards, despite the fact that by law, the NRA was given more power to take action against errant broadcasters than in Slovenia. Therefore, in this case I find that resistance to the implementation of common rules and standards was less a matter of agent-centred divisions of power within the opportunity structure and more a matter of institutional misfit. Similar to the civil servants in Slovenia, the staff members of the BC expressed their priorities as the protection of minors and the abolition of hate speech. On the other hand, the Council Members of the BC expressed different priorities, and consistently described their role as educator rather than enforcer. I also found in the accounts of Council Members, BC staff and others evidence that, in determining the appropriateness of their decisions, Council Members also considered their own and others' relationships with political elites. Where the Council Members were prepared to be strict was in the enforcement of copyrights on cable networks, for which they had a major initiative underway in collaboration with the IPTV operator Makedonski Telekomunikacii. The justification for this initiative according to those in both organisations was the EU and its rules on copyright.

#### **6.4 Conclusion**

This chapter presented evidence of resistance both to the transposition of EU rules into domestic law and in their enforcement in Slovenia and Macedonia. One possible explanation for such resistance, given in several top down studies of the implementation of EU Directives, is opposition to EU policy by decision makers with the power to veto policy change (Haverland, 2000) or even “through the back door” (Falkner et al., 2004) by those responsible for post-transposition implementation. However, counter to my expectations, I found nearly no evidence of opposition to the provisions of EU policy among any of the governance actors. In both cases, the only criticism of EU rules or standards that any respondent made was that the fifty per cent quota for European works was difficult for domestic broadcasters to achieve. Looking at the changes of rules over time (Sub-RQ1), I found similar practices in the two cases of successive governments using media law changes as a mechanism for controlling the NRA and the PSB. This could simply be

attributed to the characteristics of polarised pluralist media systems (Hallin & Mancini, 2004, 2008). However, in this bottom-up investigation of the interactions of governance, I examined human resources among the material conditions constraining actors (Sub-RQ4). I argued that in the small populations in these two countries, there were limited human resources spread among the governance actors that contributed to otherwise technical issues of media policy being left to political dealings.

My examination of the practices related to enforcement (Sub-RQ1) showed that the NRAs in both countries were lenient and generally not strongly enforcing any rules in the audiovisual sector, among them those deriving from EU Directives. Based on the evidence presented above, I offer both agent-centred and structure-centred explanations for this resistance to the applications of common rules and standards. The findings I presented on the values of those in the respective NRAs, how they perceive their roles (Sub-RQ2), and the established relationships (Knill, 2001) among governance actors (Sub-RQ3) indicated that in neither case, did strict enforcement of common rules and standards *fit* with what decision makers considered appropriate. This institutional misfit was more pronounced in the Macedonian case where I also found that political relationships, their own and those between political parties and media outlets, seemed to condition what BC Council Members considered appropriate decisions or behaviour. In the Slovenian case, effective enforcement of EU rules, among others, was hindered primarily by the formal rules distributing powers and resources to the NRAs, or the characteristics of the domestic opportunity structure. I argue that the fact that APEK lacked the power to penalise, while the Media Inspector lacked the resources to constrain their interactions with the market and helped determine the consequences and outcomes that Slovenian market players could expect from their behaviour. In this case, there were indications, in the evidence here and in the previous chapter, that political leaders had intentionally created an opportunity structure such that the resources and powers of the regulators were minimal. This constrained the actions of the regulators in relation to the market with consequences for the outcomes that media firms could expect from their decisions and actions.

So if media governance in these two countries is resistant to the transposition and application of the EU's common rules and standards for audiovisual media, what

does this mean for the role of Europeanization? In this chapter, I discussed two instances where mechanisms of EU conditionality came into play, namely the threat of infringement proceedings against Slovenia for not transposing AVMSD, and the Progress Reports that are part of the accession process for Macedonia. In addition, there was the situation of broadcasters in Slovenia choosing to adhere to newer EU rules on advertising rather than those still in force in national law. I argue that each of these instances was an example of strategic actors *using* (Jacquot & Woll, 2004) the EU as a higher authority, or the existence of EU rules, to forward their strategic interests. Other studies observed that civil society groups or political actors use the EU to add legitimacy to their cause, enhance their positions or even get additional resources from EU sources (eg. M.-C. Fontana, 2011; Luaces, 2002; Sudbery, 2010). However, two of the instances described above involve large and foreign owned market players protecting commercial interests. CME owned ProPlus and Deutsche Telekom owned Makedonski Telekomunikacii seemed able to use EU policy to affect change in the domestic opportunity structure to suit these interests.

The evidence presented here indicates that the opportunity structures in Slovenia and Macedonia are largely resistant to the diffusion and institutionalisation of common rules and standards, and that there is also resistance in the form of institutional misfit. However, where the implementation of the common rules and standards from the EU is of strategic advantage to domestic players, they may use the EU to legitimate or justify changes in the domestic opportunity structure or action to achieve their strategic goals. This chapter has treated the rules and standards of EU media policy collectively, concerned with their common implementation and application to all market players. These rules include those establishing minimum standards for how much advertising is allowed and how often films can be interrupted, but among them are also rules that mandate that broadcasters produce or procure at least 50% European production and 10% independent production. For these rules, compliance means not just adhering to the standard, but also producing or participating in achieving the quota. The next chapter looks more at participation in this kind of positive regulation as well as subsidies and other forms of state intervention within media governance in Slovenia and Macedonia.

# Chapter 7: Participation in EU Protectionism

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## 7.1 Introduction

In the previous chapter I described resistance to the transposition and enforcement of common rules and standards for audiovisual media markets in Slovenia and Macedonia. As I outlined in the introduction, what has been constructed at the EU level, and therefore through Europeanization, is to be “diffused and institutionalised” (Radaelli, 2002, p. 108) at the national level is not just a list of common industry standards, such as advertising limits. Among the rules, policy paradigms, shared beliefs and norms (ibid.) is the idea that a European-wide audiovisual media sector exists and that it should be nurtured and protected, particularly in the context of globalisation or the dominance of US production (Papathanassopoulos & Negrine, 2011). While this has been characterised as “wishful thinking” (Schlesinger, 1993), the preamble of the AVMSD, like the TWFD before it, states that it aims to build “a strong, competitive and integrated European audiovisual industry” (Council of European Communities, 2010, para. 33). The provisions are intended to encourage cultural diversity and “ensure the transition from national markets to a common programme production and distribution market” (ibid., para. 2). Two key mechanisms for doing this are the quotas for European works and independent production and the subsidies for audiovisual production distributed through the MEDIA programme.

I referred to these measures in my introduction as European protectionism. European quotas are a form of resistance to American domination in the production industry, put in place because of concerns for both its impact on European production industries and on audiences (Dolmans, 1995; McGonagle, 2008; Schlesinger, 1997; Tunstall & Machin, 1999). State subsidies are by definition, a form of protectionism and are no less so when used by the EU. The EU’s MEDIA programme aims to “strive for a stronger audiovisual sector reflecting Europe’s cultural identity and heritage” (European Commission, 2012). This chapter investigates the extent to

which Slovenia and Macedonia are part of this EU project to protect European production industries and European cultural identity.

This chapter looks at governance interactions around the use of quotas, subsidies and support for audiovisual media production in Slovenia and Macedonia. I present evidence that European level protectionism is largely irrelevant to the audiovisual media services in these countries. In the next section, I examine the use of content quotas, first by looking at the formal rules for both EU and domestic quotas in each case. I then move to a lower level of abstraction and focus on what Kooiman (2003) referred to as the *interferences* of governance or the everyday procedures, practices and even forms. I use data from interviews coded as “practice” and turn to administrative records to corroborate the behaviour described. I also present interview data from the “values” category in my discussion on the values and attitudes related to quotas. I demonstrate that in both cases, and in some very banal ways, there is institutional misfit between this form of European protectionism and domestic practices and, though to a lesser extent, values. However, the evidence indicates that the practices and values with which there is misfit are shaped by the material conditions of these small markets.

It has been argued that EU level financial support can change domestic opportunity structures by empowering certain actors (Parau, 2008; Sudbery, 2010). In the third section of this chapter, I look at subsidies, which in Slovenia includes both EU and national level support and in Macedonia covers only national level financial infusions into the market. The section dealing with subsidies also relies on interview data on practices and values. In two instances, I followed up important points made in interviews by checking with administrative records and other secondary data. I show that Slovenian producers reap some benefits from EU subsidies by enhancing their material resources, but that there is little evidence that this amounts to change in the domestic opportunity structure as this support has been still heavily dependent on the involvement of RTVSLO. At the time of writing, Macedonia remained outside the EU subsidy programme. Examining official and unofficial state subsidies to broadcasters, I find evidence that these were closely tied to political allegiance and particularly in Macedonia, acted as mechanisms of control by political elites. I found Europeanization playing a role in changing the opportunity structure in Macedonia as

the EU's Progress Reports were used to support legal changes to enable the financial independence of the PSB, but also present evidence to suggest that this change aligned with the strategic interests of the governing political parties. In conclusion, I argue that the audiovisual media sectors in these two countries were not participating in European protectionism largely attributable to institutional misfit, with the exception of the use of EU funds by Slovenian producers. I claim Europeanization does appear to have played a role in legitimising change in the domestic opportunity structures with consequences for the distribution of resources within the audiovisual media sectors, and this also aligned with the strategic interests of domestic actors.

## **7.2 Content Quotas**

Content quotas are obligations placed on broadcasters to include certain types of content in their broadcast programme. At the European level, they are defined in the AVMSD, and there are quotas for *European works*, as defined by the origin of the production (art. 1, para. n), and for independent production. Broadcasters are required 'where practicable' to ensure that 50% of their transmission time is made up of European works (art. 16) and 10% is made up of programmes from producers "independent of the broadcaster" (art. 17). The European quotas have been criticised for being more about protecting industry, particularly the large production companies in some of Europe's larger states, and rather than European culture or cultural diversity (see Harrison & Woods, 2001, 2007; Katsirea, 2003). Nevertheless, all EU Member States and those in the process of accession are expected to implement these quotas and participate in this form of European protectionism.

Both Slovenia and Macedonia transcribed these quotas into domestic law when they implemented the TWFD. The EU rules on quotas for linear broadcasting remained the same in the newer AVMSD. Therefore, despite the delays in transposition described in the previous chapter, both countries were compliant and up to date with regard to those rules. In both countries there were also domestic quotas in force. Domestic quotas can be formulated in different ways, but essentially require certain percentages of domestically produced content (Broughton Micova, 2013). In this section, I first discuss participation in European quotas in each case and then elaborate on the use of domestic quotas.



### ***7.2.1 European works and independent production quotas***

In relation to European works quotas, the situations in Slovenia and Macedonia were quite similar, but with slight variations in the way the rules are transcribed. In both cases almost the exact phrasing of the Directive was replicated in domestic law for the definition of European works and for the provision requiring a majority of transmission time. In Slovenia this requirement was applied to both national and regional television stations. In Macedonia only national broadcasters had to comply. In both countries, non-compliance could result in a misdemeanour charge and the law also included fines for this violation in its penalty clauses. At the level of law, in both countries the European works quotas appear to have been taken seriously, with fines prescribed for non-compliance even though EU law says they must be implemented “where practicable” (Council of European Communities, 2007; 2010, p. art. 16). In Slovenia the independent production quota was treated in the same way as the European works quota with the exception that where the Directive allows for a choice between 10% of transmission time or 10% of production budgets, Slovenian law only considered transmission time. In Macedonia the requirement of 10% independent production was not applied to private broadcasters. Instead, only the PSB had the obligation to spend 10% of its production budget on independent production.

**Table 7.1 European works and independent production quota provisions**

	<b>AVMSD</b>	<b>Slovenia</b>	<b>Macedonia</b>
<b>European Works</b>	A majority of transmission time	At least 50% of annual transmission time	At least 51% of annual transmission time
	Excluded: stations intended for local audiences and not part of a national network	Excluded: local stations not included in a programme network reaching more than 50% of population; stations devoted to advertising, teleshopping, or self promotion	Applies to: All national stations (in law)  Except: Thematic channels exclusively for news, sports events, games, advertising, teleshopping or teletext; the Parliamentary Channel. (in the rules)
	Transmission time excludes: news, sports events, games, advertisements, teletext and teleshopping	Transmission time excludes: news, sports events, games, advertisements, teleshopping and videopages	Transmission time excludes: news, sports events, games, advertisements, teletext and teleshopping. (in the law)  Transmission time includes the total time of the following genres: Drama, documentary, documentary-entertainment, educational, educational-entertainment, informative, cultural, art and humanities, concerts, music festivals, folklore, dance, opera, comedy, sitcoms. (in the rules)
<b>Independent Production</b>	10% of transmission time or 10% of production budget	10% of annual transmission time and half must be produced in last 5 years	10% of annual production budget
	Excluded: stations intended for local audiences and not part of a national network	Excluded: local stations not included in a programme network reaching more than 50% of population; stations devoted to advertising, teleshopping, or self promotion; the channels for the broadcast of the National Assembly and for the national minorities.	Applies to: only PSB
	If calculated on transmission time it excludes: news, sports events, games, advertisements, teletext and teleshopping	Transmission time excludes: news, sports events, games, advertisements, teleshopping and videopages	

*Source: The author, compiled from AVMSD, the Law on AVMS (Slovenia), the law on Broadcasting Activity (Macedonia), and the Rules for European Audiovisual Works (Macedonia)*

In Table 7.1 above it is interesting to note that in both countries, certain types of thematic channels were exempt from the quotas. This exemption appears mainly for the type of cable-only teleshopping channels, but in Macedonia also applied to channels only showing news or sports events. In Macedonia the manner in which transmission time was determined was more specifically defined in the “Rules on

European Audiovisual Works” such that only certain genres, described specifically in another set of “Rules” were considered<sup>43</sup>. According to the “Rules”, both the premier and first repeat of each programme counted towards the quotas.

### ***Monitoring and Reporting***

The systems for monitoring European quotas were similar in both Slovenia and Macedonia and to common practice across Europe (Graham & et al., 2011). Nevertheless because European quotas are annual, the monitoring of them seemed to be a challenge for both the regulators and the broadcasters. Both APEK and the BC relied mainly on self-reporting by the broadcaster. They did not have the capacity to directly monitor the annual output of all stations obliged to comply, though they did double-check the self-reported data in some ways. APEK’s Gorjanc explained that in Slovenia, reports were received annually in the form of lists of broadcast programmes, with time slots, their origin and other identifying information. This was corroborated by RTS Maribor’s Jerić, who showed me the table that had to be filled out. He also complained about the time it takes to complete because it has to be done manually and over an entire year a large number of programmes accrue that must be entered. The instructions for the latest version of the table<sup>44</sup> issued in 2012 are four pages long. Although it was an MS Excel spreadsheet coded to automatically calculate the percentages, it still called for detailed information on each programme broadcast. This had to be input by the broadcaster and then, according to Gorjanc, checked against an external agency’s records of broadcast programmes. It seems unsurprising that not all broadcasters manage to report each year.

As only a Candidate Country, Macedonia was not required to report to the EC regarding European works or independent production. However, these quotas were part of domestic law and Janevska received annual reports from the television stations of what has been broadcast according to genre. The forms<sup>45</sup> were similar tables to those used by APEK, but were further divided by the genres listed in Table

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<sup>43</sup> A “Правилник” or “Rules” document is a binding act adopted by the Council of the BC and published in the Official Gazette

<sup>44</sup> [http://apek.si/datoteke/File/2012/Obrazci\\_za\\_vodenje\\_podatkov/navodila\\_za\\_izpolnjevanje\\_TV.doc](http://apek.si/datoteke/File/2012/Obrazci_za_vodenje_podatkov/navodila_za_izpolnjevanje_TV.doc)

<sup>45</sup> [http://srd.org.mk/images/stories/Obrazec\\_za\\_audiovizuelni\\_dela.doc](http://srd.org.mk/images/stories/Obrazec_za_audiovizuelni_dela.doc)

6.1 as those stated in the “Rules” on implementation. The BC in Macedonia faced significant problems with getting these reports from the broadcasters according to Janevska, yet she does not explain this as intentional non-compliance:

“They are not well staffed and often don’t seem to keep records. Sometimes it just seems as if they decide on a daily basis what they’re going to put on air, or at least they don’t have some annual planning or don’t keep data . . . they have to gather all at the end everything that was broadcast because they haven’t kept daily evidence and this is mainly because of understaffing.” (Interview, May 2011)

The reporting stations that calculate what portion within each genre consisted of European works, and Janevska said her team checks their calculations based on the programme lists in the tables. The form is a MS Word document with separate tables for each genre, into which the broadcaster must put the details of each programme aired from the genres specified. According to Janevska, in 2010 6 of the 15 obliged to implement the quotas did not report, and in 2011, only 13 remained with the obligation to comply with the quotas yet 9 of them failed to report.

In both Slovenia and Macedonia, the European works quotas were part of governance. Independent production quotas were enacted in the Slovenian case, though only for the PSB in the Macedonian case. Standardised forms and reporting procedures for European works quotas were in place in both cases. However, the evidence above indicates that the process of gathering the data and the sheer volume that had to be gathered to calculate annual quotas placed a significant burden on the broadcasters and on the handful of people in APEK and the BC processing it.

### ***Enforcement and Attitudes***

Problems with compliance were handled similarly in Slovenia and Macedonia. In recent years, APEK only “alerted” or notified two separate broadcasters of their non-compliance, TV3 in 2011 and RTS in 2009 (APEK, 2011b). In the list of all measures taken against broadcasters in Macedonia between January 2007 and October 2011 given to me by the BC, not one was related to European quotas. Only in 2012 did the BC begin to issue warnings to those stations that failed to report (Broadcasting Council of Republic of Macedonia, 2012b). I cannot draw a direct link

between weak enforcement of the European quotas and individual attitudes towards them. However in the interviews, those responsible for monitoring in Slovenia and Macedonia expressed an understanding that the quotas are challenging for domestic broadcasters, and to some extent beliefs that they are not important, or at least not as important as domestic ones.

APEK's Gorjanc said that although he personally prefers European content to American and supports the quotas:

“I think you would have to make a compromise in this field. Because we are not capable to reach those amounts that are prescribed for Europe. We are capable of less, but we should maybe agree on some lower amount of works, which we would be capable of. I think we should go and make a compromise with stakeholders and the producers and the government and make a consensus on what we are capable of.”  
(Interview, April 2011)

Between both cases only one person really expressed complete negativity about the quotas, calling them “useless” and claiming that, “for the average person it's the same if they are watching an American series or French...Slovenian is Slovenian and it's interesting for a different reason. But if you have to choose between French or American you will just choose the one that[']s better.” (Anonymous, Interview, April 2011).

Similarly to Gorjanc, Janevksa in Macedonia also spoke sympathetically of the difficulty the domestic channels have in reaching the European quotas, giving this as the reason for the fact that repeats are counted towards the quotas in their calculations. She explained:

“We have a problem with meeting the European quotas, and that's even with domestic programmes being included. If it wasn't for the domestic content they would never be achieved. They [broadcasters] have a problem. They don't have the capacity, and if they did have money they'd want to buy something else.” (Interview, May 2011)

In both cases those in charge of monitoring compliance with the European quotas did not seem to find it appropriate to push broadcasters to fulfil the quotas. Their statements show that for most, this was not a matter of a clash of values or rejection

of the norms of European protectionism, but an awareness of the material conditions under which the broadcasters in these small markets were operating. Their perceptions were substantiated by the evidence on practices and accounts of those working in the market.

### ***(Non) Implementation***

In Slovenia from 2007 to 2009 between five and eight of the ten private channels reporting failed to fulfil the quota each year.<sup>46</sup> In 2010, only five of the ten private television channels reporting met the 50% threshold for European works (APEK, 2011a). Two of those that did were the channels owned by ProPlus, by far the largest and most financially successful broadcaster. Another was the regional station RTS Maribor, whose manager Jerić explained that this was because “European is Slovenian” and Slovenian content was easy to produce or procure. In 2010, RTS reported 66.2% European works and 65.5% Slovenian works. RTS is one of the strongest regional channels, founded by the same owners who originally started ProPlus, with which it maintains close relations. Interestingly, all the reporting stations showed compliance with the independent production quotas. Jerić explained how his station and some of the other regional stations achieve this. They simply trade programmes, because anything produced outside of the station itself counts as independent production. According to the AVMSD, the independent works quotas were established with the intention that they “will stimulate new sources of television production” (Council of European Communities, 2010, para. 68). In Slovenia previous long-standing relationships among stations allow the quota to be fulfilled without commissioning or engaging independent producers.

The Macedonian case shows a similar story of stations mainly not complying with European works quotas and domestic content, primarily making up the percentages that they do achieve. One of the producers from TV Sitel television freely admitted that they were not able to make the European quota: “I think we don’t have those [European works quota] fulfilled completely . . . for the European ones, we push it a bit, but for the domestic ones, the viewers themselves react” (interview, May 2011).

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<sup>46</sup> According to the reports prepared by APEK for the EC, in 2007 eight failed, in 2008 it was five and in 2009 six did not comply.

Previous research I conducted on content quotas in Macedonia over two periods in 2008 and 2009 found that while the majority (74%) of European works programmes were domestic, those that were not were primarily from within the region, namely Croatian and Serbian (Broughton Micova, 2011, 2013). The Sitel producer explained that it is the dramatic series and soap operas from around the region that bring them the highest ratings – at that time Turkish and previously Croatian and Serbian dramatic series – more so than more expensive American or Western European premium drama. Content from these three countries does count towards European works quotas, as even those that are not members of the EU are signatories to the CoE Convention on Transfrontier Television; however the practice of using cheap, but crowd pleasing dramatic content produces mixed results in terms of participation in the EU protectionism. Janevska reported that in 2010, all nine of those who actually submitted reports were compliant, but in 2011 only one complied and only 3 more reported at all.

At the level of laws, formal rules, and even the forms and procedures for reporting, both Slovenia and Macedonia appeared to participate in the European project of ensuring European works predominance in television. However the *interferences* of enforcement practice and implementation tell a different story. In other studies, failures or delays in the implementation of EU rules have been attributed to administrative culture (Falkner et al., 2007) or misfit with institutional norms, that sometimes can be overcome through socialisation (Epstein, 2005; Grabbe, 2005). However in these two cases, the process of monitoring and reporting on European quotas did not seem to *fit* well with the established practices of both broadcasters and regulators, primarily because of the material constraints on these interactions. Practices have been shaped by the size of the markets and of the market players. At the same time, resistance to participation in EU quotas was facilitated by the institutional values dominant within the NRAs. Those responsible for enforcement found it *appropriate* to tolerate non-compliance by the broadcasters because they were aware of their limitations and are sympathetic. The next section looks at the role of domestic content quotas, which affords the opportunity to compare with the rules, practices and appropriateness of those.

### 7.2.2 Domestic Content Quotas

Like many countries in Europe both Slovenian and Macedonian law imposed content quotas for domestic production on broadcasters licensed within each country. The two countries had different approaches to how the quotas are structured. Slovenian law imposed a 5% annual quota for *Slovenian works*, but required a much higher percentage of *in-house production*. Macedonian law, on the other hand, simply required that 30% of daily transmission time be made up of programmes originally produced in the Macedonian language or the language of a national minority. Table 7.2 below compares the two different approaches.

**Table 7.2 Domestic content quota provisions**

		Slovenia	Macedonia
Definitions	In-house production	Informative, arts and culture, educational, entertainment and phone-in programmes, musical, sports and other programmes with commentary and other original programme produced by the broadcaster of the programme service or produced under commission from and at the expense of the broadcaster; co-productions between or among broadcasters; and Slovenian audio-visual works if they satisfy the conditions to be also European works.	Radio or Television programmes created on the initiative or by the organisation of the broadcaster; programmes commissioned by the broadcaster; and programmes made as co-productions.
	National works	Works produced originally in Slovene or works intended for the Hungarian and Italian ethnic communities in the language thereof, and works of Slovenian cultural origin from other areas of the arts. They must be works expressed in any manner as individual intellectual creations from the fields of literature, science and art.	Programmes or music originally created in the Macedonian language or the language of a recognised non-majority ethnic group
Required amounts	In-house production	20% of daily transmission time for television of which 60 minutes in prime time  30% of daily transmission time for radio	No requirement
	National works	5% of annual transmission time for television  20% of daily music on radio or television must be of Slovene origin (40% for PSB, except for services in Italian and Hungarian)	30% of daily transmission time for all broadcasters  30% of all vocal-instrumental music must be in Macedonian or the language of a recognised non-majority ethnic group
Calculations	In-house production	Premier and first repeat counts, except for television discussion programmes	N/A
	National works	Advertisements and teleshopping are not included in the calculation of daily transmission times	Transmission time excludes: news, sports events, games, advertisements, teletext and teleshopping  Premier and first repeat count  Thematic channels and pay channels are exempt

Source: The author, compiled from the Mass Media Act of 2001 (Slovenia), the Law on AVMS of 2011 (Slovenia) and the Law on Broadcasting Activity of 2005 (Macedonia)



In the comparison above I find evidence that in both countries, policy-makers have attempted to design the quotas as forms of cultural protectionism and not just to protect the domestic production industry. Language also seems to be a key consideration. In Slovenia the definition of Slovenian works is very specific. Not only must they be in Slovene language (or one of the recognised national minorities), but they had to be individual creations from the fields of literature, science and art. In Macedonia, the law only stipulated language as the criteria for the quota, but then secondary legislation further defined the types of programmes that qualify by limiting the genres that can enter into the calculation. The 30% required by Macedonian law not only excluded advertisements and teleshopping as in Slovenian law, but also news, sports events and games. The Slovenian quota for in-house production can also be seen as linguistic protection since domestic broadcasters are not likely to produce programmes in other languages, except the PSB channels for Hungarian and Italian national minorities. However, the range of qualifying programmes types is broad, and even includes sports events with commentary.

Though organised differently, the formal rules for domestic quotas were similar in function to those of the European quotas described in the previous section. The practice of implementation, however, does not reflect this similarity. The evidence on enforcement and compliance shows that broadcasters adhered more to them than to the European works quotas. There seem to be multiple reasons for this. One is that as domestic quotas were daily rather than annual, which seems to make them a better fit with the practice of monitoring and enforcement. Another is that protecting domestic production, and in particular the national language and culture, was of greater priority to the individuals making decisions. Finally, domestic content is cheaper for the small cash-strapped broadcasters in these markets.

### ***Monitoring and Enforcement***

Slovenia's in-house production quotas and music quotas were both percentages of daily transmission time, as were the domestic content and music quotas in Macedonia. This means that compliance, or lack thereof was picked up in the regular monitoring of individual broadcasters by the NRAs. In Macedonia, Janevska

explained that when the BC staff monitors a station, staff members examine a recording of 24 hours of the station's output in relation to all provisions. This could include the domestic quotas, advertising time limits, the display of the station identification and much more. The enforcement of domestic quotas, which mandated a percentage of daily output, fit easily into this routine of the BC's monitoring. Between January 2007 and October 2011 the BC issued 7 notifications, 30 warnings and 6 warnings with the obligation to publish to broadcasters in Macedonia for violations of the 30% domestic quotas.

