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# Agency Transparency and Accountability: Comparative Analysis of Five Regulated Sectors in Serbia and Macedonia

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The RRPP promotes social science research in the Western Balkans (Albania, Bosnia and Herzegovina, Kosovo\*, Macedonia, Montenegro and Serbia). Social science research aids in the understanding of the specific reform needs of countries in the region and in identifying the long-term implications of policy choices. Researchers receive support through research grants, methodological and thematic trainings as well as opportunities for regional and international networking and mentoring. The RRPP is coordinated and operated by the Interfaculty Institute for Central and Eastern Europe (IICEE) at the University of Fribourg (Switzerland). The programme is fully funded by the Swiss Agency for Development and Cooperation (SDC), Federal Department of Foreign Affairs.

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\* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the International Court of Justice Opinion on the Kosovo declaration of independence.

IMPRESSUM

**Agency Transparency and Accountability: Comparative Analysis  
of Five Regulated Sectors in Serbia and Macedonia**

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## **Content**

Executive Summary.....	8
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### *Part I*

1. Introduction.....	13
2. Accountability and transparency.....	16
3. Transition states.....	18
4. Research questions and objectives.....	21
5. Policy significance.....	23
6. Conceptualising transparency regime.....	25
7. Theorising determinants of transparency regime.....	28
8. Methodology.....	37

### *Part II*

9. Case studies.....	47
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### *Part III*

10. Comparative analysis.....	93
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### *Part IV*

11. From transparency to accountability.....	109
12. Conclusion.....	111
Recommendations.....	114
Bibliography.....	119
Appendix .....	128

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Project leader,  
Slobodan Tomic,  
Programme Director of Belgrade Institute for Public Policy



## **Executive Summary**

### **Why is transparency of independent agencies important?**

1. Independent agencies, both regulatory and controlling ones, play a crucial role in strengthening the rule of law and supporting free market economy. In Serbia and Macedonia, independent agencies are a relatively new type of institutions, whose proliferation is associated with the start of transition and the subsequent EU accession process in these countries.
2. Unlike traditional executive agencies which operate within the ministerial hierarchy, the independent agencies are not being subject to the direct control of the government/ministry. Instead, the main means of control are resting with the parliament and they usually include only limited possibilities, such as considering an agency's annual reports.
3. As independent agencies are not subject to hierarchical control of the ministry or government, and due to the fact that the agencies are not elected by citizens, a question arises as to how the independent agencies' accountability can be ensured.
4. Transparency is seen as a major means for advancing accountability of independent agencies (who are non-majoritarian agencies). By means of transparency, the agencies are able to exercise the horizontal type of accountability, in addition to the vertical type. The "vertical accountability" was predominant in the past and directed toward the ministry or government, while the "horizontal accountability" is directed toward the stakeholders, such as regulated businesses, NGOs and watchdogs, media, citizens and so forth. Even though the stakeholders do not have power of sanctioning the independent agencies, these actors gain greater possibilities through increased agencies' transparency to contribute to better agency enforcement or to constrain their potentially detrimental activities.

5. Besides, by means of increased transparency, the independent agencies enhance their legitimacy, credibility and reputation among a wide array of audiences – from politicians through stakeholders to citizens.

### **What the study examined and what the findings are?**

6. The study analysed the levels of transparency of ten agencies from Serbia and Macedonia, operating in five major regulated sectors. Six agencies from the sample are of the regulatory type, working in telecommunications, energy and the media sector; two agencies, those dealing with market competition, are of the controlling type. The remaining two agencies, from the environmental protection sector in both countries, do not constitute independent agencies as such, because they operate within the ministerial hierarchy. They are, still, included in this study, due to the rising prominence of the environmental protection sector and because their inclusion brings certain benefits in light of the comparative methodology used in the study.

7. The analysis focuses on the content of the agencies' official websites, which is their main channel of communication and, hence, a platform for the pursuit of transparency. The main research question was: How many elements of transparency, out of five in total which are constituent to the modern systems of control, are publicly communicated by the agencies? The five elements of transparency include: (i) transparency of decision-making process and decisions; (ii) transparency of rules; (iii) transparency of regulatees' conduct; (iv) transparency of regulators' control; (v) transparency of received feedback. The number of elements present on an agency's website defines the extensiveness of the agency's transparency.

8. The findings reveal that the examined agencies have exhibited considerable variations in transparency levels. While some agencies, like the media regulators, communicated almost all five elements on their websites, others made only two or three transparency elements public. For instance, the energy regulators focused mainly on communicating their rules and procedural details, decisions and, to a certain extent, the information about the regulatees' behavior in their operation of business.

9. A number of explanations were tested in order to establish the determinants of the observed levels of transparency. These explanations pertain to national level (party competition), sector-level (degree of liberalisation, information costs) and agency-level determinants (age, resources, media exposure, de-jure independence, de-jure transparency). To a certain extent, similarities do exist within each country and within particular sectors. However, no "pure" and distinct cross-national or cross-sectoral patterns could be observed. Out of all determinants, the **de-jure transparency** – what an agency is legally required to publish – shows the highest correlation with the observed levels of enforced transparency.

10. In exercising transparency, the agencies have followed what the legislation required them to publish. However, they have communicated little of the other non-binding elements of transparency and, thus, did not help advance their horizontal accountability. Having these elements publicly released is, even though not obligatory, yet as equally important as the mandatory ones, because they facilitate the exchange of information between the agencies, on the one hand, and the stakeholders and the public, on the other.

## **Recommendations**

11. **For the agencies:** To pay more attention to the horizontal accountability, which may be advanced through communicating more elements of transparency on their websites than the legislation requires. Recent developments concerning the work of independent agencies

have shown that, for more optimal results to be achieved, independent agencies need to go beyond the legal-administrative understanding of their obligations. Providing information in the way explicitly required by the law, while perfectly legal, is insufficient for achieving desirable levels of accountability. As already stated, the possibilities for vertical control of independent agencies are limited; therefore, the agencies need to make an effort to provide relevant information to the interested parties in order to enhance their horizontal control. As a final result, this would benefit both the regulatory outcomes as well as the agency's legitimacy.

**12. For agencies' political "principals"** (government, ministries, parliament): Since de-jure transparency turned out to be the best predictor of the factual agency transparency, considerations need to be made as regard broadening the set of elements the agencies must communicate publicly. By spelling out more elements of transparency as obligatory for agencies to communicate via their websites, the legislation would be supposed to increase the overall levels of agency transparency. Yet, since preparing and releasing a broader set of data can be more resource- and time-consuming, the legislators should consider increasing the agency's resources as well.

Regardless of the legislative requirements, the principals should additionally encourage the agencies to go beyond their formally prescribed responsibilities. If the need for such practices is regularly communicated and advocated from the political level, they would have greater chances of being implemented. Political institutions should, therefore, insist that accountability, especially in a context where no hierarchical control exists, is not exhausted through submissions of annual reports. It needs to be realised horizontally as well, through extensive provision of information to the wider public.

**13. For the media:** To devote more attention to the work of independent agencies, as these get place in the media mainly in the wake of high-profile scandals. It should be noted that agencies' work encompasses much more than single decisions that trigger public outrage or fierce political battles.

In order to engage the public opinion that is more critical and capable of contributing to and controlling the agencies' work, the media need to follow the agencies' work in a prompt, thorough and a more extensive manner. Such reporting would include the details pertaining to as many elements of transparency as possible. Although the level of media exposure does not seem to shape the degree of agencies' transparency, better quality of media coverage on agencies' work may, nevertheless, contribute to creating a better informed public.

**14. For external evaluators (e.g. EU):** Independent agencies, in general, are regarded as being detached from the political institutions. The present analysis shows certain differences between the agencies' transparency in Serbia and Macedonia, but the within-country similarities are not as strong as to make up clearly distinct national patterns. The similarities, still, suggest that the various levels of partisan competition observed in the case studies may have been, to some extent, the drivers of the different levels of transparency in the two countries. In other words, the partisan life and hence the institutions occupied by political parties, may have exerted some – either direct or indirect – influence on the agencies' work. The question then arises as to what degree the agencies are de-facto independent. External evaluators might want to focus their future evaluations and reports on this aspect of the regulatory reform in Serbia and Macedonia, by analysing the agencies' transparency and also by including the stakeholders as relevant sources of evaluation. True, majority of the external evaluators, in their previous reports, commented the work of main regulators' in the region and their transparency. However, the focus of such documents was only on major decisions and scandals, whereby a wide range of the relevant issues has been neglected.

## Part I

### 1. Introduction

Over the course of the last couple of decades, independent agencies have become prominent actors in shaping the practice of governance around the world (Majone, 1997). These agencies have assumed the roles once performed by government, ministries, or bodies hierarchically subordinated to them, such as delivery of public services, regulation of newly liberalised sectors and performing controlling tasks over other parts of the administration. Their work, thus, has had important implications for the political, economic, and social life.

Depending on the reform trajectory undertaken (Pollitt and Bouckaert, 2004), some transition countries have been more and others less keen “agencifiers”. Yet, to a lesser or greater degree, almost all democratic countries around the world embraced agencification in the last couple of decades. For instance, the United Kingdom had about 600 such agencies amassed in 2004, United States more than a thousand agencies,<sup>1</sup> Sweden over 100, and there had been about 60 of them in Ireland (Vibert, 2007: 18). Independent regulatory agencies (IRAs) - a class of independent agencies that have gained prominence following the rise of the so called regulatory state (Majone, 1994) from the 1980s onwards - spread rapidly as well. In Western Europe, only from 1980 to 2002 the number of IRAs went from 15 up to about 90 (Gilardi, 2008: 113). Moreover, in 1977 there were only two IRAs in two major regulated sectors - electricity and telecommunications, while in 1999 their number amounted to about 80 (Levi-Faur, 2004), with many more today. For only two decades independent regulators, as an institutional model, had gone a long way from being an exception to representing a regularity in democratic societies.

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<sup>1</sup> Note that the agencification in the United States had two major waves, one before WWII and the other following WWII (Vibert, 2007: 17-18).

Independent agencies, as the adjective “independent” alludes to, are organisationally separated from the government and ministries (Coen and Thatcher, 2005: 330; Majone, 1997: 144). Based on the legislative arrangement, independent agencies are designed to enjoy autonomy concerning their personnel, organisational, financial, and policy decisions and are not subject to permanent hierarchical oversight by the executive, i.e. government and ministry. Independent agencies are now subject to limited control; instead of traditional hierarchical oversight there are now only “minimal” ex-ante and ex-post means of control (see McCubbins *et al.*, 1989).

Compared to the traditional modes of governance, the setup behind independent agencies arguably leads to several advantages. Credible commitment, greater efficiency, lesser politicisation or blame-taking (Thatcher and Stone Sweet, 2002: 4), have all been cited as the qualities that independent agencies are expected to bring about. These qualities can all be linked to lesser susceptibility to political attentions, especially to lesser vulnerability to the vagaries of political-business cycle.

Credible commitment is important for ensuring policy stability (Gilardi, 2005; Thatcher and Stone Sweet, 2002). While political institutions, such as ministries, may change the terms of operation within a specific sector - due to electoral calculations - even when this decision is detrimental and unsustainable in the long-run, independent agencies are assumed to be driven by professional considerations, which make them less exposed to political calculations. As non-elected actors, who do not need to win the popular support, independent agencies are expected to be better-placed to decide on the future course of a policy, based mainly on expertise and professional considerations (Majone, 1997: 153-154). This is particularly important in the field of regulation where major investments, many of which feature high “sunk costs”, can be severely damaged if the rules of the game get slightly changed (Coen and Thatcher, 2005). To sustain the ability of planning with a view to longer horizons, independent regulatory agencies have been suggested

as an optimal solution which would prevent tempering of political actors with regulatory policies.

Independent agencies are argued to be more likely to develop expertise, which then leads to more optimal policy outcomes (Thatcher and Stone Sweet, 2002: 4). This assumption is based on the fact that agencies may fully focus on their own field of work, devoid of daily politics, distractions and multiple pressures that occur in a political environment. For example, an ombudsman's office can direct all its resources and attention to examining whether various bodies within the public administration observe citizens' human rights; a telecommunications regulator has all preconditions to focus on developing expertise in the fields of telecommunications and internet technologies, without daily pressures to engage in political battles that may be lucrative in political terms. In that sense, independent agencies are argued to be able to yield more efficient policies.

Independent agencies, particularly regulatory ones, can serve as blame-taking actors who make less popular, but optimal decisions (Rose-Ackerman, 2010: 179). Office-seeking politicians may be reluctant to adopt measures that are not supported by the majority of citizens, even though they may believe that those measures represent the best choice. A case in point is the price of electricity. No electorate prefers rises in electricity prices, yet sometimes they must be made. If an energy regulator has competence over this question, then politicians may deflect the blame to the regulator arguing that there is nothing the government can do because of the constellation of jurisdictions.

Despite the advantages, some of which we summarised above, the model of independent agency has not escaped criticism though. Institutional capture, by vested interests and powerful business groups, has been one source of concern relating the work of agencies. Fears could be heard that agencies, as bodies unaccountable to the citizens in sense of direct



electability, can easily drift into policies that suit a narrow circle of people whose interests do not concur with the public interest (Laffont and Tirole, 1991). Another concern points to so called bureaucratic drift (Lodge, 2004: 126), a situation in which the agent (i.e. the regulator) drifts from the principal's (parliament, government) intended policy and enforces what had not been part of the initial "contract" which set the terms of the delegation of powers. On a more general level, "the rise of the unelected" (Vibert, 2007) has led to concerns about democratic deficit and lack of legitimacy.

## **2. Accountability and transparency**

Accountability of independent agencies has been mentioned as a key concern in the literature (Scott, 2000). The challenge lies in ensuring agencies' accountability whilst they operate "at arm's length" from the government (Majone, 1994). Questions have been raised as regards how to ensure that those agencies are working in the public interest and how to prevent, or ameliorate, capture by vested interests. Since the government has no control leverage over these agencies – relying instead on limited means of ex-ante control (McCubbins *et al.*, 1989: 434) - what other mechanisms can be employed to enhance the accountability of independent agencies?

Advancing the so called "horizontal accountability" is seen as an alternative way of controlling independent agencies. As O'Donnell puts (1998), institutions may not only be controllable by hierarchically superior instances (which amounts to "vertical accountability"), but they can also be subjected to "horizontal controls" by the groups that do not command formal political authority over the agency. Those groups include citizen organisations, business associations, institutions at the same hierarchical "level" as the agency, media, watchdogs and the wider public. Such controls, of course, do not rely on sanctions and stringent measures that can be taken against an agency (Schillemans, 2008: 177).

However, they can enhance or undermine the agency's legitimacy, they can question or boost its credibility, thus posing certain obstacles to the agency's detrimental conduct. In that sense, in the absence of strict hierarchical tools of control and the lack of possibilities for the exercise of vertical accountability thereof, advancing the horizontal accountability is an alternative that may enhance agency accountability.

Transparency is regarded as a key mechanism through which the horizontal accountability gets advanced (Scott, 2000). Transparency can be defined as including both assessability of and accessibility to one's work (Lodge, 2004: 129) and refers to the provision of information about one's work to the wider audience. For horizontal accountability to be effective, we need information about an agency's conduct in order to be able to make judgements concerning its performance. "One of the key ideas regarding transparency is that the more light that is shone on particular aspects of decision-making, the less space there will be for corruption"(in Baldwin *et al.*, 2011: 340).

Delineating accountability from transparency is not without its difficulties. Even though accountability can be characterised as a broader phenomenon than transparency, the two terms have often been used interchangeably. This suggests that accountability and transparency are often understood as interdependent, even overlapping concepts with similar impact (see, for example, Scott, 2000; Lodge and Stirton, 2001; Lodge, 2004). They may even be called the flip sides of the same coin. On a general level, transparency can be seen as a key mechanism for pursuing accountability, though the accountability is by no means exhausted solely by the exercise of transparency. Agencies can be subject to various codes of conduct and external evaluations – conducted either by political institutions such as parliament and government, or professional ones, such as auditors, or even broader by citizen assessments - which all makes up additional means of accountability. Yet, transparency does represent the cornerstone of accountability and is typically a precondition for

deployment of other forms of accountability. Therefore, transparency can add to the prospects of a successful exercise of horizontal accountability through empowerment of citizens, regulatees, watchdogs, media, external evaluators and other actors, who can take action based on the available information about a regulator's particular action.

### **3. Transition states**

Countries in transition, such as those from the region of Central and Eastern Europe (CEE), have undergone an extensive and rapid process of agencification. Main reason for that is that establishing independent agencies is stipulated by the *acquis communautaire* as one of the conditions for progressing in the EU accession process when it comes to dealing with certain prominent domains (Van Thiel, 2011: 21; Nemec *et al.*, 2011: 146). Those transition states proved in the 2000s to be even more zealous “agencifiers” than some pioneers of the New Public Management reforms which are based on agencification as a major process in restructuring the public sector (Van Thiel, 2011: 16).

It is important to mention that this rapid and extensive spread of independent agencies across the CEE region had been compounded by contextual peculiarities. The process of agencification unfolded concomitantly with major socio-political transformation processes, such as democratisation, institution-building, strengthening of the rule of law and so forth (Musa and Kopric, 2011: 34). Since the transformation processes in CEE were characterised by high-speed reforms, the time and possibilities for careful planning of institutional reforms had been very limited. Moreover, reduced funding and depleted state capacities for financial and material support often burdened the agencies' work in developing countries (see, for example, McAllister's study of two Brazilian environmental regulators; 2010). The reforms took place in a context characterised by the legacy of increased politicisation and centralisation

(Goetz and Meyer-Sahling, 2008: 12-24), in an environment of greater party control over the economic and societal resources (Grzymala-Busse, 2007; O'Dwyer, 2004) and with de-facto narrower distance between the agencies and government, particularly in smaller states (see, for example Kopric *et al.*, 2012). Based on that, it is not surprising that the concern about accountability of independent agencies has been one of the pressing issues relating to the governance in the transition region of CEE.

The region of South-East Europe (SEE) shares many commonalities with CEE due to similar legacies and challenges (individual countries' specifics should not be disregarded, though). The challenges associated with the work of independent agencies (Kopric *et al.*, 2012) are part of these commonalities. In that sense, examining the work of independent agencies, and especially their transparency and accountability regimes, merits particular professional and scholarly attention.

In this study, we focus on Serbia and Macedonia as two representatives of the Western Balkan region. Serbia and Macedonia are so called new democracies. Both aspire to join the EU and, in that respect, they can be named as "belated Europeanisers".<sup>2</sup> Currently, Serbia and Macedonia are undergoing a so called second transition and are facing many challenges related to the rule of law and other aspects of institutional reforms. Enhancing the work of independent agencies and also improving the regulation seems to be among the priorities for both countries in the period to come.

As it was the case in CEE, Europeanisation appears to be the key driver behind the creation of the majority of the independent agencies and

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<sup>2</sup> Macedonia was granted the EU candidate status in 2005 and Serbia in 2012.

IRAs in the Western Balkans (Kopric *et al.*, 2012) including Serbia and Macedonia. European Commission's Progress Reports about Serbia and Macedonia repeatedly stipulate that the establishment of independent (regulatory) agencies, as well as support of their independence and promotion of their findings, are among the requirements for the countries' progress in the EU accession process (see European Commission, 2014a). While the legislative part of the reforms has been more or less successful - in terms of having independent agencies and regulators set up across a variety of sectors - the practice of their enforcement, however, has showed many weaknesses. The most prominent obstacles include: firstly, a highly politicised environment which pays little regard for the role and position of independent agencies and secondly, a chronic under-resourcing of the agencies.