As mentioned in Chapter 6, Slovenia's APEK had recently moved over to a complaints-based monitoring system. Previously, according to Gorjanc, they had a system of monitoring individual broadcasters periodically and checking their output for compliance with a variety of provisions, including daily quotas. Afterwards, he said they would simply check for quotas when they had some down time between responding to complaints. This did result in measures being taken in cases of quota violations. For example in 2006, seven cases were forwarded to the Media Inspector by APEK against broadcasters for nine violations related to the daily domestic quotas. Seven were related to in-house production and two to Slovenian music and five of the cases were against radio stations and two were television channels. Sixteen decisions were also taken in relation to quotas in 2010, but the breakdown was not available. Gorjanc said at the time of the interview that monitoring for domestic quotas had been stopped recently in expectation of changes to the Mass Media Act.

This examination of the governance *interferences* (Kooiman, 2003) of the regulators' procedures and routines shows that domestic quotas were a better fit simply because they were mandated on a daily basis. The monitoring of these quotas does not require reporting from the broadcasters, but can be done based on the recordings held by the regulators. The interferences related to the European quotas involved lengthy reporting from the broadcasters and special engagement by the regulators outside of their regular routines. This is one very banal example of institutional misfit with established domestic practice and ways of doing things, but this misfit stems from the smallness of these countries and not socially constructed values or identity. However, I also found evidence that in Slovenia and in Macedonia, domestic

protectionism is more valued by those making and enforcing the law and smallness is part of their perception of identity.

### *Attitudes and Values*

In both Slovenia and Macedonia, the majority of respondents spoke of the need for some kind of domestic protectionism. Responses were not as clear in terms of the use of domestic quotas as a method of protectionism because of concerns over quality and the sustainability of domestic broadcasters. Individuals in both cases expressed concerns that domestic content quotas encourage the broadcast of lower quality content that can be damaging to the broadcasters in the face of external competition. In Macedonia, concerns expressed over the quality and sustainability of domestic broadcasters were also connected to a belief that stronger media companies would be better equipped to stand up to political influence as much as by fears of competition from foreign channels.

In Slovenia among the nine people interviewed<sup>47</sup> in APEK and in the Ministry, seven in some way said local programming is important. Among these were also some who expressed dilemmas about the quotas as a method of ensuring it and to whom they should apply. Domestic media were seen by some to have an obligation to contribute to the promotion of the language and culture. Stopar of the Ministry of Culture explained:

“There are only 2 million people who speak the Slovenian language in this world so it’s very important that we have our media in Slovenian language. Secondly I think they should really play their role in the popularisation of Slovenian culture and also to educate in the achievements of our science or all the other fields . . . It’s a phrase ‘globalisation’, but I really think that we are attacked by this standardisation of cultural patterns.” (Interview, April 2011)

Saša Gnezda at APEK explained that in the tenders for the new DTT licenses, applicants had to fulfil higher domestic quotas in order to prevent the DTT network from being filled with channels that simply re-transmit. She added that in her view

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<sup>47</sup> One interview was with 2 people together, the Media Inspector Sandra Vesel and the Chief Inspector of the Inspectorate of Culture and Media, Tamara Javornik. I have counted them as separate people in this number, although the flow of the conversation meant that only Tamara commented on this issue.

this was an indicator of quality. Tamara Javornik, Chief Inspector at IRSKM also supported quotas and was particularly in favour of the move to force stations to air Slovenian music during the day, rather than fulfilling the quotas in off-peak hours. However, others had some concerns that the quotas may actually go against the goal of protecting domestic broadcasters. One of Gnezda's colleagues thought that quotas could only be expected of stations that used the terrestrial networks and was concerned for the commercial survival of domestic channels in the face of such obligations. Stopar explained a similar dilemma he had while revising the quota requirements in the draft Mass Media Act:

“Sometimes I think is it [using quotas] right in the name of public interest, in the name of supporting domestic production? Do we have the right to force private investors or private enterprises with these quotas? Sometimes I'm in doubt, but I think that it's still justified because in a market of 2 million people we must do something to maintain our identity and cultural identity. So okay I'm for these quotas.” (Interview, April 2011)

In Macedonia domestic quotas were not as much on the minds of those whom I interviewed. This may have been because they were not just finishing the drafting of a new law in which quotas had been contentious. Those that did mention them or responded when asked about them felt they were important, but also had concerns about their effectiveness. Council Member Boris Arsov at the BC said flatly, “I'm against too much foreign content; we need to encourage domestic production” (Interview May 2011). However he expressed worry that the domestic quotas in place were not specific enough in order to ensure quality. He explained: “at the moment fulfilling the quota is easy; you and me sit in a studio and chat for an hour or two” (Interview, May 2011). The producers from TV Sitel television, who claimed to comply with domestic quotas, also said that doing so was generally easy for them to do with their own production. This tendency for studio based talk shows fulfilling quota requirements was also identified in the study I did on quota complaint content from 2008 and 2009 (Broughton Micova, 2011, 2013) This study also showed that 55% of the informative programming was overtly political, almost entirely in-studio format. This was 16% of total programmes, of which another 35% was news.

Andriana Skerlev-Čakar, the Chief of Staff at the BC suggested that perhaps other measures would be more appropriate such as incentives like reduced license fees or taxes for stations that produce or commission certain kinds of domestic content. BC Council Members Stefanoski and Fetai also both expressed concern over the quality of domestic broadcasters. Fetai and Council Member Naumov said there was a need to make domestic channels more competitive against foreign ones available through subscriptions services. However, both they and Stefanoski also argued that having financially more secure and viable stations would make them more professional and less easy for political parties to control. Domestic content quotas were supported in Macedonia by those responsible for enforcing and implementing them, although some would like to see them used to encourage higher quality or particular types of content. Four of those interviewed did not speak spontaneously about protection of content at all, but did about a desire to ensure the survival of domestic broadcasters and all four associated this with a need to improve quality.

The evidence indicates that individuals involved in the audiovisual media sector in both Slovenia and Macedonia valued domestic content and prioritised it over foreign content. There seems to be a paradox though in that the small size of these countries and their populations that led these individuals to feel a need to protect their language and identity through domestic content also limited the resources available for making quality domestic content. Domestic content is cheap, but the accounts here show that individuals were aware that domestic music or television studio talk shows were not necessarily going to make their channels competitive in the common market or more sustainable. Therefore, although their values lead them to prioritise domestic protectionism, they were not necessarily convinced that quotas are the best mechanism.

### ***7.2.3 Misfit with practices shaped by size***

The evidence above shows that European works quotas were generally not enforced, and adherence to them by the broadcasters was sporadic in both Slovenia and Macedonia. My findings indicate that this resistance to participation in European protectionism was due to institutional misfit with what is *appropriate* in both the

NRAs and broadcasters based on their established practices and values. The evidence indicates that the small size of these countries and the resulting material constraints have been influential in shaping these practices and values. Comparing their implementation to that of domestic quotas highlighted that reporting and monitoring EU quotas simply did not fit easily into the regular interferences – the practices and procedures – of broadcasters or regulators. Domestic quotas, which were daily, could be monitored by those in the NRAs without relying on the understaffed ill resourced broadcasters in their small markets who struggled to report on annual quotas. At the same time, for those working in the broadcasters, decisions about achieving quotas were constrained by their limited resources, and domestic content was more accessible than other European content, whether produced in their own studio or exchanged with another station.

In the statements of the individuals referred to above, it is clear that most of them valued domestic content. Those testimonies from the Slovenian case in particular, but also in Macedonia, indicated that this valuing of domestic content was rooted in the need to protect vulnerable languages and identity. However, I do not find in the evidence convincing indications that the valuing of domestic content was a source of misfit with European protectionism. Achieving domestic quotas were not mutually exclusive to achieving European ones, and it was clear that broadcasters understood that domestic content contributed to European quotas as well. I argue that misfit cannot be attributed to individuals valuing domestic over European, but could be linked to the doubts that several individuals expressed about the effectiveness of quotas generally and their impact on the sustainability and competitiveness of domestic broadcasters. It was evident in the interview data presented, that most individuals with whom I spoke valued and prioritised their domestic broadcasters, and this will be supported further in the next section. Neither European nor domestic quotas are actually designed to improve the capacity of broadcasters or quality of content (see Harrison & Woods, 2001, 2007; McGonagle, 2008). The next section examines the governance interactions involved in the form of protectionism directly aimed at supporting the creation of content or the budgets of broadcasters. It will also show that there was a sharp difference between Slovenia and Macedonia in this regard.

### 7.3 Subsidies and similar forms of direct assistance

State subsidies are a form of protectionism common in many industries. Here I use the term *state* in the general sense introduced in Chapter 3, which can refer to the various levels and organs of government inside a country, as well as to the bodies formed among countries such as the EU. In EU media policy, subsidies exist in the form of the MEDIA programme,<sup>48</sup> which is primarily aimed at supporting the production and distribution of European films, but also provides some support for television projects (see also Papathanassopoulos & Negrine, 2011; Schlesinger, 1993, 1997). The grants awarded by MEDIA for television productions are given to production companies for projects that involve collaboration with television stations, distributors and national level support programmes. Slovenia is part of this programme and some Slovenian television productions have received support. The Macedonian government was still in negotiations for the country to become an associate to the programme during my investigations, so Macedonian producers or television stations could not yet participate. At the domestic level, both countries had film funds for supporting dramatic, documentary and animated films mainly for cinematic distribution. Slovenia also had a fund specifically aimed at supporting audiovisual production for television and radio.

In the previous section, I intertwined the analysis of the two cases because the significant amount of similarity in the way quotas operated meant that a detailed comparison was useful. In this section, the two cases will be analysed separately because of the significant difference that only Slovenian producers have access to the MEDIA programme. I first discuss the use of European and national level subsidies in Slovenia. I find that in Slovenia, there was a commitment to local media and maintaining local pluralism that was matched with state aid to local and regional broadcasters. Next I delve into the use of direct assistance in Macedonia. In Macedonia I find this primarily took the form of government support for PSB, but there is also evidence that government funded public service ads and campaigns were used to inject funds into private broadcasting as well. By comparing these situations, in closing I argue that Slovenia to some extent participated in this form of European

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<sup>48</sup> The 2007-2013 programme is called MEDIA and follows the MEDIA Plus programme that was in place from 2001-2006.

protectionism but that it is not clear if there were consequences for the domestic opportunity structure because of the role and position of the PSB, RTVSLO. While Macedonian producers were not participating and MRT was not in a position to contribute to doing so, there is evidence that Europeanization played a role in changing the MRT's position within the opportunity structure. I also argue that the domestic subsidies to private broadcasters in both cases amount to political protectionism. I present evidence that this is partly a consequence of the power and resources of smaller broadcasters, and subsidies were a mechanism through which political elites could exert influence over media, most evident in Macedonia.

### **7.3.1 Subsidies in Slovenia**

Those wishing to produce audiovisual content in Slovenia had access to three different subsidies that are directly aimed at the audiovisual sector: the EU MEDIA programme, the Slovenian Film Centre (SFC),<sup>49</sup> and the fund for special interest projects that was managed at the time by the Ministry of Culture. Similarly to the EU MEDIA Programme described above, the SFC aims to support “film, audiovisual and cinematographic activities”, in Republic of Slovenia (Slovenian Film Centre, 2012). These three represent direct interventions by the *state* in the audiovisual market using public money. It is out of the scope of this thesis to investigate the film industry aimed at cinematic distribution in detail, and I focus on how each of these relate to the audiovisual media sector as defined in the AVMSD, namely broadcasting across various platforms. The evidence that follows indicates that the first two forms of subsidies listed above did play some role in the business of broadcasting particularly in relation to the PSB. The European subsidies expanded the material resources available to domestic market players, but the extent to which this amounted to change in the domestic opportunity structure is not so clear. The evidence indicates that the fund operated by the Ministry was a form of local, rather than national protectionism, and serves to reinforce the relationship between political elites and local media.<sup>50</sup>

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<sup>49</sup> The Slovenian Film Centre was founded in January 2011 as the successor to the former Slovenian Film Fund. [http://www.film-center.si/about\\_slovenian\\_film\\_centre](http://www.film-center.si/about_slovenian_film_centre)

<sup>50</sup> As per the Act on the Slovenian Film Centre of 2010 the management of this fund was transferred to the SFC from the Ministry in 2012.



### *The European and national subsidies*

Although Slovenia participated in the EU's MEDIA programme, it was not mentioned by any of those I interviewed in answer to any of the questions about relations with or relevance of the EU. Only when asked specifically about it did Stopar from the Ministry of Culture say that he did not think Slovenian television producers had been successful in getting support, but that he was not sure. This is a strong indication that the fund did not play a significant role in supporting audiovisual production for broadcast in Slovenia. Nevertheless, I contacted the Sabina Briški at the information office for the European Commission's MEDIA programme via email to check the impression that Stopar expressed. As of July 2012, only three Slovenian television productions had been supported since 2003 amounting to a total of €137,000. Two of these were animated series, and for all of them, the independent production companies also had more support from RTVSLO. According to Briški, it is very difficult for Slovenian television productions to compete for MEDIA funds, because applicants are expected to have the co-operation of many strong broadcasters in other countries that also participate in the MEDIA programme secured and meet strict criteria. She added:

“But [having a successful application] is not only having the sufficient number of [foreign] broadcasters on board. All other segments of the application (distributors/sales agents on board, strong international potential well presented, good marketing strategy ...) have to be present. For Slovenian producers this can be very hard and from this point of view and MEDIA TV Broadcasting support is still something quite ‘unreachable’ for the moment.” (Personal Communication, July 2012)

In addition to those 3 television projects, 26 single project film productions received funding to a total of €846,989 and 5 more received support in the form of credit guarantees.<sup>51</sup> Though primarily aimed at cinematic distribution, several of the film productions were also made in cooperation with RTVSLO. Briški believed that overall, Slovenian producers had been successful in using the MEDIA schemes

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<sup>51</sup> Figures provided by Media Desk Slovenia the official in-country representative of the EU's MEDIA Programme.

considering that they are intended to supplement national schemes. “The MEDIA support gained by applicants and their audiovisual projects in a country often **reflects the (in)efficiency of the domestic support system** [bold in original],” she explained, and added that her office lobbies the Slovenian government for more domestic support for audiovisual production (personal communication, July 2012).

Between 2003 and 2011, the SFC contributed to 44 audiovisual productions either as the majority financier or as a minority financier of a project largely supported by another donor. The number of films supported by the MEDIA Programme was more than half the number supported by the SFC. Six of the films on the SFC lists also appear on the list of those supported by the MEDIA Programme.

**Table 7.3 SFC support to audiovisual production from 2003-2011**

Year	Films Majority Financed by SFC		Films Partly Financed by SFC		Total Films Supported by SFC		Films (co)produced with RTVSLO
2003	2	€1,947,675	4	€2,872,267	6	€4,819,942	4
2004	3	€2,390,588	1	€187,500	4	€2,578,088	3
2005	3	€3,776,716	1	€501,381	4	€4,278,097	3
2006	0	-	2	€688,449	2	€688,449	0
2007	6	€8,012,808	2	€776,704	8	€8,789,512	7
2008	1	€1,206,554	4	€1,027,520	5	€2,234,074	2
2009	4	€5,424,563	3	€694,131	7	€6,118,694	3
2010	3	€5,537,263	1	€474,328	4	€6,011,591	3
2011	4	€5,153,882	0	-	4	€5,153,882	3
<b>Totals 2003-2011</b>	<b>26</b>	<b>€33,450,049</b>	<b>18</b>	<b>€7,222,280</b>	<b>44</b>	<b>€40,672,329</b>	<b>28</b>

*Source: The author, calculated from data provided by the Slovenian Film Centre*

As Table 7.3 above shows, the total support for audiovisual productions through the SFC from 2003 through 2011 was €40,672,329, with those films majority financed by the fund receiving nearly €1.3 million each. This shows that national level support was more than 40 times the European level support. The entire budget of the MEDIA programme 2007-2013, within which producer support is only one of eight activities,

is only €755 million for the entire EU and associated countries (European Commission, 2012) and two thirds of the funds go to support productions in the five largest EU countries (Papathanassopoulos & Negrine, 2011, p. 71). I suggest that it is unlikely that the ratio of EU to national support in Slovenia is unusual for small states. In the data presented in the table above, RTVSLO appears as co-producer and in two cases the main producer, of 64% of the films including all six of those that also received EU support. The evidence present in Chapter 5 showed that RTVSLO was the second largest actor in the market measured by audience share and advertising revenue, and that when license fee was included it receives the most financial resources for production in the sector. The data on film productions here provides further evidence of the major role RTVSLO plays in the audiovisual production industry as a whole. These funds may impact slightly on the material resources available in the sector increasing the amount distributed to independent producers. Nevertheless, considering that co-financing, secured distribution and international partners are all required to make use of the EU subsidies, there is little indication in the evidence here that these funds changed the position of RTVSLO within the domestic opportunity structure or that of independent production companies vis-à-vis the dominant broadcasters.

### ***The special interest in local media***

The use of subsidies discussed above supports national projects that are mostly cinematic, although often subsequently broadcast. The subsidy aimed directly at broadcast media is outlined in Slovenia's Mass Media Act and is managed by the Ministry of Culture. According to Stopar, who was responsible for managing this "state aid", as he called it, the budget is divided into three separate funds, two of which are specifically for broadcast media. The first fund is open to both radio and television stations that have been granted the status of non-profit special interest channels. All of these are local or regional stations that have met certain criteria in terms of the type of programming they broadcast. The second is for audiovisual works for broadcast media, and independent producers can also apply to this fund. These two funds, along with a third, which is open to all Slovenian media including print and online, draw from a budget set in the law as 3% of the amount of the RTVSLO license fee from the previous year. Ostensibly these are mechanisms for

the preservation of local media and local pluralism. Gnezda of APEK, for instance argued:

“There should be a way to protect the local broadcasters so that - not all of them - I'm not for that you have to support all of them in any case and for any costs - but those that you can find some kind of quality. Those should be supported in a way so that they are not in a danger that the big market would eat them.” (Interview April 2011)

Stopar was more specific and insisted that there will continue to be some form of state aid for local and regional broadcasters in future laws.

“... because we simply must, we must, support our media. I think commercial television working on the national level - they will survive, but the smaller ones this regional local and televisions, they will all go down without this state aid. I think it's in the public interest to support say 10 radio in Slovenia, 3-4 TV stations, 3 central newspapers and I think we have 5-6 regional papers, and I think these media should be supported. I have enough data to support this financing from the state budget for these media because they play some role in their community life. They brought some information that national broadcaster can't . . .” (Interview April 2011)

Stopar and RTS's Jerić explained that the grants go to support specific production projects, but both confirmed that these funds are necessary for the survival of these local and regional stations. Jerić said that without these funds assured, his station may have to convert to a commercial cable-only channel without its own news or other production. This vital lifeline for the local and regional broadcasters is spread quite thin, however, because according to Stopar, about 30 radio and television stations had the special status required to be eligible to apply.<sup>52</sup>

On the surface, this may seem like a textbook example of public interest media policy supporting pluralism, but in Slovenia it is problematic. Local and regional broadcasters are closely tied to local political interests. Asked how so many stations managed to get the special status, Jerić explained: “Every TV station has got their own politicians which push them forward to get the status.” In APEK, three people explained that their role in the process was simply to analyse the programme output

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<sup>52</sup> As of October 2012, according to APEK's register of broadcasters, 12 regional and local television stations and 15 regional and local radio stations had special status.

of the stations applying for the status according to genre and report to the Ministry whether or not the right proportions were present. Three of those interviewed spoke of the close connection between local broadcasters and local political elites. Jerič explained:

“Everybody knows that small media are not completely independent of politics because it’s just that every business is bound to some political decisions in Slovenia. There are so many state owned companies and you don’t even get close to them if you don’t have someone who opens the door. They don’t expect a favour, but you know that if you want to do business with the company you have to be nice.” (Interview, April 2011)

Jelovac of the Slovenian Broadcasting Council, who was appointed during the first right wing government, argued that the policy of subsidising local and regional broadcasters simply perpetuated the hold that local political elites have over the smaller media. He referred to the support for programmes of special interest as “ideological control of the media supported by state money” (interview, April 2011). Jelovac spoke of “brainwashing in red” and left wing control over media, but it remained to be seen whether these mechanisms would change with a right wing coalition in power again.

The fact that Slovenian producers are making use of the European subsidies and those interviewed valued support for domestic production, suggests that there is not institutional misfit creating resistance in terms of participation in this form of European protectionism. Based on the literature cited above (Luaces, 2002; Sudbery, 2010), one would might expect to see Europeanization playing a role by changing the domestic opportunity structure through its financial support to specific actors. However, in the Slovenian audiovisual sector, there is not convincing evidence that participation in EU protectionism and the support programme has had consequences for the distribution of power and resources among domestic actors. If anything, the data confirms the strong position of RTVSLO and suggests that EU subsidies may strengthen the importance of the PSB in supporting independent production. At the same time with smaller stations highly marginalised in terms of material and power resources as demonstrated in Chapter 5, domestic subsidies reinforce the relationships between political parties and smaller media acting as mechanisms for maintaining control.

### ***7.3.2 Subsidies in Macedonia***

As I mentioned in the outset of this section, producers and broadcasters in Macedonia did not have access to European level subsidies for the audiovisual sector. The country used to have a fund for special interest production projects drawn from the license fee and managed by the former Broadcasting Council, though decisions on grants were taken by the government. According to three of those interviewed, many local stations survived on those grants, even though similar to the Slovenian ones, they were technically for production projects. The fund was abolished in 2005, when it was not included in the Law on Broadcasting Activity of that year. This left only the Macedonian Film Fund (MFF), which supports independent cinematic production, but unlike the SFC in Slovenia did not appear to be connected to broadcasting. The governance of the audiovisual sector in Macedonia included no official interventions in the form of subsidies to private broadcasters. Nevertheless, the evidence I present below indicates that public money was still being used to support broadcasters in the country. The government's ad hoc infusions of funds in the PSB and funding of advertising campaigns to distribute resources to private broadcasters demonstrate the political nature of protectionism in Macedonia. Within this, Europeanization appears to have played a role in altering the domestic opportunity structure to change the power and resources of the PSB.

#### ***Direct subsidies to production and PSB***

In Macedonia there were two kinds of direct state subsidy for audiovisual production, but neither goes to private broadcasting. The first is the subsidy through the MFF, which provided support to cinematic works aimed at festivals and cinema distribution. The MFF was established by the Law on the Film Fund in 2006 and started operations in 2008.

**Table 7.4 Macedonian Film Fund support for productions 2008-2011**

GENRE/ YEAR	2008		2009		2010		2011	
	Number	Grant in 1000 MKD	Number	Grant in 1000 MKD	Number	Grant in 1000 MKD	Number	Grant in 1000 MKD
Features	9	133600	7	78270	8	179800	4	45000
Shorts	5	32020	1	600	12	9900	2	3900
Documentaries	6	17950	9	18400	10	13410	6	14900
Animations	1	200	2	790	3	14800	1	1200
<b>Totals</b>	<b>21</b>	<b>183,770</b>	<b>19</b>	<b>98,060</b>	<b>33</b>	<b>217,910</b>	<b>13</b>	<b>65,000</b>
Total in EUR* (in thousands)		2,990		1,592		3,542		1,056

\*based on the average interbank middle course

Source: The author compiled from annual lists of supported projects published by Macedonian Film Fund

Table 7.4 above shows that what could be considered more “television friendly” genres of short films, documentary and animation funded by the MFF in addition to feature films. However, the data available from the MFF and a search for titles in the IMDB database produced no evidence that private broadcasters or Macedonia’s PSB play any notable role in the productions supported by the fund. When contacted, the MFF responded that they do not have records of television broadcasts of their projects as they track only festival screenings. Unlike in Slovenia, the film and cinematic production sector seemed quite removed from the mainstream broadcasting sector.

The evidence on the development of the audiovisual media sector in Chapter 5 indicates that one of the reasons for the lack of PSB involvement in production was the long-term weakened financial situation of MRT. This also relates to the second form of direct subsidy from the state in the audiovisual market: ad hoc direct payments to MRT. MRT has a long history of financial difficulty stemming mainly from problems with the non-collection of the license fee. This dates back to 2004, when the electric company charged with collecting the fee allowed customers to exclude it from their bill payment and culminated with MRT’s failure to collect the fee itself after the 2005 law gave it the responsibility (Beličanec & Rieliev, 2012; Broughton Micova, 2012; see also Šopar, 2008). By 2008, MRT was in such dire circumstances financially that the government intervened with ad hoc financial

infusions, and as Table 5.9 in Chapter 5 showed, these transfers represented 90% of MRT's budget that year.

As I have shown elsewhere, this period of ad hoc subsidies had serious implications on the political independence of MRT. Editors and general managers speaking in 2010, stated that they could not be independent as long as they relied on the government for budgetary infusions with some admitting their own ties to the parties in power (see Broughton Micova, 2012). I was unable to conduct an analysis of MRT programmes myself, but the PSB has been the subject of monitoring by the BC and by successive international election monitoring missions. The BC conducted analysis of MRT's programmes in 2010 and 2011, and both times the BC's monitoring team counted the number of minutes of coverage in the main television news programmes of the following: the central government, the parties of the parliamentary majority, the opposition political parties, the civil sector and foreign institutions. Aware that there may be credibility issues using secondary data from an NRA in which I found evidence of political influence, I also looked at the last two OSCE/ODIHR election monitoring reports of television coverage during election campaign periods (OSCE/ODIHR, 2009, pp. 16-17; 2011, pp. 14-15). The OSCE/ODHIR reports and the BC's monitoring of MRT programmes showed a clear dominance of coverage of the central government bodies and ruling political parties during the period of financial dependence on the central government.

According to Todor Malezanski, head of MRT's legal department, the financial dependence on the government changed after January 2011, when an amendment to the law was adopted such that the license fee is now collected by the State Revenue Office. The relationship described above between the government and MRT, clearly goes against EU state aid rules and the norms described in the communications on the use of state aid in PSB (see European Commission, 2001b, 2009a) and the need to ensure the financial independence of MRT was referred to in successive EC Progress Reports (see 2009, 2010). Malezanski, who as Head of Legal Services was party to some of the accession process meetings with the EC's subcommittee and is active in EBU, said that the repeated mention of the need to stabilise MRT's financing in the Progress Reports was influential in getting the government to change the law in regards to the license fee. The data presented in Table 5.9 in Chapter 5



showed that by 2011, budget transfers made up only 24% of the total budget. As of 2011, the state was continuing to subsidise MRT outside of the manner foreseen in the Law on Broadcasting,<sup>53</sup> but less so than the previous years.

However, the BC's 2011 monitoring, the findings of which are in line with those of the OSCE/ODHIR mission for the election that same year, show that as opposed to the government being less present in the MRT news programmes, it received significantly more coverage in 2011 than in 2010. This indicates that the increased financial independence may not have improved the political independence of MRT, or that the years of financial control have left their mark in terms of loyal people serving in editorial and managerial positions and other relationships. The monitoring by the BC and OSCE/ODHIR, as well as my own research, document the strong and persistent influence of the ruling political parties on MRT. Enforcing a levy such as the license fee would not be a popular move for the Government. While the account of Malezanski indicates that EU pressure played a role in changing the distribution of material resources to MRT, I suggest that stabilising the broadcaster through the license fee, especially when doing so could be blamed on EU pressure, was also in the strategic interests of the ruling parties in government.

### ***Government advertising on commercial broadcasters***

While there were official subsidies for film production and budgetary support for PSB, there were no official state subsidies for private broadcasters in Macedonia aside from the controlled price of spectrum. However, I found evidence of the state unofficially supporting certain private media in the form of government financed advertising campaigns. The government sponsored campaigns consisting of public service announcements or public notices were mentioned by three out of the five broadcasters with whom I spoke, as well as criticised by both NGO representatives. Irena Arnaudova from TVM and Selver Ajdini from TVHana explained that the government-funded advertising was used to prop up one-man show local television stations. Arnaudova directly compared the practice to the previous subsidies:

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<sup>53</sup> According to the Law, the satellite television channel for outside of Macedonia and the mid range radio channels aimed at the neighbouring countries are designated as being covered from the state budget, whereas the other activities should be from a mix of mostly license fee, but also advertising and programme sales.

“So how do those stations survive? This is how they survive. Before wasn’t there the Broadcasting Council with those 10% [of license fee] for public interest projects? There was. Well now there are the government campaigns. The hole left by the cancelling of the BC projects is filled with the government’s small change - but for a person who has almost zero needs they are enough.” (Interview, May 2011)

Arnaudova complained bitterly about the unfair competition her station suffers from another that receives government support, but that according to her, has none of its own production and mainly airs music videos except during elections. Another local television representative also complained of this kind of unfair competition being sustained by the government campaigns even though his station had also been recipient of the campaign contracts. He said:

“The small ones exist without fulfilling any standards only if they are close to a party, but the bigger ones in this climate function because the government advertises on them. If they are with the government they’re doing super. I don’t know how to prove it, but I have that experience. Now we don’t have them because they are not allowed during the pre-election period. We stopped them. But there were here also the government ads. On the one hand it’s good – they are interesting for the public, for instance about breast cancer or professionalization of public administration – those are nice things. However to spend that much on one television [station] for that kind of information is unacceptable.” (Interview May 2011)

These respondents all came from local stations, and spoke of the role of these campaigns in sustaining local stations. According to Sašo Ordanovski of Alsat M television, government advertising had an even bigger impact in the national market in which his station operates:

“About three years ago the government started to aggressively attack the television market selectively and politically. One of the key policies of this government is changing perceptions. They know that television is the most powerful. They have 17 campaigns per week. There were times when 17 campaigns were going at the same time. From drugs and alcohol to buying new books. That’s money! And now Alsat got 100,000 euros, Sitel got 6 million, and A1 got nothing and that creates such a disparity it wrecks the market.” (Interview, May 2011)

Both Ordanovski and Arnaudova complained about what this income has done to their ability to buy programme rights, saying that prices had tripled for premium

content because of the stations that have suddenly found themselves flush. These reports of politically motivated government advertising were corroborated across several interviewees including by some who were recipients of the support. Nevertheless, I decided to try to triangulate using other data because of the significance of such claims for the sector and because interviewees could have motivations for being critical of the Government. Based on the data from AGB Neilson Media Research Macedonia on ad airtime on all the major channels, the BC has published lists of the top 10 or 50 advertisers since 2005 in its annual reports on the broadcasting market. The Government did not appear in the top ten from 2005-2007, however in 2008 it was suddenly second on the list behind only T-Mobile, the largest mobile operator (Broadcasting Council of Republic of Macedonia, 2009a, p. 80). In 2009 the government was number 5, but while Coca-Cola and T-Mobile took the top two places, the spots immediately above the government were companies owned by the owner of A1 television whose ads were broadcast only on that channel (Broadcasting Council of Republic of Macedonia, 2010, pp. 107-108). In 2010 the Government had fallen down to number 18, but unlike the previous two years, that was not an election year. This data appears to support the accounts of the interviewees.

In a struggling market government expenditure can help businesses sustain themselves until better times, however in this case the evidence indicates that it was primarily being used as a mechanism of control. In addition to what interviewees described above as politically motivated and imbalanced distribution of the campaign income, there is evidence of control in the practices of implementing the campaigns. According to Ajdini, whose station had carried many government campaigns, for each ad under any media plan given by the Secretariat of the Government, he had to provide a notarised statement confirming that it was broadcast according to the plan. Another interviewee said that his station had not always been paid for the campaigns:

“We broadcast a campaign from the Ministry of Education about registration for secondary school and the system of education – some information for students – but since 2009 they still owe us and we can’t get paid. They can owe money, and now do I take them to court? They can get revenge.

Sally: How can they get revenge?

Anonymous 2: Well with an inspection, you know how it is. That still exists and psychologically has an impact. There, there's some money outstanding, but here I'll get some. If I take the Ministry of Education to Court, they'll tell the Secretariat of the Government.

Sally: And?

Anonymous 2: No more ads. It's finished." (Interview, May 2011)

In Macedonia the government was subsidising private broadcasters, despite the fact that the only legally established mechanism for supporting private audiovisual media was the MFF, which appeared to have little relation to broadcast media. The evidence indicates that the Government used inflows of funds through a large number of advertising campaigns between 2008 and 2010 to solidify their influence over private media at both local and national levels. Another intervention in the market took the form of ad hoc financial support to the PSB, which significantly decreased after a change in the law related to the collection of the license fee in early 2011. This change to the rules determining the domestic opportunity structures was supported by EU pressure to comply with EU guidance on the independence of PSB and use of state aid. However, while it seems MRT was able to use the EU pressure to further its interest in financial stability, this change also seems to have suited the political parties in government who had solidified their influence over the broadcaster.

### ***7.3.3 Subsidies as mechanisms of control***

In both Slovenia and Macedonia the state was in some way injecting financial support into the audiovisual media market. In Slovenia, producers appeared to be participating in the European project of creating audiovisual works and benefiting from EU level subsidies to the extent that the country's production capacity would allow. Though television production per se had received very little EU support, the fact that RTVSLO was a big player in cinematic production means that both EU and state level subsidies into the film industry indirectly supported content for television as well. As has been shown in other cases, inflows of financial resources from EU sources can change the domestic opportunity structure empowering actors such as civil society groups (Luaces, 2002). In the case of Slovenia there was not enough

evidence to determine with sufficient certainty if independent producers were empowered by the boost to their resources from EU subsidies. To show more decisively would have required more extensive research into the relations and resources of independent producers in the country, which was not possible within the scope of this project. However, the small relative amounts of the EU subsidies in comparison to those of the state film fund and the data that showed the heavy involvement of RTVSLO in the film productions, suggest that there had not been much change. In Macedonia, on the other hand, there was no opportunity to participate in the EU level subsidies and domestic support for the film industry appears to overlap very little with broadcast media.

In terms of subsidies directly aimed at broadcasting recognised mechanisms of state aid for private local and regional broadcasters existed in Slovenia. Although the aims of those implementing the support schemes seemed committed to the preservation of local media and pluralism, the evidence from others indicates this support also perpetuated the influence of local political elites through local and regional media. In contrast, in Macedonia there were no official subsidies for private broadcasters, yet the government was providing ad hoc financial support to sustain the PSB for several years and injected large sums into the coffers of private broadcasters through public service campaigns or ads. The political bias of MRT reported by the NRA and international monitors and the evidence of political relationships being involved in the advertising campaigns on private broadcasters indicate that these served as mechanisms of control. MRT's power and resources were changing, however, in part at least to Europeanization in that it is becoming increasingly financially independent. The adoption of new rules on the collection of the license fee was supported by the repeated mention of MRT's situation in EU Progress Reports; however, as I have argued, this change in the opportunity structure also aligned with the strategic interests of the political parties in power.

## **7.4 Conclusion**

In closing I return first to the question of whether or not these two states were participating in the European protectionist project. I found the answer to be a clear no for Macedonia, but not so clear an answer in the case of Slovenia. Slovenia's

production industry did participate in the MEDIA programme to the extent that its producers were able. The evidence shows that the industry relied significantly on the PSB as a backbone of production, despite the fact that most production was cinematic and not aimed primarily at broadcast media. Participation in the MEDIA programme may be reinforced the position of RTVSLO, rather than changed the distribution of resources and power among the actors. Nevertheless, this would need to be investigated further with a study that focused more on the film production part of the audiovisual media sector.

The evidence presented here showed that broadcasters and regulators in neither country were participating fully in European works quotas. Although the associated rules in both cases were in line with EU rules, looking at the practices of implementation, especially in comparison to domestic quotas, I found resistance (Sub-RQ1). This resistance was a consequence of institutional misfit with established practices shaped by the small size and related material conditions of both NRAs and broadcasters. It was tolerated because to do so was in line with the beliefs and priorities expressed by the individuals involved in these interactions (Sub-RQ2). In the interview data presented above, it was apparent that although most people did value domestic content, this tolerance of non-compliance with EU quotas stemmed more from an understanding of the practical and financial challenges of the broadcasters. There was greater compliance on the part of broadcasters and more enforcement by regulators when it came to national language or domestic production quotas. However, those responsible for enforcement expressed doubts about the benefits of content quotas in general and the more thorough implementation of domestic quotas was more a consequence of institutional fit with the established practices of the NRAs and that domestic content could be done cheaply.

In this chapter I also discussed the use of national subsidies and financial support from the state for broadcasters. Other than the respective film funds, only in Slovenia did an official intervention exist in the form of production grants from the Ministry of Culture. In Macedonia there were no official subsidy mechanisms for commercial broadcasters, but instead ad hoc infusions for the PSB and injections of cash into private broadcasters through state-funded ad campaigns. Looking at the relationships among the actors involved in these forms of support (Sub-RQ3), I found established

relationships between media and political parties closely linked to these subsidies. I argue that these interventions can be considered political protectionism and are examples of the mechanisms of control over media by political elites cited by media scholars from the region (Jakubowicz, 2007b, 2008; Mungiu-Pippidi, 2003; Splichal, 2001; Sükösd & Bajomi-Lázár, 2003). One change to the dynamics among governance actors was the alteration of the rules on the financing of PSB in Macedonia, which at least began the process of MRT separating itself from financial dependence on the political parties in government. There were indications that Europeanization played a role in this change in that MRT was able to use the EU's Progress Report to support its demands for changes to the law. However, the evidence showing the extent of government influence over MRT and its continuation after the change suggests that financial stabilisation of MRT was also in the interests of the ruling political parties that would then benefit from having a stronger and eventually more popular broadcaster under their control.

At the level of governance *interferences*, such as monitoring and reporting practices for content quotas, I found resistance to Europeanization that was rooted more in the small size of the contexts in which individuals were working that shaped institutional practices and values. However, at the level of the opportunity structures there was evidence of Europeanization playing some role, impacting the distribution of resources and power among the actors in the sector. Although minimally, EU subsidies expanded the material resources for independent producers in Slovenia, even if the evidence did not indicate that this resulted in a change in their position within the sector. In Macedonia, the change in the position and resources for the PSB was linked to Europeanization although there was also evidence that this was an instance of the EU's instruments of conditionality being used by domestic strategic actors when their interests and the EU pressure aligned.

In the previous chapter and in this one, I have found evidence of Europeanization impacting the domestic opportunity structures in these two cases when domestic actors have made use of the EU as a higher authority or legitimiser (Jacquot & Woll, 2004; Sudbery, 2010), and when Europeanization is aligned with the strategic interest of political parties. In the introduction, I explained that one of the core tenets of EU media policy is that there is a common market for audiovisual media services

and therefore no barriers to trade in this sector. This implies that the domestic audiovisual media sectors should be open to new entrants and other potential changes in the domestic constellation of actors and the distribution of resources among them. Inclusion in the common market also places the domestic governance actors within a European opportunity structure for the audiovisual sector. In the next chapter, I look into the openness of these two markets and their inclusion in the European common market.



# Chapter 8: The Openness of the Markets

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## 8.1 Introduction

The common market is at the very core of the European Union and implies the elimination of barriers to trade within Europe. As I explained in the introduction, this was taken into the audiovisual media sector by the TWFD, which opened up television broadcasting markets and by the Satellite and Cable Directive and the Open Network Provision Directive, which opened up markets for cable, satellite and other network provision services (Harcourt, 2005; Simpson, 2008). The telecommunications and broadcasting markets were formally fully liberalised and open in accordance with EU Directives in 2001 in Slovenia and in 2005 in Macedonia (European Commission, 2001a, 2006). The audiovisual media markets in both countries are legally open and part of the common European market for audiovisual media services, but this thesis began with an anecdote from Slovenia that suggested its market may not be so open.

In this last empirical chapter, I return to the story told in the introduction of Norkring and MTG's exits from the Slovenian television market. Why did this happen if the Slovenian audiovisual media market should be open and fair for both broadcasters and network operators as per EU rules? The removal of country specific laws and rules that can be barriers to trade as part of the negative integration mechanism of Europeanization has been associated with changes in domestic opportunity structures (Knill & Lehmkuhl, 1999). Did such changes not occur after 2001 when formally, negative integration was completed? This chapter looks more deeply into this case and the extent to which the Slovenian and Macedonia audiovisual media markets are open and part of the common market.

The common and open European market in audiovisual media services implies more than just the elimination of laws restricting trade. As mentioned in the introduction to this thesis, according to EU rules and norms the open market goes hand in hand with

the principles of a level playing field and free competition. The preamble to the AVMSD reads:

“Bearing in mind the importance of a level playing-field and a true European market for audiovisual media services, the basic principles of the internal market, such as free competition and equal treatment, should be respected in order to ensure transparency and predictability in markets for audiovisual media services and to achieve low barriers to entry.”  
(Council of European Communities, 2010, para. 10)

In Chapter 6, I already argued that in both Slovenia and Macedonia there is resistance to equal treatment under common rules and standards because of delays in the transposition of the rules under which other European market players are operating, and because of weak enforcement of rules in general. I maintained that the limited human resources available for policymaking in the small populations of these two countries exacerbated the use of media law as a tool by political parties that explained transposition delays. In Chapter 7, I showed more specifically that the lack of implementation of EU rules for European works stemmed from institutional misfit with established practices shaped by the small size of the markets, the market players and the NRAs.

Smallness is by definition relative, and when discussing countries several factors can be used to establish what constitutes a small state.<sup>54</sup> The characteristics of small state media systems were identified in the early 1990s by Trappel (1991), Meier (Meier & Trappel, 1991), and Burgelman and Pauwels (1992). These scholars were focused on Europe, but did not specify exactly which states should be considered small. Switzerland and Austria were small in comparison to Germany (Trappel, 1991); and Belgium in relation to France and the Netherlands (Burgelman & Pauwels, 1992). Since then, Puppis and his colleagues (Puppis, 2009; Puppis, Haenens, Steinmaurer, & Kaenzler, 2009) use a population cut off of 18 million to define small states, and Lowe and Nissen (2011) use 20 million. In his analysis, Picard (2011) also includes GDP as a measure of smallness. His inclusion of an economic indicator is appropriate for consideration of media systems because of how important the

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<sup>54</sup> For discussions of defining small states in general and the implications of smallness Baehr (1975) and Maas (2009) or for specifically within the EU, see Thorallsson and Wivel (2006)

economic power of potential advertisers and consumers are for media firms, and the potential tax base is for state support in the sector including PSB. Slovenia and Macedonia are small both in population and in GDP. They are even on the lower end of the scale within Europe in terms of these measures. Therefore this chapter is also an investigation of the implications of smallness within the common audiovisual media market and the consequences of it for the institutionalisation of the rules and norms of openness and fairness in markets.

This chapter first examines the material conditions in the Slovenian and Macedonian audiovisual media sector and the extent to which they act as constraints on governance interactions (Kooiman, 2003). The material conditions discussed are not just financial or technical, but also human resources. This section draws on secondary data from censuses, market research companies and reports from NRAs and PSBs. It also draws on interview data from the category “opportunity structure” in which people discussed the distribution of power and resources, some of which overlaps with sections also coded as “smallness”, the category that was added when it emerged so consistently as a topic across the interviews. I present information on revenues and discuss the consequences of the distribution of resources based on the accounts of those working in the market or as observers of the market in NRAs or civil society. The evidence shows that there is a notable difference between the two cases in the way resources were distributed in the sector; however because of their small size, neither was really part of a common market for audiovisual media services.

The third section of this chapter focuses more closely on the relationships within each of the audiovisual sectors. Some of the relationships between strategic actors are defined by laws or other rules shaping the domestic opportunity structure, and this section draws upon formal rules in both cases. This section primarily uses interview data coded under the category “relationships”. The evidence from interviews presented here indicates that relationships between or among individuals also help to define those between organisations as strategic actors. Though there are significant differences between the two cases, I find in each country within the sector there existed what amount to “closed clubs” of domestic players, creating barriers to trade and to entry into the markets.

In the end, I argue that these markets were open in the sense that foreign channels and content can be rebroadcast, but they were not open to foreign capital and investment and neither are domestic market actors able to participate in the broader European audiovisual media market. For market players and other governance actors in these small countries, the European market was not a level playing field because of the material conditions of the national audiovisual media sectors. Neither were the audiovisual media markets open to investment or new entrants from outside, because the established relationships among domestic actors and individuals essentially created barriers and make them resistant to change. It has been argued that EU audiovisual media policy came about because “larger countries created pressure for change and therefore new policies” (Papathanassopoulos & Negrine, 2011, p. 9) and that what ended up in policy “represents the interests of larger states, with insufficient regard for their smaller counterparts” (Burgelman & Pauwels, 1992, p. 177). While accessing the benefits of the economies of scale that the common market offers might be in the interest of media companies in large states, the evidence in this chapter shows that, in these two countries, small size serves as a barrier to the participation of their audiovisual media sectors in the common market. Instead, unable to compete more broadly domestic actors appear to have closed ranks to preserve their positions at the national level.

## **8.2 Material Conditions and the Distribution of Resources**

In the conceptual model of governance used in this thesis, material conditions can be the simple demographic, financial, or even geographic characteristics in any given country that constrain governance interactions. It is outside the scope of this project to conduct a thorough comparison of the material conditions in these two cases, with those in other states in the EU. However, in presenting the material conditions in each of these markets, I make reference to some other small European countries that may be more familiar simply as reference points. This section relies on secondary data from a variety of sources, which are described in more detail as the data is presented. To begin with, in the table below are some basic figures about Slovenia and Macedonia for the period studied.

**Table 8.1 Demographic data on Slovenia and Macedonia alongside data from the Netherlands and Denmark**

	Slovenia		Macedonia		Netherlands		Denmark	
Population	2,055,496	Q1 2012	2,050,671	M6 2009*	16,656,000	Yr 2011	5,584,758	M4 2012
GDP per capita	€17,361	Yr 2011	211,246 MKD (€3,422)	Yr 2010	€33,400	Yr 2011	€37,300	Yr 2011
Net monthly wage	€988	M4 2012	21,415 MKD (€350)	M12 2011	€2,229	Yr 2009*		
unemployment (registered)	5.3%	M4 2012	32%	Yr 2010	6.20%	M4 2012	6%	M4 2012

\*Latest available figures were only from 2009 with new counts scheduled for near future. In Macedonia 2012 census was delayed for political reasons. Netherlands new 2011 figures expected December 2012.

Source: State Statistical Office Slovenia; State Statistical Office of Macedonia; Statistics Netherlands; Eurostat; Statistics Denmark

In terms of population size, Slovenia and Macedonia are at the lower end of the scale within the EU. Among the EU members and Candidate Countries, only Estonia, Cyprus and microstates like Luxemburg, Montenegro and Malta have smaller populations. Because of the economic conditions these small populations also have low purchasing power and provide a weak tax base through which to sustain a media market (Picard, 2011). The population size also places other objective limits on the capacity of the audiovisual media sector. Eight of those interviewed in Slovenia and nine of those in Macedonia spoke spontaneously of the size of the country being a constraining factor in the media system. Their accounts below show that the figures above are not just descriptors of the environment, but represent real constraints on the everyday behaviour and interactions of actors in the sector.

### **8.2.1 Financial and human resources**

One of the main issues that came up in the interviews in terms of smallness was the size of the advertising market. Those working in private stations in both countries mentioned that they had no trouble with sticking to advertising limits set out in law because they just did not have that much demand for advertising, and prices were already rock bottom. Jerič of RTS Maribor in Slovenia said that only PopTV and RTVSLO had trouble keeping within the limits of their allowed advertising time. In Macedonia, Ordanovski of the national station AlsatM, also said that his channel had trouble filling the ad time allowed. In Macedonia, those interviewed from television stations also complained about the low price of advertising that they explained as a

result of the number of stations competing within such a small market. In both cases, I contacted various sources in order to get data information on advertising budgets and was told that it is very difficult to get exact figures because of the discounts given by broadcasters and alternative forms of compensation used. In both countries, figures were available for the gross value of advertising, which is derived from data on ad time on air and advertised prices from the broadcasters. In Slovenia, a team at the Department of Journalism of the University of Ljubljana recently used data obtained directly from broadcasters to arrive at figures for advertising revenue in 2010, and in Macedonia, the BC had been tracking the advertising revenue as reported by broadcasters to them and the Central Register. Table 8.2 below provides some available information for the period 2009-2011 from each case that gives a rough picture of the financial state of the broadcasting sectors.

**Table 8.2 Some financial indicators for Slovenian and Macedonian television markets**

	Slovenia	Macedonia	Macedonia (€)
Total Revenue of non-PSB TV 2009	N/A	1,683,508,410 MKD (454.55 mil A1 TV)	€27,272,863 (€7.36 mil A1 TV)
Total Revenue of non-PSB TV 2010	€77,300,000 (€53 mil ProPlus)	1,112,230,000 MKD (825.03 mil national terrestrial stations)	€18,129,349 (€13.45 mil)
Total Revenue of PSB 2010	€123,044,167	731,091,357 MKD	€11,843,680
Total Revenue of PSB 2011	€109,775,023	1,271,298,592 MKD	€20,722,167
Gross Value of Advertising on TV 2010 (ad time by advertised prices)	€406,059,512	35,315,000,000 MKD	€578,930,000
Advertising revenue reported by all television stations 2010	€69,400,000	1,003,840,000 MKD	€16,362,592

*Source: Mediana, Slovenia; Broadcasting Council of Rep. of Macedonia; Milosavljević et al. (2012); Radio Television Slovenia; Macedonian Radio Television*

As Table 8.2 shows, Slovenia's RTVSLO received about five times more revenue than Macedonia's MRT in 2011. However, the total revenue of RTVLSO in 2011 was still much less than the €125 million that the incoming Dutch Government promised to cut from its PSB budget that same year (Government of the Netherlands, 2012). Figures for 2011 were not available, but in 2010 the total revenue for private television was significantly less than that of RTVSLO. With the closure of A1

television, which, as the table shows, made a significant contribution in the previous year, the total revenue of private television in Macedonia also fell below that of MRT. MRT's revenues at the time were still largely government transfers. The dominance of the large national players in terms of revenue is clear in both cases. In Slovenia, ProPlus' revenue was 68.6% of the total for all private stations in 2010, which included the income other stations received from the government through the subsidies for special interest programmes and other sources. In Macedonia even without A1 television, the four remaining national terrestrial stations received 74% of the total revenue, leaving little for the more than 60 other licensed channels.

By far most of the revenue for television in both cases comes from advertising, and in both cases it is notable that the gross value of television attributed to advertising far outstrips the amounts that stations reported receiving as revenue from advertising. In Slovenia, the gross value was only just under six times the reported revenues in 2010, however in Macedonia it was more than 35 times the reported revenues in that same year. According to several of those I interviewed and those supplying the data, this disparity is due to the fact that the actual rates paid for advertising were significantly discounted from the advertised prices (see also Beličanec & Ricliev, 2012). This means that the actual market value of television ad time was far less than on official rate cards. For the sake of reference, while Slovenian and Macedonian television stations made just over €69 and €16 million respectively from advertising in 2010, the advertising turnover for Danish television stations was 2,256,000,000 DKK, the equivalent of just over €303 million.<sup>55</sup>

What do all these figures mean for the Slovenian and Macedonian market actors as part of the common audiovisual media market in Europe? The amount that private television stations have to spend on production and the procurement of programmes is limited by the amount of revenue they can generate from advertising. Though RTVSLO and MRT may exchange some programming with other PSBs through EBU, there is not much hope of public or private stations marketing Slovenian or Macedonian productions to external markets. APEK's Kriselj remarked about Slovenia, "We will never have huge television production. It's impossible for such a

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<sup>55</sup> Figure from Statistics Denmark (<http://www.dst.dk/en.aspx>) where official source listed as Dansk Oplagskontrol, Reklameforbrugsundersøgelsen i Danmark

small country with a different language from the neighbours” (interview, April 2011). His colleague Gorjanc in talking about there not being enough quality Slovenian audiovisual works explained:

“We do not have so much money provided for this audiovisual industry. For example foreign countries they have big amounts of money that is provided for production and we have for example, I don’t know, 5 million, no, one or two million per year. And a film costs 2 million - you don’t even have money for one film. That is our reality and for example in some other countries they have, I don’t know, billions – billions of Euros for production and you cannot compare.” (Interview, April 2011)

Gorjanc wanted to see more investment from the government in production, but insufficient money was only one of the problems. In both Slovenia and Macedonia, people with whom I spoke from within the industry and others said that the small population also just does not generate enough people for production. In Macedonia, Beličanec of the Media Development Center, criticising the BC’s decision to issue more satellite licenses argued: “There just isn’t the workforce in Macedonia to absorb more professionally” (interview, May 2011). Jankovska from the BC and an interviewee from one of the television stations also both explained that broadcasters just did not have enough qualified personnel, especially in technical or management areas. Ajdini from TV Hana said he had to wear several hats in the station he managed, taking care of all the administration as well as playing an editorial role, because of a lack of staff. And as Gorjanc explained, in Slovenia the problem is not just with the actual broadcasters, but also in independent production. He said that while in bigger countries independent production can be an important part of industry, in Slovenia “there are maybe just one or two bigger producers and all the others are smaller, they don’t even have their own studio . . . They just ad hoc hire some studio and get together and make some audiovisual work” (interview, April 2011).