At the same time, the widespread perception of independent agencies is highly negative in the region. They are often portrayed in public discourse as profligate and redundant institutions (similarly to what has been the case in Croatia; see Musa and Kopric, 2011: 47)<sup>3</sup>, serving the interests of political elites and the big businesses, rather than making a positive contribution in the interest of citizens. Little is, actually, known about the work of the independent agencies in Serbia and Macedonia, reason being the lack of public debates and the low degree of visibility of the majority of independent agencies in the two countries. Certain questions inevitably arise: Is this due to the lack of interest of the media, who predominantly influence citizens' opinion and interests? Or, is

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<sup>3</sup> The following few newspaper articles, from Serbian daily Politika, well illustrate this sort of widely shared attitude:

[www.politika.rs/rubrike/Ekonomija/Drzava-jos-okleva-sa-ukidanjem-agencija.lt.html](http://www.politika.rs/rubrike/Ekonomija/Drzava-jos-okleva-sa-ukidanjem-agencija.lt.html)

[www.politika.rs/rubrike/Ekonomija/Namnozili-agencije-a-kriva-nam-Evropska-unija.lt.html](http://www.politika.rs/rubrike/Ekonomija/Namnozili-agencije-a-kriva-nam-Evropska-unija.lt.html)

[www.politika.rs/rubrike/Ekonomija/Agencije-ukinite-budzeti-prezivi.lt.html](http://www.politika.rs/rubrike/Ekonomija/Agencije-ukinite-budzeti-prezivi.lt.html)

it again the lack of initiative by the agencies themselves to reach the wider public?<sup>4</sup>

Given the general experience from the OECD world concerning the accountability of independent agencies and the lack of it, with the aforementioned compounding specifics of transition states in mind, another question can be asked: Have the agencies in Serbia and Macedonia been accountable? More specifically, what are the models of transparency enforcement of independent agencies in the two countries? This publication aims to contribute to the study of enforcement of agency transparency, as a key component of accountability enforcement, in less developed regions. The issue is approached through an analysis of the models and determinants of transparency observed in ten Serbian and Macedonian agencies.

#### **4. Research questions and objectives**

In this study, we look into the transparency of ten Serbian and Macedonian agencies in five regulated sectors. The analysed agencies include regulatory ones, controlling agencies and those that are not independent, i.e. which are not at arm's length from the government or ministry.<sup>5</sup> The research will be guided and centred by the following research questions:

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<sup>4</sup> The representatives of the agencies in Serbia and Macedonia, who attended the first round-table within this project held on 20 December 2014 in Belgrade, unanimously concluded that the media showed no interest in their activities. They also added that, apart from major scandals, no other topic related to their work could possibly generate public discussion.

<sup>5</sup> Note that independent agencies can be classified into several groups. For example, one such classification is on: (1) service providers; (2) risk assessors; (3) boundary watchers; (4) inquisitors; and (5) umpires and whistle-blowers (Vibert, 2007: 20). We make a distinction between independent agencies without regulatory powers and independent regulatory agencies (IRAs). We include in the sample two agencies that are not independent, that is they operate under direct ministerial hierarchy; those are Agencies for Environmental Protection in both countries.

- How transparent the ten agencies are?
- What explains the given levels of transparency?

In order to answer these questions, we first seek to gauge the level of the agencies' transparency by using a framework pointing to several important aspects of transparency and accountability (Lodge and Stirton, 2001; Lodge, 2004). Thereafter, we will seek to pinpoint the determinants of the observed transparency levels across the ten agencies.

The publication offers both conceptual and empirical contribution. Conceptually, the study applies a previously developed framework for mapping doctrines of transparency and accountability, with one important extension. Rather than looking at transparency doctrines, which are determined not only by the conduct of the regulator but also by the regulatees and citizens, we examine the level of transparency. In other words, we look at how extensive the transparency of an analysed agency has been rather than what sorts of style (or elsewhere named as transparency doctrine) has been pursued in practice.

On the empirical side, the study explores and identifies the types of transparency regimes of the analysed agencies. Moreover, the study tests whether certain factors - influencing institutional behaviour - can be considered as determinants of the observed regimes of transparency. We contrast agency-level to sector- and country-level factors when seeking to pinpoint the drivers behind the different transparency regimes.

## 5. Policy significance

In addition to its contribution to scholarly literature, this study has policy significance as well. Independent agencies, including regulators as one of their sub-types, have been overlooked in both public and scholarly debates in the South East Europe (SEE) region. Apart from the negative narrative portraying the independent agencies as profligate party “subsidiaries”, little reflection has been made so far, by experts and general public, on previous experiences or challenges and opportunities the agencies have been dealing with. It is not surprising, therefore, that policy recommendations or agency and regulatory studies have been scarce in the region so far. While not surprising, this fact is certainly not encouraging for the prospects of good governance in the SEE region, given the important role that the regulatory and other independent agencies need to play in market reforms and in the overall societal transformation processes.

In this regard, our study seeks to contribute to the opening of the agenda concerning independent agencies and regulators in Serbia and Macedonia - one of many agendas that can foster an informed and evidence-based debate on this issue. By means of this study and through the concomitant activities within the project “Are Regulatory Agencies in Serbia and Macedonia Accountable and Transparent?” we seek to encourage research and debate about the independent and regulatory agencies in Serbia and Macedonia. The issue of transparency, which is the focus of this paper and one of the pressing issues in the two countries, is only one of many aspects that future research, professional and public debates might be interested in addressing. Based on our knowledge of the regulatory literature, fresh approach and new ideas would be welcome on the topics of independent agencies’ resources, adoption of best comparative practices, key trends and policy transfer from the developing world to not yet fully-fledged democracies, as well



as regulatory impact assessment, the challenges posed by the rapid technological, societal, and environmental changes, and many other questions.

Most of the institution-related research on the SEE region has focused either on the central political institutions, such as government, ministries, parliament, or on political parties as major entities that serve as recruitment centres for filling up the formal institutional positions. However, there is more to governance than the policy making and implementation from the central political level. In fact, it is the rest of the institutions that make or should make a key contribution to the functioning of transition democracies. As a remark to the widespread belief that performance of a government, as a central executive body, crucially affects the transition outcomes, we remind that the delivery of policies as well as policy outcomes are contingent upon the work of the civil service and administration as well. It is important to add that, even though non-majoritarian institutions are not crucial players in enacting legislation and setting the course of policy development at the highest level, they are indispensable actors in effective delivery of public services.

The outcomes of this study include policy recommendations, which are based on findings about the current transparency levels and which also make use of the findings about the determinants of the given levels of transparency. The recommendations aim at a wide variety of stakeholders, including:

- the **agencies** – the examined ones in particular, but also more than a hundred of other agencies - which are not included in this study due to the limited timeframe and span of the project; they can all benefit from the conclusions and recommendations;
- agencies' "**principals**" – include parliamentarians in the first place, as they are currently the only ones who hold formal -

though limited - controlling leverage over the agencies. But the study also aims at the government and ministries, who set the pace of the legislative agenda and who are generally seen as the de-facto principals of the agencies;

- **policy entrepreneurs** – non-governmental organisations, watchdogs, whistle-blowers, or active citizens; their role of intermediaries between the institutions and the general public is indispensable in communicating the spotted deficiencies and opportunities in the work of agencies;
- **external evaluators** - such as the European Union or other regional and international initiatives who analyse the governance processes in Serbia and Macedonia.

## 6. Conceptualising transparency regime

Though being extensively discussed both in practice and literature, transparency has rarely been operationalised. Studies point to an extensive list of issues concerning the phenomenon of transparency such as its role, its challenges and potential effects (Hood, 2006; Meijer, 2013), elucidating the link between transparency and the broader question of governance and citizenship (Lodge and Stirton, 2001). Significantly fewer accounts, though, have suggested how to measure agency transparency in practice (but see, Koop, 2014).

Traditional accounts of transparency, associated with legal-administrative perspective, placed an emphasis on the decision-making and procedural details (Lodge 2004: 128). According to this approach, an agency's transparency can be measured by assessing to what extent the details on the agency's decision-making, rules and procedures are made public.

More recent accounts, however, criticise this approach for being dated and incapable of capturing the crucial aspects of modern regulatory regimes. Lodge (2004), for example, argues that transparency systems should be treated as general systems of control consisting of the following elements: (i) standard setting; (ii) information-gathering; and (iii) behaviour modification (as set out by Hood, 1983: 3-4). Based on that, adequate concepts of transparency should include elements pertaining to each of these dimensions of control and, in particular, the following five elements (Lodge 2004: 128):

- transparency of the **decision-making process**: Are decisions made known to the public?
- transparency of the **rules**: Are the rules of the game clear and spelled out by the regulator?
- transparency of the **regulated entities**: Can the public get information about the regulatees' conduct?
- transparency of the **regulator's conduct**: Can the public find out more about the work of the regulator herself?
- transparency of the **feedback**: Does the public have access to the content of the regulatees' or other stakeholders' feedback to the regulator's decisions?

The last three elements, which are added to the list, by no means make reference to a trivial matter. On the contrary, they point to the processes that have profound implications for the policy outcomes, rights, duties and the pay-offs of parties involved in and affected by the agencies' enforcement. How the regulatees behave, what the regulator<sup>6</sup> does in

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<sup>6</sup> Please, note that occasionally we use the term “regulator” rather than an “independent agency”, when the point can be made for independent agencies regardless of whether they are regulatory or not. The reason for referring to “regulators” or “regulatory policies” in this case is that we draw on other authors' work focused on regulation.

its day-to-day practice, and what the feedback is by those affected or interested in the regulatory policy, all these elements may shape the policy process itself, may shift its direction and consequently lead to different results. Therefore, being fully informed on these additional three elements is as equally, if not more, important as being aware of the first two elements, which are decision-making and rules/procedures related ones. We, therefore, find this five-pronged framework a suitable heuristic device for analysing the Serbian and Macedonian agencies' transparency.

As mentioned above, we are interested in the transparency levels of the analysed agencies, while the doctrines underlying the transparency regimes are not the focus of our study. Transparency doctrines are shaped by the agencies themselves, but also by the regulatees, customers, citizens and other actors. In that sense, we will not look into the tools that have been integral to the application of the five elements of agency transparency in practice. While relevant, this question goes beyond the scope of this study. We are interested, instead, in finding out whether the agencies have communicated all five elements to the wider audience. One may assume that all five components are by default present in an agency's transparency pattern; however, there is no empirical evidence supporting such a claim. Given the challenges and the hindering factors set out above, there is a reason to believe that especially outside the OECD world – in developing countries and new democracies - agencies exhibit abridged forms of transparency. We name as “abridged forms” those transparency regimes that feature fewer than the five elements which comprise the conceptual framework we draw from. For example, an abridged transparency regime can feature a combination of the first, second, and fifth element, rather than having some of the “fuller” modes of transparency consisting of all five, or four out of the five elements from the spectrum.

Therefore, our first question – To what extent are the agencies transparent? – can be rephrased in the following way: Do the agencies’ transparency patterns include all five elements or some “limited” forms of transparency can be found in practice?

After we measure the levels of transparency of the ten agencies, we will proceed to the examination of their determinants.

## **7. Theorising Determinants of Transparency Regime**

The accounts of institutional behaviour which we draw from the comparative regulation and agency literature can be divided into agency-level, sector-level, and country-level explanations. The remainder discusses these factors and sets out the hypotheses on how the factors may impact agency transparency.

### **Agency-level explanations**

Agency-level determinants, which represent independent variables in this analysis and can potentially explain the observed levels of agency transparency, include: age, resources, media exposure, formal (de-jure) independence, and de-jure transparency. Now we will consider all of them individually.

#### *Age*

From early works in regulation and public administration literature (Bernstein, 1955; Downs, 1967) to later studies of organisational behaviour (Quinn and Cameron, 1983; Levitt and March, 1988), age has been speculated as a determinant of organisational enforcement. More recently, Koop (2014: 570) hypothesised that nascent agencies do have a need to legitimise themselves by providing abundant data related to their work, while older agencies no longer need this sort of

practice because their credibility and legitimacy have already been established. Following this logic, one may assume that older agencies tend to be less transparent.<sup>7</sup>

H1: Older agencies tend to be less extensive in their transparency.

### *Resources*

Insufficient resources may constrain an agency's enforcement capacities, particularly across the non-OECD world, as showed in McAllister's analysis of Brazilian environmental agencies (McAllister, 2010). No doubt that conducting inspections and handling legal matters can be demanding. But, is the exercise of transparency via website, as a distinct aspect of agency enforcement, equally resource-consuming? One of the arguments heard during the project fieldwork was:

"[...] to be honest, if we have already dedicated one IT guy to put everything up online - it takes his time and effort but not ours, therefore more transparency doesn't mean more money spent by us, it is rather a part of his regular work, say on an everyday basis, instead of once or twice a week" and "maintaining a website is not running inspections – it doesn't stretch resources that much" (an anonymous regulator's Board member).

On the other hand, a member of a regulatory agency RATEL in Serbia explains to what extent the updating a website with various sorts of materials can be resource-intensive:

"We have hundreds of decisions on a monthly basis, from telecom operators to the use of radio-frequencies by small

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<sup>7</sup> Although this assumption did not get empirical support in the given study on Dutch agencies, we nonetheless take it as a working hypothesis.

boats and radio-stations... it needs to be scanned, sorted, tagged and uploaded... we're talking about thousands of papers on a monthly basis... that's quite a work"<sup>8</sup>.

Hence:

H2: More resources - more extensive transparency.

Number of permanently employed staff will be taken as a proxy for an agency's resources.

### *Media exposure*

Regulators have been shown to be more transparent while being put under the spotlight by the principals. Through greater transparency the regulators seek to boost their credibility and, thus, respond to legislative threats (Koop, 2014). We include this logic as well, except that we use the term "media exposure" rather than "politicians' watch"<sup>9</sup>:

H3: Greater media scrutiny leads to more extensive transparency.

Appendix III spells out the way of measuring media scrutiny of the ten agencies.

### *Formal (de-jure) independence*

The way an agency behaves and the results it achieves can be dependent on the agency's formal (de-jure) independence (Gilardi 2002, 2009). The independence is defined by the agency's appointment and sacking procedures, by its organisational and financial autonomy and the

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<sup>8</sup> Dr Dejan Suput (General Affairs Department, RATEL), conference "Transparency in Regulated Sectors" (20 May 2015, Belgrade, Serbia).

<sup>9</sup> Koop (2014: 571) finds a high correlation between the number of media reports and the frequency of politicians' mentioning of an agency in Parliament.

exclusivity of its competencies (Gilardi 2002: 881-883). One can argue that greater independence entails a greater need/expectation for justification of the undertaken actions, which then leads to greater (more extensive) transparency:

H4: The higher the de-jure independence, the more extensive the transparency.

We measure de-jure independence of the analysed agencies with the “Gilardi index” (2002). For full details about the index components and how they work out in our sample, please see Appendix II.

### *De-jure transparency*

De-jure transparency can be defined as legally stipulated obligations of an agency to publish certain materials on the website. In this study, we use another concept - de-facto transparency – to describe the activities related to what agencies disclose in their practice, regardless of the fact whether this content is obligatory or not. As the agencies can publish more data than they are explicitly required, de-facto transparency is therefore a broader concept than de-jure transparency.

The difference between de-jure and de-facto transparency can be compared to the differences between vertical and horizontal accountability (O'Donnell, 1998). Vertical accountability, as mentioned, refers to control of agencies exercised by hierarchically superior institutions, which is typically parliament or government. On the other hand, a precondition for the enforcement of the horizontal accountability - pursued by groups not holding formal authority over the agencies - is the existence of information based on which the interested parties can (re)act. For the horizontal accountability to be exercised, the actors – such as citizens, media, watchdogs, and other groups – need to have specific data regarding the agency's work. Such data often go beyond the information that the agencies communicate publicly as part of their legal obligations.



To measure the de-jure transparency of the ten agencies, we looked at the legal provisions defining what kind of information must be published on the websites. The coding was undertaken against the same framework as de-facto transparency. The table below summarises the patterns:

**Table 1:** De-jure transparency of the agencies.<sup>10</sup>

“\*” – given element is present only to some extent (partially).

Agency	De-jure transparency extensiveness
RATEL (S)	1*, 2, 3*, 5*
AEC (M)	1, 2, 3, 5*
CfPC (S)	1, 2, 3*
CfPC (M)	1, 2, 3*
REM (S)	1*, 2, 3*, 4, 5*
AVMS (M)	1,2,3,4,5*
EA (S)	1,2, 3*
ERC (M)	1,2,3*

**Source:** Relevant legislation. For full list of the data the agencies must publish, according to the legislation, see Appendix V. For the coding details, see Appendix IV.

As can be seen, there are variations in de-jure transparency across the agencies. Some agencies (e.g. EA, CfPC) are required to communicate only the first two elements (decisions and rules related details), as well certain but not full details about the third element, whereas other agencies are bound by more extensive requirements going beyond the first two elements of transparency.

In this study, we generate a hypothesis regarding the impact of de-jure transparency on de-facto transparency. The hypothesis (H5) assumes that the vertical accountability, rather than the horizontal one predominates in

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<sup>10</sup> The two agencies dealing with environmental protection are excluded from the table because the legislation defining their position does not impose any requirements regarding transparency which would be enforced precisely by these agencies.

institutional settings of tradition countries, such as Serbia and Macedonia. This means that the agencies report to hierarchically superior instances and publish primarily those information that are stipulated by the law. However, their communication is reduced when it comes to additional data, which goes beyond the legal requirements. This is, however, the data that would empower the stakeholders and, consequently, advance the horizontal accountability:

H5: The de-facto transparency of the agencies displays similar patterns to their de-jure transparency.

### **Sector-level explanations**

There are two sector-level determinates that will be tested in respect to the IRAs transparency regimes: information costs and liberalisation.

#### *Information costs*

Information costs refer “to the level of information or expertise required to understand an issue” (Reiss, 2009: 116). Thus, the more professional knowledge is required for understanding of an issue (Reiss, 2009: 116), the higher the costs of dissemination of information related to the given issue will be. While certain details related to the market, such as market operators, services, major developments and issues, can be easily understood by the broader public, this is less of a case in other sectors. Furthermore, citizens are in some instances likely to be overwhelmed by abundant or highly technocratic information.<sup>11</sup>

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<sup>11</sup> Providing information on fuse boxes in the electricity sector is a case in point. The choice between telecom operators would be the opposite example, with low information costs. We thank Martin Lodge for providing us with these clarifications.

In the event of high information costs, one can expect the regulator to omit the elements that would contain full details, because the release of such information may be appraised as not worth the resources. In other words, the value of releasing the data decreases as the information cost increases, which can be translated into a hypothesis:

H6: High information costs lead to a lower degree of transparency extensiveness.

The domains of media and market competition can be considered as bearing low information costs. Despite the needed expertise for decision-making, ultimate decisions can be communicated to the wider public without major risks of information-complexity or information-overload. Issues from the fields of telecoms and energy, while being characterised by highly technical details, can still be easily communicated (in a majority of cases). Due to this inherent “technical” nature, on one hand, and the ability to frame most of the pressing concerns into a citizen-friendly language, on the other hand, telecoms and energy are characterised as “medium information cost” sectors. Finally, environmental protection seems to be bearing high information costs, highly technical and not so graspable data.

### *Liberalisation*

Degree of sector liberalisation may have implications for agencies’ conduct. Agencies are seen not only as protectors of the public interest, but also as facilitators of a better business environment. In that sense, a larger number of actors in the market can lead to more demands for transparency:

H7: Greater liberalisation of the sector implies more extensive agency’s transparency.

## Country-level explanation

### *Party competition*

Transition democracies are usually characterised by high levels of party patronage, draining of state resources and party control over the social and economic domains (Grzymala-Busse, 2007; O'Dwyer, 2004). In those cases when political parties have shown to be in control over the civil service, there is reason to believe that they also tend to influence the agencies by violating the arm's length distance assumption. After all, struggle for control over the decisions of regulators and other agencies is nothing else than struggle for control of vast resources that circulate and can be reaped in as lucrative sectors as energy, telecommunications, and others.

If economic competition is taken as a potential determinant of the regulators'/agencies' conduct, there is no reason to dismiss political competition as a factor either. We are examining two relatively small countries in terms of population – Serbia about 7 million population and Macedonia about 2 million population.<sup>12</sup> These countries have predominant concentration of economic, administrative and political powers in their capital cities, as Belgrade and Skopje make up one third of the overall population and are home to the major political and administrative institutions. It has been noticed that some small states in the region, due to their size, have bigger likelihood of facing institutional capture or political influence over their agencies (Kopric *et al.*, 2012: 34). Moreover, the penetration of parties into the economic realm is deep and political patronage networks extensive in such countries (Pesic, 2012). Under these circumstances and in addition to their normal

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<sup>12</sup> World Bank figures accessed via Google, from: [www.google.co.uk/?gfe\\_rd=cr&ei=nsJxVa-nD9CLoQeHkYDAAg#q=serbia+population](http://www.google.co.uk/?gfe_rd=cr&ei=nsJxVa-nD9CLoQeHkYDAAg#q=serbia+population) and [www.google.co.uk/?gfe\\_rd=cr&ei=nsJxVa-nD9CLoQeHkYDAAg#q=macedonia+population](http://www.google.co.uk/?gfe_rd=cr&ei=nsJxVa-nD9CLoQeHkYDAAg#q=macedonia+population)

activities, political parties tend to assume the role of main economic players with interests deeply rooted in particular economic sectors. Their competition, therefore, is expected to produce similar effects as the competition involving “genuine” economic actors.

Grzymala-Busse (2007) and O'Dwyer (2004) agree that the intensity of party competition crucially determines the extent of patronage. However, their assumptions differ concerning the direction of this impact. Grymzalla-Busse (2007) holds that greater party competition leads to lesser extraction of the public resources, while O'Dwyer (2004: 521) claims that the tougher the party competition, the bigger resources will be extracted via the public administration, since a large number of coalition partners have to be accommodated.

We believe that greater party competition enables greater mutual control of the parties on one hand, and easier control of the parties by businesses, on the other. Greater party competition and hence greater uncertainty about who will form the future government (s), may also result in the regulated businesses turning more to the market rather than state-extraction logic. This is due to the fact that no guarantees exist that they will be able to operate under the model of “state assisted” regulation for a while. Hence the regulated company may increase the pressure on the regulator/agency to be more transparent as, under the aforementioned circumstance, good business environment is an issue of high priority for the company:

H8: Greater degree of political competition leads to more extensive forms of transparency.

## 8. Methodology

### *Data*

The data are collected through coding of the materials available on the agencies' official websites between November 2014 and February 2015.<sup>13</sup> For most agencies, we analysed a random sample of about 20% of the overall material, for the years 2013 and 2014. We assume that the sample is highly representative of the overall communication the agency pursued via the website, given the uniformity in the agencies' style of communication. Namely, certain patterns hold across the same sort of material and it is highly likely that the content of a decision, register or annual report is structured in the same way as it is in all other decisions, registers, and so on. When agencies offered limited amount of information and digital material, we analysed the whole content of their website.

Interviews were also conducted with representatives of the agencies, in order to better understand the context of their work and the potential determinants of the espoused levels of transparency. We conducted seven interviews in total.<sup>14</sup>

The communication through website is not the only way of exercising transparency. The agencies can use other channels of communication to inform the public about their work, such as distributing newsletters via email, publishing itemised budgets, releasing bi-annual or more/less frequent reports, publishing external audits (Koop, 2014), being visible in the traditional media by making public statements regularly, by taking part in round-tables, debates and discussions, or by distributing printed materials with the aim of reaching as wider audience as possible,

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<sup>13</sup> It is possible that some agencies subsequently uploaded new material on their websites. However, this is irrelevant for the period observed. We consider that newly available data do not change the history of the previous enforcement of transparency.

<sup>14</sup> We could not reach representatives of three agencies, despite multiple attempts.

and so on. Bearing all that in mind, we still consider that the website content is the fundamental and, hence, the most important channel of communication in an era of Internet. While the other ways of communication may undeniably enhance an agency's transparency, by no means can they compensate for a potential absence of the five elements in the website content. Media, wider public, political parties – including the opposition ones as the major critique, then watchdogs organisations, external evaluators, and regulated entities, they primarily get informed by reading website materials, which are available to all social groups, 24-hours a day, at no cost. No other medium can convey as complete and extensive information as the Internet (website) can. For these reasons we consider the website content the key proxy for an agency's transparency.

Just as an agency's website is not the sole tool for facilitating transparency, a website is not the sole means of exercising accountability either. There is a variety of accountability channels, such as voluntary commitments to codes of conduct (Koop, 2014), peer-review or exposure to benchmarking and other sorts of evaluations. Such instruments certainly add to an agency's accountability, but what precedes and conditions their application is again the information concerning the agency's conduct. This brings us back to the issue of providing data on the agency's enforcement, which is operationalised in this study through the five elements of control systems. Thus, the presence of the five elements, as set out in the conceptual framework (Lodge, 2004), is a necessary factor for the application of any other form of transparency and accountability that may, no doubt, additionally strengthen the control of the agency.

It is worth reminding that, in this paper, we present and discuss the transparency of the agencies' work and not the quality of it. More precisely, an institution may make all its work public, yet its on-ground performance might be dismal; and reversely, an agency that is non-transparent is by no means predetermined to be a poor performer.

Therefore, by noting that an agency has achieved higher or lower degree of transparency in its work, we are not assessing the agency's performance in normative terms (although transparency is generally considered a contributor to good governance).

Case studies, which are contained in Part II of the publication, are presented in sectoral order; first comes the Serbian and then the Macedonian agency in a given sector. In Part III – “comparative analysis”, a comparative review will be presented discussing the country, sector, and agency patterns than may potentially be observed.

Coding had been undertaken in the following way. For each task or jurisdiction of an agency, we coded the data about those elements of transparency that have been identified in the website material. The coding followed the order of tasks/jurisdictions presented in the agencies' annual reports or legislation. We first looked at an agency's annual reports to identify its activities and thereafter we sought to find which of these activities have been published on the website. For the purpose of comparison between the agencies, we looked at the 2013 annual reports for all agencies (please, note that not all agencies published their annual reports for 2014). Full details of coding are available in Appendix IV. Based on the observed presence of each of the five elements, we made decisions whether the given element can be coded as overall “present” in the agency's enforcement of transparency.

As it usually goes, some approximations and simplifications were inevitable. For example, one agency can feature the fifth element, named as transparency of feedback, in several of its jurisdictions but not in all of them. Whether this element will be coded as “present” in the overall summary of the agency's work depends on an assessment of how crucial the given jurisdiction for the overall agency's mission is; e.g. “international cooperation” is secondary to “deciding about market monopolies”. Such instances of “mixed” presence of certain



elements across the jurisdictions were cross-checked by at least one more researcher and subsequently agreed upon jointly. Moreover, the cases that could not be assigned the “present” or the “absent” value were named as “partially present” and marked with the “p” sign in the table. Lastly, we looked at the frequency of the element appearance, i.e. whether it appears systematically or only periodically in the overall body of materials. For example, if an agency made 100 decisions during a year and published only 10 of them, this would be coded as “absent” despite the fact that actually 10 decisions have been published.

### *Case Selection*

The study analyses ten agencies operating in five major policy sectors - market competition, telecoms and IT, media, energy, and environmental protection - in Serbia and Macedonia. The case selection is based on the following criteria. Firstly, we selected five major regulated sectors which frequently appear in the literature on developed states’ agencies. Free market competition is widely regarded as a key precondition for economic development and as such represents one of the most important concerns in modern liberal-democracies. Market competition, after all, has been the cornerstone of EU since its inception. Telecoms and IT is probably the fastest growing sector, where the role of regulators has been highlighted as essential to fostering technological development. This sector championed the EU and world liberalisation toward the end of the 20th century (Humphreys and Padgett, 2006). Energy is another key domain, especially given its geo-political and strategic importance as a resource. The work of regulators in energy policies has been subject to increased scrutiny because, unlike telecoms, this sector has been more resistant to liberalisation (Eising, 2002). Moreover, energy is among the most important and pressing questions within the EU (see for example, European Commission, 2011). Media are inextricable

ingredients of democratic societies and as such their regulation deserves particular attention. Finally, there has been an increasing emphasis on environmental protection, on global, EU, and national level. Truth, environmental protection has been devoted insufficient attention in developing countries. However, this area will be part of the reform agenda in those countries and promoted by external actors. In Serbia and Macedonia, for example, the environmental issues are mainly addressed in the context of the EU accession process.

After discussing the selection criteria for the five sectors examined in this study, we proceed to the discussion about the nature of the examined agencies. In this study we focus on the agencies operating in these five sectors regardless of their organisational form, i.e. whether they are independent regulatory agencies by strict definition, or they take the form of controlling or executive (semi-autonomous) agencies instead. They, namely, all operate in the domains that are highly regulated and increasingly salient, particularly in the context of EU integration. As such, they face similar challenges, demands, and pressures concerning everyday work including the exercise of transparency. Therefore, whether one agency is regulatory or controlling or executive is not expected to make a crucial difference when it comes to the outcome we are looking at (apart from the factor of de-jure independence). Six out of the 10 analysed bodies – the energy, telecoms, and media regulators – feature the IRA model; the two agencies responsible for market competition are controlling agencies, and there are two executive agencies which operate within ministerial hierarchy (these are the environment protection agencies in both countries) (see Table 2). The inclusion of the last two non-“non-majoritarian” agencies enables comparisons of whether the “non-majoritarian” status itself affects the transparency regime, since the level of de-jure independence is one of the explanatory variables.

**Table 2.** Three categories of agencies in the analysed sample.

Independent agencies		Agencies subordinated to ministry
Independent regulatory agencies (IRAs)	Controlling agencies	Executive agencies operating under ministerial hierarchy
Energy Agency (Serbia)	Commission for Protection of Competition (Serbia)	Environmental Protection Agency (Serbia)
Energy Regulatory Commission(Macedonia)	Commission for Protection of Competition (Macedonia)	Directorate for Environment (Macedonia)
Regulatory Agency for Electronic Communications and Postal Services (Serbia)		
Agency for Electronic Communications (Macedonia)		
Regulatory Authority of Electronic Media (Serbia)		
Agency for Audio and Audio-Visual Media Services (Macedonia)		

The given setup allows for a great variety of the independent variables’ constellations, that is a high number of combinations in their values. There is a full variation in the level of liberalisation, media exposure, and several other variables, which maximises the testing potential of those variables on the observed outcome. Due to the context specifics, some other independent variables cannot exert a full variation. For example, agency’s age is bound to be “low” due to a relatively recent date of the

launch of agencification reforms; likewise, the agency resources are not expected to be "high" in this early stage. Yet, these variables of limited variation, in combination with the variables that exert full variations, ultimately provide for abundant comparative opportunities.

### *Research Methods and Comparative Strategy*

The study employs case study method in measuring the transparency levels of the 10 agencies. Case study approach allows the detailed examination of one aspect of the cases under investigation (George and Bennet, 2005: 5). It may also lead to testing existing explanations or developing new ones, which could be generalised to other cases of the same type (George and Bennet, 2005: 5). When it comes to our first research question – focused on identifying the levels of transparency – the intention is not to generalise, but rather to measure the outcome of interest. Yet, the findings about the ten agencies' levels of transparency may be a hint or a starting point for future research on other tens of agencies in Serbia and Macedonia, which were not selected for the study. Should "abridged" forms of transparency be found, this might mean that a number of other agencies in Serbia and Macedonia have enforced a similar form of transparency by using only some – and not all five – elements of transparency. This would certainly be a useful indicator for policy recommendations. The things work the other way round, too. Should full or "fuller" forms of transparency be observed – the forms involving all five elements or four out of five – it might be a good indicator that, contrary to the general assumptions, the agency transparency is not an issue of concern in the examined cases. As we mentioned above, this study analyses diverse sectors and includes various models of agencies, such as independent non-regulatory, independent regulatory and non-independent agencies. Thus, the validity and reliability of the study lend credence to the claim that the conclusion could be turned into a

tentative generalisation for the overall universe of agencies in Serbia and Macedonia which can be tested on other agencies thereof in the future.

In addressing the second question – about determinants of transparency levels - we go beyond case-study approach. Our sample, which includes two countries, five sectors, ten agencies in total, is suitable for a compound research strategy (Levi-Faur, 2004), based on cross-country and cross-sector comparisons. We seek to identify sectoral and national patterns which then may be indicative of the impact of sector-level or country-level variables. If distinct sectorial or country patterns cannot be observed, and if there is a variation in the dependent variable, one of the following explanations is possible:

- some of the agency-level, rather than sector- or country-level explanations, offer(s) a plausible account of the variation in the dependent variable;
- none of the factors (from the three groups: agency-level, sector-level, country-level) offers a plausible explanation for the observed outcome variations; therefore we either failed to include a powerful explanatory factor in our hypotheses or the transparency regime is more ad-hoc driven rather than by some underlying logic.

Should a lack of variation in the dependent variable be observed, it would signify the absence of variation in the key independent variable (hence identical outcomes). What remains to be done in such a scenario is to identify that particular key independent variable and uncover the underlying mechanism of its impact on the dependent variable. There might be several variables which exert no major variations and they will all feature as the “prime suspects”.

This research strategy is useful in uncovering cross-agency, cross-sectoral, or cross-national variations, which then may point to particular factors explaining the transparency levels. However, we need to admit that the strategy bears certain limitations. Ten cases, across five sectors and two countries, do offer a basis for comparisons that can identify potential causes of the observed outcome. The sample, though, is too small for drawing firmer conclusions. In that sense, if liberalisation, agency independence or political competition appear as promising explanatory factors, it still does not mean that the inclusion of additional sectors would not lead to different results, diminishing the initial factors' explanatory power. Therefore, by seeking to identify the causes of the various transparency levels of the agencies, we are interested in coming up with explanations that may be applied to other non-observed agencies. Yet, our conclusions should serve only as tentative directions before making any broader generalisations. Rather than claiming their prowess, we should further test the findings, both on other countries in the region, e.g. Montenegro, Croatia, or Bosnia & Herzegovina, and on other sectors, such as regulation of medicines, food safety, water management, airline industry and so forth.

In summary, we are interested in two key concerns in this study: (i) to identify the patterns of the ten agencies' transparency; (ii) to consider which factors may have determined these patterns. To measure the agencies' transparency, we use a five-pronged framework developed by Lodge (2004). The framework points to five major elements that should be included in considerations of regulatory (and hence agency) transparency: (i) decision-making; (ii) procedures/rules; (iii) regulatees' conduct; (iv) regulators' controls; (v) received feedback. How many of these elements have been present on the agencies' websites indicates

how transparent they are. We will also try to pinpoint the causes behind the different levels of agency transparency, by looking at three sorts of explanations. Firstly, there are agency-level explanations, which include the characteristics of individual agencies, such as their age, de-jure independence, resources, de-jure transparency and media-exposure of the institution. Then, the second-level explanations consider the level of information costs and the degree of liberalisation as two potentially determining factors. Lastly, the country-level explanations focus on party competition at the national level.

## Part II

### 9. Case studies

This section of the paper analyses transparency regimes of the ten selected agencies. Before looking at the data concerning the analysed transparency enforcement, a brief overview of the agencies' origins, institutional status and mission will follow.

#### **Regulatory Agency for Electronic Communications and Postal Services (RATEL, Serbia)**

Serbian sector of telecommunications has been regulated by an independent regulatory agency RATEL. The existence of this Republic Agency for Telecommunications dates back to 2005 after the adoption of Law on Telecommunications in 2003.<sup>15</sup> The Law said that the functions over the telecommunication sector are delegated as follows. The political functions, that is formulation of policies, and the operational functions, which include formulation of strategies, are entrusted to the Government and competent Ministry.<sup>16</sup> The regulatory role, instead, is delegated to the Agency for Telecommunications.<sup>17</sup> This Agency went through several changes stipulated by the Law amendments, but it has remained the only regulator in the telecommunication sector. In 2010 Electronic Communications Law renamed from the Republic Agency for Telecommunications into RATEL (Regulatory Agency for Electronic Communications) and advanced its jurisdictions. More recently, in 2014, RATEL merged with the postal regulator RAPUS.<sup>18</sup> So, RATEL's competencies have expanded over time.

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<sup>15</sup> RATEL: Market analysis for 2007, from: [http://www.ratel.rs/editor\\_files/File/Pregled\\_trzista\\_telekomunikacija\\_u\\_RS\\_u\\_2007.pdf](http://www.ratel.rs/editor_files/File/Pregled_trzista_telekomunikacija_u_RS_u_2007.pdf)

<sup>16</sup> RATEL's presentation: *Tasks, Jurisdictions, and Commencement of work*, from: [www.ratel.rs/upload/editor\\_files/File/Prezentacije/RATEL\\_prezentacija\\_TELFOR\\_2005.pdf](http://www.ratel.rs/upload/editor_files/File/Prezentacije/RATEL_prezentacija_TELFOR_2005.pdf)

<sup>17</sup> Ibid.

<sup>18</sup> Postal services are however excluded from this study; we largely use the data before RATEL's merger with the postal regulator.



According to Article 8 of the applicable Electronic Communications Law, main RATEL's tasks include:

- adopting ordinances regulating the issues within its remit;
- deciding about the operators' and consumers' rights and obligations;
- collaborating with other institutions and organisations in matters related to electronic communications;
- cooperating with regulatory and expert institutions from EU and other states;
- participating, as a national regulatory representative, in the work of international organisations and institutions focusing on the electronic communications sector;
- regulating in postal services' domain.<sup>19</sup>

RATEL's high degree of de-jure independence is not only reflected in the fact that it is organisationally detached from the Government and Ministry's control, but is also evidenced by a high value of the index of de-jure independence (0.70 "Gilardi points"; see Appendix II). This value is lower than in some other agencies analysed in this paper, yet it makes for a substantial degree of autonomy in comparative terms.<sup>20</sup> Two things particularly add to RATEL's de-jure independence: firstly, its financial and organisational autonomy are high, e.g. the Agency is self-funded through the fees collected from the industry; secondly, the Agency has no formal obligations towards the government and parliament, except for the submission of annual reports and government's permission on financial plans and statutory changes.

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<sup>19</sup> Electronic Communications Law (Official Gazette 44/10), from: [www.ratel.rs/upload/documents/Zakon\\_o\\_elektronskim\\_komunikacijama.pdf](http://www.ratel.rs/upload/documents/Zakon_o_elektronskim_komunikacijama.pdf)

<sup>20</sup> Comparing, for example, to the West European regulators analysed by Gilardi (2002).

Prior to the establishment of RATEL (under its initial name), the telecommunications sectors and their parts were characterised by different levels of competition. In the field of mobile telephony, there were two major companies operating - the state-owned *Telekom* and a private company *Mobtel 063*.<sup>21</sup> The fixed telephony, however, was characterised by the state monopoly.<sup>22</sup> Later on, the telecommunications sector underwent substantial liberalisation in two ways: firstly, through the arrival of new operators on the market (*Telenor*, *VIP Mobile*); secondly, through the development of a regulatory framework which stimulates open and competitive market.<sup>23</sup> Yet, the state-owned *Telekom* has remained the dominant player in the sector, especially when it comes to the fixed-line telecommunications services. This company is controlled by the government, who owns a 58.11% of *Telekom's* shares, including the golden share.<sup>24</sup> Due to the fact that the state's influence in the telecommunication sector is considerably strong - through the majority ownership of the largest operator, as explained above, and since the "implementation of the competitive safeguards is still lagging behind",<sup>25</sup> the telecommunications sector in Serbia can be described as partly rather than fully liberalised.

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<sup>21</sup> Note that several transformations and disputes over the ownership of the two telecoms operators occurred since their creation in the 1990s.