It is not just a matter of technical and production personnel, however. For broadcasters in Slovenia and Macedonia that have to provide 24 hours of content each day and fulfil quotas for domestic production, there is also the problem that their countries just do not produce enough material – the stars, musicians and others



that can generate subject matter or content. One of the two producers from TV Sitel in Skopje explained:

“First of all this is a small market and that market doesn’t allow you to create that kind of programme that they have say in Serbia. As a population we are small, as an intellectual capacity, and the possibility to find good guests, good TV hosts in this space is a problem.” (Interview, May 2011)

Although this producer in Macedonia believed Slovenia would have less of a problem, Slovenians had similar complaints. One of the big problems is having enough Slovenian music to fulfil the domestic quotas. The person interviewed from RTVSLO for this project echoed statements made by others in previous research I did on RTVSLO (Broughton Micova, 2012) saying, “the level [quota] for Slovenian music is 40% Slovenian music in programmes and as you can imagine we have our own programme for classical music – 40% Slovenian classical music isn’t easy to get” (Anonymous, Interview April 2011). In both Slovenia and Macedonia the audiovisual media industries in general faced limitations of size. The advertising revenues and government interventions that fund production were small, but also the material and people needed to generate content were also limited. For television stations and independent producers facing the kind of competition from foreign channels described in Chapter 5,<sup>56</sup> the playing field is not very level even if the same rules and minimum standards apply to all. These actors were at a disadvantage from the start because of the size of their home jurisdiction. Although Europeanization may contribute to the removal of formal barriers to trade, the material constraints within which these market players operate created others, and therefore resistance, to any empowering changes Europeanization might otherwise have brought to the domestic opportunity structure.

### ***8.2.2 Internal competition and competitiveness***

Since the monopolies of the former state-run system were broken down, there has been competition for the limited financial and human resources for audiovisual media services in both Slovenia and Macedonia. In both cases, policymakers and regulators were wrestling with how to make domestic media companies more

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<sup>56</sup> See in particular Tables 5.2 and 5.3 and Figure 5.2.

competitive in relation to foreign competitors, as evidenced by the concerns of those cited in the previous chapter from the NRAs and public administration. The nature of competition within the two countries was quite different, which provides a chance to see the consequences of the two variations for participation in the common market. In Slovenia, concentrations formed internally and competition was seen as coming primarily from outside. In Macedonia, one could see a higher level of pluralism in the market, which caused concern not just in terms of foreign competition, but also in terms of the media relationships with political elites. I start by describing the situation in Slovenia and then go into detail on the case of Macedonia, highlighting the differences afterwards.

Although in Slovenia many broadcasters were licensed early on as local stations, as described in Chapter 5, the market became increasingly concentrated. According to four of those interviewed in APEK, the main reason for this was the relationship that had been established between broadcasters and the state in relation to the frequency. This arrangement between the two actors meant that frequencies could be easily transferred and were held indefinitely. They explained that at one point, the state was simply forced to acknowledge the existence of the so-called networks of smaller stations allowing the larger stations to form. Only one person I interviewed did not seem to regret this lack of diversity, particularly in radio. APEK's Igor Funa, responsible for spectrum management gave some reasons for why there was little interest in frequencies or entrance into the market:

“Television is very different because to run a TV station you need quite a lot of money, much more than for radio and then on the other hand Slovenia is a very small market and this is maybe the main reason why we don't have many TV stations. Years ago when we were using only analogue broadcasting one of the reasons the number of stations was limited was the number of available frequencies, but since last two years we have a lot of capacity on the digital networks but the number of TV channels is practically the same. There are many reasons, but the main reason is that the market is small. The second reason is that the main commercial TV player is very strong, has a big market share, and this makes for anybody interested in the Slovenian market a very difficult starting position.” (Interview, April 2011)

Stopar in the Ministry of Culture and Jerič from RTS Maribor gave this same reason for their views that there was little chance of foreign companies setting up shop in

Slovenia to compete with incumbent broadcasters. According to them, the situation of the small market and two large incumbents in the form of ProPlus and RTVSLO made it “not interesting” to foreign investors. I found that there were also other reasons and will go into that in more detail in the next section, but at the same time being “not interesting” for investors did not mean that foreign competition was not an issue.

Instead, Slovenian broadcasters faced direct competition from channels coming in from other jurisdictions and being re-broadcast on subscription services. Stopar, Krišelj and others in APEK raised the problem of a new phenomenon of foreign channels targeting advertising to the Slovenian market and therefore taking part of the potential advertising revenue from domestic broadcasters without having to comply with domestic programme standards. Tables 5.2 and 5.3 in Chapter 5 showed that the popularity of “other stations”, most of which are foreign channels not including the Croatian ones that are counted separately, was steadily increasing over the last several years and by 2011 accounted for more than a quarter of audience share. I have already shown that the market liberalisation that resulted in the spread of multi-channel subscription services in Slovenia cannot be attributed to Europeanization. However, there are formal rules in the AVMSD related to jurisdiction that provide mechanisms for dealing with such unfair competition and maintaining the level playing field (see Council of European Communities, 2010, art. 4). State level authorities can appeal if channels outside their jurisdiction are specifically targeting their national markets.

Although aware of these, according to Stopar in the Ministry of Culture, there were no plans to make use of these measures at the time of the interviews as there were other priorities. Considering the size of his department and the smallness of the NRAs and civil society groups in Slovenia described in Chapter 6, it seems there was not much capacity among domestic actors to make use of the mechanism provided for in the AVMSD. In most interviews, European level organisations did not come up spontaneously in response to questions about with whom they communicate regularly or other questions aimed at uncovering their relationships with others. Therefore, interviewees were specifically asked about relationships and communication with EU level organisations. One person in APEK explained that

their relationship with EU institutions consisted mainly of answering questions from Brussels. This person added that only one person from the Ministry of Culture has participated in the discussions about AVMSD at the European level without reporting back to other actors or engaging APEK (interview, Anonymous, April 2011). Not making use of the EU rules designed to encourage a level playing field gave foreign market players access to the resource of the already limited advertising market within Slovenia without the obligations placed on Slovenian broadcasters. These foreign channels were then in direct competition with the domestic broadcasters that operated under the material constraints described in the previous section, not just for audience share but also for advertising revenues.

Jelovac, of the Slovenian Broadcasting Council, argued that because of foreign competition, the country should focus on developing the competitiveness of a few large domestic players, and stop trying to prop up pluralism with government funds that he saw as primarily mechanisms for political control:

“In the present law we have so called programmes of special importance – look, programmes of special importance (sarcastically). And we finance them without any control of the content, but only of quantity of output. So we financed several programmes of such types – what’s that? On the one side is the directive [AVMSD], it’s a danger that we are destroyed by the bigger players. And on the other side you have the continuity of the political ideological domination of media. So we must find the third way. And that’s what we have to do. That’s our mission in small countries: to find the capital that will support the development of strong media. Strong in the sense of human resources, of technical equipment, so strong in all sense of meaning of strong organisation. And on the other hand to have some kind of public support for their mission.” (Interview, April 2011)

Although he was among those who regretted the loss of diversity in the market, Stopar in the Ministry of Culture, also said that in his view there needed to be fewer players in the market supported by state aid allowing for more sustainable regional television stations to survive. Based on the market data presented in Chapter 5 and in the previous section, I argue that the Slovenian audiovisual media market was already rather concentrated with one very large commercial player as Jelovac described, whose only meaningful competition was the PSB. Still, the largest player in the Slovenian market, ProPlus also seemed to feel the pinch of competition from

foreign channels. Milosavljević of the Department of Journalism at the University of Ljubljana, who was in the drafting group for a new media act, argued that Slovenia does not “have the critical mass” of population to support specialist channels (interview, April 2011). However, ProPlus’s Grčar said that his company was so eager to start with niche channels like those coming in from outside that they would not wait for a law to be passed to allow them. Under the law valid at the time, such channels would still have to fulfil all the domestic quotas and other obligations applied to Slovenian broadcasters, but Grčar intended the niche channels to be without those obligations. With foreign channels not obliged by such quotas eating into the already small Slovenian advertising market, I find it unsurprising that, according to Grčar, ProPlus found it worthwhile to risk fines rather than wait.

In Macedonia, it was the interviewees from the Albanian language broadcasters who were most concerned about competition from foreign channels. Though the situation was not the same as in Slovenia where movie and other niche channels were providing translation and selling advertising time in the Slovenian market, they did describe a problem with the channels coming in from Kosovo and Albania through multi-channel subscription services. The demographic characteristics of Macedonia mean that according to the last census in 2002, approximately 23% of the population shares a language with these two neighbours. Ajdini from TV Hana in Kumanovo said that especially as a local Albanian language station, he could not compete with the Albanian language programming coming from Tirana and Prishtina. He explained that the issue was not so much about advertising, but that he had to compete with them for the same pool of artists, musicians and others needed to make programmes.

In terms of foreign investment in the domestic market, I also encountered the opinion that the Macedonian market was too small and already too saturated to be interesting for foreign investors. However, rather than it being attributed to one large commercial incumbent as in Slovenia, the main concern was the high, and still growing, number of domestic players. The abundance of broadcasters was an issue not just because it was perceived as a deterrent to foreign investment, but also as inhibiting the quality and competitiveness of the domestic broadcasters. Ajdini’s station, which was mentioned above as competing with Albanian and Kosovar

channels, is based in a town of just over 70,000 inhabitants. He explained that his station could probably survive as a local station with advertising from local businesses if it was the only station in town, but that local competitors have driven ad prices down so low that it is hardly worth the amount he would spend on phone calls trying to get local business to pay the bills. According to Ordanovski from the national AlsatM, the competition for viewers and advertising income is damaging the quality of the programme offering on all the channels:

“The televisions have entered this race for prime time and ratings and they are prepared to broadcast Turkish series from morning to night if that’s what gets results . . . we are flooded with programmes with questionable quality or structure. . . . very harsh competition imposes criteria of survival.” (Interview, May 2011)

These were also the reasons Beličanec of the Media Development Center was highly critical of the BC’s decision to issue more licenses to satellite stations. According to BC President Stefanoski the mistake was made in 2006, when the BC failed to use the transition from concessions to license as an opportunity to cull the number of broadcasters and license only the better equipped and more professional of them. Instead, he admitted under the pressure of time and interrupted by an election, that they made the decision to grant licenses to all who were interested and afterwards to try to enforce standards.<sup>57</sup>

BC Vice-President Fetai defended the decision despite his own dilemmas saying that there were people interested who showed they had capital. He said that the BC assumed that they had calculated the risk and decided that it should allow for “survival of the fittest”. The strategy of the Macedonian regulator has been to give out ever more licenses further diluting the domestic resources. All those interviewed from television stations, except for the producers from TV Sitel, said that the market is just too small for so many broadcasters to survive from broadcasting. But inside Macedonia there were still people interested in getting licenses. Stefanoski turned the question of why did the BC keep giving out licenses around to ask, “Why is there so much interest in having a television station in a country where the advertising pie is

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<sup>57</sup> The ex post enforcement of standards failed to materialize. See Chapter 6.

miniscule?” (interview May 2011). In a separate interview, his colleague Fetai provided an answer:

“Macedonia has an enormous number of radio and television stations, private stations alone are more than 100 in this little country. . . We have great pluralism in terms of the number, but if you take into account that the basic source of financing these should be advertising which depends on industry, on the economic development of the country – how big is that advertising pie that large and strong that can sustain them. They are sustainable those that have advertising and the biggest advertiser in the country now is the state, so in some way they become dependent on the advertising that is in control of the government. And what’s happened since then [1997] instead of having regulation of the market that would be normal for an advertising pie that is not growing, we have in the last 3-4 years fifteen more national televisions through satellite. And these terrestrial ones, where what will they live off of I ask you when the advertising pie has not grown so as to support more televisions.”  
(Interview, May 2011)

I recall here the discussion of the use of advertising campaigns as pseudo-subsidies and as a mechanism of control in Chapter 7. The accounts here indicate that the abundance of broadcasters in Macedonia has three consequences. Firstly, the high level of internal competition makes the market unattractive for foreign investors. The two producers from TV SITEL television gave several examples of foreign investors that had started to invest in television, but withdrew after seeing it was not profitable. The most recent attempt was one by Serbia’s PINK television which ended when the investor never paid for the license, essentially giving up the channel it had bought into (see Broadcasting Council of Republic of Macedonia, 2012a). Secondly, in Macedonia, the four national broadcasters who received most of the advertising income available in the market still did not have enough income to produce quality programmes to compete with foreign channels. Thirdly, the thinly distributed resources spread among the multitude of smaller broadcasters, leaves them dependent on other sources of income that are often connected to political allegiance.

Without even delving into issues of convergence and competition from non-linear content from various sources, broadcasters in Slovenia and Macedonia face competition from linear foreign channels based in other jurisdictions. The nature of internal competition within these markets differed significantly in that Slovenia had one very large private station and a strong PSB, whereas Macedonia had several

national private stations and a weak PSB. In neither case did it appear that the model was overcoming the limitations of the material conditions in the country. In the Slovenian case, for which EU rules provide mechanisms to help level out the playing field, the evidence suggested that domestic actors were not able to make use of these, making them somewhat irrelevant.

### ***8.2.3 Uninteresting markets and uncompetitive market players***

In both Macedonia and Slovenia, the material conditions in which broadcasters and other actors of governance operated were characterised by limited financial and human resources due to the small size of the two countries. Advertising revenues were low and concentrated among the national terrestrial television stations in each case. Because of the small populations and economic conditions the bases for the license fees were small as well as the overall tax bases, limiting state intervention in the form of PSB and subsidies. In both cases, the human resources needed in terms of qualified personnel to work in broadcasting and production, were also limited. These findings were expected based on the existing literature on small state media systems and small media markets (Burgelman & Pauwels, 1992; Picard, 2011; Puppis, 2009; Trappel, 1991, 2011). What the investigation of material constraints in these two cases also showed was that financial and technical resources were not the only constraint. Another issue was the ability of these small countries to generate content in terms of musicians, artists, events, locations, or generally subject matter for programmes. In addition to discouraging foreign investors, these conditions limited the capacity of domestic market players to participate in the European audiovisual media market as contributors of content. It also restricted the ability of domestic players to compete with others in the common market, the foreign channels that are re-broadcast in Slovenia and Macedonia.

In Slovenia because of the relationship established between licence holders and the state in the early years after independence, concentrations formed with the result that two big players, one of which is the PSB, dominated the television market. Several of those with whom I spoke in Slovenia felt that larger, stronger domestic broadcasters would be better able to compete with foreign channels. However the evidence here suggests that being a big fish in a small pond does not help when the



small pond becomes part of a lake. Slovenia's ProPlus was still struggling to compete with foreign channels, prepared even to break the law in order to gain some advantage, and the audience data in Chapter 5 showed that foreign channels were increasing in popularity. This indicates that in Slovenia, despite the high level of concentration in the domestic television market, the small size of the country still presented a barrier to trade, making the domestic opportunity structure resistant to the change that might be expected in the course of Europeanization.

In Macedonia the domestic opportunity structure developed such that there was more pluralism and competition within the domestic market. The Macedonian NRA's strategy of allowing survival of the fittest and the marginalised position of MRT meant there were no "strong" broadcasters. The evidence presented here indicates that this resulted in stations that struggled to produce quality programming and were dependent on sources of income that had political strings attached. Although the fierce competition and extremely limited potential revenues in the Macedonian audiovisual media sector may have made it unattractive to foreign investors, there had been attempts from media companies in neighbouring Greece and Serbia to invest. Those foreign investors quickly withdrew, but the statements of those in the BC show that there was persistent domestic interest in launching new media. If there is no money to be made, why would anyone be interested in opening a television station in Macedonia? The answer to this question I found in further exploring the established relationships within the sector. In the next section, I investigate in more detail the relationships among actors and find these also contributed to resistance to participation in the open and common market for audiovisual media services.

### **8.3 Relationships in Slovenian and Macedonian Audiovisual Media Markets**

Following the discussion above about the material conditions and the distribution of financial and human resources that define the opportunity structures in Slovenia and Macedonia, this section examines more closely the relationships among the actors of governance, including at the level of individuals. In this section I present further evidence that the Slovenian and Macedonian audiovisual media markets were resistant to the foreign investment and European level competition that is part of participating in the common audiovisual media market. The evidence here comes

primarily from interviews data coded in the category of “relationships” and one can see that the interviewees describe both their own personal relationships as well as the inter-organisational relationships among actors in the market, the state and civil society. For example, television station managers spoke of their personal communication and relationships with the president or director of the NRA and of their company’s relationship with the NRA or other state actor. In these descriptions, the lines between the individuals making decisions and behaving on the basis of the *logic of appropriateness* and organisations operating as strategic actors based on the *logic of consequences* (Börzel & Risse, 2003; March & Olsen, 2004) begin to blur.

In both Slovenia and Macedonia I was told that “everybody knows everybody” by several of those interviewed. The small numbers of individuals working within the governance actors of audiovisual media in both countries was also demonstrated in Chapter 6 in relation to the ability of the various governance actors to engage with policy and rule making. As I have shown above, there are significant differences between the two cases in terms of the way power and resources were distributed within the national audiovisual media sectors. I have already presented evidence demonstrating that in Slovenia, ProPlus and RTVSLO were the largest players in the television market with an overwhelmingly large share of both audience and advertising.

In this section, I examine the relationships surrounding these two companies and fill in the details of the story with which I started this thesis. From the Macedonian case, the data discussed so far has testified to the strong links between political parties and media companies through financial dependence, and even indicated that political ties were part of considerations of appropriateness for decision-makers in the NRA. This section examines more closely the relationships within the audiovisual media sector in this country and the dynamics between political elites and media. The differences between the cases raise questions about what the implications of plurality are in such small markets. However, in both cases I find that the relationships in these two small audiovisual media sectors, in which distinctions between individual relationships and inter-organisational ones are slight, contributed to making them resistant to Europeanization. I just argued in the previous section that the material constraints of these small markets act as barriers to trade and to changes in the domestic

opportunity structure that Europeanization could bring. Here the evidence indicates that the established relationships in these small states did so as well, and domestic actors used those relationships to protect their positions and their interests, be they profit-based or political. I begin with the situation in Slovenia and follow with the Macedonian case, expanding afterwards on the implications of the findings from the comparison of the two cases.

### ***8.3.1 Relationships in the Slovenian audiovisual sector***

As I have described before, the fact that licenses were unlimited and easily transferable helped make it possible for ProPlus, with a key infusion of foreign capital, to establish a dominant position in the market in terms of rating and share of advertising. Despite being owned by CME, ProPlus was not considered a foreign company in Slovenia. After my third interview, which was with Grčar of ProPlus, I began asking the remaining interviewees as well as other people I met if they considered ProPlus to be Slovenian. Not one of them answered negatively. The majority said that although the capital was foreign it was run by Slovenians and produced in Slovenian. ProPlus was started by local media professionals who although no longer part owners, have remained involved in its management for the last 15 years.

One can expect an incumbent broadcaster to have advantages over new broadcasters for a variety of reasons. However, the new network operator for digital terrestrial television (DTT) did not expect broadcasters to be a barrier to its entry into the provision of transmission services. When I interviewed the Director of Norkring Slovenia, Roman Smiridonik, he was frustrated and angry with both RTVSLO and ProPlus. Norkring won the tender to build the commercial free to air DTT network in Slovenia expecting that the commercial channels that were allowed on RTVSLO's MUX during switchover would move to its network upon completion. According to Smiridonik, Norkring planned to have ProPlus's channels and the three regional channels in addition to those it did have: TV3<sup>58</sup> and TVPink.si, both foreign-owned. Since then, Swedish MTG pulled out of TV3 citing a failure of regulators to ensure

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<sup>58</sup> TV3 existed before as a station run by the Catholic Church; however when it was bought by Swedish Modern Times Group in 2008 it was completely re-launched.

fair competition that meant it was unable to capitalise on its consistently increasing ratings (STA, 2012a). Although at the time of the interview Smirdonik said that the company was preparing a case for the European Courts, Norkring pulled out also in February 2012 (STA, 2012b). As the evidence below will show, the Slovenian market was closed to these new entrants because the opportunity structure gave power and resources to ProPlus and RTVLSLO enabling them to essentially drive the newcomers out, but also because individuals deemed it appropriate to their political and personal relationships to allow it.

Unlike most other countries in the region, in Slovenia the government never chose to divest the “links and transmitters” from RTVSLO into another public company. The Law on RTVSLO and the Digital Broadcasting Act, which granted RTVSLO a digital MUX ensured that important transmission resources were distributed to RTVSLO. RTVSLO retained the privileged position of controlling its own signal and more importantly, owning the transmitter positions across the country. The law implementing digitalisation in Slovenia granted RTVSLO an entire MUX (Republic of Slovenia, 2007) thereby ensuring that it maintained its position of both broadcaster and network operator after analogue switch off. In addition to the role of political elites when it comes to the PSB described in Chapter 5, this arrangement helped define RTVSLO’s relationship with other market players. ProPlus may have had a very competitive relationship with RTVSLO in terms of ratings and advertising, but would have been a customer for the decade and a half that it had its own analogue terrestrial network. After switchover ProPlus would simply have switched from paying co-location fees to paying carriage fees to RTVSLO’s division of links and transmitters. Also, according to Smirdonik, Norkring’s biggest expense, one that Norkring intended to cover by serving RTVSLO’s competitors in the market for viewers and advertising, was the co-location fee paid to RTVSLO. A clarification of the Law on Digitalisation or a competition ruling on RTVSLO’s pricing could have forced the PSB to host only its own channels on its MUX.

However, two other types of entrenched relationships seemed to work against Norkring and TV3: one on the personal level among individuals and another between ProPlus and the political establishment. First of all, the individuals representing Norkring did not appear to be moving in the right circles. The evidence for this was

both in how people described the situation and their own behaviour. Smirdovnik, for example, said that while he had learned a great deal since starting with Norkring, he did not communicate much with those in the media part of broadcasting. He explained:

“More or less we as a MUX operator we deal more or less on the technical side, so we don’t have too much to deal with media people – real media people. Of course, we do have to understand media, but we are just on the very low end or I don’t know where, how to say, we are somehow connected but not so much in media.” (Interview, April 2011)

Smirdonik said he had applied several times in writing to APEK requesting them to investigate RTVSLO’s pricing schemes and each time RTVSLO issued new prices and the process took a long time. Smirdonik expressed understanding that the investigation might be difficult and that APEK might not have influence over the law. However, the “real media people” with whom I spoke did seem to have a different relationship with the regulator.

For example, RTS Maribor along with the 3 other main regional channels had signed an initial letter of intent to be on Norkring’s network. Its Director Jerić, who said he had good relationships with all of APEK’s previous directors and knew the current one quite well, reported that he often just phoned up the director when he had concerns. Most recently, he said, these had been about Norkring sending him invoices. Jerić and the other regional stations were also lobbying for their stations to be given public service status, and therefore a permanent position on RTVSLO’s MUX. I already described the unique influence of regional and local televisions on law making because of their connection to local politics in Chapter 6, but having relationships among “the real media people” is not just a question of that kind of direct political clientelism. APEK’s Funa was responsible for frequency management but claimed to have many friends working in broadcasters. Although he seemed to almost be rooting for TV3, he was not optimistic about their potential because he thought they were not building the necessary relationships. He explained:

“There are maybe 200 people that work for them [ProPlus] and there are two terrestrial channels and then one in cable. This is a whole system – a lot of people, a lot of social networks, a lot of people that know

politicians that talk to politicians and make sure for them. But TV3 on the other hand have only a few people who are actually involved in preparing content and they actually are not involved in anything else. They have payout. They have some limited local production. They are not present on social events, they are not interested in whatever is happening here in Slovenia.” (Interview, April 2011)

He said these personal relationships are not essential, but they are if you want to influence legislation or “to have some friends that maybe you will need sometimes”. ProPlus’s in-house counsel Grčar, who was previously head of its legal department for nearly 15 years, said that he did not need connections or want too many. The fact that his reason was because then people want things, attests to what such relationships mean in terms of assumptions about what is then appropriate behaviour. It also shows that within that environment, he was one with power and resources, who could be expected to be asked for things more than one who needed to rely on the power or resources of others.

Although some were unhappy about its tabloid style and commercialism, not one of those interviewed said that ProPlus demonstrated political bias in its programming. It was viewed as independent of the influence of politics. According to Grčar this was mainly because the station had foreign owners. Petković of the Peace Institute of Ljubljana said that ProPlus’s independence could also be attributed to the fact that among its advertisers are all the major foreign companies active in Slovenia. According to her, other media have been affected by changes in government because they depend on state companies, whose directors change with each incoming government. Jerić, whose station was in such a position, concurred. Whether because of its foreign owner or its foreign advertisers, ProPlus’ dominance in the market not only made it independent, but made others dependent on it. Jerić summed up the situation:

“If small media are maybe afraid of political power, political power is afraid of PopTV [ProPlus]... PopTV is using its power to tell the government you leave us alone, you leave us on MUX A and we don't care about Norkring, get'em out of Slovenia...Their interests are commercial, so they don't care who is in charge, but whoever is in charge they are trying their best to have them under control.” (Interview, April 2011)

RTVSLO had a unique relationship with the state that gave it a privileged position as both broadcaster and network operators for others. ProPlus was well integrated at the level of personal relationships among the circle of “real media people” in Slovenia who have access and influence in the country. The evidence here indicates that within the audiovisual media sector in Slovenia, there was a kind of “closed club” that left newcomers with little recourse or way in. Personal relationships among those within governance actors contributed to this, making it *appropriate* for individuals in decision-making positions to protect this club. Norkring’s Smiridonik lamented: “If I say to Golobić [then Minister of Higher Education, Science and Technology], look this is not okay and he says, yes you are right and just puts the solution in the drawer, what can I do then? (interview, April 2011)”.

### ***8.3.2 Relationships in the Macedonian audiovisual sector***

In Macedonia, the laws defining the opportunity structure had not given MRT the same resources as RTVSLO. The links and transmission division of MRT was made a separate public company in 1998 by the Law on the Public Company Macedonian Radio Diffusion (MRD). Although through a tender and not through law, the Macedonian government granted three DTT MUXs to Telekom Slovenia, which had also recently acquired one of the country’s mobile telephone operators from Greek investors, to operate a subscription based multi-channel DTT service. By law, MRD was granted one MUX to provide free to air transmission of the programmes of MRT. Digitalisation was not complete in Macedonia at the time of this investigation, but at the time the only operator of a DTT network provided a multi-channel subscriptions service similar to cable or IPTV.

The accounts from the interviews in Macedonia provided strong evidence that the main relationship contributing to the lack of openness in the audiovisual media market is the strong bond between political elites and broadcasters. Out of all the people with whom I spoke, only four did not complain about the political influence over or ownership of the media. Two of these were the BC’s Mitevksa and Ilevska from AEK, who spoke only of more technical subjects specific to their jobs, and the other two were the two producers from TV Sitel. It was outside the scope of this project to investigate the financial connections between politicians and individual

media or monitor content for political influence. However, the overwhelming perceptions and concurring accounts of those interviewed both from within the industry and among those monitoring it, provides ample evidence that the established relationships between individual broadcasters and political parties made the market a difficult one for any newcomer to enter.