<sup>22</sup> World Bank: *Indicators of Foreign Direct Investment Regulation – Serbia*, from: [www.iab.worldbank.org/Data/ExploreEconomies/serbia/fixedlinetelephonyservices](http://www.iab.worldbank.org/Data/ExploreEconomies/serbia/fixedlinetelephonyservices)

<sup>23</sup> RATEL: *An Overview of the Telecom and Postal Services Market in the Republic Serbia in 2014*, from [www.ratel.rs/upload/documents/Pregled\\_trzista/rate-pregled-trzista-za-2014-ENGLESKI-web.pdf](http://www.ratel.rs/upload/documents/Pregled_trzista/rate-pregled-trzista-za-2014-ENGLESKI-web.pdf)

<sup>24</sup> Cullen International: *Monitoring regulatory and market development for electronic communications and information society services in Enlargement Countries: Report 4*, from: [www.cullen-international.com/asset/?location=/content/assets/research/studies/2011/11/final-summary-report-4-feb-2014.pdf/final-summary-report-4-feb-2014.pdf](http://www.cullen-international.com/asset/?location=/content/assets/research/studies/2011/11/final-summary-report-4-feb-2014.pdf/final-summary-report-4-feb-2014.pdf)

<sup>25</sup> Ibid.

Thus Telekom's status corresponds to the fourth, out of the five forms of privatisation, that is „public company with less than 100% share“, as conceptualised by Schmitt (2014: 614).

In what way has RATEL enforced its transparency in practice? We first provide a summary of the data that RATEL used to make public via its website (during the observed period, 2013-2014). Thereafter follows an analysis of these data through the lenses of the conceptual framework we draw on in this study.

RATEL's website comprises the following sections:

- *About RATEL*: this section features information about the agency's organisational structure and staff, the agency's statute, information booklets, work plans, together with annual reports and presentations;
- *Market*: contains annual sectorial analyses (from 2006 to 2013), audit reports and information on price regulation;
- *Information*: data on tenders, public consultations, public calls and news;
- *For users*: information for consumers, e.g. information concerning roaming prices and number portability in the mobile telephony;
- *Regulations*: contains relevant laws and secondary legislation, strategies, plans, rule-books and market analyses;
- *Instructions and forms*: guidelines, e.g. instructions and forms for radio station licences;
- *Press*: media news and public announcements;
- *Internet counter*: is a section through which RATEL provides services to citizens and customers via the Internet; and
- *Register*: provides access to RATEL's registries and databases.<sup>26</sup>

As RATEL's annual reports for 2013 and 2014 are not yet available, we

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<sup>26</sup> RATEL's website, from: [www.ratel.rs](http://www.ratel.rs)

used RATEL's Information Booklet 2012-2013<sup>27</sup> to draw the agency's major jurisdictions. The jurisdictions are indispensable for coding the presence of the five elements of transparency in the agency's work.

A summary of the presence of the elements of transparency, across the respective jurisdictions, is provided in the table below:

**Table 3.** Transparency of RATEL across jurisdictions.

Competence	1	2	3	4	5
Adopts ordinances and other rules		✓			✓
Assigns and revokes licences for the use of numbering	✓	✓			
Monitors and controls market of electronic communications		✓	✓ <sub>p</sub>	✓ <sub>p</sub>	✓
Assigns and deals with radio-frequencies	✓ <sub>p</sub>	✓			
Adopts technical rules in electronic communications	✓	✓			✓
Monitors whether the operators adhere to the licence/permit conditions		✓	✓ <sub>p</sub>		
Handles users' complaints		✓			
<b>Overall transparency</b>	✓ <sub>p</sub>	✓	✓ <sub>p</sub>		✓ <sub>p</sub>

**Source:** RATEL's official website: [www.ratel.rs](http://www.ratel.rs). Sign "p" indicates partial website presence of the given element in the observed jurisdiction. Fields 1, 2, 3, 4, 5 denote the five elements of transparency, as introduced in Part I.

It must be borne in mind that some jurisdictions are by default unable to exhibit all five transparency elements, e.g. adaptation of ordinances. Therefore, based on the assessment of the overall presence of the respective transparency elements across the jurisdictions, it can be concluded that RATEL has exhibited a relatively stable pattern of "medium" degree of transparency across the jurisdictions. RATEL's communication via the website has namely included the first, second,

<sup>27</sup> RATEL: *Information Booklet for 2012-2013*, from: [www.ratel.rs/upload/documents/O\\_Ratel/Informator/INFORMATOR%20za%202012-13%20konacna%20verzija.pdf](http://www.ratel.rs/upload/documents/O_Ratel/Informator/INFORMATOR%20za%202012-13%20konacna%20verzija.pdf)

third and fifth element from the transparency framework. While the communication of rules (2) saw a high level of transparency, the transparency of the decisions (1), conduct (3) and feedback (5) are only partially present on RATEL's website.

Large number of *decisions* could be found on RATEL's website, either in the form of Director's executive decisions, Board's meetings' minutes and conclusions, or in other sorts of materials. Yet, only a small portion of the published decisions concerns radio frequencies licences' issuance and revocation. The section Director's executive decisions contains not more than 100 decisions on issuance/revocation of radio-frequencies licences for the period between 2010 and 2015, which is a much lower number compared to the overall pool of decisions made by RATEL. For instance, in 2014 RATEL made 579 decisions about issuance and 312 decisions about revocation of the radio frequencies' licences.<sup>28</sup> For this reason the first element of the transparency – transparency of the decisions – is coded as only partially present.

Next, the *rules and procedures* – a wide range of them, from those pertaining to the awarded licences, to the standards that the operators need to adhere to and other sorts of behaviour-regulating rules – all are spelled out in a clear and visible manner on RATEL's website.

The third element, transparency of *the conduct of regulated subjects*, paints a different picture though. There are market analyses featuring information about the market of electronic communications in Serbia. Certain information about the operators' conduct, such as service prices, are also available. RATEL's website also contains registers of all operators. There are analyses of the relevant markets containing information about operators with significant market power. Still, RATEL does not publish all information about the regulated subjects. According to RATEL's reports and the forms available on its website,

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<sup>28</sup> RATEL: *Information Booklet for 2014*, from: [www.ratel.rs/upload/documents/O\\_Ratelu/Informator/INFORMATOR%20za%202014.pdf](http://www.ratel.rs/upload/documents/O_Ratelu/Informator/INFORMATOR%20za%202014.pdf)

this regulator collects data about the quality of the operators' services, as well as technical and financial information on an annual basis. However, to the best of our knowledge, such data are not available for all individual operators on the agency's website. Transparency of the conduct of regulated subjects, therefore, has been only partially demonstrated.

Specific information on how RATEL *controls and monitors* the operators' adherence to the licence conditions cannot be found on the website. RATEL explains the procedure for monitoring, however details are lacking as to whether the telecoms operators act contrary to the set conditions. Moreover, the website's content does not explain when, how and what controlling measures RATEL undertakes in its monitoring activities. For example, RATEL's website contains a database related to the control and monitoring of the radio frequencies; what is lacking, though, is a document or a report explaining how exactly RATEL conducts the monitoring of the operators. The only exceptions, in regard to the control of regulated subjects, are two types of documents available on the website: first, the analyses of the relevant markets and second, the decisions containing information on the obligations of operators with significant market power as well as information on how RATEL controls the conduct of these operators. Nevertheless, it remains unclear which activities of the individual operators are in accordance with RATEL's requirements and which are not.

Lastly, various forms of *feedback*, both from the commercial and experts' side, have found their place on RATEL's website. RATEL publishes comments of the regulated subjects and experts about the regulation and analyses of the relevant markets. However, while the consultation letters directed to RATEL are available, the individual complaints and feedback seem to be absent. Thus, neither the full information about the content of individual complains, nor the outcomes resulting

from these complains can be found. A *Telecoms Complaint Bulletin*, a quarterly published by British OFCOM, may serve as an example of how this element of transparency can be exercised in practice.<sup>29</sup> However, potentially high resource costs of processing and uploading such data may be justified by the value that such feedback brings.

In summary, RATEL has demonstrated a form of transparency relying on the provision of four out of the five elements of transparency. In addition to the first two elements, decision-making and rules/procedural aspects, which are usually highlighted by those with the traditional views as something a transparent body must communicate, RATEL has publicly provided information on the fifth element that is feedback process. However, this not fully presented, such as in the case of individual users' complaints. Similarly, transparency of regulatees' conduct has been partial, while the data concerning control of regulated subjects have not been a regular feature of RATEL's website, at least not in the observed period.

### **Agency for Electronic Communications (AEC, Macedonia)**

Macedonian Agency for Electronic Communications (AEC) was established in 2005 as a regulator in the electronic communications markets.<sup>30</sup> According to the applicable Law on Electronic Communications, the agency's core jurisdictions are:

- monitoring and controlling operators in the market of electronic communications;
- defining and identifying the operators with significant market power;

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<sup>29</sup> OFCOM: *Telecoms Complaint Bulletin*, from: [www.stakeholders.ofcom.org.uk/enforcement/telecoms-complaints-bulletin/](http://www.stakeholders.ofcom.org.uk/enforcement/telecoms-complaints-bulletin/)

<sup>30</sup> Law on Electronic Communications (Official Gazette 13/05), from: [file:///C:/Users/Ivana%20Popovic/Downloads/01.Zakon\\_za\\_elektronski\\_komunik-acii\\_13-05%20\(3\).pdf](file:///C:/Users/Ivana%20Popovic/Downloads/01.Zakon_za_elektronski_komunik-acii_13-05%20(3).pdf)

- issuing licences and monitoring the use of radio-frequencies;
- issuing and revoking the use of numbers;
- monitoring the use of numbers and number providers;
- taking measures in cases of law violation;
- handling complaints between operators and service providers, as well as between users and operators and providers;
- adopting technical rules;
- implementing domestic and international standards and technical rules.<sup>31</sup>

Overall, AEC's major goal is creation of a competitive market in the domain of electronic communications.<sup>32</sup>

AEC features a high degree of de-jure independence. With its 0.79 "Gilardi points" (Appendix II), it scores higher than Serbian RATEL. In reality, though, the differences between the elements shaping their formal independence are far from substantial. Both agencies enjoy a high degree of financial and organisational autonomy. However, what makes the Macedonian AEC specific is the following: first, the provisions defining the possibility of holding multiple posts by the Commission members; then, the utter absence of obligation toward the government, i.e. submitting reports to the government is not stipulated (RATEL does not submit reports about its work, yet it submits financial plans to the government).

The telecommunications sector in Macedonia has been liberalised to a significant degree. Unlike Serbia, Macedonia introduced most of the

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<sup>31</sup> Law on Electronic Communications (Official Gazette 39/14), from: [www.mioa.gov.mk/files/pdf/dokumenti/zakoni/zek/Zakon%20za%20elektronskite%20komunikacii\\_2014.pdf](http://www.mioa.gov.mk/files/pdf/dokumenti/zakoni/zek/Zakon%20za%20elektronskite%20komunikacii_2014.pdf)

<sup>32</sup> AEC's website, from: [www.aek.mk/en/about-us](http://www.aek.mk/en/about-us)



competitive safeguards in 2007 and 2008.<sup>33</sup> In 2001, when *Makedonski Telekom* was privatised by *Magyar Telecom*, a subsidiary of the *Deutsche Telekom Group*, the state had pulled out from the telecoms sectors as a majority owner; yet it has remained present as a minority owner, having 34.81% ownership in *Makedonski Telekom*.<sup>34</sup> Thus, AEC has been dealing with a more - albeit not fully - liberalised sector during its decade-long functioning, compared to its Serbian counterpart.

What did the content of AEC's website look like during the observed period? The following are the sections presented on AEC's official website:

- *About us*: contains information about the agency's organisational structure and staff, the agency's public meetings, meetings on the occasion of public hearings and lastly, public announcements;
- *Documents*: this section contains legislation, agency's decisions, information about public hearings, agency's working plans, the annual reports, the meeting minutes, forms for different agency's services, and agency's registers;
- *Radio frequency spectrum*: contains information about the legislation pertaining to the radio frequency spectrum and the registers;
- *Telecommunication*: contains legislation about telecommunications and the registers;
- *Market analysis*: contains legislation related to the market analysis, the forms for submission of the information needed for market analysis, and analyses of the market;

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<sup>33</sup> Cullen International: *Monitoring regulatory and market development for electronic communications and information society services in Enlargement Countries: Report 4*, from: [www.cullen-international.com/asset/?location=/content/assets/research/studies/2011/11/final-summary-report-4-feb-2014.pdf/final-summary-report-4-feb-2014.pdf](http://www.cullen-international.com/asset/?location=/content/assets/research/studies/2011/11/final-summary-report-4-feb-2014.pdf/final-summary-report-4-feb-2014.pdf)

<sup>34</sup> Makedonski Telekom, from: [www.telekom.mk/en/?z=763](http://www.telekom.mk/en/?z=763)

- *Customer care*: contains basic legal information about disputes between users and operators and forms for users' complains;
- *Portal komunikiraj.mk*: contains a link forwarding to a website with various information about the telecom operators.<sup>35</sup>

Following the structure and the order of the jurisdictions listed in the 2013 report, we coded AEC's transparency as featuring the following elements:

**Table 4.** Transparency of Macedonian AEC across jurisdictions.

Competence	1	2	3	4	5
Adopts by-laws and other rules	✓	✓			✓p
Issues and revokes the numbers and monitors the use of numbers		✓			
Supervises electronic communication networks and providers		✓	✓	✓p	✓
Issues and revokes radio-frequencies		✓			
Monitors the use of radio-frequency spectrum		✓			
Handles complaints between operators and services' providers, as well as between users and operators and providers		✓			
Pre-emptive reporting and sanctions		✓			
<b>Overall transparency</b>		✓	✓		✓p

**Source:** AEC's official website [www.aek.mk](http://www.aek.mk). Sign "p" indicates partial website presence of the given element in the observed jurisdiction. Fields 1, 2, 3, 4, 5 denote the five elements of transparency, as introduced in Part I.

AEC has displayed a similar pattern of transparency to its Serbian counterpart RATEL. It is the procedures and rules (2), as well as information about the conduct of the regulated subjects (3) that the regulator has mainly communicated to the broader public. AEC's

<sup>35</sup> AEC's website, from: [www.aek.mk/](http://www.aek.mk/)

website also shows partial transparency when it comes to the feedback (5). However the transparency of the decisions (1) and the control (4) have largely been absent.

Though some *decisions* are published on the agency's website, their number is negligible compared to the overall number of decisions made by AEC. For example, according to the 2013 Annual Report,<sup>36</sup> AEC made hundreds of decisions during that year only, including the decisions about licences issuing, about measures against those violating the law and rules, decisions about complains, and so forth. On the website's section documents/decisions, however, no single decision from 2013 can be found. Moreover, only 23 decisions in the section documents/decisions in total have been made publicly available for the period between 2010 and 2015. This is surprising given the fact that AEC regulates a fast developing and technologically advanced sector, characterised by a high degree of market competition. This is altogether likely to drive the market entrants to press for greater accessibility and assessability of the regulator's work.

The second element of the transparency framework we employ in this study has "fared" better. All *rules* pertinent to the work of AEC, as well as the operation of the regulated markets, the telecoms being the key one among them, are presented in a clear and systematic manner.

Concerning transparency of the *conduct of regulated subjects*, AEC provides periodical (quarterly and annual) market analyses featuring information about the market of electronic communications. AEC's website also contains registers of all operators and providers in Macedonia. Market analysis reports feature information about the operators with significant market power. Other information about the operators, such as service prices, the level of radiation or the network coverage across the country, can be found at AEC's portal

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<sup>36</sup> AEC's Annual Report for 2013, from:  
[www.aek.mk/mk/dokumenti/izveshtai/godisni-izveshtai-za-rabota-na-aek/](http://www.aek.mk/mk/dokumenti/izveshtai/godisni-izveshtai-za-rabota-na-aek/)

“komuniciraj.mk”. When it comes to quality of the operators’ service, the portal offers three reports about the quality of services of the three mobile operators in three zones. What is missing on this portal, though, are the reports about other operators and for previous years. Yet, it could be said that overall AEC provides a considerable amount of information about the regulatees, so it has been transparent in this respect.

When it comes to *control of the regulated subjects*, AEC has not been publishing decisions, pre-emptive reports, and sanctions against those operators violating the rules. According to the annual reports, AEC provides reports about its inspection supervision, decisions banning radio-frequencies, and so on; however, these reports could not be found on its website. Therefore, several issues remain unknown, such as the ways in which AEC was undertaking inspections, the sorts of monitoring strategies that the regulatees had been subjected to and the names of particular operators which had breached the rules. The only exception in that sense, as in the case of Serbian RATEL, are the decisions and market analyses containing information about obligations of the operators with significant market power. Even that information, concerning the results of the controlling activities in respect to the operators with significant market power, was limited. Generally speaking, however, we consider that sufficient information could not be found out on AEC’s website about the prior control of the regulated subjects.

Regarding the *feedback* directed at AEC, this regulator publishes annual public opinion polls. These polls, among others, include questions about citizen satisfaction with the operators and providers. AEC also publishes comments from the public hearings pointing to some regulatory rules and analyses, but does not publish materials from all public hearings. Published comments can be found primarily in the section “public announcements”, and not in the sections “public hearings” which a

visitor might start searching first. This shows that the website does not present the comments in a clear and visible manner. Furthermore, similarly to Serbian RATEL, Macedonian AEC does not publish any sort of reports containing citizen complaints, nor decisions on disputes. To conclude, this element of transparency is characterised as being only partly present.

In summary, Macedonian AEC has displayed a medium degree of transparency. Through the website, as its major means of transparency, AEC mainly communicates the details pertaining to the second element of the transparency framework – the rules and procedures regulating the conduct of actors in the sector. AEC has also shown a significant level of transparency when it comes to the conduct of the regulated entities. The information going beyond the second element (involving procedures and rules) have been lacking across the jurisdictions involving control of networks and providers as well as decision-making, except for the partial presence of the fifth element (transparency of the feedback).

### **Commission for Protection of Competition (CfPC, Serbia)**

Serbian Commission for Protection of Competition (CfPC) was set up in 2005 by a Law on Protection of Competition (Official Gazette 79/05).<sup>37</sup> The Commission acts as an independent agency with delegated authorities for market control. Thus, the Commission enjoys the status of a controlling body, rather than the regulatory one.<sup>38</sup> According to

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<sup>37</sup> CfPC' website, from: [www.kzk.gov.rs/o-nama/osnivanje-i-status](http://www.kzk.gov.rs/o-nama/osnivanje-i-status)

<sup>38</sup> Note that Director of the Commission, Dr Miloje Obradovic, mentioned that “different interpretations appeared concerning one provision that allows the Commission to make regulatory rules, which may qualify it as a regulatory body, however given that we are talking about one provision only – as opposed to all other tasks and the crux of what the Commission does, calling this agency controlling would be the most appropriate characterisation” (Belgrade conference, 23 May 2015).

Article 21 of the Law on Protection of Competition, Commission's main competitions are:

- deciding on the rights and obligations of market actors;
- imposing administrative measures;
- participating in drafting regulations and giving opinions on laws related to market competition;
- monitoring and analysing competition conditions on particular markets;
- performing and controlling implementation of the measures that provide protection of competition;
- developing cooperation with international organisations according to the international obligations.<sup>39</sup>

Apart from being regulated by the Law, the domain of market competition is regulated by a string of Government by-laws as well as the European Stabilisation and Association Agreement (SAA).<sup>40</sup> The latter stipulates application of the criteria derived from the fundamental principles of EU market competition.<sup>41</sup>

The institutional configuration of CfPC ensures a considerable degree of de-jure independence to this commission (0.69 “Gilardi points”; see Appendix II). Still, there are certain issues reflecting on this somewhat lower index compared to the telecommunications or media regulators. The issues include, first, the fact that President of CfPC is appointed by Parliament rather than by the CfPC's Council (the latter is also

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<sup>39</sup> Law on Protection of Competition (Official Gazette 51/09), from: [www.kzk.org.rs/kzk/wp-content/uploads/2011/07/ZAKON-O-ZASTITI-KONKURENCIJE.pdf](http://www.kzk.org.rs/kzk/wp-content/uploads/2011/07/ZAKON-O-ZASTITI-KONKURENCIJE.pdf)

<sup>40</sup> CfPC's website, from: [www.kzk.gov.rs/o-nama/osnivanje-i-status](http://www.kzk.gov.rs/o-nama/osnivanje-i-status)

<sup>41</sup> Ibid.

elected in Parliament). Second, CfPC has reporting duties toward both Parliament and Government (the Statute and financial plans need to be approved by the Government). Nevertheless, CfPC has enjoyed a considerable degree of de-jure independence in comparative terms.