Ordanovski of TV AlsatM explained the nature of these relationships and why in Macedonia, it is accepted that television stations do not make money in the market. As he explained, television stations are not businesses in and of themselves, but tools for the support of their owners' other business interests:

“Money for the television is part of the business concept...[Business owners think] if I make a television I'll be able to pay off the racket, so when Branko [leader of SDSM] comes and says give me 2 million, I won't give you money but I can give you advertising. When Grujo [Prime Minister and leader of VMRO-DPMNE] comes to drum up something I'll tell him – listen every evening you'll be on the main news ... Before they'd come to ask for cash, which before was given to a campaign, for big deals like licenses<sup>59</sup> - this way make a television and the television is the money with which you operationalize the racket.” (Interview, May 2011)

However, according to others interviewed, these relationships are not just about protecting business interests. In several cases business interests and political interests were closely connected. BC Council Member Naumov explained that there had been interest from foreign companies in the domestic market; however they were discouraged because the market does not operate like a market:

“They come. Greeks, they come and want to buy but it is not in the interest of our owners because what would they be without their media – nobody. And for them the medium is not important as a medium, but as a tool for their business and political interests, in which the political interests are exclusively above the business.” (Interview, May 2011)

Each of the BC Council Members with whom I spoke mentioned the problem of political party leaders being directly connected to national television stations, and their inability to do anything about it. According to them and civil society observers

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<sup>59</sup> Translated as licenses, but could be permissions or concessions – not necessarily for broadcasting.



Petkovska and Beličanec, TV Sitel and Kanal 5 were directly owned by party leaders and parliamentarians, who were minor partners in the ruling coalition.<sup>60</sup> Beličanec argued that without their televisions, Ljubisav Ivanov-Dzingo of the Socialist Party and Boris Stojmenov of VMRO-Makedonska would have no political influence: “The weight of Dzingo and Stojmenov is a political zero without those televisions, and they then turn from reporting to propaganda” (interview, May 2011). These owners then put their stations at the service of the coalition to which they belong. Because Macedonia’s elections were still internationally monitored, there is some clear evidence for this practice. It was documented in the 2011 parliamentary elections that immediately followed my interviews by the OSCE/ODIHR Election Observation Mission’s monitoring of election coverage (see OSCE/ODIHR, 2011, pp. 14-15). This means that maintaining the status quo was most comfortable for both the political parties and the most powerful owners. Petkovska, from MIM bluntly explained, “no foreigner can enter the market in Macedonia because the local thugs won’t let them in” referring to the owners of the major television stations in the country (interview, May 2011). These accounts indicate that in Macedonia, having television stations was closely connected to the individual personal relationships and influence of politicians and owners.

At the time of writing there had only been significant foreign investment in network providers: Macedonian Telecom that offers IPTV; the second largest Cable operator CableTel<sup>61</sup>; and BoomTV, the DTT provider. Germany’s Deutsche Telekom owned a majority share of Makedonski Telekom and, as mentioned above, Telekom Slovenia launched Boom TV after being the only applicant in the tendering of the first commercial MUXs. An American and Bulgarian partnership invested in CableTel. Relations between these providers and the broadcasters at the time of my interviews were far from cordial, and suggested that the larger Macedonian broadcasters were closing ranks. All three of those platforms offered only subscription-based services and there was no free-to-air digital option at the time. According to both AlsatM’s Ordanovski and Siljanovski from Makedonski Telekom, the main point of contention was over payment for the rights to rebroadcast the domestic channels.

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<sup>60</sup> Examination of the records in the BC’s database show only the companies that hold the licenses, but that individuals close to, or related to these leaders listed as Directors of those companies.

<sup>61</sup> CableTel has since been rebranded as Blizoo, but I will refer to it here by the name it had at the time of the interviews as this is the way it was referred to at the time.

Ordanovski explained that the owners of the national terrestrial television stations, except for A1, had recently come together to fight for their interests. They had formed a group within the Chamber of Commerce to protect their interests. “We have a kind of informal power, personal televisions, because if we all agree to start our evening news with someone, he has a problem” (interview, May 2011). Their main enemies at the time were the network operators, most of which were at least partially foreign owned. He complained that Makedonski Telekom and BoomTV had both launched subscription packages offering their channels without even asking or considering payment. According to him, this was already causing problems for the stations, which were getting complaints from rights holders because the stations had only been paying for analogue terrestrial rights. The other issue was whether or not changes would be made to allow network operators to also own broadcasters; something that Siljanovski reported Makedonski Telekom was interested in doing. He argued that his company had the resources to invest in domestic production and should be given the chance. According to Ordanovski, the broadcasters were prepared to fight back and were planning to establish a separate company to bid for the next available MUX. However as he described, the group would not be tackling any politically sensitive issues because as he said, each of the stations had its own concept and political relationships. This was also a reason he did not see the group expanding to local or regional channels, since accounting for every owners’ relationships would get too complicated.

The national broadcasters’ battle with the network operators was temporarily on hold due to the elections because, according to Ordanovski, all their owners were involved with political parties. Nevertheless, Siljanovski felt that the decision makers were more likely to favour the television stations. When interviewed, he was about to head to a meeting with the Prime Minister, and Makedonski Telekom is still 40% owned by the state. However, when asked whether those relationships helped the company’s case against the broadcasters he replied. “It doesn’t matter. We can’t bring them 5,000 votes” (interview, May 2011). His statement suggests that Macedonian decision makers would find it appropriate to protect the broadcasters, at least the ones that provided political support to the party to which they belong.

The accounts above support the evidence presented in the previous chapters of the strong link between political parties and media. This look at the relationships in the audiovisual media sector however, shows the importance of the individual relationships between media owners and political elites, who were sometimes one and the same, and suggests that media companies in Macedonia were the means for managing those relationships. These findings indicate that in Macedonia, there was also a “closed club” within the audiovisual media sector to which media owners and political elites belong to the exclusion of others. Like in Slovenia, I suggest that this club represents a barrier to the open common European market in audiovisual media services.

### ***8.3.3 Resistant relationships in national clubs***

In both Slovenia and Macedonia, the relationships in the audiovisual media sectors resembled closed clubs of actors with vested interests in the maintenance of the status quo. Though some of these actors were competitors in the national market, their strategic interests combined with the personal relationships that existed in these small environments to ensure that their national market was closed to outsiders. These findings therefore indicate that the established relationships in these cases presented additional barriers to trade and to foreign investment in the domestic markets.

In Slovenia within the circles of “real media people”, regulators and politicians, ProPlus and RTVSLO co-operated over the MUX that RTVSLO was granted. They succeeded in closing down Swedish owned TV3, which was the first channel to hint at being a threat to their positions in the market, along with the Norwegian owned network operator that carried it. The evidence above also suggests that this process was, if not enabled, then at least not hindered by individuals within the NRA and the Government for whom inaction was the most appropriate behaviour in this case. There were indications that ProPlus’s position in the market gave it influence over politicians and helped it maintain the status quo.

In Macedonia, political party relationships with media companies were so close that in some cases, political elites and media owners were one and the same. Where they

were not, the accounts indicate that individual relationships between business owners and political elites were managed through their media. These individual relationships were intertwined with the strategic interests of their other businesses and political parties. However unlike in Slovenia, in these relationships it seemed that the political parties had influence over the media, rather than any one media having influence over politicians.

In the evidence presented here from these two small countries, relationships among individuals within organisations were difficult to separate from relationships between or among the organisational actors. This makes it difficult to maintain the distinction between the higher level of abstraction in which the logic of consequence functions and the lower level in which individuals follow the logic of appropriateness. Where an individual television owner uses his television station to maintain his personal clout within a political coalition, or a network operator can close down because its director does not have relationships with the “real media people”, what is the likelihood that EU rules and norms will play a role?

#### **8.4 Conclusion**

Technically, the Slovenian and Macedonian audiovisual media markets were open according to law and part of the common European audiovisual media market. In both cases, foreign channels could be received freely through various multi-channel subscription services and enjoyed audience shares between 20% and 25%, with the highest percentages in Slovenia. However, the evidence presented in this chapter indicates that this was where openness ended in the audiovisual media sectors in these two countries. With respect to the participation of domestic actors in the common European market and to foreign investors or media companies entering the national markets, there were barriers to trade stemming from the material conditions in these small states and the established relationships within their respective audiovisual media sectors.

Looking at the material and power conditions related to media governance in these two cases (Sub-RQ4), I find evidence in each case that the actors of governance were constrained by the small size of the country and the resulting limited resources. This

finding is in line with the characterisation of small states' media markets in the literature, which emphasises their small advertising markets and low potential for utilising economies of scale (Berg, 2011; Lowe, Berg, & Nissen, 2011; Picard, 2011; Puppis, 2009). There were not just limitations on financial resources stemming from the small advertising market or tax base, but also there were limits on the extent to which these small states with small populations could generate material for content. There was a lack of human resources both in terms of the number of skilled people that could be engaged to work in the industry and in the potential of these small populations to generate content in the form of artists, musicians, or interesting subjects. In both cases foreign competition was perceived as a threat, and regulators and policy makers expressed concerns for the sustainability of domestic broadcasters.

There was a clear difference between the two cases in the way resources and power were distributed within the audiovisual media sectors at the national level. In Slovenia, the domestic opportunity structure enabled the growth of one very large private television company. This company was owned by the one foreign media company that got in early on and was able to capture the domestic market. In Macedonia, there were a number of national private companies that had captured the bulk of advertising and audience, but no one private channel was particularly strong and no foreign investors had lasted. Though several of those cited above thought that having fewer stronger broadcasters was more likely to produce ones that could compete with foreign channels in light of the limited resources, the evidence suggested that in both cases, these material conditions still represented a barrier to the free and fair competition of Slovenian and Macedonia broadcasters beyond their national markets. These broadcasters were therefore not able to take advantage of any economy of scale that having access to a larger European market might offer. The data presented above contained recurrent claims that in Slovenia, the domestic broadcasters were facing unfair competition from re-broadcast channels from outside Slovenia that went against EU rules. Nevertheless, the governance actors within Slovenia seemed unprepared to make use of the EU rules to address this problem.

Trappel (1991) argued that small states media systems were more vulnerable to takeovers of domestic companies by foreign media companies from larger markets.

There had been several attempts by foreign companies to enter audiovisual media markets in these two cases, including the failed MTG investment in Slovenia and attempts by Greek and Serbian companies to invest in television stations in Macedonia. Although failed investments can often be explained by general economic factors or poor business calculations, the evidence on relationships within the audiovisual media sectors indicates that in both Slovenia and Macedonia, “closed clubs” of domestic players were able to use their established relationships to keep newcomers out. It might seem obvious that whether their goals were profit or political influence incumbent broadcasters would be opposed to new competition within the market. The rules of the common market are intended to prevent acts that jeopardise free and fair competition, but in these two cases the evidence indicated that these national “clubs” were a source of resistance to any change that might be expected from the EU rules. The Slovenian club was defined by the relationship of the PSB to the state, and a circle of influence dominated by ProPlus, which had power over political elites. In the Macedonian case, within the entrenched relationships between political parties, even individual politicians, and broadcasters, it seemed that media were tools for managing these relationships.

What then is the role of Europeanization? It is hard to find any evidence of Europeanization playing a role in the relationships and dynamics described here. As I have discussed before, looking at the domestic impact of EU policy, Knill and Lehmkuhl (2003) outlined three mechanisms of Europeanization. One of them is the influence of EU policy on the domestic rules of the game, which they referred as “altering the domestic opportunity structure and hence distribution of power and resources between domestic actors” (Lehmkuhl, 2003, p. 258). Based on the evidence presented here, I find that the distribution of power and resources in both of these audiovisual media sectors was not influenced by European open market rules, and that there was resistance to Europeanization stemming from the material conditions found in these small states. Top down approaches to Europeanization focused on the implementation of specific EU directives have considered the distribution of power and resources in terms of the ability of certain strategic actors, political actors or civil society groups, to influence policy and their policy preference for or against the EU rules (e.g. Knill & Lehmkuhl, 1999; Luaces, 2002; Sudbery, 2010). However by taking this bottom-up approach looking at the material and

human resources as well as the relationships in the sector in which EU rules might play a role in governance, I have identified resistance to Europeanization that is unrelated to the policy preferences of actors on any particular Directive. What it does seem related to is size. Based on the evidence here, I argue that being a small state, defined both in terms of population size and economy, limits the extent to which the rules aimed at creating an open and level common market can have consequences for the state's audiovisual media sector.

One of the sources of resistance to change identified in this chapter was the nature of relationships within the sector, which were characterised by personal favours or loyalties, political influence and connections. Another mechanism of Europeanization could be socialisation or social learning (Checkel, 2001, 2005) into more "European" culture that did not include cronyism or clientelism. It might be tempting to attribute the closed nature of these national markets to an administrative culture that tolerates such behaviour and finds it appropriate. With a solid body of literature focused on national administrations and the implementation of EU policy (e.g. Falkner et al., 2007; Grabbe, 2005; Knill, 2001), one could accept that conclusion and look for solutions in the socialisation of those in the NRAs and ministries. However by also engaging with the market players in the sector and looking at relationships among multiple governance actors, I found evidence that these phenomena were not just based in social constructs to be changed through learning new cultural norms, but in these small environments were closely tied to the strategic interests of actors.

This chapter does not end by highlighting an instance where, despite the general resistance found, Europeanization is playing some role. Instead I conclude based on the evidence here, that the common market for audiovisual media services is not an open, fair or a level playing field for these two small states. In the next chapter, I will review the various forms of resistance identified in this and the previous chapters, as well as the small role that I did find Europeanization playing mentioned in Chapters 6 and 7. I will discuss the implications of these findings both for academic progress in the field of Europeanization and in the study of media governance and for EU audiovisual media policy.

# Chapter 9: Europeanization meets resistance

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## 9.1 Introduction

On 25 November 2010, police and financial inspectors raided the offices of A1 television, Macedonia's first privately owned and until then most successful national television. The station's owner, Velija Ramkovski, was charged with tax evasion and fraud. A1 was just one of Ramkovski's many businesses, which included a chain of mini-markets, import companies and three daily newspapers and the businessman had a history of shifting alliances with the leading political parties (Dimovski, 2010; Lutovska, 2012). A1 had been known for its news programme and as a relatively neutral voice until Ramkovski formed a political party in 2006 to oppose the then SDSM government's agricultural policy. He was openly supportive of the VMRO-DPMNE government until falling out with the Prime Minister allegedly over his handling of a failed dairy plant (Dimovski, 2010). With key members of its management in detention and under investigation, A1 lost its frequency and ceased broadcasting on 31 July 2011, shortly after declaring bankruptcy. Ramkovski is now serving a 13-year prison term, having been sentenced in March 2012, along with 19 former employees including the ex-director of A1 television. The government's handling of the case drew harsh criticism from the OSCE Representative on Freedom of the Media (OSCE, 2011b). The EC raised concerns about the "proportionality and selectivity" of the government's actions against A1, along with the channelling of funds to uncritical stations in its 2011 Progress Report (European Commission, 2011b, p. 16).

These events took place during the fieldwork for this thesis. With all the relevant individuals in pre-trial detention, I was not able to interview anyone who worked at A1 television, nor was the person in the responsible government department allowed to speak to me about media issues. Nevertheless, this story, described in international media and documented in OSCE and EC reports, is a harsh example of the close and even personal, relationships between politics and media in Macedonia discussed in the previous chapters. The A1 story adds support to the case made in the previous chapters that, despite more than a decade of EU accession processes and candidacy



since 2004, the Macedonian audiovisual sector did not operate as an open and free market in which common rules and standards apply to all as foreseen in EU treaties and directives. When starting this investigation I had expected Slovenia, already a Member State and known in the region as the “good kid” of the former Yugoslavia, to be very different. The evidence presented in the preceding chapters, including the experiences of Norkring and MTG with which I started this thesis, indicate that the situation in Slovenia was remarkably similar. I identified a few key differences, the most prominent of which were the position of ProPlus that gave it a power over politics different from other media and the financial independence of the PSB. Nevertheless the Slovenian audiovisual media sector showed signs of being prone to unfair competition, without the application of common rules and standards, and not participating in a common audiovisual media market.

Problems with clientelism, concentration and threats to media freedom, are not uncommon in Southern Europe or the countries of the former Eastern bloc. However, I argue that by reducing the problems of media governance in these countries to corruption or “undemocratic” political culture, one misses important aspects of the complex nature of these environments, limiting one’s vision for potential solutions. As I mentioned in my introduction, there have recently been calls for the EU to get more involved in media freedom and pluralism issues, and the Commission is considering its potential competence in this area. I maintained that in this context, it is important to understand what role EU policy in the media sector has had in national contexts, particularly from the parts of Europe known to be problematic. **The aim of this thesis was to contribute to this understanding by investigating the role of Europeanization, or what could be called EU-ization, in audiovisual media governance in Slovenia and Macedonia.**

I attempted to achieve this aim through a mixed method examination of the interactions of media governance in these two countries. I found Europeanization playing a small role in that EU rules were used by domestic actors, mainly market players, to legitimise or advance their strategic interests. The few instances mainly involved large actors involved in some kind of European level or network, and two were linked to conditionality mechanisms, namely infringement procedures and the accession Progress Report. What I found much more characteristic of these two cases

was compelling evidence of resistance to the diffusion and institutionalization of formal and informal rules, procedures, policy paradigms, styles, shared beliefs and norms of the EU (Radaelli, 2002, p. 108).<sup>62</sup> This resistance took a variety of forms, but contrary to my expectations, I did not find evidence that this was rooted in any kind of conscious or intentional opposition to EU media policy or EU rules and norms for this sector. It was not a simple matter of non-compliance with EU rules. Instead, I found media governance in these two cases was resistant to Europeanization because of the size of these small countries, and, though to differing degrees, due to relationships between political elites and media. As evidenced in the preceding chapters there were instances in which this resistance manifested as non-compliance with transposition deadlines for directives, such as in that of Slovenia and the AVMSD; however it also appeared as an inability to participate, such as demonstrated in Chapter 6's discussion of European protectionism. The closed nature of the markets was only partly attributable to apparent non-compliance with EU competition rules.

This concluding chapter first summarises the forms of resistance identified in the course of this investigation by returning to each of the four sub-questions that guided the investigation. Next, I offer some explanations based on the evidence for why this resistance exists. I then return to the main research question and discuss the rather limited role of Europeanization that I found in these two cases. Following this is a section that covers what this resistance and the reasons for it mean in a more theoretical context. I discuss the implications for thinking on Europeanization and on media governance. The motivation for doing this project was an interest in and concern for the media systems in small states in South East Europe. Therefore, I close with some reflections on what aspects of these findings from this region are relevant to audiovisual media policy.

## **9.2 What forms of resistance?**

The term resistance does not necessarily imply agency to that which is being resisted or to the resistor. Europeanization as a process itself does not have agency. However, according to the conceptualisation of governance used in this thesis, in a situation of

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<sup>62</sup> See full definition of Europeanization in the introduction.

multi-level governance such as in Europe, the EU Treaties and Directives are intentional interventions by the state,<sup>63</sup> as are national level laws. The enactment of law is an exercise of agency. Therefore, there is agency behind EU policy, which is the intention to implement the rules, norms, policy paradigms, etc. that have been agreed upon at the EU level. In my introduction I outlined what these rules, norms and policy paradigms were for the audiovisual media sector based on the EU treaties, Directives and other documents. Without getting into the minutiae of the provisions of the Directives that apply to this sector, I broadly grouped these rules and norms into those that aim to ensure that: common rules and standards apply to all actors across the common market for audiovisual media services; that European production and distribution is protected and nurtured; and that within the common European audiovisual media service market, there is free and open competition within a level playing field.

What follows is a return to the four sub research questions that guided this investigation. In the summary answers to these questions, I show how much of the resistance I identified can be explained by institutional misfit with the practices and established relationships that form the contexts for individuals working within media governance actors. The evidence summarised here also demonstrates that the EU related changes that were identified, were the results of strategic action by actors aimed at altering the distribution of power and resources within the two domestic opportunity structures, both of which were otherwise largely resistant to externally driven change.

### ***9.2.1 RQ1: What are the rules, practices and routines of media governance? How do they interact with EU policy?***

The formal rules governing each audiovisual media sector are part of what defines the distribution of power and resources within the sector. They dictate the limits on advertising, the main source of income for most broadcasters. They establish the financing system for PSB and in some cases, the prices that can be charged for transmission or interconnection. They also determine what tools regulators have at their disposal to interact with those in the market. According to the theory of

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<sup>63</sup> I remind the reader that in Chapter 3 the “state” was defined conceptually as an actor with a public task and not necessarily as a nation-state government.

opportunity structure that I explained in Chapter 3 and refer to throughout the thesis, these rules constrain or enable the behaviour of strategic actors (Knill & Lenchow, 2001b, p. 195), determining the options they see before them and the outcomes they can expect from their choices. They also are created by strategic actors, for example adopted by political parties in parliaments, who do so in line with their interests.

At the time of my field research, the formal rules governing the audiovisual media sectors in Slovenia and Macedonia were not yet in line with the most recent EU rules, because in neither state had the AVMSD been transposed into domestic legislation. Both countries still had laws that were compliant with the TWFD that had come before it. In terms of advertising standards and limits, the protection of minors, quotas for European works and independent production etc., there was little difference between the two cases. On both cases domestic laws were in line with TWFD, so the domestic laws differed from the current EU Directives to the extent that TWFD differed from AVMSD. Therefore, the domestic broadcasters were subject to different rules than other European broadcasters, many of which were re-broadcast in Slovenia and Macedonia. Because of this, in the summer of 2011, Slovenian and Macedonian broadcasters were still subject to advertising limits that had been relaxed in other countries by 2009 or even earlier.

In Slovenia, the broadcasters were aware of this disadvantage, and according to the two people interviewed from private stations, they were already operating largely according to the new standards contained in the AVMSD. At the forefront of this move was ProPlus, whose lawyer was well versed in EU policy. He explained that the station found the new rules beneficial and deemed them to supersede those of national legislation. According to two people in APEK, this practice was being essentially condoned by the regulator, with the justification that to enforce old rules would be unfair to the domestic broadcasters who must compete with foreign channels. The domestic actor's (ProPlus') knowledge of the EU level rules and interest in using them resulted in changes to the rules defining the distribution of resources within the market before political leaders got around to bringing them in line with the EU. Therefore in Slovenia, although in relation to advertising and some other programme standards the old rules still applied formally, informally, the new

ones were in place. There was no evidence of this phenomenon in Macedonia, where none of the private media seemed aware of the new rules at all.

Each country had European works quotas transcribed in law and also had formal rules that set out domestic content quotas. Though the domestic quotas were formulated differently in the two cases, in both, these rules linked content quotas with language and national identity. I had expected to find objections to the European quotas and clear prioritising of the domestic protectionist measures. However as described in Chapter 7, there was little evidence that people in the audiovisual media sector viewed EU quotas as counter to domestic protectionism or avoided compliance and enforcement because of opposition to them. When I compared the practices and routines around the implementation of EU and domestic quotas by broadcasters and NRAs, I did find problems with compliance by broadcasters with EU works quotas both in terms of fulfilling the quotas and reporting on them to the NRAs that were not matched by similar problems with domestic quotas. However, I could not link this to any opposition to the EU quotas.

Although people expressed a need to support and favour domestic content, they did not see EU quota rules as counter to such goals any more than the domestic quotas, which several people doubted were effective in supporting domestic content. Looking at the practices in the market, it seemed that non-compliance with EU or domestic quotas was more attributed to limited resources. The simple fact that EU rules apply quotas annually, rather than daily like the domestic ones, made them incongruent with the routines of both broadcasters and NRAs. Broadcasters with whom I spoke complained of the time and human resources required to fill in the forms and keep track of the annual quotas, which was a significant challenge to their limited resources. Daily quotas on the other hand were checked by the NRAs independently of the broadcasters simply through the regular recording and checking of a 24-hour period. Because of this, fulfilment and enforcement of daily quotas aligned better with the size-constrained practices of both broadcasters and regulators. This may seem like a banal issue, but is a clear example of resistance due to institutional misfit between participation in the EU's protectionist content quotas and the established domestic routines and practice.

Another set of formal rules examined were those establishing the functions and powers of the countries' NRAs described in Chapter 5. As I demonstrated, the rules dividing powers and resources between APEK and the Media Inspector in Slovenia made for a system in which neither of these bodies could be a strong, effective regulator. By law, the BC in Macedonia had many more enforcement powers at its disposal, but still did not have the power to make use of the monetary fines foreseen in the law. In both cases, I found the formal institutional arrangements and appointment systems enabled political influence. Looking at practices in the regulators, it was clear that there was weak enforcement in general of common rules and standards, including those derived from EU Directives.

In Slovenia, this seemed to stem primarily from the constraints on NRAs because of the formal rules. Those in APEK also expressed views that it was not appropriate to be very strict with media, but there was no evidence that this was connected to political relationships. The perceptions of roles within the NRAs are discussed further below, but here an important difference between the two cases in terms of practice, was that in Macedonia weak enforcement could mostly be attributed to what the BC Council Members considered appropriate to their perceived role as a regulator, and to the political relationships in the sector, including their own personal ones. According to all the BC Council Members interviewed, their practice was to avoid issuing harsh penalties despite widespread violations, and they had even changed internal rules on enforcement measures in order to maintain this practice. The exception to this leniency was their approach to copyright enforcement on cable operators, which was done in close co-operation with Makedonski Telekomunikacii, the IPTV provider. The justification for this selective enforcement practice given by BC Council Members and the representative from Makedonski Telekomunikacii was the EU Progress Report. Nevertheless, the application of common rules and standards within the market did not *fit* with the established practice in either case.

The formal rules in both these cases were not up to date with EU rules, while other formal rules for the sector contributed to lax enforcement practices, particularly in Slovenia. Practices in both NRAs and broadcasters shaped by the material constraints of their small size, had consequences both for enforcement and compliance with rules. The examination of rules, practices and routines, however, also revealed

instances in which the existence of EU rules and obligations were used by domestic actors when implementing EU rules also served their strategic interests.

***9.2.2 RQ2: How do the actors involved in media governance perceive their roles and positions, and what norms or values are reflected in these perceptions?***

As I mentioned above, there were general tendencies for the NRAs to be lenient towards the domestic broadcasters. In both cases, those working within the NRAs did not seem to perceive their roles as ones that should involve much interference in the market or harsh punishments. In Macedonia, three out of the four BC Council Members interviewed clearly expressed the view that their role was primarily to educate the broadcasters. Both the President and the Vice President said that they thought there should be fewer stations in the market so that those remaining could be stronger, but, when talking about their approaches to licensing, they did not seem to see this as the BC's role. In Slovenia, no one in APEK made such clear statements about the regulator's role as in Macedonia, yet I saw indications that the dominant perception of APEK's role by those working within the regulator was that of an administrator. Three of those interviewed indicated that they wished APEK could do more to encourage diversity of content or local media; however, when discussing procedures and processes, the individuals with whom I spoke seemed comfortable with the lack of APEK's lack of discretionary powers and its administrative function.

The theory of institutional fit, which implies that domestic change depends on the extent to which its implementation fits with what individuals consider appropriate based on their existing values and identity in addition to the established practices and relationships discussed in relation to other RQs, was developed mainly based on research within national administrations. In taking a broader governance approach to this investigation, I attempted to identify also some of the norms, values and self-perceptions held by individuals in the market and civil society as well. For those working within the NRAs, it seemed normal to talk about what they thought the role of their organisation was, and their particular jobs within the organisation. Those from television stations or other market players did not give such direct answers related to their self-perception or values. Values and self-perceptions were mainly interpreted from the things people said about how they work, what they do, and what is important. Although I did this as systematically and consistently as possible, it

must be acknowledged that the answer to this research question is more dependent on my subjective interpretation as the researcher than the other three.

The most striking thing for me in terms of self-perceptions and values was that an overwhelming majority of those interviewed, seventeen individuals, spontaneously talked about the smallness of the country and the negative implications of this for the media market. In both cases, there seemed to be a perception of national vulnerability among people in the public bodies including the NRAs, in the market and in civil society. In both cases, interviewees expressed concern for the preservation of the national language, culture and broadcasting sector, and perceived them as under threat. The majority of those interviewed in some way talked about the importance of protecting domestic content and broadcasters, which were perceived as vulnerable.<sup>64</sup> One of the limitations of this investigation is that I was not able to probe deeply into the personal values of individuals around things like corruption or favours because of the fact that, as discussed in Chapter 4, it was difficult to offer complete anonymity to many of those interviewed. However, I did find surprising the ease and nonchalance with which many of the interviewees talked about their own political connections or the political influence over the media, such as the regional TV manager in Slovenia and the local TV managers in Macedonia, or even some BC Council Members. This is not to say that these people approved of it and often it was framed as a problem, but their attitudes indicated that it was something common and banal enough not to be ashamed of being a part of at a personal level.

The values described here could be seen as protectionist, and concerned with the preservation of the national language and culture and shaped by feelings of vulnerability because of the small size of these populations. Only one person, Jelovac in Slovenia, related his perception of vulnerability to being within the common market. It was surprising how little opposition there was to or even discussion of EU policy without prompting, and I did not get the impression that people found a conflict between EU norms for the audiovisual sector and their values. The sources of resistance to Europeanization that I found seemed to be more those aspects of

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<sup>64</sup> Here I should qualify that within the Slovenian market, ProPlus was not perceived by others as vulnerable, but instead as supremely powerful. However it seemed that in the statements of those in APEK and others, there was an assumption that it was not powerful in the face of competition from foreign channels and vulnerable to threats from outside.



institutional misfit rooted in the regulators' perceptions of their roles, the established practices described above, and the relationships elaborated on below, which seemed to be accepted as normal.

### ***9.2.3 RQ3: What is the nature of the relationships among the domestic actors and between domestic actors and EU institutions?***

The most distinctive characteristic of the Macedonian case was the apparent pervasiveness of political influence. Every person interviewed in Macedonia referred to the close relationships between political parties and media, especially the influence of the political parties in government. The story of A1 at the beginning of this chapter was just one of many told in the course of the interviews. Civil society representatives and the BC Council Members commented on the direct relationships between individual politicians and major broadcasters. In Chapter 8, the evidence presented indicated that these relationships between media owners and politicians, operating often at a very personal level, amount to a closed network in which media are tools for managing those relationships. I argued that the limited size of the market and level of pluralism in the country exacerbated these links, which, the data showed, often involved financial dependency. At the same time, the years of dependency on ad hoc support from the central government also seemed to contribute to the evident political influence over the PSB, MRT. All those interviewed from the broadcasters complained about the political ties of other broadcasters, while two of those interviewed essentially admitted to their own connections. The BC, charged with regulating these politically connected broadcasters, itself did not appear independent from political party influence. The BC's leniency towards broadcasters was explained by some Council Members as a choice to punish no one in order to avoid having to punish those they did not want to have to punish. This was not only because of the political connections of broadcasters, but also because of their own.

In Slovenia, the audiovisual media market was largely defined by the relationship between ProPlus and RTVSLO, as the two largest players in the market by far. As shown in Chapter 5, the position of these two broadcasters in terms of audience shares and advertising income far outstripped all other domestic players. The interviews with those from both ProPlus and RTVSLO indicated that the relationship

was generally one of fierce rivalry, but with one point of mutually beneficial co-operation over the use of the MUX for DTT that RTVLSLO was granted. The timeline of legislative changes in Chapter 6 showed that political parties tend to use law to influence RTVSLO while in government. The relationship between political parties in government and RTVSLO did not appear as strong as those between the Macedonian government and MRT, nor was there an element of financial dependence. Nevertheless, there were indications that privileges such as the MUX go along with a lack of political independence.

ProPlus' relationships with the government and political parties in Slovenia were very different from RTVSLO's and from those of the smaller broadcasters. Smaller stations were reported to be under the influence of political parties because they depend on them for support in getting subsidies and advertising from state companies, but ProPlus was described by several of those interviewed as having influence over politicians. The audience and advertising share data indicated that the size of ProPlus in the market would make it important for political leaders to keep as an ally. The company's lawyer claimed that the fact that it had foreign owners protected the station from political influence, a view shared by others interviewed, and he was included in the drafting committee for the new Mass Media Act. The issue of Norkring's battle with RTVSLO over terrestrial television with which I started this thesis was a hot topic during my interviews in Slovenia, yet its director reported having no such connections. MTG's TV3 was described by one interviewee as being doomed because its management were not moving in the right circles. The relationships of both RTVSLO and ProPlus with the political parties in government seemed to contribute to the country being resistant to openness and part of a common European audiovisual media market.

The relationships that domestic actors had with European level institutions were limited. While civil society groups reported relationships with European level civil society, they did not have them with EU institutions. Communication with EU institutions in both cases was primarily the domain of central government. Some individuals working within APEK and the BC maintained personal contacts with people working in the relevant EC Directorate, but interviewees reported that most official communication consisted of answering questions sent by the Commission

either directly in the case of APEK or through the central government in the case of the BC in Macedonia. APEK and the BC were involved with the European Platform for Regulatory Authorities, (EPRA), and interviewees from both reported close collaboration in particular with other regulators in the region on a variety of topics and initiatives. The Media Inspector in Slovenia was not part of these relationships. Among the private broadcasters from which I interviewed people in both countries, only Slovenia's ProPlus had any history of European level relationships. My findings indicate that none of the domestic actors had strong relationships with EU institutions, although regional co-operation was often mentioned in NRAs and civil society groups. The private broadcasters, except for ProPlus, appear to be the most "out of the loop" of European level relationships.

The findings on relationships indicate that the audiovisual media sectors in Slovenia and Macedonia are rather insular. There are close relationships between political elites and media, and in the Macedonian case between political elites and the regulator. Many of these seem to operate at a very individual level, blurring the lines between individual assessments of appropriate behaviour and the strategic decisions of governance actors. The story of A1 television that was first used by its owner to further personal and business aims and then closed after a personal fall-out with the Prime Minister was one of the more extreme examples of the consequences of these relationships. Beyond the central government and the main NRAs, there were almost no relationships with EU level institutions, and even those of the central government and certain individuals in the NRAs were described as mostly EU led. I argue that the relationships identified here contributed to make the audiovisual media sectors resistant to EU-initiated change in the domestic opportunity structures in these countries.

#### ***9.2.4 RQ4: What are the material and power conditions within which the domestic actors operate and their consequences?***

The limited engagement with European level organisations I found was just one of the consequences of the small human capacity in terms of knowledgeable individuals in each case. Under developed civil society is a well-documented legacy of the old systems in SEE and CEE states (Holmes, 2006, p. 186; Kostadinova, 2012, p. 237) so weak civil society actors were expected, but in the audiovisual sectors in Slovenia

and Macedonia among the actors of the state, civil society and the market, the market players were the least equipped to contribute to policymaking. This is not to say they were not able to lobby, or have their perceived interest championed by their political patrons when it came to law making. However, interviewees from APEK and from both the BC and AEK in Macedonia reported that they got abysmal responses to consultations. In Macedonia, the broadcasters appeared particularly left out of the domestic policymaking processes, and there was no awareness of the most recent EU policy. The very small size of these operations meant that they did not have the human resources to participate. I argued that the small size and lack of human resources with the governance actors, helped make it possible for political elites to use media laws as tools for maintaining influence over the media.

The limited financial resources for business in the audiovisual media sector were evident in the data I presented on the various forms of revenue available in each country. There was also evidence that this was a factor in the non-compliance with European works or independent production quotas, and shaping the practices involved in monitoring and reporting. However, the resistance to participating in the protection of the common European market for production and distribution was not just rooted in the fact that the stations in Slovenia and Macedonia could not afford French art films or Danish crime serials. Interviewees explained that qualified personnel, talent and even material from which to draw content were limited. Both countries have poorly developed independent production sectors. Slovenia was in a better position than Macedonia with a relatively well-resourced PSB and one large financially stable private television, ProPlus. Slovenian producers were also able to access European level subsidies. Smaller broadcasters in Slovenia and all broadcasters in Macedonia did not seem to have the resources to contribute much production to the domestic market, much less the European one. I therefore concluded that the material conditions in these small states represented a barrier to trade and to the participation of domestic market players in the common audiovisual media market.

There was a big difference between the two cases in the way power and resources were distributed within the market. In the Slovenian case, the largest private broadcaster ProPlus had captured most of the resources available in the market, and

many of those interviewed seemed to think that was necessary in order to compete with foreign channels. In the Macedonian market, in which revenues were spread thinly across so many broadcasters, even the larger national stations could not expect much profit and very few were making any at all. The evidence showed that even ProPlus struggled to compete with foreign channels, but that at least it was able to be above domestic politics enough to provide politically neutral content, whereas the national stations in Macedonia were controlled by political elites. I argue that both situations are likely to deter foreign investment, and therefore contribute to resistance to the open common market.

### ***9.2.5 The role of Europeanization***

In summary, Europeanization faces multiple forms of resistance in both Slovenia and Macedonia. At the level of individuals working within governance, I found due to institutional misfit with though more so with the established practices and relationships of the individuals involved in media governance, and within the NRAs, to their perceptions of their role than to values related to the sector. The notion of institutional fit refers to the extent to which change or behaviour *fits*, or in other words, is deemed *appropriate* to existing structures such as norms and values, established practices and relationships, culture and ways of doing things and therefore *misfit* is a source of structure-centred resistance. At a higher level of abstraction, the domestic opportunity structures were also resistant to exogenously initiated changes to the formal rules, to implementation and enforcement of common rules in the markets, and to free and open competition in the common market. This was primarily agent-centred resistance in that governance actors set the rules in order to achieve certain goals or distribute resources in a certain way. This is not to say that the domestic distribution of power and resources were completely unchangeable. Where I found Europeanization to play a role were in the instances in which actors called upon EU rules as a higher authority to effect some change in the domestic opportunity structure or the existence of the EU rules essentially allowed domestic actors to expect different outcomes or change the distribution of power.

An example of the first was the case of ProPlus in Slovenia instigating the implementation of the new advertising rules of the AVMSD ahead of their

transposition into domestic law. There was a similar situation in Macedonia in which the regulator and the largest telecommunications operator and IPTV provider Makedonski Telekom, used the repeated references to copyright infringement problems in the EC Progress Reports as justification for their joint effort to crack down on cable operators. Both of these instances involved domestic actors with contacts at the European level and knowledge of EU rules and norms being able and interested in making use of the EU to further their strategic interests. Change of the second type was linked to conditionality mechanisms, namely the EU Progress Report in the context of Macedonia's accession process and infringement proceedings initiated against Slovenia for non-transposition of AVMSD. It could be argued that these are examples of the effects of conditionality. However, the effects of conditionality depend significantly on the perceived credibility of the threats and the reward (Grabbe, 2006; Schimmelfennig & Sedelmeier, 2004). Macedonia has been a candidate country since 2004, and its entry into the EU depends on it first concluding the conflict over its name with neighbouring Greece. As many domestic and international observers have observed, this makes its prospects slim and domestic political elites are not only well aware of this, they have ceased to make EU entry a serious objective.<sup>65</sup>

The decision to initiate infringement proceedings against Slovenia for non-implementation could be seen as the exogenous source of the change in domestic legislation that included the implementation of AVMSD. However, looking at the context in which this decision was received, the government threatened with the infringement proceedings had just lost a vote of no confidence and could have left its successor to deal with them. Instead, I argue that rather than simply change resulting from EU pressure, these two were instances of alignment between EU requirements and the strategic interests of domestic actors. In Macedonia, when the financing of the PSB was finally put on the road to stabilisation, as demanded by EU Progress Reports, this also seemed in the interests of MRT and of the political parties in power that had solidified their influence over the broadcaster. The outgoing political party in Slovenia used the threat of EU punishment to push through a media law that

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<sup>65</sup> Most commentary on this is in Macedonian, a few recent examples: <http://faktor.mk/archives/60021>; interview with Harald Shenker <http://republika.mk/?p=107308>; Several articles are available in English at <http://BalkanInsight.com>, though behind a paywall.

included several provisions in their interest for a time out of office, in addition to those related to AVMSD transposition. It is also noteworthy that both Slovenia's ProPlus and Makedonski Telekomunikacii have foreign owners that operate on a European level, and the other two actors in these instances are the BC and the Macedonian PSB, both of which are involved in pan-European networks, namely EPRA and the EBU. These instances indicate that despite the resistance identified above, Europeanization did play a role in changing the domestic opportunity structures when making the change also aligned with the interests of domestic actors that had the power to make use of them (Jacquot & Woll, 2004). These actors need to be "in the loop", to some extent, at the European level in order for this to happen, and to be a position to affect the change.

### **9.3 Explaining the limited role of Europeanization in media governance**

I have argued that in these two cases, the reasons that Europeanization plays a small role in media governance are misfit with domestic institutions and their resistant domestic opportunity structures. Institutional misfit has been explained by scholars as stemming from a mismatch between the aims or execution of EU policy and the values or cultural norms of national administrations, as well as their established practices and relationships (Börzel & Risse, 2003; Knill & Lenchow, 2001a). One could explain the resistance to change with the argument that the political culture of these post-communist or post-socialist countries makes them more resistant to change (Börzel, 2011; Mitropolitski, 2012). There was ample evidence in these two cases that the relationships with political elites and their actions played a large role in defining the institutions of media governance. Several of the practices identified in this investigation fit well into Karklins' (2005 ch. 2) well-known typology of corruption in post-communist states, especially into the her categories of obfuscation of regulation, misuse of licensing or inspection powers, misuse of legislation, and of course corruption of the media.

These have been explained by legacies of the old systems such as the "underdeveloped culture of self-motivated political participation" and a left-over blurring between the state and society resulting in confusion over public and private domains (Holmes, 2006, pp. 183-187). Because of the identified high levels of

corruption and clientelism in the region, the work of the media scholars like Jakubowicz (2007a, 2007b) and Splichal (1999, 2001) cited in Chapter 2 highlighting mechanisms of political control in the media sector, as well as my own experience in the region, I had expected to find evidence of clientelism and political influence over media in these two case. I had doubts about the extent to which these would have consequences for Europeanization in this sector, however, because the EU's policy in this sector is more industrial than normative (Harrison & Woods, 2007). The evidence in the two cases showed that the political relationships among governance actors did explain some of the resistance to the application of common rules and standards, particularly the transposition of them into law and their enforcement, as well as contributed to the closed nature of the markets.

However, based on the evidence in these cases, I argue that to define the relationships between political parties and other governance actors solely as constructs of a political culture held over from the single party socialist system ignores material factors and the strategic interests born from the new multi-party system. At the same time, several aspects of the resistance identified, such as the practices and values of lower level civil servants around content quotas, or the inability of market players to participate in the common European audiovisual market did not appear related to these political relationships.

One of my hypotheses when I began this investigation was that I would find overt opposition to the EU's common market in audiovisual media stemming from nationalist sentiment and nation building related protectionism. I had expected EU policy to be seen more as a threat and Europeanization perhaps as a subset of globalisation. Another hypothesis that I had at the outset was that national level protectionism might be more vehemently implemented and both contribute to resistance to participation in the common market and serve to protect domestic market players. Instead the resistance found stemmed not so much from institutional misfit with values or norms but from institutional misfit with practices and established relationships.

The main conclusion that I take away from the investigation of these two cases is that size does matter. Admittedly, this is not a new argument. Ample evidence



already exists showing that, within media systems in Europe, small size, defined by population and economy,<sup>66</sup> results in lower advertising expenditure per capita and lower licence fee revenues (Picard, 2011; Puppis, 2009) as well as lower expenditure on quality original content (Berg, 2011). What this investigation in these two cases has provided is new evidence on how size matters in the context of Europeanization and has shown that the consequences of smallness are not limited to financial constraints and low production.

Size matters both in shaping the institutions that form the contexts within which individuals determine appropriateness and it matters in terms of defining the opportunity structures that define the actions of governance actors. I found indications that small size contributed to shaping values and practices, and that because “everybody knows everybody” in these small countries, relationships within the audiovisual media sectors resembled national clubs, closed to outsiders. At the same time, I argue that the material constraints of smallness essentially acted as barriers to trade and to inclusion in the European audiovisual media market by limiting the ability of domestic actors to participate and, combined with the closed national clubs I mentioned above, by discouraging foreign entrants or investors. I also maintain that the evidence from these two cases indicates that the constraints of smallness contribute to, or exacerbate, the perpetuation of the political elite’s influence over the media.

### ***9.3.1 Smallness shaping structures***

In this investigation, I found that the size of each country contributed to the shaping of the norms, values, practices and routines described above. It has been argued that in small media markets, policymakers tend to favour protectionism as better suited to preserving national culture and creating a strong industry (Puppis, 2009, p. 14). Smallness, and the limited material resources –human and financial – that go along with it, is not a socially constructed structure like those usually considered to be measures of appropriateness. However, I found evidence in these two cases that some of those structures were shaped by the small size of the country. This was reflected in the values individuals had for domestic content and broadcasters, and the

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<sup>66</sup> For discussions of small states and smallness see introduction to Chapter 8.

vulnerability they perceived for their national languages and cultures. What was surprising in the data was that these values and priorities did not seem to be perceived as being in conflict with or threatened by EU rules or norms for the audiovisual media sector. I suggest that this is likely because liberalization and the spread of foreign channels in each of these countries are not linked to the transposition of EU rules, as was shown in Chapter 5. The perceived threat to national media and national identity was more associated with globalisation, and I did not find strong evidence that these protectionist values and perceptions of vulnerability were behind the institutional misfit identified above. Instead of institutional misfit with values or norms related to the sector, there was institutional misfit with established practices, routines and relationships in the sector, as well as to some extent the self-perceived role of those in the regulators.

As I demonstrated in the preceding chapters, in both cases one of the main reasons for the non-implementation of rules by individuals was misfit with the established practices of the very small operations in which they worked. In small states, the limitations of the material conditions of the market is not just a matter of financial resources, but also “professional staff, talent and creativity” (Trappel, 2011, p. 115). Market players were limited in terms of production capacity or their ability to procure content. However the lack of human resources in particular, the size of their operations and the size of the pool of talent from which to draw, also seemed to shape practices related to reporting and engagement with policy making. The limitations also applied to civil society and state actors. The resistance identified to the implementation of common rules and standards or EU protectionist measures did not appear deliberate or consciously associated with non-compliance with EU rules or norms, but there was evidence that certain practices within the NRAs and the market players resulted in institutional misfit. These cases showed that beyond transposition, the limited capacity in the administrations responsible for implementation and that of the market players to whom the rules apply can be a source of resistance. It could be thought of in terms of individuals not just following the *logic of appropriateness* but also the *logic of possibility*, or that appropriateness may be also judged in terms of the resources constrained by material conditions.

The evidence in Chapter 6 showed that the enforcement of common rules and standards in Macedonia also did not fit with what was considered appropriate by decision makers with the regulator in the context of their established relationships with political elites and those between political elites and the media. In the Macedonian case, individual patronage relationships were revealed between decision makers in the NRA and political parties. These could stem from the lack of barriers between party and private spheres in Yugoslav times (Holmes, 2006, p. 184), but more likely, given the ethnic divisions and extremely personal nature of the relationships described are rooted more in the tradition of “big men” and related “informal family subsistence systems” and other “informal economic activities” typical of the Eastern Balkans (Kanin, 2003, p. 40). In Slovenia, such individual political patronage relationships were not evident, however there was evidence of relationships between media and political parties based on financial dependency, and the decision makers within the NRAs also had very limited powers and resources for enforcement as a consequence of the rules made by political leaders. As stated above, the role of politics and political elites in these two cases cannot be ignored, however, I argue that the extent of their role in media governance is exacerbated by the smallness of these two countries.

### ***9.3.2 Smallness constraining agents***

Other research has shown that the policy preferences of political groups, namely those opposed to EU policy, can result in delays to transposition depending on the number of such veto players and their positions within the domestic opportunity structure (Haverland, 2000; Kaeding, 2006). Toshkov (2008) showed that in relation to social policy for instance, a predictable left/right split could be seen in the implementation of EU Directives depending on which parties were in government. In cases looking at environmental or gender equality issues, the focus has been on the extent to which Europeanization changes the power of advocacy groups to influence those in government (Luaces, 2002; Sudbery, 2010). Policy preferences in relation to these areas may be part of winning voter or donor support during elections or appeasing lobbyists. Investigating media governance in these two cases I found no evidence that the policy preferences of those in government or in opposition towards EU policy were relevant, yet the actions and influence of political elites were

pervasive. I suggest that this is because the area of media policy is a special case, due to media being fundamental to the political process.

It has already been convincingly argued by Jakubowicz (2008), Bašić-Hrvatin and Petković (2007) that countries in this region adhere to the polarised pluralist model of media systems (Hallin & Mancini, 2004, 2008). A core characteristic of media systems in the polarised pluralist category that “there is a strong tradition of regarding [the media] as means of ideological expression and political mobilization” (p. 90). Media are thus often tools that political parties use to achieve their strategic goals, and it follows that where they have influence over media it is in their strategic interest to maintain the status quo. A distinction was made in Chapter 2 between the theory that mechanisms of control over the media were sustained legacies of the former authoritarian system (Splichal, 2001) or in the needs of new political elites, who may have held emancipatory ideals, to solidify power in the new democratic systems (Jakubowicz, 2007b). Though it is not unique to post-socialist or post-communist states, regarding media as a vehicle for political mobilization and spreading ideology may be connected to the Yugoslav past. However, there was more evidence of the strategic use of mechanisms of control born of the new capitalist system such as manipulation of advertising budgets and subsidies. What I found in these cases was that the small size of the two countries and the limited financial and human resources that went along with that exacerbated the role of political elites. There were marked differences between the two countries in the extent to which political elites had power within the domestic opportunity structures and their relevance to the institutions with which there was misfit.

In both cases, delays in the transposition of Directives were consequences of political parties in government using media laws to shape the domestic opportunity structure. The evidence indicated that one of the reasons that issues such as subsidies for local media or the amount of advertising allowed on PSB were left to political deals was because of the very limited capacity within the national administrations, civil society and particularly the market to engage in policy making. The sheer numbers of people with expertise were not enough. I argued that this helped to allow the application of the common rules and standards of the EU for domestic market players to be shunted aside by the interests of political parties. The exception to this was in Slovenia,

where one market player with foreign owners that was large enough in the market to be independent from political party influence began to implement some of the EU rules.

As the evidence showed, ProPlus is large to the point of near monopoly in Slovenia, balanced only by the PSB, RTVSLO, which retains a notable share of audience and advertising. The data presented indicated that this position helps place it outside the influence of political elites and even gives it power over political leaders. This position was not a consequence of Europeanization, but of a transnational company investing at the right time and a conducive domestic opportunity structure. In Macedonia, no such market player existed among the broadcasters and political relationships were crucial to their sustainability, and the smaller stations in Slovenia were also dependent on political alliances for their financial survival. There was an evident link in both cases between the limited financial resources in the market and relationships of dependency with political elites. In Slovenia, ProPlus, whose foreign investors had entered the market at a very early stage in its development, used its position and relations with other players in the market to keep the market closed to new entrants from outside. While this may seem problematic from the point of view of media pluralism, the evidence from the Macedonian case indicates that where there was more pluralism the market was equally closed to foreign investment. In Macedonia, the relationships between political elites and media and the thinly spread small amount of potential revenues resulted in the market being equally closed to foreign investment.

The evidence in the preceding chapters also highlighted another reason the media policy area is special and not the same as other sectors subject to EU rules. Within the common market, there is a free and open market for washing machines, in which all companies making washing machines compete on a level playing field and by the same rules. With the negative integration that led to the opening of the market for washing machines, Slovenia's Gorenje company was able to compete freely in Italian, German and other markets, along with Indesit or Miele, or other makers of washing machines. This was a significant change in the opportunity structure that allowed this major Slovenian company to participate in the common appliances market and to capitalise on economies of scale that participating in a larger market

allowed. The same kind of negative integration was brought about by TWFD for the audiovisual media market, but the same was not true for Slovenia's ProPlus or for any of the domestic broadcasters in Slovenia or Macedonia. Scale is particularly important for media companies because the media goods are non-exclusive and the initial costs are the same whether broadcasting to 10,000 people or 10 million people (Doyle, 2002; Picard, 2002). However, the advertising revenue that can be raised from an audience of 10,000 is very different from that which can be raised from an audience of 10 million. Broadcasters and producers in Slovenia and Macedonia cannot benefit from the common market in the same way that the company making washing machines can because of the constraints that the limited human and financial resources place on their capacity to produce discussed in Chapter 8. The accounts here showed that production capacity in these two cases was not just limited by the small budgets and lack of skilled media professionals, but also by the extent to which the populations and the material conditions of these small countries could generate subject matter in the form of artists, events, locations and stories. This restricts them to the domestic markets, and therefore to the limited potential revenues and political dependency that goes along with it.

Size also seemed to contribute to resistance through the close relationships among actors that often involved individual personal level connections, for example such as between an owner of a television station and a political party leader or between a media company manager and a person in the NRA. In Slovenia, there was evidence that the networks of individual relations among "the real media people" facilitated alliances among incumbents and their actions to keep others out. In Macedonia, the data pointed towards established connections involving obligations to political elites. In both cases, I described these as national clubs that create barriers to entry for foreign investors or media companies. I am relating these closed clubs to size because of the very personal level relationships involved and because I found the limited resources in the market contributing to dependency relationships between media and political elites. However, it is possible that this sort of national clubbiness exists also in other countries with the common market. I therefore advocate more research into the relationships between governance actors, even at the level of individuals working with governance actors, in the context of both Europeanization and governance studies.