In Serbia, as in other transition economies, market competition has been among the thorniest issues. Transforming the market from a predominantly state-controlled to a competitive one, where the private sector would play a major role and where the “playing field” would allow private companies to engage in fair competition, is a challenging task to accomplish. It is, therefore, not surprising that Serbian CfPC has faced substantial challenges of the local market: from the changes in the state-dominated sectors where it had to rule at least in those cases where the state provides generous subsidies, to those instances where powerful companies and individual oligarchs have come to dominate the market in one or another way.

Over the past years, CfPC has been in the position to decide about a series of major cases. This is often followed by heated political debates. For example, the case of an alleged market dominance and abuse in the field of retail.<sup>42</sup> Or, the “favourable treatment” of foreign investors, when some foreign investors complained about unfair market conditions, while others had been accused of utilising political links in order to secure a privileged status vis-à-vis the domestic companies.<sup>43</sup> While those cases have been frequently hitting the headlines and raising the issue of control and regulation of market competition, they have not put CfPC under a proportionately high public scrutiny, as

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<sup>42</sup> For instance, a widely debated case of the network of supermarkets of Delta company, owned by Mr Miskovic, who had been perceived as the most powerful oligarch in period 2000-2012 (the year when we was arrested), often accused for the abuse of dominant market position.

<sup>43</sup> One such salient issue has been the government’s programme of subsidising foreign investors since 2005, whereby the government provides financial incentives as well as other sorts of allowances and exemptions for those launching businesses.

one would expect given the scope and nature of the debates. In that sense, CfPC has been occasionally present in the public, but never at the forefront, even when the landmark cases were being discussed. Instead of referring such cases to the controlling agency CfPC, the disputed cases were dealt with by the government and the high-ranking politicians in the public.

CfPC's website contains the following sections and information:

- *About us*: information about the Commission's organisational structure and jurisdictions;
- *Information booklet*: contains annual information booklets;
- *Annual reports*: features Commission's annual reports;
- *International and domestic activities*: contains a brief description of the Commission's international activities and domestic cross-institutional cooperation;
- *Legal framework*: contains laws, secondary legislation, statute, instructions and guidelines;
- *Decisions*: contains decisions published in full and arranged according to the respective jurisdictions;
- *Launched cases*: conclusions concerning the cases in progress;
- *Sectorial analysis*: contains annual sectorial analyses of the oil and milk market;
- *Forms*: contains the forms for initiating investigation of violations of competition;
- *Public announcements*: contains media news and Commission's public announcements.<sup>44</sup>

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<sup>44</sup> CfPC's website, from: [www.kzk.gov.rs/](http://www.kzk.gov.rs/)



The following table summarises transparency extensiveness of the Commission, based on our analysis of the Commission’s website material:

**Table 5.** Transparency of Serbian CfPC across jurisdictions.

<b>Competence</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
<i>I Competition violation</i>					
(a) Breach of competition	✓	✓	✓	✓	✓ <sub>p</sub>
(b) Prohibition exemption of restrictive agreements	✓	✓	✓	✓	
<i>II Concentration inquiry</i>	✓	✓	✓	✓	
<i>III Opinions on laws</i>	✓	✓			
<i>IV Sectorial analyses</i>	✓	✓	✓ <sub>p</sub>		
<i>V International activities</i>	✓				
<b>Overall transparency</b>	✓	✓	✓	✓	

**Source:** CfPC’s official website: [www.kzk.org.rs](http://www.kzk.org.rs). Sign “p” indicates partial website presence of the given element in the observed jurisdiction. Fields 1, 2, 3, 4, 5 denote the five elements of transparency, as introduced in Part I.

Some jurisdictions are not crucial for our analysis of the Commission’s transparency, “international activities” being one such example. Other jurisdictions are, by nature, unable to feature all five transparency elements, e.g. opinions on legislation. If those objective limitations are discounted, the Commission’s transparency can overall be characterised as extensive. Details pertaining to the execution of major tasks, such as the information regarding competition violation and concentration inquiries, have been widely covered and extensively communicated on the website. The Commission has, therefore, exerted a high degree of transparency, particularly in respect to the first, second, third, and the fourth element of transparency, concerning decisions, rules, conduct, and control of the market actors.

All CfPC's *decisions* are published on the website in the section "decisions" and they are also thoroughly discussed in the Annual Reports. The Annual Reports are exhaustive and detailed, containing explanations of the individual decisions, rules according to which the decisions were made, the list of cases examined by the Commission and the cases in which the market entities appealed against the Commission's decision. All *rules* are available and communicated in a clear and consistent manner.

As to the transparency of the *market actors' conduct*, the Commission publishes information about the finished and ongoing cases. It also publishes explanations for the cases where an initiative for the examination of a potential violation of the competition rules did not result in the launch of formal procedure before the Commission. Periodical sectorial analyses, which to some extent focus on the conduct of the market actors, have also their place on the Commission's website. Yet, the available sectorial analyses cover only two markets – the oil and the milk market. According to the Commission, sectorial analysis is an important tool in identifying possible competition violations.<sup>45</sup> Therefore, it would be advisable for the Commission to carry out and publish the analyses in other domains too.

In respect to the *control of the regulated subjects*, the Commission publishes decisions containing measures taken against the subjects violating the competition principles. These decisions also contain information on how the Commission checks whether the market participants act in accordance with the issued measures or not. Moreover, CfPC publishes cases that have not resulted in initiating the proceedings before the Commission. Here, the Commission typically explains who submitted a request for examination of competition violation, what steps were taken by the Commission in response and why the cases did not result in the initiation of proceeding against the suspects. CfPC

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<sup>45</sup> Commission's Annual Report for 2013; from: [www.kzk.gov.rs/kzk/wp-content/uploads/2014/06/Izvestaj-o-rad-u-za-2013-godinu.pdf](http://www.kzk.gov.rs/kzk/wp-content/uploads/2014/06/Izvestaj-o-rad-u-za-2013-godinu.pdf)

also publishes information about ongoing cases, including all prior steps made by the Commission up until that moment. This provides an opportunity for the insight into the Commission's activities in specific cases, such as the information on how the Commission controls the market actors, what sort of data are collected about these actors, which measures have been undertaken, and so on. Given all this, the fourth element of transparency can be qualified as being a relatively regular part of CfPC's transparency practices.

Lastly, the release of received *feedback* is partly exhaustive and includes judicial decisions about the lawsuits which the market participants filed against a previous Commission's decision. Other sorts of feedback, however, have not been part of CfPC's website, such as experts' opinions, citizens' comments, and the likes. Thereby, the fifth element of the Commission's transparency has been only partly present.

Overall, CfPC has demonstrated an extensive form of transparency, with the first, second, third, and fourth elements being a regular feature of its website communication.

### **Commission for Protection of Competition (CfPC, Macedonia)**

Macedonian Commission for Protection of Competition (CfPC) was established in 2005 by the Law on Protection of Competition.<sup>46</sup> Its core jurisdictions are similar to those of Serbian CfPC and include:

- exercising control over the Law implementation;
- monitoring and analysing market conditions;
- conducting administrative procedures;
- defining rules and measures concerning the protection of competition and defining measures aimed at establishing effective competition;

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<sup>46</sup> CfPC's website, from: [www.kzk.gov.mk/eng/aboutus\\_C.asp](http://www.kzk.gov.mk/eng/aboutus_C.asp)

- giving opinions on market competition related laws;
- approving the allocation of state aid;
- developing international cooperation.<sup>47</sup>

What lies at the heart of CfPC's institutional mission is the exercise of control of market entrants' adherence to the rules, rather than production of new rules regulating market competition. Therefore, Macedonian Commission for Protection of Competition can be categorised as a controlling body.

CfPC's index of de-jure independence is 0.70 and comes at the bottom end of the sample of the analysed bodies (if the environment protection agencies are excluded). Yet, this makes for a relatively high degree of formal independence in absolute terms. There is no substantive difference between the Serbian and Macedonian commissions for market protection in this regard (0.69 and 0.70).

The following are elements contained in the official website of CfPC:

- *About us*: information about the Commission's organisation, staff and jurisdictions;
- *News*: press reports (very few of them, though) and cross-institutional collaboration memoranda signed between the Commission and other institutions and agencies;
- *Legal framework*: laws, secondary legislation, statute, and guidelines;
- *Decisions*: containing the previously adopted decisions;
- *Notifications*: notifications about market concentrations;

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<sup>47</sup> Law on Protection of Competition (Official Gazette 145/10), from: [www.kzk.gov.mk/images/ZakonZaZastitaNaKonkSlves%20145%2010.pdf](http://www.kzk.gov.mk/images/ZakonZaZastitaNaKonkSlves%20145%2010.pdf)

- *Resources*: contains forms for requests with regard to the Commission's competences;
- *Publications*: Annual Reports and sectorial analyses of banking, TV commercials, and liquid gas.<sup>48</sup>

Translated into the framework applied in this study, the above data make for the following constellation of transparency elements across the Commission's jurisdictions:

**Table 6.** Transparency of the Macedonian CfPC across jurisdictions.

Competence	1	2	3	4	5
Competition violation	✓	✓	✓p		
Concentration inquiry	✓	✓	✓p		
Opinions on laws		✓			
Sectorial analyses	✓	✓			
Approval of the allocation of state aid	✓	✓			
International activities	✓	✓			
<b>Overall transparency</b>	✓	✓	✓p		

**Source:** CfPC's official website [www.kzk.gov.mk](http://www.kzk.gov.mk). Sign "p" indicates partial website presence of the given element in the observed jurisdiction. Fields 1, 2, 3, 4, 5 denote the five elements of transparency, as introduced in Part I.

It should not be overlooked that some jurisdictions cannot be representative of the overall Commission's transparency pattern (e.g. international cooperation) and that, as in the other cases, some other jurisdictions are by definition precluded from having all five elements of transparency. Nevertheless, CfPC's transparency pattern can be characterised as "abridged". Full details have only been released for the first two elements of the framework – the decision-making (1)

<sup>48</sup> CfPC's website, form: [www.kzk.gov.mk/](http://www.kzk.gov.mk/)

and rules related information (2). The third element of transparency – market actors’ conduct - has only partly been exercised and, moreover, the remaining elements (transparency of control (4) and transparency of feedback (5)) could be found only in limited forms on the website.

Within its core jurisdictions, CfPC has made its *decision-making process* considerably transparent to the wider audience, as all Commission’s decisions are easily discernible on the website. Likewise, all *rules*, from the legislation to other details dictating the conduct of the relevant parties in the process of control of market competition, are presented on the website in a clear and consistent manner.

More information on *market participants’ conduct* can only be found if it relates to a specific CfPC’s decision. Furthermore, little can be learnt from the website regarding the ongoing cases and, in particular, the ones which do not result in the initiation of a proceeding (this is not the case with the website of CfPC’s counterpart in Serbia). The sectorial analyses include three sectors only - banking, TV commercials, and liquid petroleum gas. They are, however, not conducted in a regular or cyclical way, but rather in a one-off manner: the analysis of the banking sector was carried out in 2012, TV commercials in 2012 and liquid gas in 2010.<sup>49</sup> Further publication of analyses concerning other sectors would certainly add to the transparency of the conduct of market participants. Somewhat generously, we mark this element as “partly present”, although in terms of the third element of transparency CfPC has probably been closer to the value of “not exerting” than “exerting”.

Based on the website, it is not possible to find out more about the *market actors’ controls*. Some of the control measures undertaken by CfPC against market participants, when a competition violation was suspected to have occurred, could be tracked through the Commission’s

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<sup>49</sup> CfPC’s website, from: [www.kzk.gov.mk/mak/zapis.asp?id=18](http://www.kzk.gov.mk/mak/zapis.asp?id=18)

decisions. However, CfPC's website again fails to provide data about the investigated cases which did not result in an administrative or misdemeanour procedure. In particular, it is not known which steps the Commission made, what data it collected, and so on. As a result, one cannot see how CfPC behaves when examining such cases, except for the examples that ended up in a specific decision. Thus, the users of the Commission's website are deprived of the information concerning the controlled subjects' conduct and their knowledge on this topic remains limited.

Concerning the received *feedback*, the Commission publishes judicial decisions about the lawsuits filed against the Commission's decisions. However, other types of feedback such as experts' opinions, citizens' comments, public debates and the like, are not published. Hence, the fifth element of the Commission's transparency is characterised as being present in a limited form, at best.

In summary, CfPC has seen a limited degree of transparency, with some, yet not full details, about the market participants' conduct and the Commissions' control. The transparency model we observed in the case of CfPC departs to a minimal extent from the traditional "abridged" view of transparency. This view highlights the need for publishing decisions and rules/procedures, but does not pay much attention to the other aspects that are elsewhere said to be important for systems of controls.

### **Regulatory Authority for Electronic Media (REM, Serbia)**

Regulatory Authority of Electronic Media (REM) was set up in 2003, originally under the name Republication Broadcasting Agency (RRA), by the Law on Broadcasting.<sup>50</sup> REM has been in charge of regulating

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<sup>50</sup> REM's Annual Report for 2013, from: [www.rra.org.rs/uploads/useruploads/PDF/5346-Izvestaj\\_o\\_radu\\_RRA\\_2013.godina\\_final.pdf](http://www.rra.org.rs/uploads/useruploads/PDF/5346-Izvestaj_o_radu_RRA_2013.godina_final.pdf)

the electronic media market, one of the most sensitive domains for the functioning of a democracy, especially in transition contexts.

The adoption of a package of media laws in 2014 (Law on Public Information and Media, Law on Electronic Media, Law on Public Service Broadcasting) represented an important step in harmonisation of the Serbian legal framework with the EU legislation regulating media sphere (European Commission, 2014a). Nonetheless, according to the latest European Commission Progress Report for Serbia (2014a: 29), “the media market continues to suffer from non-transparent public funding of selected state-owned media and commercial media through direct budgetary subsidies and contracts with public enterprises and authorities”. Besides, the state is present in this sector as owner of some media and the structure of the media ownership remains non-transparent (Commission, 2014: 29). Thus, overall, although some progress has been made, further improvements in the media market liberalisation in Serbia are necessary.

According to Article 22 of the Law on Electronic Media, REM’s major competences are:

- drafting Strategy of Development of Broadcasting;
- monitoring broadcasters’ work and ensuring the law implementation;
- issuing broadcast permits;
- setting binding rules for the media service providers;
- setting rules relating to programme content;
- handling complaints regarding the program operation providers of media services;
- undertaking measures against broadcasters.<sup>51</sup>

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<sup>51</sup> Law on Electronic Media (Official Gazette 83/14), from: [www.rra.org.rs/uploads/useruploads/PDF/5605-Zakon%20o%20elektronskim%20medijima.pdf](http://www.rra.org.rs/uploads/useruploads/PDF/5605-Zakon%20o%20elektronskim%20medijima.pdf)



REM is a prime example of a highly independent regulatory agency (in de-jure terms). With as many as 0.86 “Gilardi points” (Appendix II), it represents one of the (formally) most independent agencies in the sample and, needless to say, a highly independent regulator in comparative terms. All aspects defining an agency’s de-jure independence - from the status of agency head, through the appointment and functioning of the Council, to the relationship toward parliament and government, and finally, the agency’s financial and organisational autonomy – allow for a high degree of institutional autonomy, in the case of REM. If the “de-jure independence hypothesis” proves to be true (Hypothesis 4), it would be possible to expect a high degree of transparency. The underlying logic here is that higher degrees of de-jure independence entail higher degrees of transparency, due to a need for establishing credibility/legitimacy among the audiences.

REM’s website contains the following sections and information:

- *About us*: information about REM’s organisational structure;
- *Regulatory framework*: laws, strategies, guidelines, recommendations and the statute;
- *Decisions*: contains detailed information about REM’s meetings, measures pronounced against broadcasters, decisions on issuing or revoking licences and judicial decisions;
- *Public tenders*: features calls for tenders for allocation of broadcasting licences;
- *Information booklet*: contains REM’s information booklets;
- *Reports*: contains REM’s Annual Reports, reports about supervision of broadcasters’ activity, financial plans and reports and reports about public hearings;

- *Analyses*: contains analyses of electronic media;
- *News and announcements*: contains media news and REM's public announcements.<sup>52</sup>

The table below structures the observed website content by tailoring it to the format we use for mapping agency transparency regimes:

**Table 7.** Transparency of REM across jurisdictions.

Competence	1	2	3	4	5
Issues and deprives broadcast permits	✓	✓	✓	✓	
Approves broadcasters' ownership changes					
Provides opinion on the state's, parties' and other organisations' advertising					
Monitors broadcasters' work	✓	✓	✓	✓	
Handles complaints		✓			
Undertakes measures against broadcasters	✓	✓	✓	✓	✓p
Opinions on laws	✓	✓			✓
<b>Overall transparency</b>	<b>✓p</b>	<b>✓</b>	<b>✓</b>	<b>✓</b>	<b>✓p</b>

**Source:** REM's official website [www.rra.org.rs](http://www.rra.org.rs). Sign "p" indicates partial website presence of the given element in the observed jurisdiction. Fields 1, 2, 3, 4, 5 denote the five elements of transparency, as introduced in Part I.

As can be seen, in its core jurisdictions - issuing of broadcast permits and oversight over their work - REM has demonstrated an extensive form of transparency. Namely, full details are published in respect to the first, second, third and fourth element of transparency. Yet, what has been limited is the transparency of the feedback and the

<sup>52</sup> REM's website, from: [www.rra.org.rs](http://www.rra.org.rs)

transparency of the decisions on approval of broadcasters' ownership and opinions about the state's and political parties' advertising.

In the core jurisdictions, REM made its *decision-making process* extensively transparent to the wider audience, with all previous decisions being put up on the website. What is lacking, however, are the decisions concerning the approval of changes of the ownership structure of media and also REM's opinions about the states', political parties' and other organisations' advertising. The latest Annual Reports makes it clear that REM was making decisions regarding these issues (see the 2013 Annual Report<sup>53</sup>). However, as we pointed out earlier, these decisions were not available on the website in its integral form. Approvals of changes of ownership structure are among the most important decisions that REM has taken so far in term of their consequences for the market competition, media reporting policy and the likes. Regarding the second element of transparency, all *rules* and procedural regulations are presented in a clear and consistent manner.

Transparency of *regulatee's conduct* has been exercised to a full degree through decisions, analyses and reports featuring information on how the regulated subjects perform particularly with regard to meeting the standards set by the legislation or licences. The website also contains a licence register. REM has been highly transparent in this aspect.

The *control of the broadcasters* has also been transparent. REM publishes reports on the fulfilment of the program and legal obligations of broadcasters. Also, decisions containing measures and sanctions against broadcasters acting against the laws are available on the REM's website.

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<sup>53</sup> REM: Annual Reports for 2013, from: [www.rra.org.rs/uploads/useruploads/PD-F/5346-Izvestaj\\_o\\_radu\\_RRA\\_2013.godina\\_final.pdf](http://www.rra.org.rs/uploads/useruploads/PD-F/5346-Izvestaj_o_radu_RRA_2013.godina_final.pdf)

Finally, in respect to the fifth element of transparency – *feedback* – judicial decisions are published in cases where a broadcaster appeals against a REM's decision. REM also publishes some of the citizens' questions in regard to its activities and answers to these questions, as well as comments given by the participants in public debates. However, not all decisions about citizens' complaints are not available. We can see from the REM's annual reports which complains are considered by REM, but we could not find on the website all decisions concerning these complaints. Therefore the transparency of the feedback has been partial rather than full.

Following from the above, it can be said that REM has demonstrated a rather extensive form of transparency, with publicly available data concerning almost all stages of the policy cycle (the only exception being the fifth element of transparency – feedback).