### ***9.3.3 The Contribution of these Findings: Markets and Politics***

The main contribution of this thesis is in what it shows about the importance of markets – their players and size – and about the role of political parties in media governance in these two cases. Agent-centred explanations in theories about implementation and domestic change in Europeanization research tend to consider political parties as actors in terms of their preferences for or against EU policy or in some cases general attitudes towards the EU. They are seen as potential veto players that can block policy implementation, and opportunity structures are considered in terms of the extent to which political parties or civil society groups are empowered to push for or against EU inspired changes (e.g. Haverland, 2000; Luaces, 2002). Market players have largely been ignored as actors. In a notable exception, Versluis (2007) provided some evidence that the readiness of market players can factor into implementation of policy. The findings from this thesis indicate that market players can be important both in resistance to Europeanization or as change agents – if Europeanization coincides with their strategic interests.

The cases studied here also highlight that there can be institutional misfit also at the level of markets and the individuals working within them. Recent discussions have provided evidence on the effects of “administrative capacity” in Europeanization (Falkner, 2010; Falkner & Treib, 2008; Thomson, 2009) focusing on government efficiency or that of national administrations. The capacity of market players in these two cases was limited by the material conditions of smallness. In the evidence presented, there were instances of resistance that could be explained mainly by misfit with the practices within market players, even down to the level of reporting to the NRAs that were constrained by their limited resources and capacity. A vast amount of EU policy generated in Brussels concerns the regulation of markets. Based on the evidence from these two cases, I argue that Europeanization scholars should look beyond issues of institutional fit with structures within national administrations to include those operating within the market.

Based on the evidence in these two cases, I also argue that policy and formal rules are not just institutions that have a life of their own. I suggest that formal rules should not be considered separately from the strategic interests of those that have

agreed upon them. Resistance to the institutionalisation of EU rules and norms was not related to the policy preferences of political parties. Instead, it was a consequence of the role political parties had in setting the rules that shaped the domestic opportunity structure in the audiovisual media sector to maintain mechanisms of control over media. I suggest that national laws and other formal rules should be considered as instruments of the will and strategic interests of the political parties that adopted them, in the same way that those at the EU have been “consolidated and agreed upon” at the European level among the Member States (Radaelli, 2003, p. 118). This has implications in terms of agent-centred explanations in Europeanization studies and I therefore argue that more research is needed into the role of political parties in relation to their use of laws connected to Europeanization and not just their policy preferences in relation to EU policy. Treating law as an intentional intervention by those who adopt it, namely political parties in government, also has implications for how media governance can be conceived.

Two models of media governance from media scholars were presented in Chapter 3, along with one more general conceptualisation of governance from Kooiman (2003). Puppis’ (2010) model refers to “government” and Kooiman’s to the “state”. Puppis’ model breaks down what Kooiman considers the state to some degree, in that he considers NRAs and international bodies, such as the EU or WTO, as extensions of government. However in both cases the government and the state are treated as politically neutral. They are not broken down into the actors that form governments and their interests, and the various bodies of the state, which have their own relationships with the actors forming central government. McQuail’s (2005) model divides mechanisms of governance into internal, within media organisations, and external. Among his external mechanisms is law, however as I have argued here, law is an instrument of agency and is therefore not without the intent of those who made it. McQuail’s model does not account for the kind of behaviour by those in government seen in Slovenia and Macedonia. I therefore propose, based on the investigation of media governance in these two countries, that the concept of the state and of government in media governance needs to be problematised. I suggest that political parties and their relationships with media should be separated out, particularly in terms of their rule-making function as part of the government and the state and in terms of their relationships with media.



Political parties have a life before and after their time in government, and their role in media governance can be seen as defined not only by their time as part of government. In these two cases there was evidence of political parties using law as a tool for control of both PSBs and NRAs. There was also evidence of them directly using mechanisms of control over broadcasters, and in Macedonia over decision makers in the NRA, even when outside of government. This thesis has provided rich detail as to how those mechanisms of control function that suggests they are not so much legacies of the authoritarian past, as the strategic use of relationships in the context of the new system, which, in the Macedonian case, may also have roots in even older ways of doing things. I have argued above that in these two cases, the small size of the countries and their media markets contributed to the influence of political parties over media, especially by exacerbating relationships of financial dependence. In order to further understand the relationship between market size or economic factors and political influence over the media, I suggest more research is needed into these dynamics in other environments. I advocate more examination of the relationship between the role of political parties in governance in different types of media systems and countries of different sizes and economic conditions. I suggest it may be more useful to separate the state into component parts. These could include national administration, NRAs, Parliaments, and central governments - but as constituted by political parties with their respective interests. In some cases, as the ones studied here, the dynamics among these different parts can be very important to understanding media governance.

#### **9.4 The Implications for Audiovisual Media Policy**

This thesis was started out of a concern for the future of media in its cultural and public interest role in small states, particularly in SEE. Faced with claims from media scholars that media systems in such states are vulnerable (Puppis, 2009; Trappel, 1991, 2010) and that Europeanization may be a threat (Burgelman & Pauwels, 1992), I had a hypothesis that they were not actually vulnerable because they were in some way resistant to the process of Europeanization. I expected these two states in particular to be part of a trend of “resurgent ethno-nationalism” (Schlesinger, 1993, p. 15), prone to more aggressive national protectionism and

generally opposed EU intervention in the audiovisual sector. What I found was resistance to Europeanization, but in a very different manner than I expected. I found that the media systems in Slovenia and Macedonia are resistant to Europeanization to a large extent because they are small and some of the manifestations of this resistance may also be making them vulnerable.

For Slovenia and Macedonia the common market for distribution is a reality, not because of the EU, but because of their own liberalisation processes. This market is not a European one, but a global one. The spread of foreign channels and content, often from outside of the EU can be seen as part of overall globalisation processes, and, based on the evidence here, I suggest facilitated by the incapacity of the audiovisual media sectors in these countries to produce what audiences expect. It has been said that the EU “manages the process of globalization for its Member States and works tirelessly to prevent the process and its impacts being defined by the US or other regional powers” (Papathanassopoulos & Negrine, 2011, p. 10). In the audiovisual media sector in the EU, this amounts to the protectionist measures of content quotas and subsidies, as well as supposed benefit of having access to the larger common market to make use of economies of scale. However, the findings of this investigation indicate that small states, defined as small by both population size and economic indicators, are being served by the EU’s management in this sector. Despite the fact that the EU rules are established to be the same for all actors within the common market, within the European opportunity structure Macedonian and Slovenia actors are severely disadvantaged by the material constraints of their size. Neither EU nor national level rules aimed at protection can overcome these constraints.

Evidence from others suggests that while Macedonia and Slovenia may be extreme cases because they are near the bottom of the spectrum in terms of both population size and economy and have unique languages, other small states are similarly poorly served by EU protectionism and lacking in capacity to contribute to the common audiovisual media sector. The subsidies of the MEDIA programme overwhelmingly go to fund productions in the five biggest EU Member States (Papathanassopoulos & Negrine, 2011, p. 71), perhaps in an effort to encourage high quality hits that can compete with US premium content. Notable examples from even some of the richest

small states involve cross-national co-productions and heaving PSB involvement, such as in Scandinavia. Norway is becoming famous for its “slow TV” such as the 12 hours of a fireplace roaring or real-time boat and train journeys (Lim, 2013) that are probably no more likely to appeal to broader audiences across Europe than a Slovenian documentary about a mountain village. Even the global success producers in some small countries have had with entertainment format has been linked to consolidation into larger transnational companies because “small countries are limited by the smallness of their domestic markets” (Hill & Steemers, 2011, p. 217). While the richer Western small states probably have better records in terms of transposition and enforcement of EU rules for the audiovisual media sector, there is ample evidence to suggest that resistance to participation in European protectionism and in open European markets may exist in other small states. Based on the evidence from Slovenia and Macedonia, I argue that EU policy makers should reassess the extent to which current policy is mediating the effects of globalization on behalf of its members. I suggest that an approach aimed at encouraging development within the numerous small markets, rather than supporting potential big European hits to compete with US content, would be more effective in the long-term.

The Slovenian case showed that even when a private broadcaster was allowed to grow to near monopoly size and the PSB was financially stable with a notable share of the advertising market, these broadcasters still struggled to compete with foreign channels, and neither was able to take advantage of the rest of the common market. Nevertheless, the strong PSB facilitated the use of EU subsidies contributing somewhat to Slovenian independent production, and the size of ProPlus and its foreign ownership seemed to protect it against the mechanisms of political control described by Splichal (2001) and Jakubowicz (2007b, 2008). This was a sharp contrast to the situation in Macedonia, in which even the national channels were not very viable and showed signs of financial dependency on government pseudo-subsidies. In any discussions that might lead to EU level policy on media pluralism, there is a need to closely examine what pluralism means in small states, and what level of pluralism might actually best protect the public interest. The evidence from these cases suggests that in very small markets having multiple owners may not be sustainable or sufficient to protect media companies from dependency on political patrons. Instead policy might be more effective at ensuring a diversity of views and

representations in the media if internal diversity within companies and content is encouraged through public interest obligations or other measures.

It has been shown in other cases that administrative culture, values, and norms can be changed through socialisation or social learning (Andonova, 2005) within national administrations or among civil servants. However in these two cases, those did not appear to be the main sources of misfit with EU policy. I suggest that this may be because EU policy in the audiovisual sector is primarily industrial and relegated to issues of managing the common market (Harrison & Woods, 2007). What does not fit is the size of these countries and their markets. This is not something that can be changed through the social learning of new cultural norms or values. However, the evidence from these two cases shows that in the context of the multi-level governance of Europe, the rules of the EU can be called upon by domestic actors as a higher authority when they align with their strategic interests at the national level. The diffusion of rules and norms from the EU to the national level in the instances in which Europeanization played a role in these countries, was a matter of national level actors making use of them to change the domestic opportunity structure or the outcomes they could expect from their strategic decisions. As the EU considers its competence in relation to media freedom and pluralism, I suggest it also carefully assess the extent to which market players and political actors at the national level will associate any proposed measures with their own strategic interest, as the findings from these two cases indicate that such links can be crucial to EU policy playing a role in the region where there is currently the most cause for concern.

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## **Annex 1: List of Interviewees**

This list has been modified slightly to protect the anonymity of those who asked to remain anonymous.

### **Slovenia**

Miha Krišelj, Acting Director of APEK

Igor Funa, Head of Spectrum Management Department

Tomaz Gorjanc, Head of Monitoring Department

Cene Grčar, In-house Counsel for ProPlus media company

Roman Smiridonik, Director, Narking Slovenia

Vojko Stopar, Director of the Media Directorate, Ministry of Culture

Dejan Jelovac, President of the Broadcasting Council of Slovenia

Štipe Jerič of Director, RTS Maribor

Brankica Petković, Head of Media Policy, Peace Institute of Ljubljana

Marko Milosavljević, Professor of Journalism, University of Ljubljana

Saša Gnezda, administrator in APEK (responsible for broadcasting licensing and tenders)

Tamara Javornik, Head of Culture and Media Inspectorate

Sandra Vesel, Media Inspector

Anonymous

Anonymous

### **Macedonia**

Cvetanka Mitrevska, Head of the Legal Department Broadcasting Council

Emilija Janevska, Head of the Programme Department Broadcasting Council

Zoran Stefanoski, President of the Broadcasting Council

Milaim Fetai, Vice President of the Broadcasting Council

Biljana Ilievska, Head of Radiospectrum, Agency for Electronia Communications

Roberto Beličanec, Head of Media Development Center

Biljana Petkovska, Director Macedonian Institute for the Media

Sašo Ordanovski, Director of Veve Group (AsatM Television)

Boris Arsov, Council Member, Broadcasting Council



Andriana Skerlev-Čakar, Chief of Staff, Broadcasting Council

Dejan Siljanovski, Head of Legal and Regulatory Affairs, Makedonski  
Telekomunikacii (Macedonian Telecommunications)

Selver Ajdini, Director, TV Hana

Irena Arnaudova, Director TV M

Producer, TV Sitel

Deputy Producer, TV Sitel

Stole Naumov, Council Member, Broadcasting Council

Todor Malezanski, Head Legal Department

Anonymous from a television station

Anonymous from a television station

## Annex 2: Topic Guides for Interviews

### INTERVIEW GUIDE: National Regulatory Authority

- I. Role of media, institution & self
  - a. View of role of broadcast media
  - b. View of role of own institution
  - c. View on PSB
  - d. Does being a small country make any difference in terms of what broadcasting or what PSB should/or can do?
  - e. *View of EU in relation to media policy. What is the EU's role? How do you feel about it?*
- II. Rules and Procedures
  - a. What are the key rules for broadcasters? How long have they been in place? How did they get put in place?
  - b. Rules or procedures for communicating with other actors. How long have they been in place? How did they get put in place?
  - c. Procedures for licensing, monitoring, penalizing How long have they been in place? How did they get put in place?
  - d. Reporting rules or procedures. How long have they been in place? How did they get put in place?
  - e. How do actors learn about the rules or procedures? How informed are they?
  - f. Who makes the rules?
  - g. *Do more rules come from EU directives or from local law? Which are more important?*
- III. Practices and Routines
  - a. Daily or regular work routines
  - b. What is practice for information dissemination, within and with other actors? How long has it been done that way?
  - c. Common enforcement practice – what do broadcasters get in trouble for & how is it dealt with
  - d. Why do you do things the way you do?
  - e. *Do you think the way you do things is different from other European countries? How “European” is your way of doing things?*
- IV. Relationships
  - a. Who do you communicate with the most inside the organisation? Outside? How often and for what?
  - b. Who have you been dealing with the longest? Or known the longest?

- c. *How often your work do you end up using personal contact or have to deal also with people you know personally?*
- d. To what extent were the people you communicate with designated for you already when you started?
- e. What do you think are the strongest relationships in the sector among actors?
- f. *What about relationships with European institutions?*

V. Decisions

- a. How is your organisation involved in policy/law making?
- b. Who else is involved, influential?
- c. How are decisions made to grant a license/penalize/conduct ad hoc monitoring? Who makes, on what basis
- d. How do you think these decisions should be made? What should be considered?
- e. *To what extent is EU policy considered, or are EU institutions influential?*

VI. Priorities

- a. Most important thing your organisation does?
- b. Most important thing you do?
- c. What is needed for development of media in the country?
- d. What does public need?
- e. *How important is it to comply with EU policy? To be part of Europe?*

VII. Consequences

- a. *How have things changed in the broadcasting sector here since you started the process to be part of the EU?*
- b. *What are the consequences, benefits or problems, from liberalisation of the broadcasting and telecoms markets?*
- c. *What can be/is being done to limit any negative impact? To take advantage of any benefit?*

INTERVIEW GUIDE: Non-governmental organisation

I. Role of media, institution & self

- a. View of role of broadcast media
- b. View of role of own organisation in the country
- c. View of NRA role and independence
- d. View on PSB
- e. *View of EU role in relation to media policy*

II. Rules and Procedures

- a. What are the key rules for broadcasters?
- b. How important is it to comply and is there compliance

- c. Rules or procedures for communicating with other actors like NRA & government
- d. How do you learn about rules or procedures? How informed do you feel?
- e. Who makes the rules?
- f. Are they fair? Do you find any to be burdensome or discriminatory?
- g. *Do more rules come from EU directives or from local law? Which are more important?*

### III. Practices and Routines

- a. Their regular investigation, reporting & communications practices
- b. Are there any self-regulatory practices in the sector? How do they work?
- c. Common enforcement practice – perception of what kind of things actors are penalised for by NRA or other body?
- d. Do you find it fair?
- e. *Do you think the way things are done here is different from other European countries? Why?*

### IV. Relationships

- a. Who do you communicate with the most outside the organisation?
- b. How often and for what?
- c. Who have you been dealing with the longest? Or known the longest
- d. What do you think are the strongest relationships in the sector among actors?
- e. *Do you feel left out of communication channels?*
- f. *Do you have any communication with European level organisations, EU or advocacy groups or associations, etc*

### V. Decisions

- a. How is your organisation involved in policy/law making?
- b. Who else is involved, influential?
- c. How are decisions made to grant a license/penalize/conduct ad hoc monitoring? Who makes, on what basis
- d. How do you think these decisions should be made? What should be considered?
- e. *To what extent is EU policy considered, or EU institutions influential?*

### VI. Priorities

- a. Most important thing your organisation does?
- b. Most important thing you do?
- c. What else needs to be done?
- d. What is needed for development of media in the country?
- e. What does the public need?
- f. *How important is it to comply with EU policy? To be part of Europe?*

### VII. Consequences

- a. *How have things changed in the broadcasting sector here since you started the process to be part of the EU?*
- b. *What are the consequences, benefits or problems, from liberalisation of the broadcasting and telecoms markets?*
- c. *What can be/is being done to limit any negative impact? To take advantage of any benefit?*

## INTERVIEW GUIDE: Industry

- I. Role of media, institution & self
  - a. View of role of broadcast media
  - b. View of role of own company in the country
  - c. View of role of self within that
  - d. View of NRA role and independence
  - e. View on PSB
  - f. *View of EU role in relation to media policy*
  
- II. Rules and Procedures
  - a. What are the key rules for broadcasters?
  - b. How important is it to comply?
  - c. Rules or procedures for communicating with other actors like NRA & government
  - d. Reporting rules or procedures
  - e. How do you learn about rules or procedures? How informed do you feel?
  - f. Who makes the rules?
  - g. Are they fair? Do you find any to be burdensome or discriminatory?
  - h. *Do more rules come from EU directives or from local law? Which are more important?*
  
- III. Practices and Routines
  - a. Daily or regular work routines
  - b. Are there any internal self-regulatory practice? How do they work?
  - c. Common enforcement practice – what kinds of thing have you been penalised for by NRA or other body?
  - d. Do you find it fair?
  - e. *Do you think the way things are done here is different from other European countries? Why?*
  
- IV. Relationships
  - a. Who do you communicate with the most inside the organisation? Outside?
  - b. How often and for what?
  - c. Who have you been dealing with the longest? Or known the longest
  - d. To what extent were the people you communicate with designated for you already when you started?

- e. What do you think are the strongest relationships in the sector among actors?
- f. *Do you have any communication with European level organisations, EU or advocacy groups or associations, etc*

V. Decisions

- a. How is your organisation involved in policy/law making?
- b. Who else is involved, influential?
- c. How are decisions made to grant a license/penalize/conduct ad hoc monitoring? Who makes, on what basis
- d. How do you think these decisions should be made? What should be considered?
- e. Do you think the NRA is independent?
- f. *To what extent is EU policy considered, or EU institutions influential?*

VI. Priorities

- a. Most important thing your organisation does?
- b. Most important thing you do?
- c. What else needs to be done?
- d. What is needed for development of media in the country?
- e. What does the public need?
- f. *How important is it to comply with EU policy? To be part of Europe?*

VII. Consequences

- a. *How have things changed in the broadcasting sector here since you started the process to be part of the EU?*
- b. *What are the consequences, benefits or problems, from liberalisation of the broadcasting and telecoms markets?*
- c. *What can be/is being done to limit any negative impact? To take advantage of any benefit?*

## INTERVIEW GUIDE: Government

I. Role of media, institution & self

- a. View of role of broadcast media
- b. View of role of the government, the specific department
- c. View of NRA role and independence
- d. View on PSB
- e. *View of EU role in relation to media policy*

II. Rules and Procedures

- a. What are the key rules for broadcasters?
- b. How important is it to comply and is there compliance
- c. Rules or procedures for communicating with other actors like NRA & broadcasters

- d. Who makes the rules?
- e. Are they fair?
- f. How do they get changed?
- g. *Do more rules come from EU directives or from local law? Which are more important?*

### III. Practices and Routines

- a. Regular practices of daily work related to the sector
- b. Are there any self-regulatory practices in the sector? How do they work?
- c. Common enforcement practice – what kind of things actors are penalised for by your inspectorates and how often? (Slovenia only)
- d. Consultation with the industry practice?
- e. Appointments to and Communication with NRA?
- f. *Do you think the way things are done here is different from other European countries? Why?*

### IV. Relationships

- a. Who do you communicate with the most outside the organisation?
- b. How often and for what?
- c. Who have you been dealing with the longest? Or known the longest
- d. What do you think are the strongest relationships in the sector among actors?
- e. *What is the nature of communication with the EU bodies? Do you feel equal to other EU countries?*

### V. Decisions

- a. How is your organisation involved in policy/law making?
- b. Who else is involved, influential?
- c. How do you think these decisions should be made? What should be considered?
- d. *How does having candidate status and the SAA affect decisions made? (Macedonia Only)*
- e. *To what extent is EU policy considered, or EU institutions influential?*

### VI. Priorities

- a. Most important thing the ministry does in the sector?
- b. Most important thing you do?
- c. What else needs to be done?
- d. What is needed for development of media in the country?
- e. What does the public need?
- f. *How important is it to comply with EU policy? To be part of Europe?*

### VII. Consequences

- a. *How have things changed in the broadcasting sector here since you started the process to be part of the EU?*
- b. *What are the consequences, benefits or problems, from liberalisation of the broadcasting and telecoms markets?*

- c. *What can be/is being done to limit any negative impact? To take advantage of any benefit?*



### Annex 3: Table of Findings from Interviews

#### RULES<sup>67</sup>

Macedonia		Slovenia	
ZRD is too detailed on many things & long	27	ZoM is too detailed and long	13, 19
but there are also things missing	27,36		
ZRD is missing fines for some things or very light/weak	27, 36, 39, 41	Fines can be big for some things  But are usually small	12  13
Rules for licensing are easy, but require a tender	27	Getting a license for programme is very easy, can't be turned down basically if you did all the paperwork properly.	11, 13, 25
There are strict ownership rule against political owners and on concentration, but they are not enforced	33,34,46	It is a problem that license are easily transferable and no detail on type of programme in license – so station can completely change & concentrations formed  <sup>68</sup>  This is how Proplus (PopTV) was formed	11, 24, 20  13,
DCQ is 30% daily with 2 repeats allowed.	28	5% Slovenian daily, 20-30% in house (dependent on status)	
EU quotas (apply to national stations only): stations have trouble achieving them	28, 47	EU quotas (apply to national stations and regional ones with special status), stations have trouble achieving them	15, 16
EU rules must be adapted to Mak environment/mentality	38, 47, 36	EU rules have been just copy-pasted so far and country should use the options in them to decide some things at the national level	10, 20, 19

<sup>67</sup> Numbers in the tables refer to the number of voice recording from the interview, where more than one recording was made in the same interview only the first number is used.

Reporting rules for broadcasters are extensive and too long	41 (42, contra?)	Reporting rules for broadcasters are extensive and too long	13, 23, 25
Process of making the new law is very closed, not transparent, not inclusive, inefficient	28, 33, 38	Process of making the law was inclusive,  but final text quite altered  Process not inclusive (those left out)	10, 13, 16,  10, 13  18, 26
Regulation of copyrights is weak point in law and not enforced enough.	42, 41, 39	Jurisdiction is a problem because foreign channels are broadcasting with Slovenian subtitles and Slovenian ads, but don't have to abide by domestic rules (quotes, etc.)	10, 15, 16
It is a problem that fines can only be issued by the courts and BC must go through court for those penalties	27, 38, 41		
BC used to have rules for which penalty came next in order, but got rid of this so now it is the penalty is decided ad hoc  - Good thing - Bad thing	36,  29, 51 36,		
		All broadcasters must register in Media Register at Min. of Culture, but easy to do & just requires some paperwork	10, 11, 19
		APEK has only narrow powers to penalise,	12,
		The AVMSD already applies even though not transposed  The AVMSD is not transposed national law has precedence	13, 23  12, 62
		APEK & Inspector must abide by administrative procedures & inform station of monitoring process, give	15, 21, 62

		<p>them a chance to respond, then make a decision – takes a long time, if not followed decision will be overturned in court</p>	
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## PRACTICES

Macedonia		Slovenia	
DTT is subscription only, national broadcasters want their own MUX, broadcasters in negotiations (battle) with operators over who pays who	34	APEK has tenders for DTT and no one applies for license, lots of free capacity	10
		APEK monitors what is happening in the market through personal contacts, what broadcasters are saying & asking about	11, 15
BC monitors according to annual plan (when the just check for everything) as well as based on complaints or ad hoc on the initiative of BC members; EWQ & IP monitored annually based on reports from broadcasters; DCQ checked on a daily level when a station is monitored (according to annual plan or complaint)	28, 46	APEK monitors based on complaints for most things; plus outsourced monitoring of ads which happens automatically; EWQ & IP monitored annually based on reports from broadcasters; in house production monitored randomly and not current priority because due to be reduced in new law (!?); and randomly check people complying with special status or license requirements and when they know ownership has changed or something	12 (21)
BC records several stations 24 hours/day & national stations are priority	28	APEK records several stations 24 hours/day & national stations are priority	12, 15
BC is lenient with penalties, rarely chooses sever punishments, especially now that rule on consequential penalties were revoked; licenses only ever revoked for non-payment of license	36, 46, 47	Never happens that a license is revoked, only twice APEK used temporary revocation for a few hours	12,13
Regulator often organising workshops, seminars, etc but broadcasters rarely participate much	28, 38, 37, 41, 42, 46, 47(contra)	Regulator often organising workshops, seminars, etc	13, 24

Broadcaster use connections to ensure court cases expire or get off with warnings,	27, 38, 46,	Fines are not so big so sometimes broadcaster complains, but usually just pays it so as not to bother	13, 26
Stations started in free for all and then BC chose not to cull when transfer from concession to license based on any kind of standards – this was a mistake Yes, but unavoidable b/c of deadline	38, 42,  48	Only local stations allowed at the beginning, it was a strategy	13, 24
Main violations are advertising limits	28, 47	Main violations are advertising limits – it used to be in house production, but not any more	15
		APEK & Inspector with shared responsibility is inefficient – passing the buck back & forth	16, (26)
Political ads during elections go to loyal, but perhaps “one man show” stations that otherwise have no real programme, which keeps them alive until next election – unfair competition for serious local stations	41, 42	Stations with special status apply for funds in a tender each year from Min. of Culture – this money if technically for projects, but is important lifeline for station survival	16, 23, 24, 18
		PSB law was worked on by same group as for ZoM and had to be done first- politically motivated	20, 24
BC staff prepares all information on violation, previous penalties for same violation for that broadcaster	27, 28, 46	Inspector waits for APEK to make a decision on a case and give it’s “expert” opinion before going forth with a fine	21, 15, 62
		Station’s fulfilling EWQ with domestic content, DCQ not so hard b/c news counts & IP can be from anyone outside – so trade with other local TVs is IP content	13, 23
		Cases related to Product placement are on hold awaiting change in the law	62
BC gave out satellite licenses on a tender but for pgms of general	33, 42, 41, 46		

format aimed at national audience, not specialised channels, so now essentially 10 more national stations			
4 national commercial broadcasters have formed sub group in Chamber of commerce to protect their interests, only A1 left out	34		
3 national network operators, MaxTV(IPTV), BoomTV(DTT) and Cabletel signed an agreement on fair play practices – copyright, VoD practice, only Telekabel chose not to	39		
Selection of BC members is politically influenced	33, 46, 47		