### **Agency for Audio and Audio-Visual Media Services (AVMS, Macedonia)**

With adoption of the Law on Audio and Audio-Visual Media Services (2013), the Macedonian Broadcast Council (created in 1997) was replaced by a new independent regulator named the Agency for Audio and Audio-Visual Media Services.<sup>54</sup>

According to Article 6 of the Law on Audio and Audio-visual Media Services, the Agency's major jurisdictions are:

- ensuring transparency in the broadcasters' work;
- ensuring protection and enhancing pluralism in the sphere of audio and audio-visual media services;

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<sup>54</sup> AVMS's website, from: [www.avmu.mk//index.php?lang=mk](http://www.avmu.mk//index.php?lang=mk)

- undertaking measures against broadcasters when provisions of the Law and other rules are violated;
- adopting acts derived from the Law;
- issuing and revoking broadcast permits;
- monitoring broadcasters' work; and
- prescribing the manner of measuring the number of viewers or listeners of the broadcasted programmes and conducts the process of measurement.<sup>55</sup>

AVMS is the most independent regulator (and agency) in the whole study sample. Its institutional design yields 0.90 "Gilardi points" (Appendix II), which is not only the highest value in the sample, but is also a remarkably high and rarely seen score in comparative terms. AVMS is the oldest agency in the sample, created 18 years ago.

Media market in Macedonia shares similar characteristics with the one in Serbia. The adoption of the Laws on Audio and Audio-visual Media Services in 2013 was a step forward in harmonisation of the national legislation with the EU standards (European Commission, 2014b). However, the European Commission (2014b) has emphasised the uncertainty concerning the implementation of the law in practice. The EC also raised some concerns related to the complaints made in public discourse about the allegedly limited media freedom in this country (Commission, 2014b and 2013). Generally, further advancement of the media market is necessary, like in Serbia.

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<sup>55</sup> Law on Audio and Audio-visual Media Services(Official Gazette 184/13), from: [www.avmu.mk/images/Zakon\\_za\\_audio\\_i\\_audiovizuelni\\_mediumski\\_uslugi\\_mkd\\_1.pdf](http://www.avmu.mk/images/Zakon_za_audio_i_audiovizuelni_mediumski_uslugi_mkd_1.pdf)

AVMS' website contains the following sections and information:

- *About agency*: information about AVMS' organisation and staff, plans, programs and annual reports, rules of procedures, and the agency's public meetings in 2015 and 2014;
- *Sessions*: summaries, minutes and decisions made at the sessions;
- *Measures/supervision*: contains information about AVMS' measures in respect to the broadcasters;
- *Licences*: decisions about broadcast permits;
- *Legislation*: domestic and European laws and secondary legislation;
- *Media*: registers of broadcasters;
- *Operators*: contains the register of operators, registered programme packages, signal locations and author rights;
- *Publications/analyses*: economic, programme, legal, copyright, technical and other analyses, as well as analyses of the media coverage during elections;
- *Forms*: contains different sorts of forms for citizens and operators;
- *Public consultations*: contains information about public consultations concerning rules and the agency's work programmes.<sup>56</sup>

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<sup>56</sup> AVMS's website, from: [www.avmu.mk](http://www.avmu.mk)

The following table summarises the structure of the AVMS' transparency:

**Table 8.** Transparency of AVMS across jurisdictions.

Competence	1	2	3	4	5
Issues and revokes broadcast permits	✓	✓	✓	✓	
Monitors broadcasters' work	✓	✓	✓	✓	
Supervises the operators of the public communications networks	✓	✓	✓	✓	✓
Supervises print media	✓	✓	✓	✓	
Undertakes measures against broadcasters	✓	✓	✓	✓	
Handles complaints	✓	✓			✓
<b>Overall transparency</b>	✓	✓	✓	✓	✓

**Source:** AVMS's official website: [www.avmu.mk](http://www.avmu.mk). Sign "p" indicates partial website presence of the given element in the observed jurisdiction. Fields 1, 2, 3, 4, 5 denote the five elements of transparency, as introduced in Part I.

As can be seen, AVMS has exerted a high degree of transparency extensiveness in respect to the all elements of transparency – transparency of decisions, rules, conduct, control of the regulated subjects and feedback.

AVMS's website boasts having all previous *decisions*. All *rules* are represented in a clear and consistent manner on the agency's website.

Concerning the transparency of the *regulatees' behaviour*, AVMS publishes licence registers, decisions and reports containing information about the conduct of the regulated subjects. It also publishes different sorts of analyses, such as economic, programme, legal, technical and also analyses of the media coverage during elections.

The *control* of the broadcasters is also transparent, as the agency publishes regular monitoring reports. Also, decisions containing measures against the broadcasters that have been found in breach of law, together with information on AVMS's control mechanisms, are available on the website.

In respect to the fifth element of transparency – concerning *feedback* – AVMS publishes experts' opinions and broadcasters' stances. AVMS' responses to citizens' or broadcasters petitions are contained on the website, too. It is worth noting that this agency organises public meetings, which is another way of eliciting and discussing the feedback.

Overall, AVMS has exerted a high degree of transparency in respect to all five elements of transparency. As will turn out, AVMS has been the most transparent agency in the whole sample.

### **Energy Agency (EA, Serbia)**

Energy Agency (EA) was instituted in Serbia in 2005 by the Energy Law, which has been amended several times since (2011, 2012, 2014).<sup>57</sup>

According to the Energy Law and international agreements, the agency's major tasks are:

- price regulation;
- licensing in the energy sector;
- deciding about appeals;
- supervision and monitoring of the energy market; and
- implementation of international agreements.<sup>58</sup>

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<sup>57</sup> EA's website, from: [www.aers.rs/Index.asp?l=1&a=91](http://www.aers.rs/Index.asp?l=1&a=91)

<sup>58</sup> EA's website, from: [www.aers.rs/Index.asp?l=1&a=16.1](http://www.aers.rs/Index.asp?l=1&a=16.1)



EA's work is relevant for the economic development in general, but in a more direct manner – by contributing to the regular households' expenses – the work of EA is linked to the citizens' welfare.

EA enjoys a very high degree of formal independence (0.88, Appendix II), which renders it one of the most independent energy regulators in comparative terms. This high independence is partly due to the exclusivity of EA's competencies and also due to the multiple safeguards of its Council and President. Even though Council and President are appointed by Parliament, there are strong mechanisms preventing external interference in their work.

As for the market liberalisation, it is worth reminding that – despite the narrative about the attractiveness of liberalisation and despite the EU calls for a greater opening of the network industries – the energy sector in Serbia has not been considerably liberalised so far. While the dominant player in the domain of electricity has been the state monopolist *Elektroprivreda Srbije* (EPS), the gas domain has been subject to an inter-state deal (with Russia) rather than subject to market competition. Besides, many energy companies, such as *EPS*, *Yugorosgaz-Transport* and *Srbijagas*, have not been unbundled yet – in legal or operational sense (European Commission, 2014a). In spite of the presence of small and medium enterprises in some parts of the market, the energy domain is overall characterised by a low degree of liberalisation.

How has the Energy Agency enforced its transparency in practice?

EA's website contains the following sections and information:

- *About agency*: information about the agency's organisation, tasks and staff, plans, annual reports and information booklets;
- *Legislation*: laws, secondary legislation, acts made and also acts approved by the agency, international legislation;
- *Forms*: contains forms for energy entities through which EA collects needed information;
- *Licence*: contains general information about licences, rules about licences, information on licensing and licence register;
- *Price regulation*: data on gas, oil and electricity prices regulation;
- *Energy market*: contains basic information about the regulations concerning gas, oil, and electricity market and decisions about energy prices;
- *Appeals*: contains information on the agency's competences in respect to the appeals, rules about appeals and instructions for submission to appeal;
- *Renewable energy sources*: contains information on the agency's jurisdictions and rules in respect to renewable energy sources;
- *Rational use of energy*: contains information on the agency's jurisdictions in respect to rational use of energy;
- *Heat energy*: contains information on the agency's jurisdictions in respect to heat energy;
- *Public consultations*: contains forms for sending objections and suggestions about the agency's rules.<sup>59</sup>

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<sup>59</sup> EA's website, from: [www.aers.rs](http://www.aers.rs)

Table 9 summarises the transparency regime of EA:

**Table 9.** Transparency of EA across jurisdictions.

Competence	1	2	3	4	5
<i>I Regulation of prices</i>					
(a) Price-setting methodology	✓	✓			
(b) Setting prices of system services	✓	✓			
(c) Approves regulated prices	✓	✓			
(d) Supervision of the implementation of the price-setting methodology and approved prices		✓	✓		
<i>II Licensing</i>		✓			
<i>III Market oversight</i>	✓	✓	✓p		
<b>Overall transparency</b>	✓	✓	✓p		

**Source:** EA's official website: [www.aers.rs](http://www.aers.rs). Sign "p" indicates partial website presence of the given element in the observed jurisdiction. Fields 1, 2, 3, 4, 5 denote the five elements of transparency, as introduced in Part I.

EA has displayed a rather limited form of transparency. It has been highly transparent only in the first and second element – transparency of decisions and transparency of rules. The transparency of the regulatees' conduct (3) can be characterised as only partial, while the remaining two elements (transparency of control and transparency of feedback) are almost completely missing.

This agency generally publishes *decisions* concerning the price-setting methodology, the price-setting itself and approvals of prices. The website features a licence register, but decisions about issuing and revoking of licences are not available. The *procedures* and *rules* are represented in a clear and consistent manner on the agency's website.

Transparency of *regulatees' conduct* (the third element) has been partial. EA's website contains information about energy prices. Apart from a general market overview, however, EA's website does not contain more details about the individual energy subjects' behaviour. Certain information about individual regulated subjects could be found in the market reports (which are part of the annual reports), but that information is not exhaustive compared to the amount of information that EA regularly collects; moreover, such information does not pertain to all energy subjects. According to the agency's annual reports, EA collects detailed data about the energy subjects quarterly, semi-annually and annually. These data are, however, not available to the broader public (except for the information contained in the market reports).

Transparency of *regulatees' controls* has been even more limited. For example, information about how the agency monitors the conduct of the energy companies is unavailable. According to the annual reports, the agency controls whether the regulatees act in accordance with the rules. The control is conducted, among others, through EA representatives' participation in commissions formed by the energy companies and through market inspection (please, see Annual Report 2013<sup>60</sup>). However, to the best of our knowledge, EA's website does not contain any sort of data about this aspect of EA's work.

EA's website does not contain any sort of *feedback*, including citizens', energy subjects', and experts' opinions and comments. The agency does not publish neither citizens' and energy subjects' complains, nor decisions in regard to these complains.

Overall, one is not able to find out more about the EA's activities, apart from the rules guiding the markets, the decision-making related

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<sup>60</sup> EA: Annual Report for 2013, from: [www.aers.rs/Files/Izvestaji/Godisnji/Izvestaj%20Agencije%202013.pdf](http://www.aers.rs/Files/Izvestaji/Godisnji/Izvestaj%20Agencije%202013.pdf)

information and market analyses. Given that the set standards and, relatedly, compliance to these standards have huge social, economic and political implications, the lack of this sort of data seems to be a forceful indicator of how “abridged” the EA’s transparency has been.

### **Energy Regulatory Commission (ERC, Macedonia)**

Macedonian Energy Regulatory Commission (ERC) was set up in 2002 by a Law on Energy and commenced its operation in 2003.<sup>61</sup> ERC is responsible for regulating the energy sector by performing a set of tasks similar to the Serbian energy regulator (EA). According to the Law on Energy, ERC’s most important tasks are:

- prescribing conditions under which certain sorts of energy can be supplied;
- dealing with price regulation;
- issuing and revocation of licences in the energy sector;
- monitoring of the implementation of licences;
- dealing with conflict resolution;
- proscribing rules for connecting to the energy grid; and
- adopting rules, procedures and other acts.<sup>62</sup>

ERC’s formal independence amounts to 0.82 “Gilardi points” (Appendix II), which is a considerably high degree of formal independence in comparative terms.

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<sup>61</sup> ERC’s website, from: [www.erc.org.mk/Default\\_en.aspx](http://www.erc.org.mk/Default_en.aspx)

<sup>62</sup> ERC’s website: [www.erc.org.mk/pages.aspx?id=60](http://www.erc.org.mk/pages.aspx?id=60)

The pace and the ultimate scope of energy sector liberalisation in Macedonia have been modest. Although some progress has been made in regard to the opening of the electricity market (Commission, 2014b), full liberalisation of the electricity market, initially planned for the beginning of 2015, was postponed until 2020 by the Macedonian government (Energy Community Secretariat, 2015<sup>63</sup>). Currently, the electricity sector is dominated by an Austrian monopolist (EVEN AG)<sup>64</sup> who privatised the state-owned energy company in 2006. In this way, the state's monopoly was replaced by a private company's monopoly. The gas sector is not liberalised either,<sup>65</sup> as the import of gas is constrained and no free competition exists in this field.

ERC's website contains the following sections and information:

- *ERC*: contains information about the Commission's organisational structure, competences and international activities;
- *Regulation*: laws and internal organisational laws;
- *Pricing*: contains information about energy prices;
- *Licensing*: contains information about licensing procedures and decisions about issued and revoked licences;
- *Complains*: contains legal information about complains;
- *Annual reports*: contains ERC's annual reports;

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<sup>63</sup> Energy Community's website, from: [www.energy-community.org/portal/page/portal/ENC\\_HOME/NEWS/News\\_Details?p\\_new\\_id=10921](http://www.energy-community.org/portal/page/portal/ENC_HOME/NEWS/News_Details?p_new_id=10921)

<sup>64</sup> Energy Regulators Regional Association's website, from: [www.erranet.org/AboutUs/Members/Profiles/Macedonia](http://www.erranet.org/AboutUs/Members/Profiles/Macedonia)

<sup>65</sup> ERC: Annual Report for 2014, from: [www.erc.org.mk/odluk/2015.05.15\\_Godisen%20izvestaj%20za%20rabota%20na%20Regulatornata%20komisija%20za%20energetika%20na%20RM%20za%202014%20godina\\_FINAL.pdf](http://www.erc.org.mk/odluk/2015.05.15_Godisen%20izvestaj%20za%20rabota%20na%20Regulatornata%20komisija%20za%20energetika%20na%20RM%20za%202014%20godina_FINAL.pdf)

- *Public relations*: public announcements and statements, information about ERC's projects and notifications from companies;
- Sections *electricity, natural gas, heat energy, oil and renewable sources*: contain secondary legislation, pricing and tariff decisions, and information about the market.<sup>66</sup>

Table 10 summarises the transparency of the Commission:

**Table 10.** Transparency of ERC across jurisdictions.

Competence	1	2	3	4	5
<i>I Regulation of prices</i>					
(a) Price-setting methodology	✓	✓			
(b) Decisions on the energy prices	✓	✓	✓p		
<i>II Issuing and depriving of licences</i>	✓	✓			
<i>III Monitoring of the implementation of the licences</i>		✓			
<i>IV Monitoring of the energy market</i>		✓	✓p		
<i>V Disputes resolution</i>		✓			
<i>VI International activities</i>		✓			
<b>Overall transparency</b>	✓	✓	✓p		

**Source:** ERC's official website: [www.erc.org.mk](http://www.erc.org.mk). Sign "p" indicates partial website presence of the given element in the observed jurisdiction. Fields 1, 2, 3, 4, 5 denote the five elements of transparency, as introduced in Part I.

Macedonian Energy Regulatory Commission is an example of a quite "abridged" form of transparency. Similarly to its Serbian counterpart, ERC has been highly transparent when it comes to the first and second element – transparency of rules and decisions – and partly transparent in the third element - conduct of regulated subjects.

<sup>66</sup> ERC's website, from: [www.erc.org.mk](http://www.erc.org.mk)

When it comes to the transparency of *decisions*, the situation is as follows. The decisions about price-setting methodology, about energy prices, issuing and revoking licences, acquiring the status of privileged producer and preferential tariffs, they have been in general made transparent. The website displays all *rules* and legal directions regulating the field.

Transparency of the *regulated subjects' conduct* could be observed to a limited extent. The decisions about licences, published by ERC, include basic information about the regulatees. Market analyses are also published as part of ERC's annual reports. Thus, it is possible to find out more about what the regulatees do in practice. Nevertheless, ERC's website does not contain further information on energy entities' behaviour, apart from the information provided in the market analyses. According to the Annual Report for 2014, ERC supervises the energy market by using data from monthly and annual regulatees' reports. While some of these data are revealed in the ERC's annual reports - for certain businesses only - they are not available for all licence holders.

Transparency of the *control of regulatees* has been limited, too. Certain information related to this topic cannot be found on the website, such as the information on how ERC supervises the energy subjects' activities and how the enforcement of licences is being controlled.

ERC's website does not contain any sort of *feedback*, including citizens' and energy subjects' complains. There are no citizens' and experts' opinions, and the feedback provided by regulated subjects is not available either.

Generally, ERC has shown a similar pattern of transparency to its Serbian counterpart EA. What has been mostly communicated are the rules and decisions, and partly the conduct of energy subjects.



## Environmental Protection Agency (SEPA, Serbia)

Serbian Environmental Protection Agency (SEPA) was founded by the Law on Ministries in 2004.<sup>67</sup> It operates as part of the Ministry of Agriculture and Environmental Protection (and the corresponding ministries in the past). SEPA does not have the status of a non-majoritarian agency and does not command regulatory powers. As such, SEPA enjoys a low degree of de-jure independence, i.e. the Agency's budget, personnel policies, powers and jurisdictions are subject to the Ministry's control. SEPA has been responsible for the development of an IT system which would enable tracking the indicators of the state of environment (air, water, and other sorts of pollution), for the directing of the National Laboratory's work – which carries out technical inspections, execution of state monitoring of the quality of air and water, for the gathering of data on the implementation of environment protection policies, and for cooperation with the European Environmental Agency (EEA) and EIONET network.<sup>68</sup>

SEPA's website contains following sections and information:

- *About the agency*: contains information about the agency's jurisdictions;
- *Organisation*: contains information about SEPA's organisational structure;
- *Information booklet*: contains information booklet and a form for applying for access to information of public importance;
- *Data and services*: contains information about air and water quality, allergenic pollen, and the results of state monitoring of the air and water quality;

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<sup>67</sup> SEPA: *Link to Europe*, from: [www.sepa.gov.rs/download/Agencija\\_publikacija.pdf](http://www.sepa.gov.rs/download/Agencija_publikacija.pdf)

<sup>68</sup> SEPA: *Information Booklet for 2014*, from: [www.sepa.gov.rs/download/IJZ/informatorNov2014.pdf](http://www.sepa.gov.rs/download/IJZ/informatorNov2014.pdf)

- *Thematic areas*: features details about activities and important data concerning the water, air, climate changes, land, biodiversity, waste, pollen, radiation, economic activities and instruments, and noise;
- *National register of pollution sources*: contains information about relevant legislation, activities, reports, data, permits for waste management, documents on the waste movements and pollution sources' register;
- *Documents*: contains reports, publications, presentations and papers about environment;
- *News*: contains media news and public announcements.<sup>69</sup>

The following table summarises the exhibited transparency pattern of this agency:

**Table 11.** Transparency of SEPA across jurisdictions.

Competence	1	2	3	4	5
Development, coordination and direction of national IT system for tracking the state of environmental protection		✓	✓	✓	
Execution of state monitoring of the quality of air and water		✓	✓	✓	
Gathering of data about implementation of environment protection policies		✓	✓	✓	
Cooperation with the European Environmental Agency (EEA) and EIONET network	✓				
<b>Overall transparency</b>		✓	✓	✓	

**Source:** SEPA's official website: [www.sepa.gov.rs](http://www.sepa.gov.rs). Sign "p" indicates partial website presence of the given element in the observed jurisdiction. Fields 1, 2, 3, 4, 5 denote the five elements of transparency, as introduced in Part I.

<sup>69</sup> SEPA's website, from: [www.sepa.gov.rs](http://www.sepa.gov.rs)

Despite the lack of formal independence and a chronic shortage of resources, SEPA has focused on a diverse set of elements in exercising its transparency (within the given jurisdictions, of course). Thus, SEPA has been highly transparent when it comes to the second, third, and fourth element of the transparency extensiveness.

All rules concerning SEPA's jurisdictions are available on its website. As to its major jurisdictions, SEPA's website features a registry of the national waste management spots, a section about polluters, movements of dangerous waste and so forth. Additionally, various sorts of reports, publications and presentations concerning environment are also available on the website. The website is regularly updated with the data on the quality of air, land, water, which suggests that the elements 2-4 of the transparency framework are being regularly communicated. Whilst the first three jurisdictions feature an extensive list of elements (2-4), the fourth does not do so. Since international cooperation is not substantively a core jurisdiction, the absence of 2-5 elements in it will not be taken as a defining factor of the overall extensiveness of transparency of SEPA.

SEPA provides information based on their on-ground inspections of the material. It does not make decisions nor creates rules though. Therefore its transparency is considered to be full.

### **Directorate for Environment (DfE, Macedonia)**

Similarly to the Serbian SEPA, Macedonian counterpart – the Directorate for Environment has been part of their ministry responsible for the issues related to environmental protection (Ministry of Environment and Spatial Planning<sup>70</sup>). It, therefore, does not feature as a non-majoritarian or regulatory agency. Instead, this institution has

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<sup>70</sup> Ministry's website, from: [www.moepp.gov.mk/](http://www.moepp.gov.mk/)

been added to the sample of analysed administrative bodies, for the reasons cited in the methodological section.

According to the Law on Environmental Protection, DfE's major jurisdictions are:

- carrying out professional activities in regard to the protection of nature, water and soil;
- carrying out professional activities in regard to the management of the waste, air, chemicals and other areas of environment;
- monitoring the state of the environment; and
- keeping the Environment Cadastre and the register of polluters.<sup>71</sup>

DfE does not have its own website. Since it operates as a part of Ministry of environment and spatial planning, all information relevant to its work is available at the ministry's website.

The following table summarises the transparency of DfE:

**Table 12.** Transparency of DfE across jurisdictions.

Competence	1	2	3	4	5
Professional activities in regard to the environment protection and management of different areas of the environment		✓	✓		
Monitoring of the state of the environment		✓		✓	
Keeping the Environment Cadastre and the register of polluters		✓	✓		
<b>Overall transparency</b>		✓	✓p	✓p	

**Source:** Ministry's official website: [www.moepp.gov.mk/#](http://www.moepp.gov.mk/#). Sign "p" indicates partial website presence of the given element in the observed jurisdiction. Fields 1, 2, 3, 4, 5 denote the five elements of transparency, as introduced in Part I.

<sup>71</sup> Law on Environmental Protection (Official Gazette 53/05), from: [www.moepp.gov.mk/?page\\_id=901](http://www.moepp.gov.mk/?page_id=901)

DfE has not encompassed as many elements of transparency as the Serbian SEPA has, but it has, nevertheless, featured the first one (transparency of rules) across all jurisdictions. All rules concerning DfE's jurisdictions are available on the ministry's website. In regard to the third element, the ministry's website contains various sorts of reports, studies and registers about waste, water, soil and other areas of the environment. For the process of monitoring the environment quality, DfE offers its control-related information, such as the data about the measuring stations. The feedback process have not been part of the communication toward the public. Possible reason for this is that DfE, due to its institutional status, is unable to deal with this sort of concern. Generally, though DfE has exerted a medium degree of transparency, it would be useful for DfE to create its own website where information about its activities would be presented in a clear manner.

## Part III

### 10. Comparative analysis

#### Comparative overview

In this section, we present a comparative overview of the empirical evidence about the ten agencies' transparency regimes. Based on the individual case studies, presented in Part II, the table below summarises the ten agencies' transparency regimes:

**Table 13.** Agencies' transparency, as measured in the individual case studies presented in Part II ("p": the agency implemented the given element partially).

	1 Transparency of decision- making process	2 Transparency of rules	3 Transparency of regulated activities	4 Transparency of regulator's controls	5 Transparency of feedback
<b>Telecoms</b>					
RATEL (S)	✓p	✓	✓p		✓p
AEC (M)		✓	✓		✓p
<b>Market competition</b>					
CfPC (S)	✓	✓	✓	✓	
CfPC (M)	✓	✓	✓p		
<b>Media</b>					
REM (S)	✓p	✓	✓	✓	✓p
AVMS (M)	✓	✓	✓	✓	✓
<b>Energy</b>					
EA (S)	✓	✓	✓p		
ERC (M)	✓	✓	✓p		
<b>Environment protection</b>					
SEPA (S)	✓	✓	✓	✓	✓
DfE (M)	✓	✓	✓p	✓p	✓

There seem to be certain similarities when it comes to the individual elements of transparency themselves. Firstly, all agencies, with no exception, communicate the second element: transparency of rules. Thus, relevant laws, by-laws, guidelines, instructions and other documents regulating the market are all available on the agencies'

websites. Secondly, a majority of the observed agencies release their decisions (the first element of transparency) in a regular and consistent manner. The exceptions are the cases where only a small portion the overall number of decisions is made transparent, such as in the case of AEC, or when one type of decisions is published and other types are not, as on the websites of REM and RATEL.

Another similarity can be noticed in respect to the third element (transparency of conduct of the regulated subjects): most of the available information about the regulated subjects can be found in annual market analyses provided by the regulators. Though informative, such analyses usually do not contain full data about all regulatees. Besides, the internet presentations typically contain the standard details the citizens are interested in, pertaining primarily to the services' prices (gas, electricity, mobile phone prices, and so on). Overall, websites containing a section about the individual regulated subjects are rare. Role models in this regard are the media regulators – REM and AVMS, who offer individual sections for each of the media.

Furthermore, the agencies rarely communicate information about their own behaviour. What is often missing is the information on what kind of controls the agencies conduct and in what way, in their day-to-day enforcement (the fourth element of transparency).

The fifth element, the transparency of feedback, has mostly been confined to publishing judicial reviews of agency's decisions as well as the regulatees' comments on rules by the agency. Citizens' comments and complains, and experts' opinions, are not a common feature of the analysed websites.

In contrast to this relative trend of cross-element similarities, considerable variations can be observed in the exhibited transparency levels across the agencies. Some agencies feature almost the maximal (AVMS) or nearly maximal degrees of transparency (REM, Serbian

CfPC – with four out of the five elements present), whereas other have been found to communicate three elements or fewer (EA, ERC, Macedonian CfPC).

This diverse picture leads to several inferences and questions. First, the data illustrate the heuristic value of the five-pronged framework proposed. If the “traditional concepts” of transparency (Lodge 2004: 123-124) are used – those based on a legal-administrative understanding which focuses on a two-dimensional framework – we would not be able to pinpoint these major differences among the agencies. Thus, if the two-dimensional concept is applied - consisting solely of the transparency of decision-making and the transparency of rules – the two commissions for market competition (Serbian CfPC and Macedonian CfPC) would appear identical in their transparency regimes, whereas in practice, as the table above indicates, they have been substantively different. Moreover, the “ticked” elements (transparency of conduct, control, and feedback) – which some agencies enforced and others did not – are not some minor details noted for the sake of analytical acrobatics. On the contrary, they represent key elements in the logic of agency enforcement and profoundly affect the outcomes, interests and rights of the involved parties. In that sense, it is corroborated that the five-pronged concept of transparency brings a substantive value to the study of agency transparency.

The above description poses very important questions regarding the central concern of the study: Which factors explain the observed variations in transparency levels across the ten agencies? Why do some agencies communicate more and others less extensively? Do the theoretical accounts, set out in Part I of this study, contribute to the explanation of the transparency differences? If so, which are those accounts and in what way?

The following section seeks to provide answers to these questions.



## **Assessing variables and hypotheses**

The following table offers the constellation of the theorised independent variables, and the observed transparency levels as the dependant variable. For the full calculation of particular independent variables' values, please refer to Appendix.

**Table 14.** Constellation of the independent variables and the agencies' transparency extensiveness.

AGENCY	COUNTRY-LEVEL	SECTOR-LEVEL			AGENCY-LEVEL			OUTCOME
	Political competition	Liberalisation	Information cost	Media exposure <sup>72</sup>	Formal independence <sup>73</sup>	Age <sup>74</sup>	Resources <sup>75</sup>	Transparency extensiveness
RATEL (S) AEC (M)	High Low	Partial Considerable	Medium Medium	Medium High	0.70 0.79	10 10	122 137	123*5* 235*
CfPC (S) CfPC (M)	High Low	- -	Low Low	Medium Low	0.69 0.70	10 10	31 21	1234 123*
REM (S) AVMS (M)	High Low	Partial Partial	Low Low	High High	0.86 0.90	12 18	82 59	1*2345* 12345
EA (S) ERC (M)	High Low	Low Low	Medium Medium	Medium High	0.88 0.82	10 12	38 28	123* 123*
SEPA (S) DfE (M)	High Low	- -	High High	Low Low	Low Low	11 10	71 -	12345 123*4*5

<sup>72</sup> See Appendix III

<sup>73</sup> See Appendix II

<sup>74</sup> Source: Agencies' websites.

<sup>75</sup> Source: Agencies' websites.

“\*” – the agency implemented the given element to some extent (partially).

As a reminder, the research strategy employed in this study is based on cross-national and cross-sectorial comparisons and furthered by a cross-agency comparison. Thus, the questions for the start would be: Based on the table above, is it possible to identify distinct national or sectorial patterns? Do the differences in agency specifics (such as age, de-jure independence, media exposure, resources, de-jure transparency) correlate with the different outcomes, including those in transparency?

In what follows, we will begin with presenting the sectorial factors. *Information costs*, the first sector-level variable, does not feature as a plausible explanatory factor. Our hypothesis H6 stipulates that high information costs lead to a lower degree of transparency. Contrary to that, the empirical evidence shows that some agencies with high information costs (e.g. SEPA) have been extensively transparent, whereas certain agencies with low information cost (e.g. Macedonian CfPC) demonstrated an “abridged” form of transparency. Therefore, information costs do not offer explanatory power for the transparency level; correlation between various degrees of information costs has not been found either, nor has the predicted direction always been materialised.

One reason could be that, although some information are highly technical by their nature, they may also be very important for people’s well-being or may involve some sort of value judgement (Reiss, 2009: 116); therefore, they have to be shared with the broader public. Support for this explanation could, for example, be found in the Serbian Law on Environmental Protection, which lays down a general principle that “in realising their rights on healthy and safe environment, everyone has the right to be informed about the state of the environment”.<sup>76</sup>

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<sup>76</sup> Law on Environmental Protection (Official Gazette 135/04, 36/09, 36/09, 72/09, 43/11), from: [www.paragraf.rs/propisi/zakon\\_o\\_zastiti\\_zivotne\\_sredine.html](http://www.paragraf.rs/propisi/zakon_o_zastiti_zivotne_sredine.html)

Thus, even if information costs are high, the question of environmental protection is so important that the relevant authority must respect citizens' right to be informed about the on-ground realities.

*Liberalisation*, another sector-level variable, has been assumed to be positively correlated with the degree of agency transparency: the more liberalised the sector, the greater the agency/regulator transparency is (H7). Assessing the plausibility is difficult on a deterministic level; the empirical evidence suggests that are (rare) examples running against the logic of H7, but it also contains points to several examples that conform to the H7 expectations. AEC, an agency operating in the most liberalised sector in our sample (telecommunications in Macedonia), offers an example of a very limited transparency, which runs against the hypothesis' expectation. On the other hand, the agencies operating in sectors with a low degree of liberalisation (EA, ERC) have been little transparent, as the hypothesis predicts; likewise, those agencies where sectors have reached a certain stage of liberalisation (RATEL, REM, AVMS) have been considerably transparent agencies. This lends support to the hypothesis H7.

It is hard to say whether AEC represents an "odd man" out and whether, should the sample be bigger, significant correlation would appear between the degree of liberalisation and transparency. But, what can be made as a provisional conclusion is that the agencies in non-liberalised sectors seem to be less prone to extensive forms of transparency. The findings can also be interpreted in the following way: liberalisation may be a necessary, but not a sufficient factor for extensive transparency. In other words, high degrees of the agency transparency may not be possible without (certain level of) liberalisation; but also a prior liberalisation itself is not a guarantee that the agency will be transparent. This would mean in conjunction with liberalisation another factor (s) is needed to make the agency transparent. In conclusion, the variable "liberalisation" may be offering some, but not deterministic explanatory power.

On the other hand, the country-level variables may be offering greater explanatory power. If we divide the ten agencies along the national lines, into the group of Serbian and Macedonian ones, we might note differences in transparency between the two groups. The Serbian agencies appear as featuring more extensive transparency regimes. This pattern seems consistent, to a lesser or greater extent, along three out of five sectors. For example, Serbian CfPC is considerably more extensive than its Macedonian counterpart CfPC. Serbian RATEL and SEPA have expressed slightly more extensive forms of transparency compared to Macedonian AEC and DfE. The energy regulators (Serbian EA and Macedonian ERC) and the media regulators (AVMS and REM respectively) have been almost equally transparent. It cannot be argued that in the observed pairs of agencies, Serbian agencies are overwhelmingly more transparent than their Macedonian counterparts. However, the identified differences between the two countries may point to certain systemic differences.

These cross-national differences might indicate particular patterns of agency transparency in each country. In order to explain them, it would be necessary to focus on the country-level factors that differ between the two states. There are many similarities pertaining to the macro-political settings between Serbia and Macedonia, including their status as transition countries, external EU conditionality, common legal and administrative history, and the likes. Yet, one of the rare factors that substantively differs, as explained in Part I, is the nature of *political competition*. This factor is especially worth considering as it might be contributing to the different agency transparency levels in the two states. Serbia and Macedonia feature similar political systems (semi-presidential democracies), with similar legal-administrative legacies, cultures, externally driven agendas and similar challenges. Yet, they greatly differ when it comes to the degree of political competition. For example, Serbia has been characterised by an extremely fragmented party system from 2001 to 2014, with considerable uncertainty in each

parliamentary (and presidential) elections – except for the latest one in 2014.<sup>77</sup> On the other hand, the Macedonian realities have seen less uncertainty in this regard. Macedonian party system can be defined as a system with one predominant party (Aziri, 2013), that is VMRO-DPNE which has won all early parliamentary and presidential elections since 2006.<sup>78</sup> Almost a decade-long dominance of this party enabled greater concentration of power, not only in the political but also in other realms, economic being one of them.

Therefore, Hypothesis 8 - “greater degree of political competition leads to more extensive forms of transparency” - may offer a plausible explanation of the varying transparency levels. It is difficult to pinpoint the exact mechanisms implied by this hypothesis due to the lack of tangible data and the inability of gaining insight into the “black box” of the underlying process taking place between the political elite and the regulator. However, the systemic differences in the outcomes, i.e. levels of transparency that we observed across the two countries,

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<sup>77</sup> For full details about the previous elections in Serbia, please see the edition of the Centre for Free Elections and Democracy (CESID), from: [www.cesid.org/lt/articles/izdanja/oko-izbora/](http://www.cesid.org/lt/articles/izdanja/oko-izbora/)

<sup>78</sup> Note that the margin between the two largest parties in Macedonia in the election held between 2006 and 2014 has not necessarily been larger than the margin between the two largest parties in Serbia, but according to a widespread perception, and which is different than Serbia, the incumbent VMRO-DPNE had been expected in all elections to stay in power (with a safe-option of having one of the Albanian ethnic parties as a future coalition partners).

In the final project conference, organised in London by the mentoring institution Centre for Analysis of Risk and Regulation (CARR, LSE), Dr Jan Meyer-Sahling from the University of Nottingham pointed out that the situation in Serbia and Macedonia is in fact the reverse: Serbian party system is dominated by one strong party (SNS), whereas Macedonia moves towards a polarised two-block system. This is indeed true, however, the mentioned developments have unfolded only recently, while the agencies’ transparency we observed encompasses the work that had been performed before the changes of the party systems gained momentum.

together with other accompanying indicators, point to the need for further exploration of the politics-regulators nexus in less developed societies.

So far, one sector-level variable (liberalisation) and one country-level determinant (political competition) have showed some (limited) explanatory potential. Now we need to turn to the agency-level factors - age, resources, media exposure, de-jure independence, and de-jure transparency - in search for explanations of the variations in the outcome.

Contrary to the expectations of the existing literature, the agencies' *age* does not offer strong explanatory power. The agencies of similar age have exercised different levels of transparency. What is more, the analysis has shown that our first hypothesis (H1): "Older agencies tend to be less transparent", works in the opposite direction in the observed cases. For example, the most transparent agency in our sample is the oldest one (AVMS). However, the role of this agency-level variable should not be fully dismissed. If understood as a resource for institutional learning and a factor that contributes to further institutionalisation, age may be linked to the question of democratisation stage and wider macro-political changes that strongly influence the transparency agencies. In that sense, age may be coupled to national-level variables.

Next, the analysis suggests that bigger *resources* do not necessarily imply more transparency (H2). The agency with the small number of staff (Serbian CfPC) turns out to be highly transparent, while some other agencies with far more employees have communicated fewer elements of transparency (RATEL, AEC). However, despite the cross-agency variations in the amount of resources, the question is whether all of them can be qualified as lowly-resourced in general terms. If we compare RATEL with 137 employees and *British Telecoms* regulator

OFCOM<sup>79</sup> with 766 employees, or SEPA's 71 employees compared to 1500 employees of the Germany's main environmental protection agency,<sup>80</sup> we come to the conclusion that the agencies we analysed are endowed with a low level of resources (despite the potentially wider range of competencies and bigger markets in UK and Germany).<sup>81</sup> Although in our sample the agencies' resources did not prove to be a significant explanatory variable, it should be noted that their variation across the agencies may have not been as substantial. Instead, they had been a constraining factor for all agencies due to its "low" value.

*Media exposure* is the third agency-level variable. The assumption that more media scrutiny leads to more extensive transparency (H3) does not seem convincing in our sample, because some agencies which had been highly exposed in media, such as AEC and ERC, have shown the abridged forms of transparency. Unlike them, some highly exposed agencies have been highly transparent, such as REM and AVMS. Contrary to the expectations again, some agencies that have generated little media interest (SEPA) have been transparent to a significant extent. The lack of support for our media related hypothesis (H3) can potentially be explained by the fact that the media, in general, are not interested in all aspects of agencies' work but only in some of their activities. Sometimes, one feature of an agency's work attracts plenty of attention, while other features remain unnoticed in media reports. For example, energy regulators are usually under intense media scrutiny when it comes to energy prices and under far lesser scrutiny when other aspects of their work are at stake. This means that the pressure exerted by the media varies from one to another agency's task. This can reflect in lower levels of transparency regarding one set

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<sup>79</sup> OFCOM's website, from: [www.stakeholders.ofcom.org.uk/binaries/foi/2011/february/1-166510234Response.pdf](http://www.stakeholders.ofcom.org.uk/binaries/foi/2011/february/1-166510234Response.pdf)

<sup>80</sup> UBA's website, from: [www.umweltbundesamt.de/en/the-uba/](http://www.umweltbundesamt.de/en/the-uba/)

<sup>81</sup> This was a unanimous remark by all interviewees and also a widely shared public impression.



of issues as opposed to the issues expected to be more transparent due to higher media exposure. The regulators from Serbia and Macedonia, who attended the first round-table within this project on 20 December 2014 in Belgrade, pointed out that their work gets media attention either when a scandal breaks out or when issues of wider societal interests are on the table (e.g. electricity prices). Many of the vital issues in the agencies' domain, however, remain underreported by the media. This is probably the reason why media exposure did not show higher explanatory power in our study.

*De-jure independence* of the agencies, as measured by "Gilardi index", does not appear to shape the agencies' level of transparency either. In contrast to the assumption that higher de-jure independence leads to more extensive transparency (H4), some agencies with a very high index of de-jure independence (e.g. EA) have turned out less transparent than other agencies with extremely low de-facto independence (e.g. SEPA, which is not a non-majoritarian institution either). Literature shows that high de-jure independence does not necessarily translate into high de-facto independence (Hanretty and Koop, 2013: 212). Based on our study, this argument can be taken further. We argue that high de-jure independence does not determine any other aspect of agency enforcement either, including agency transparency.