## RELATIONSHIPS

Macedonia		Slovenia	
BC ( and AEK) staff and members often answer questions from broadcasters or advise on the phone, broadcasters feel they can call staff or members freely with dilemma's and often consult on rules, especially related to elections or recently with the classification of content re: protection of minors. (Even those that don't have such a great relationship with the pres. for political or personal reasons)	28, 34, 37, 39, 41, 46, 47	APEK staff often answer questions or advise broadcasters on the phone & by email, broadcasters feel they can freely call APEK staff and consult or confer	11, 12, 13, 23
Both NGO's currently have little contact with the BC – only directly with those few members who used to be journalists and are not involved in drafting the new law	32, 33, 29	NGO rep was involved in drafting new law, but as individual expert, close ties with academia, not too much contact with APEK	
European institutions used to be	33, 39, 41		

more involved and are not very interested now, so not so much communication with local stakeholders, NGOs			
Relationships among BC members is very strained and divided along political lines	36, 29, 51	Relationship between Broadcasting Council and APEK is official, and has been strained in the past	18, 21, 25
EU asks lots of questions of the regulator and they are often answering requests for information that come directly or via SEP	37,	EU asks lots of questions of the regulator and they are often answering requests for information	24
Relationship between BC and Ministry of Transport is strained and between BC and AEK (though staff level communicate and official requests are responded to appropriately)	36, 28, 37, 38, 46	Relationship between APEK and Ministry of Culture or Ministry of Science is cooperative - both official & direct communication/consultation - But they can say no, or disagree  Relationship between APEK & Inspector is very official and mostly on paper.	11, 24  11  12, 15, 62
Telekom has a very good relationship with the BC, united in joint efforts on copyright	39, 29	Proplus lawyer is influential, - involved in drafting law - through the courts (changing relationship b/t APEK & inspector)	13, 15, 21
Uses & maintains personal relationship: - To consult with judges on dilemmas - To get information & stay in the loop with other institutions, inc. EU - To ease communication and getting things done	27 28  39, 46	Uses & maintains personal relationship: - With people in APEK and with NGOs as part of small club who know stuff about the sector, to exchange views, share info, participate in strategy - Avoids them with politicians as they expect something - To know what is going on in the market, who might be selling or buying, etc	13   13  11, 15
Local broadcasters communicate regularly, commonly buy	41, 42	Local/regional television with special status have an association	23

programme rights, sell joint advertising, co-ordinate before election to fix prices for political ads		which was represented in drafting process & lobbies, and 3 regional stations on MUX A share content	
		A newcomer, from outside the media club, has to struggle to break in & is not party to information/plans	14



## OPPORTUNITY STRUCTURE

Macedonia		Slovenia	
Regulator is weak - And it serves commercial interests - And it serves political interests	27 27 32,	Regulators are weak - and it serves commercial interests	16, 15
MRT is not a player, big commercial stations have power as influence opinion  “if we agree to start the news with you . . .”	34, 39	Duopoly with PopTV & RTVSLO exists and dominates the market. There is fierce competition, especially over sports rights, and - increased commercialisation of RTVSLO	10, 20, 26  11,15
Drafting of new law is closed and no clear vision	28	Players in the marketplace influence drafting of the law - Local broadcasters - Big Commercial broadcasters (PopTV)	10  20, 23, 26 13, 20, 26
No concentrated power now in the market, as former dominant player is ruined, - Escalating battle for rights - Govt/Political parties controlling the national stations	34, 41  33, 34, 46	The biggest player in TV market and the second(by far) biggest commercial player are foreign owned, but they are basically Slovenian companies just with foreign capital and locals run the show. PopTV really dominates	10  14, 23
Many channels available on cable & unfair competition from small local cable operators who pirate foreign channels	39,41, 42,	There is a lot of choice on cable and satellite. Lots of foreign channels	11, 24
		Have issued almost all available frequencies for radio, but APEK has little control over how they are used	11, 24
		Concentrations forming in the radio market because small ones can't survive, forced to sell.	11, 15, 24
		Domestic quotas in place would be hard to change –patriotic feelings &	16, 26

		musicians lobby	
People have individual involvement in drafting of new law - Telekom - One BC member - Latas (TV Sitel)	39 36 47	Experts from University are important players in drafting the law – social political scientists	13, 16, 19, 20
Government directly is biggest advertiser	32,34, 41, 46	Government owned companies make up most of the advertisers except for on PopTV & RTVSLO where a few big international companies are present – P&G, Coca-Cola	19, 20, 23, 24
Govt ads and political campaigns keep alive small one-man show stations that degrade the market	41,42 (51)	Subsidies for programmes of special interest support ideologically controlled media at local & regional level	18, 23, 24
It is not easy to enter Macedonian TV market, Market is small and local big players won't allow it, - media is not a business, but political tool Must have a local in charge connects to one of the political options	32, 33, 34, 51  51	It is not so easy to enter the TV market in Slovenia because it is not so easy to enter a platform & registering in Slovenia is required, which carries many obligations, and market is full	21, 24
Govt. ad campaigns used to “buy” loyalty and support loyal broadcasters, national & local	34, 41, 42	Local stations closely tied to local politicians and businesses, which are also state-controlled companies,	23, 24
Lack of enforcement of ownership rules means politicians almost directly own national televisions	33	whereas PopTV can dictate to politicians & has independence because of position in market and foreign capital	23, 13, 24
Ministry of Transport is understaffed And hands tied by Minister	33, 38	Ministry of Culture is understaffed & only one Inspector for all media	24, 62
EU carries weight and Progress Report matters, helps spur on action, ex Copyright enforcement or threat of reaction influences decisions	28, 33, 36, 39, 46, 58		

Macedonian subtitles respected now that Max TV does them (Telekom – owned by Deutchtelecom)	28, 39		
Local stations have local power and influence local courts	27, 46		

## CULTURAL NORMS

Macedonia		Slovenia	
Public debate is weak and participating in public discussion held by BD or AEK is low – domination of daily politics & lack of understanding/capacity	28, 32, 33	High culture has been replaced by sport and pop culture - sameness	11,15,16
Lack of rule of law:  - Some stations just ignore warnings or penalties - Rule of people, not rule of law	39,46, 51  28  33	Hypocrisy is very present	18
Culture of showing off – TV as show off piece	33, 51		
Albanians bound by loyalty to Albanian cause & each other – challenge for Albanian TV to be a business, not a cause	41		

## VALUES

Macedonia		Slovenia	
		Diversity of content, different kinds of music and types of programme is important in the market (missing now)	10, 11, 16, 18
Media has value for the people, public interest function, democratic function  Local information,	41, 51  41, 42	Media has value for the people, public interest function  - - - Local information, local media	11, 15, 16, 18 (contra), 19, 23, 15, 16
PSB should be public interest & have special rules	36, 58	PSB should be public interest, non-commercial or not so commercial, fill gap	11, 14, 16, 25 (contra)
Domestic production is important	36, 42	Domestic production is important	(11), 16,

			25
Important Rules for broadcasters:  - Hate speech & incitement - Ad limits - Ownership & concentration - Protection of minors	28,38, 46  28 33  38	Important rules for broadcaster:  - Protection of Minors  - Slovenian language  - Ad limits	12, 15, 25, 62 V2 16  62 V1
Media freedom is important	46, 51	Media freedom is important	13, 19,
Being European is important  - Better to be in than out - Important to be feel European, to belong - Not so much	32 46, 51  38	Being European is important  - Better to be in than out	13
Domestic quotas are important	47, 28	European works important  - Yes, but should be lower - No	15, 16 25
Viability of media is important, need stations that can survive & not “one-man” shows	46, 41, 42	Viability of media is important,	
Independence of Regulator	32, 33, 46,		
Regulator should not just punish, but more educate about the rules	36, 41, 46		
Copyright is important  - because EU demands it - because piracy hurts local markets	29, 46 41, 42		

## SMALLNESS

Macedonia		Slovenia	
Lack of capacity in regulator, not enough people, resources	27, 28, 34		
Everyone knows everyone  - Means you have to be careful - You can always find a connection if you need	28 28, 33,	Everyone know everyone  - Makes communication easier - Must be careful of people wanting favours	11, 23

- Use of connections undermines rule of law & efficiency	39 41	- Means some people have more influence	11, 13 19, 23
Language must be protected	28, 47	Language must be protected	16
Small market, dominated by govt employment & not enough big firms to generate ads	32, 33,	Small market, local stations can't survive – must sell up	15
Too many players in small market – competition cannot sustain quality	34, 41, 42, 46, 47	Small market with one giant commercial & strong PSB, can't sustain pluralism	11, 20, 23
Vulnerable? - Yes, to internal competition and commercialisation - No	34	Vulnerable? - Yes, to foreign channels on cable aimed at Slovenian market - No, because not interesting market	10,13  16, 23
Not enough capacity for production/independent production	28	Not enough capacity for production /independent production	15, 16, 23
Not enough people who know anything about the media sector	32,	Not enough people who know anything about the media sector	13,19, 20

## POST-SOCIALIST TRANSITION

Macedonia		Slovenia	
PSB legacy- MRT has been unstable state TV since independence, finally getting some stability; then can work out if it is state or public	33	PSB has largely not changed how it works	16
Political parties are legacy of transition – centric, undemocratic and not transparent	33, 34,	There is still some kind of authoritarian tradition	19
Things understood in developed countries need to be set in guidelines here	51	The laws are changing all the time	18
Regulator learning together with players in the market	51	Regulator learning together with players in the market	13
Left & right in post socialist countries is a mess	32, 33	Left & right in post socialist countries is a mess	13

		Journalism and media dominated by the left	18, 19
		- Old elite still in charge	18

### OTHER STORIES (cross over multiple codes)

Macedonia	Slovenia
<p>Copyrights enforcement now by multi-agency efforts (46, 51), by channels checking on each other (34, 51), by Telekom monitoring &amp; sending information to BC (39)</p> <p>Big issue for stations at the local level for years 41, 42</p>	<p>RTVSLO was give a MUX in Law on Digitalisation and according to that law can do what it wants with it – APEK &amp; BC agreed to give temporary permission for commercial stations to go to that MUX during building of commercial MUX, but now they won't migrate &amp; commercial MUX only has 3 channels. RTVSLO was declared an SNP by APEK and therefore has to have only cost based prices and is currently investigating charges by commercial MUX that the current prices are under cost (dumping). PopTV &amp; RTV said they don't want to go to MUXB because prices are higher and coverage less. RTVSLO rep was not in the department that dealt with it &amp; couldn't discuss. APEK says it is a problem with the law and proposed changes to it &amp; that it is in the process of investigating. 10, 13,14, 18, 23</p>
<p>Government is spending large sums on advertising campaign for various announcements or PSAs</p> <p>These fund are distributed in a non-transparent way and are distorting the market in various ways:</p> <ul style="list-style-type: none"> <li>- Prices for premium content have gone up as national stations that got the windfall entered bidding wars 34,42</li> <li>- Small local “one man show” stations are being kept alive and loyal 41,42</li> <li>-</li> </ul>	<p>Right of reply – due to be changed in new law, but currently reply can be requested &amp; must get same “position &amp; space” in print and broadcasting. Currently means politicians and companies, even artist getting a bad review get the same time/space to respond. 19, 20</p>

#### **Annex 4: Interview Transcript Example**

*(This transcript has not been proofread for spelling or grammar, but is left as it was created. It was also the first of two interviews with this individual as it was cut short and continued the following day.)*

APEK

06.04.11

First some chat about self and project.

Presentation of consent form (sound of signing)

S: tell me a bit about what you do

T: I am head of monitoring department. We have a radio communication department that includes monitoring and media content regulation and I'm the head of monitoring department

We are monitoring radio and television content until the new law is going to be adopted and then in the new media law we're going to monitor also all these audiovisual media services. Radio tv and audiovisual media service. Linear, so we are going to have linear and non-linear services, non-linear services are media on demand services, and we are going to have inspection powers with the new media law. Now we have only a narrow area of powers because we can now impose only a warning and this would be the first step of sanctions and after that the second step is part time period revocation and the last level is termination of license. So these are the only three things we can do. We do not impose fines or anything like that. If we find out with our procedure that there is some kind of violation we put our decision to the broadcaster and then the same decision we send to the ministry of culture and then they can impose fines.

S: the Ministry?

T: yes, and we are responsible for just a part of our media law. The areas that we are covering in the media law are advertising, protection of minors, licensing and program quotas, from Slovenian, own production and European Audiovisual quotas. Which are prescribed for a year, annual content quotas. Our work is based on appeals



of listeners and viewers and of course we are monitoring the programmes by ourselves. We look at the programme, or listen to the radio programme and if we spot some violation we start with the procedures.

S: S do you say okay now we are going to monitor the stations from this time to this time r how do you decide?

T: we have different approaches, if there is an appeal for a listener, we go and look for the programme. Maybe I can tell you, now we bought equipment which we can tape, record 8 programmes 24/7 digitally and so if there is an appeal, if it is a violation that comes from one of those 8 programmes it is not a problem because we have these programmes for the last 3 months.

S: so if a person calls and says I saw this on channel X

T: they have to write down

S: oh it has to be written

T: Yes it has to be written.

S: and then you can go back and look and find it in the recording

T: Yes we have recorded programme for 3 months, for those 8 programmes, we can change of course those 8 programmes, it depends on what we would like to do and then if we find out that there are some more problems similar to that appeal then we record some other programmes and then we make just a broader action, for example. If for example there appeared that there wasn't enough Slovene music on the radio programmes then we record maybe 10 programmes and then we check out how much Slovene music

S: what kind of things do people most often complain about?

T: In the year 2009 there were some appeals from the area of protection of minors, we had problems with Big Brother 1 & 2, there were two seasons and then there was The Farm, also a reality show. I'm going to a meeting tomorrow also on reality shows in Belgrade there are going to be regulators from three countries, also in Balkans. Its going to be, the topic will be this Dvor. Do you know it?

S: I haven't watched it.

T: it's on Pink TV. So now for example we are dealing a lot, well a lot of our work is concentrated on advertising content, because we have the public broadcaster sending appeals on the commercial broadcasters and vice versa. And now we outsourced data. AGB media services. They are collecting data on programmes, not just advertising but also the other programmes. And the service we monitor is advertising, especially

advertising because the service they have detects the advertising so that we can look in the software and see, for example what was the amount of advertising in an hour. Which is the main important thing, until the new directive was adopted. Because for example there is no advertising provisions on the day level. In the current media law there is still a provision that advertising shouldn't exceed 20% per day, but the new directive says that it should be only per hour.

S: and so which is enforced

T: well yes, now we have some problems with that, because for instance product placement is allowed, but the problem we see is that it should be announced this product placement. And no one is announcing it. Some of the broadcasters are already using this provision from the directive, but still we are sanctioning this practice as, not secret advertising, but.

S: aha hidden advertising

T: hidden advertising, yes,

S: I think it is surreptitious

T: yes surreptitious

S: which is a fancy way of saying hidden, but its in the Directive

T: Yes, Because the problem for us is that there is no announcement and the viewers don't know that this is product placement. They just saw the product in the show, but there is no announcement so for us this is still surreptitious advertising. Because product placement is allowed by the directive only under certain conditions. Just in certain programmes and it has to be announced and so on and those conditions are not put and they are not regulated. They are going to be regulated in the new media law, because the directive is not implemented in our media law, we claim that this is still surreptitious advertising and we had already one case. We are not . The problem is that we do not have powers over surreptitious advertising because the Min of Culture has supervision over surreptitious advertising, so if we detect this kind of advertising practice then we record the programme and send an appeal to the Min of Culture. There is a media inspector and he is supervision surreptitious advertising.

S: so he is the one that is supposed to then take action

T: Yes and he already took action in the case, the time of the world championship in football. There were people in the studio with some ads on their T-Shirts and the inspector fined them. This was a classic example of product placement and there was

no announcement of product placement so they treated this as surreptitious advertising.

S: Do you have easy communication with this inspector.

Now there is a new inspector there and we know each other just from the phone. He's in charge I think from the first of March, but we do not have any, I should say not very good relations. We are just sending and he is responding. He told me they are very occupied with the other areas of the media law because we are just in charge of those four areas and he is in charge of all the other parts of the media law, which is also right to reply and all other things that are in the media law. SO we are just sending if we detect some problem related to the radiospectrum we just proceed our findings to the inspector and he tell us what he has done after he has finished his procedures.

S: So it sounded like the complaints about programme standards were coming from the public, especially about protection of minors. .

T: Yes, I can go from area to area. About advertising, we can detect a lot of violations from our outsourcing software. Those are advertising breaks and advertising quotas and most of those advertising provisions we can find out by ourselves with outsourcing.

S: that just goes automatically?

T: yes the procedure automatically starts. Then protection of minors, yes, we have appeals and then we have our findings. It is both.

S: Do you think the public knows how to do an appeal?

T: I should say that the public is not aware enough about the provisions on this area – that there is any kind of a protection. Maybe they see only all these signs, 15, or 12 or whatever, but the problem is also that in our provisions for the protection of minors that it is just on violence or pornography. There are no provisions talking about bad language or any other kind of content that is the programmes, in the shows. Because the problem with the Farm was that there were more appeals about sex, okay this in covered, then bad language – the law doesn't cover bad language, and then was also drinking – also it is not covered, and then smoking, you know these hazards. There were appeals especially on this. There was a lot os drinking and smoking and bad

language in this show, but from our perspective it is not covered good enough in the law. It is just violence and sex material.

S: but in the AVMSD it's also just some minimum requirement

T: Yes, When I saw this – XXX was pretty much involved in the preparation of this new law- I think there is much better regulated the area of protection of minors. Because it is going to be in this way that it is not specified in the law what kind of material is problematic – just those categories, 18 over 18, under 18, 15, 12 and so one etc. – but all the content that is problematic is going to be defined in an executive act, so there going to be hazards, bad language, what is kind of a programme is suitable for some age group. So I think it is going to be a little bit better regulated in this manner. For us it is going to be easier to work when we decide about what is proper and what is improper

S: Do you think Slovenian standards are different from tother places in Europe?

T: hmm that is a difficult question

S: It wasn't on my list it just came up now that we're talking about it

T: We made a public consultation with the broadcasters and we made some kind of an analysis on this topic and we compared Dutch, French German, etc. standards of this and I would say that we are quite liberal. One of the most liberal countries is Netherlands and I think we would treat quite smiliar this content to the Netherlands.

S: So you think that even if things change it is still going to be quite liberal.

T: yes, but I think that now it is even more liberal than it is going to be in the new law, because as I said there is no regulation of bad language and so on and now those things are going to be in the law. For instance it is not going to be allowed to show drinking of young people in the content that is suitable for children under 15. Now you have everything. They are showing some very problemtatic films at 8 pm or even earlier. Most of the films are just violence, and maybe sex content is broadcasted after 11, for example, but all the others – especially problematic for me is the violence and all these films with young children drinking and drug stuff in the content. They're broadcasting these things at 6pm and 8pm and I think this is not appropriate and there should be some kind of warning, the symbol or something.

S: And how, as the regulator when you are not monitoring something based on an appeal, how do you decide what to monitor. Or what kind of monitoring do you do on a regular basis or ad hoc

T: we have done some things, like advertising on a regular basis, but now we do everything ad hoc as things arise. I didn't finish my description of all the areas. This was in the areas of protection of minors. And audiovisual works and the other programme quotas – we do monitoring once a year because these are annual quotas. And we check for this once a year and we are now doing the quotas from 2010.

S: does that mean you have to go through the programme schedules and look at them yourself or do they report to you?

T: they have to make a report and they report to us only quotas and then we start the procedures when we check all the quotas that they proceed to us. And then we check all the audiovisual works that they sent us. They have to sent to us all the lists of all the audiovisual works that were broadcasted and they have to list where it was produced, in Europe, if it was produced by independent producer, when it was broadcasted, and that is most of it. From this data we decided if some work was made by Slovenian producer then it is Slovenian works, or if it was an independent producer and we go over all these lists. It is quite a big amount of work.

S: are the stations pretty good about submitting their reports.

T: in the last 4-5 years we have received quite a bit of appeals from independent producers. They said that those quotas are not correct and that is why we started these detailed procedures to check the reported quotas. And now we are doing this every year, these detailed procedures with all those broadcasters that have to fulfil the quotas.

S: and that is just national programmes

T: National and regional, the exception is just local and of course those specialized programmes that don't have Audio visual works, for example information programmes, advertising programmes.

S: So on the one hand you have work on protection of minors, on advertising and on quotas.

T: and we then have also on home production quotas and this is made just through. . .

S: and by home production do you mean their own in house production or do you mean Slovenian production

T: yes In house production. And those quotas are checked randomly because we have no appeals on this matter, so this is really random. If we saw there is a problem . . .

S: So you just say hmm, next week we have some time, lets check

T: yeah for example.

S: does that mean that that one gets kind of bumped down to the bottom of the list in terms of priorities.

T: Yes it is not such a priority. Because we also saw that in the new media law it is going to be, well now we have 20% per day and in the new media law it's 10% per week, so it is a bit lower provision from 20 to 10.

S: Will Slovenian works stay the same

T: yes Slovenian works will stay the same, you mean Audiovisual works?

S: Yes

T: those stay the same

S: because you had 20% in house production and then there was something like 5% Slovenian works and the European

T: Yes, European is 20% and then independent production is 10%

S: what is the reason behind lowering it

T: good question, we do not know. Maybe XXX knows because she was involved in this process pretty much. But the problem is that there was no public discussion on these topics. IT was the same with this law. IT was adopted in 2001 and I was already working in this area. IT was quite similar today. The only public discussion in this new media law was on right to reply, which is not our area of work, and the Slovene music. Yeah, the Slovene music was a topic in public discussion because one or two years ago it was a problem that the musicians found out that their music, Slovene music, was broadcasted on the radio stations during the night. There are provisions, daily provision for commercial stations for 20% per day, but because the radio stations said that they don't care about Slovenian music and they tried to avoid those provisions and they put the Slovenian music during the night, but they fulfilled the provisions. And when one started then all the broadcasters started with the same practice and in one moment the musicians they started to protest and then this became a topic of public debate. And now in the draft of the new media law there is a provisions of 20% during 6am and 8pm. So this is the way how they solved the problem

S: and that is in the past?

T: no it is still in process. So that was the only thing, this right to reply and this. Oh and also this, well I don't know if this is important to you because it is not our area of work. It was how the editor of the media is appointed. Whether it was to be with the consent of journalists or not and also there as some debate on concentration of the media, but not a lot. Just in these expert magazines. Aha, and this is one area that I forgot. We monitor also the programmes of special importance. This are regional, local, non-profit and student programmes. You can apply for this status in our agency and then we take a pattern of the programme and we look at the programme and if the programme fits all the programme requirement it can receive our licence for this special status.

S: And then you monitor if it keeps up

T: yes this is again random. And if we saw something in the market – if there are any changes – if someone is selling some radio station to some other company, then we monitor to see if he is still fulfilling these requirements. There are also some other requirements except programmes, the broadcaster should have for example 3 employees or 3 for local or and 6 for regional and there are also some other not so important requirements, the most important are these programme requirements. For instance there are some quotas for information programme, cultural programmes and so on, some quotas on this matter.

S: and this is just for the programmes of special interest

T: yes, just for programmes of special interest

S: because in the license agreement there is also percentages of what type of programmes

T: Yes this is the last area, the licenses are made especially because of broadcasters that are broadcasting terrestrial. On the terrestial platform because we have those public tenders, you know when we give those frequencies, and this was made especially for them. So first they had to get this license and then they had to go on the public tender with this license and compete with other companies for the frequencies.

S: DO you monitor if they are actually doing what they said they would do

T: Yes, we are also monitoring is there is any appeal. There are no appeal from the part of the viewers, but there are some appeals from the Broadcasting council for example. We had one big action back in 2007 when the new broadcasting council was appointed and at that time they had a demand to the agency that we should monitor all the broadcasters received a frequency in the period of this broadcasting council and at

that time there were 17 radio stations, so it was quite a big, really huge amount of work for us. So we checked all the quotas, and so on that are stated in the licence.

S: so they wanted to check what the previous council had done?

T: they wanted to check that the programmes are still fulfilling the license, but the problem is that again, at the end of the process the only thing we can do is the first step, which is a warning. And if the requirements are not fulfilled then we should start with the second step of the procedure which is as I said part time revocation of the license, so we just temporarily stop the license. And the last step revocation

S: and have you ever revoked

T: no

S: and have you ever done this temporarily?

T: Yes temporarily we have done twice in the last few years for advertising

S: and did they comply?

T: Yes, in the second step they complied, but still you know in the third step we checked this second sanction and but after that then it is still at the beginning, so after the third step it goes back to the beginning and if you again see the violation it is back to warning.

S: I just wanted to check the time

T: yes it is 4 o'clock

S: then I'll let you go, I don't want you to miss . . . (agreeing the next interview)

Total time: 46:24



## Annex 5: Codebook for Analysis of Decisions of the Broadcasting Council of Republic of Macedonia

Code	Type	Coverage	Public/private	Law/rule broken	Type of Violation	Category of violation	Penalty	Court case	Court Result
1	TV	National	Private	Law on Broadcasting	Domestic language Quota	Protection of minors - categorization, inappropriate time for broadcast, harmful content	Indication/notification	None	ongoing
2	Radio	Local	PSB	Election coverage rules	ID of sponsors	Protection of language (quotas or translation rules)	Written warning	Appeal by broadcaster	expired
3					Election coverage balance related - covering govt. activities, use of journalists in campaigns, misuse of polls or other imbalance	Elections - balance in programme & ads, silence period	Written warning with requirement to publish	Broadcaster charged by BC	withdrawn
4				Both 1&2	Election ads - giving too much time to one party, overstepping time limits, govt. paid ads	Advertising - limits, not separating, surreptitious ads	Temporary ad ban for 1 day		Fine for company >1000
5				Electoral Code	Breaking the election silence period	Administrative - not publishing information, not sending reports	Temporary ad ban for 3 days		Fine for company <=1000
6				Rules for identification of Sponsors	Use of children in political ads	Other	Temporary ban on broadcasting of 8 days		Fine for Responsible person
7				Rules for pay telephone lines or at all	Content harmful to children at wrong time		Temporary ban on broadcasting of 16 days		Both 4&6
8				Rules for protection of Minors	no categories signs on programme		Temporary ban on broadcasting of 30 days		both 5&6
9				Both 1 & 8	surreptitious advertising or failing to acknowledge sponsors		Temporary ban on broadcasting of 90 days		Warning
10				Other	overstepping ad time limits or putting too many in a period or programme		Misdemeanor charge		both 6&10
11					not separating ads from programme with jingle				
12					Not publishing ownership details				
13					Not submitting financial or other reports				
14					Hate speech or inciting violence				
15					Failing to translate				
16					Other				