Unlike other agency-level variables that we gauged in this study, striking correlation is established between the *de-jure transparency* and the de-facto transparency:

**Table 15.** De-jure transparency vs. de-facto transparency of the ten agencies  
(\* - the agency implemented the given element partially).

Agency	De-jure transparency	De-facto transparency	Difference between de-jure and de-facto transparency
RATEL	1*, 2, 3*, 5*	1*, 2, 3*, 5*	
AEC	1, 2, 3, 5*	2, 3, 5*	1
CfPC (S)	1, 2, 3*	1, 2, 3, 4	3*,4
CfPC (M)	1, 2, 3*	1, 2, 3*	
REM	1*, 2, 3*, 4, 5*	1*, 2, 3, 4, 5*	3*
AVMS	1,2,3,4, 5*	1,2,3,4,5	5*
EA	1,2, 3*	1,2,3*	
ERC	1,2,3*	1,2,3*	

All agencies have displayed very similar patterns of de-facto and de-jure transparency, with the exception of Serbian Commission for Protection of Competition (CfPC). In 2013, Serbian CfPC made a decision to publish a broader list of elements than it is required by the Law<sup>82</sup> which is why there is significant difference between its de-jure and de-facto transparency in favour of the de-facto transparency. However, generally, the above table shows that the agencies did not go far beyond the legal provisions in exercising their transparency. Striking congruence between the two sorts of transparency lends strong support for our Hypothesis 5, which suggests that de-jure transparency requirements determine – to a considerable degree – what the agencies will actually communicate through their websites.

One possible explanation for this strong correlation may be that the scarce resources prevent the agencies from publishing more elements than the law stipulates. Preparing and uploading information on the website is a time- and resource-consuming activity; even more so if it

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<sup>82</sup> CfPC's website, from: [www.kzk.gov.rs/kzk/wp-content/uploads/2013/05/144-2-2.pdf](http://www.kzk.gov.rs/kzk/wp-content/uploads/2013/05/144-2-2.pdf)

is undertaken on a daily basis and in the context of heavy workload. Under such settings, the opportunity costs of publishing data that are not part of the formal obligations may be very high. Moreover, the agency may prefer to use the resources for completing other important tasks. As Reiss put, “since agencies have limited resources, they would not want to spend more on accountability behaviours than they have to” (2009: 117).

A somewhat different view, however, would suggest that institutions in transition states are still dominated by the legal-administrative tradition, which places an emphasis on legally binding means of accountability. It would not be surprising if agencies in such societies see the principals as ultimate sources of authority, which then leads to a more “stiff” understanding of accountability that resembles what is theoretically articulated as vertical accountability. Where such an understanding prevails, little regard is given to “alternative” means of accountability, including non-obligatory aspects of transparency. In favour of this assumption is the opinion of a regulator’s representative who was interviewed in this project. When asked whether their agency publishes data concerning the control of regulatees’ conduct (the fourth element of transparency), the regulator’s representative replied:

“We control the conduct of the regulatees, but we do not make those information publicly available. We do not publish it on the website, because Article 67 of the Law on Market Competition explicitly enumerates what we must publish”. (a response from Macedonian CfPC’s member)

We will return to this point in the following section, while discussing in more detail the relationship between accountability and transparency. At this point, it should be noted that Hypothesis 5 seems to offer perhaps the most

plausible explanatory account of the observed patterns of transparency across the ten agencies.

Before we turn to the next section, we will briefly recap which of the hypothesised factors seem to have received empirical support as determinants of transparency regimes.

**Table 16:** Reviewing the hypotheses (“p”: the hypothesis finds only partial support).

Agency-level	
<b>Age:</b> Older agencies tend to be less extensive in their transparency (H1)	x
<b>Resources:</b> more resources, more extensive transparency (H2)	x
<b>Media exposure:</b> More media scrutiny leads to more extensive transparency (H3)	x
<b>De-jure independence:</b> The higher the de-jure independence, the more extensive the transparency (H4)	x
<b>De-jure transparency:</b> The more extensive de-jure transparency is, the more extensive de-facto transparency will be (H5)	✓
Sector-level	
<b>Information costs:</b> High information costs lead to a lower degree of transparency extensiveness (H6)	x
<b>Liberalisation:</b> Greater liberalisation implies more extensive IRA's transparency (H7)	✓p
Country-level	
<b>Political competition:</b> Greater degree of political competition leads to more extensive forms of transparency of the regulators/agencies (H8)	✓ p

To summarise, the level of liberalisation (sector-level variable) and party competition (country-level variable) may be offering some explanatory power in accounting for the differences in the agencies' patterns of transparency. It is, however, de-jure transparency (agency-level variable) that may have been the crucial driver behind the differences of the agencies' transparency.

As it usually goes, interdependencies of the hypothesised variables are not to be excluded either. For example, as agencies age and their society shifts towards a more developed one, the role of de-jure transparency may diminish. During this process, the agencies increasingly depart from the legal-administrative view of accountability, realising the need for having more extensive transparency than the legal framework obliges them to. To discover more about interacting or mediating effects among the variable, a broader sample would be needed. Yet, what needs to be emphasised is that sector-level and national-level factors, even if characterised as being of secondary importance to agency-level determinants, are by no means irrelevant and as such are worth taking into account in the future studies in this field.

## Part IV

### 11. From transparency to accountability

This study has shown that ten regulatory agencies in Serbia and Macedonia have exercised different levels of transparency in the time period between 2013 and 2014. De-jure transparency, as mentioned, has proved to be the most significant factor influencing agencies' factual transparency. In other words, the observed differences in agencies' transparency result from the different legal requirements in regard to the transparency enforcement. It is very encouraging that some laws, in both Serbia and Macedonia, prescribe high levels of transparency, (e.g. laws regulating legal status and jurisdictions of REM, AVMS, and SEPA). Still, this is not the case in all sectors; some agencies have shown abridged forms of transparency following the modest legal requirements in their fields (e.g. EA, CfPC).<sup>83</sup> This indicates that traditional concept of accountability still dominates agencies' enforcement in Serbia and Macedonia.

The traditional concept of accountability involves agencies' formal duty "to account for their actions to ministers, Parliament, and to courts" (Scott, 2000: 40). Consequently, the agencies follow legal requirements imposed by these political and judicial institutions, including requirements to publish certain data about their activities. Given the legacy of centralised political systems which leave little room for horizontal controls, it is not surprising that Serbian and Macedonian public bodies still consider accountability primarily as vertical, that is as accountability to central political intuitions (Scott, 2000: 40). In doing so, they may have overlooked the importance of

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<sup>83</sup> Positive exception in this respect is Serbian Commission for Market Competition who made a decision according to which it commits to publishing a broader list of information than required by the Law in order to increase its transparency.

horizontal accountability, that is “[the] accountability to citizens and stakeholders” (Meijer, 2014: 513). Furthermore, the mechanisms of horizontal control have been disregarded due to the initial lack of experience and knowledge of the wider public about independent agencies and the lack of media attention in regard to their work. Lastly, since precondition for horizontal accountability is transparency of agencies’ work, additional resources were needed to be invested in making agencies’ enforcement more transparent. Thus, the process of accelerated “agencification”, which was driven by the EU pressures (Musa and Kopric, 2011: 34), accompanied by a lack of experience and the media and citizens’ attention, significantly limited the potentials for enforcement of horizontal accountability.

As experience in developed countries has shown, it is necessary that the horizontal control, provided by citizens and stakeholders, is combined with the vertical control, if agencies’ accountability is about to be improved. Since the precondition for horizontal accountability is transparency of agencies’ work, agencies are supposed to “put more light” on their work. The existing empirical studies show that, generally speaking, transparency is indeed an effective mechanism for allowing media and stakeholders to make public authorities more accountable for their actions (Meijer, 2014: 516). For example, NGOs using information to point to government corruption in India, the Watergate Investigation, or the Dutch newspaper using data about school performance to call schools to account, are some of the cases listed in literature as evidence of how transparency can be used to make public institutions more accountable (Meijer, 2014: 516). Transparency of agencies’ enforcement is also an effective preventive measure. The fact that agencies know that someone watches them work, may force them to be more accountable for their actions (Meijer, 2014: 509).

## 12. Conclusion

While independent agencies had initially been seen “as a technocratic and ‘clean’ (i.e. non-political) device [...] capable of bringing to bear greater professional expertise than the judiciary [...] concerns were soon expressed with the growing discretionary powers of these administrative bodies” (Lodge and Stirton, 2010: 353). The question of agencies’ accountability and control of their enforcement, thus, has occupied a central place in the study of agencies and regulators. It has been suggested that one of the most effective mechanisms for improvement of agencies’ accountability is to encourage them to be more transparent. The idea behind this is Bentham’s notion that “the closer we are watched, the better we behave” (in Lodge and Stirton, 2010: 353).

Driven by these concerns, we sought to explore the transparency of ten agencies from Serbia and Macedonia, operating in five major regulated sectors. Our research questions have been: How transparent are the ten agencies and what explains their levels of transparency? The empirical analysis was based on the content of the ten agencies’ websites, observed from 2013 to 2014. The research findings have confirmed our expectation that, in a transitional context, agency transparency is not granted to be full, but certain “abridged forms” of transparency can be observed as well.

The agencies’ transparency has exhibited a considerable degree of variation, along the agency, sectorial and country lines. However, the distinct agency-level patterns suggest that national patterns (political competition) and the sector-level factors (liberalisation and information costs) do not offer superior explanation for the observed levels of transparency. Within the group of agency-level factors different levels of the agencies’ de-jure transparency seem to have facilitated different patterns of factual agency transparency. Although



not offering as encompassing explanation of the transparency levels as de-jure transparency seems to be, some sector- and nation-level factors may have had some effect on the agencies' transparency though. Specifically, political competition (nation-level) may have played out as an additional contributor (in Serbia) or detractor (in Macedonia) from agency transparency, and also a greater level of liberalisation seems to have further facilitated transparency in most, but not all of the analysed cases.

The findings suggest that traditional concepts of accountability and transparency still dominate the regulatory intuitions in Serbia and Macedonia. This means that the agencies mainly communicate the first and the second element of transparency (rules and decisions), which is consistent with the traditional legal-administrative understanding of transparency. Moreover, central political institutions are still the ultimate authorities of control of the agencies' enforcement, as well as the agencies' behaviour in regard to transparency. This confirms that the prevailing understanding of accountability is the one of vertical (hierarchical) process of control. This is not a surprising finding given the social and political context in the two countries.

In order to contribute to the debate about the agencies' transparency regimes, we suggest the following. The agencies should communicate more information about the conduct of regulated subjects, about the control proved by the agencies themselves, and the details concerning feedback, which are the third, fourth and fifth elements of transparency respectively. We also suggest the improvement of transparency regimes – either by means of legal changes or through voluntary activities of the agencies themselves. Lastly, we suggest that all interested social actors pay more attention and engage in discussions about the agencies and their activities.

In addition to its practical contribution, this study offers guidelines for the future research on agencies' transparency regimes. The present analysis has shown that the five-pronged framework could be a useful device for measuring the extensiveness of agencies' transparency. However, given the problem of "too many variables, too few cases" (Goggin, 1986) the upcoming examinations of agencies' transparency should use larger samples to test some of this study's findings. Future research of agency transparency may focus on the role of both political dimension, i.e. political competition (which may have been elsewhere termed "party institutionalisation"), as well as the economic dimension, i.e. liberalisation, in shaping regulators' conduct. One possible way forward in seeking systematic explanatory patterns of transparency regimes may include more complex models, which would rely upon mutual interactions of variables used in this study and some novel variables, too.

## Recommendations

The recommendations provided in this section are aimed at three types of actors in the regulatory area: (i) agencies, (ii) agencies' principals, (iii) external evaluators, (iv) stakeholders, citizens and media.

### Policy recommendations for agencies

(1) Agencies are advised to increase their de-facto transparency. Legal framework regulating the status of agencies in Serbia and Macedonia varies in terms of the levels of transparency it stipulates. For example, the laws regulating the work of REM, AVMS and SEPA prescribe high levels of transparency; however, this is not the case with EA or ERC. Where the laws do not require full transparency - as defined in the theoretical framework used in this study – the agencies can choose to improve their transparency voluntarily. A good example of that is Serbian Commission for Protection of Competition, which voluntarily made the decision to improve the transparency of its work.<sup>84</sup>

(2) The agencies should communicate more information about the conduct of the regulated subjects (third element of transparency). While most of the time rules and agencies' decisions are being published orderly and consistently on the agencies' websites, the information concerning the actual behaviour of the regulatees is limited. All agencies in our sample do provide some sort of information on this topic; however, this is little compared to the amount of non-shared information that agencies normally collect about individual actors. Moreover, other sorts of materials about regulatees' behaviour, besides market analyses, are rare on the agencies' websites. Although informative, market analyses usually do not contain full data about

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<sup>84</sup> CfPC's website, from: [www.kzk.gov.rs/kzk/wp-content/uploads/2013/05/144-2-2.pdf](http://www.kzk.gov.rs/kzk/wp-content/uploads/2013/05/144-2-2.pdf)

all regulatees. Some agencies, such as AEC, REM, AVMS, publish comparative overviews of the service quality in their sector. This kind of material, however, is not a common feature for all agencies and is not produced in a regular manner. Agencies can provide, in accordance with their jurisdictions, more analyses, reports, overviews and other similar materials containing detailed information about regulated subjects.

(3) Agencies could also communicate more information about the way they control regulated subjects (the fourth element of transparency). The agencies with the mandate to impose measures against regulatees who are violating the law, such as REM, AVMS and CfPC, publish their decisions regularly. However, the major part of agencies in our sample does not provide any sort of reports or other documents containing details about the way they actually conduct the control of regulated subjects. Legal basis and general procedures for the control are explained on their websites, but the specific reports are missing. In that sense, it is necessary that the agencies put more light on this aspect of their work. More details about the control of regulated subjects in the form of reports or decisions would be useful. A good example in this regard is AVMS, as they regularly publish reports containing information about the control of every regulated subject in their sector.

(4) Agencies could communicate more information about the feedback they receive (the fifth element of our transparency framework). Most of the agencies publish the regulated subjects' comments in regard to the regulatory rules. They also publish judicial decisions about complaints on agency's decisions. Nevertheless, citizens' complaints and objections, as well as experts' opinions are rarely published. Based on their annual reports, the agencies receive hundreds of citizens' complaints of all sorts. For example, Serbian EA received

201 complaints in 2014,<sup>85</sup> RATEL received 869 complaints in 2012.<sup>86</sup> However, most of the agencies do not publish these complaints, neither individually nor in the form of reports. Such publications would be useful as they often contain information about the most common citizens' problems, about the main market actors that citizens complain about, citizens' concerns in regard to the agency's work and so on. If individual complaints cannot be published due to, for example, data protection principles, then agencies should provide reports containing overviews of all complains. A good example, in that sense, is British regulator for telecommunications OFCOM who provides reports with an overview of all individual complains, citizens' questions and OFCOM's answers to those questions and so on.<sup>87</sup> Publishing feedback information improves the quality of services of the agency, on the one hand, and of the regulated subjects on the other. Also, expert analyses, studies and opinions should be produced and published in greater numbers. RATEL's website can serve as a good example in this respect, as they regularly publish reports by independent auditors about telecommunication companies' finances.

(5) As for data presentation on the agencies' websites, there is still room for improvement. The transparency of website is not only about the content of the uploaded materials. What matters, too, is the way in which the data is presented, from the overall layout of a website, to adequate organisation of material, user-friendly options

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<sup>85</sup> EA's Annual report for 2014, from: [www.aers.rs/Files/Izvestaji/Godisnji/Izvestaj%20Agencije%202014.pdf](http://www.aers.rs/Files/Izvestaji/Godisnji/Izvestaj%20Agencije%202014.pdf)

<sup>86</sup> RATEL's Annual report for 2012, from: [www.ratel.rs/upload/documents/O\\_Ratel/Godisnji\\_izvestaj/RATEL%20IZVESTAJ%20ZA%202012.pdf](http://www.ratel.rs/upload/documents/O_Ratel/Godisnji_izvestaj/RATEL%20IZVESTAJ%20ZA%202012.pdf)

<sup>87</sup> OFCOM: *Telecoms Complaint Bulletin*, from: [www.stakeholders.ofcom.org.uk/enforcement/telecoms-complaints-bulletin/](http://www.stakeholders.ofcom.org.uk/enforcement/telecoms-complaints-bulletin/) and [www.stakeholders.ofcom.org.uk/enforcement/audience-complaints/](http://www.stakeholders.ofcom.org.uk/enforcement/audience-complaints/)

and other web design solutions.<sup>88</sup> Serbian and Macedonian agencies' websites usually do not provide summaries of all websites' sections; usually professional jargons and highly technical language is used. We recommend the agencies to provide short explanations and guidelines about the segments of their internet presentations and to use a language more comprehensible to a wide audience. As a role model in that sense, we single out the price calculator option presented on the energy regulators' websites in both countries. There are several other technical details that should be improved, too. For example, the agencies' annual reports should be uploaded in a searchable format, and not as scanned documents; also, all websites should have the „search“ option.

(6) We also suggest that the agencies improve their communication with the media, watchdog organisations and other relevant groups, such as consumer groups, as this can increase the agencies' visibility in public.

### **Policy recommendations for the agencies' principals**

As the study shows, legal provisions significantly influenced the agencies' de-facto transparency. Therefore, Serbian and Macedonian parliaments and governments should consider increasing the agencies' de-jure transparency levels by making changes to the existing legal framework. Yet, since preparing and releasing a broader set of data can be resource- and time-consuming, the legislators should consider increasing the agency's resources as well. Besides, public hearings and parliamentary debates concerning the agencies' annual reports should

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<sup>88</sup> As Professor Martin Lodge, from the London School of Economics and Political Science, noted in a project conference in Belgrade (May 2015): "Everything that cannot be arrived at [on the regulator's website] with two or three mouse clicks, with a user-friendly navigation, is virtually useless" [from the perspective of website visitors).

be used, as a good opportunity, for drawing attention to the question of transparency.<sup>89</sup> Lastly, MPs in both countries could make use of their public profile to inform the citizens and stakeholders about agencies' work.

### **Policy recommendations for external evaluators**

Being the main promoter of the regulatory reform in Serbia and Macedonia, the European Union should put more emphasis on the question of agencies' transparency, as this issue is rarely mentioned in the EU progress reports. Similarly, the regulatory authorities on the EU level, as well as other international organisations and bodies, could provide guidelines concerning IRAs accountability and transparency. Their experience and expertise, in form of best practices, would be very helpful.

### **Policy recommendations for stakeholders, citizens and media**

This study was primarily focused on the tasks and possibilities of the agencies to increase the amount and quality of data that they communicate with broader public. However, improvement of horizontal accountability is not a unidirectional process, so other social actors need to be involved, too. Thus, the media, citizens, watchdogs, scholars and other stakeholders in Serbia and Macedonia should devote more attention to the work of these agencies. By giving their inputs into the process of regulation, these actors will exercise horizontal accountability.

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<sup>89</sup> Note that rarely, if ever, were annual regulators' reports discussed in both Serbian and Macedonian Parliament.

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## Appendix I

### Acronyms

#### Serbia

RATEL	Regulatorna agencija za elektronske telekomunikacije i poštanske usluge ( <i>Regulatory Agency for Electronic Communications and Postal Services</i> )
CfPC	Komisija za zaštitu konkurencije ( <i>Commission for Protection of Competition</i> )
REM	Regulatorno telo za elektronske medije ( <i>Regulatory Authority of Electronic Media</i> )
EA	Agencija za energetiku ( <i>Energy Agency</i> )
SEPA	Agencija za zaštitu životne sredine ( <i>Agency for Environment Protection</i> )

#### Macedonia

AEC	Agencija za elektronski komunikacii ( <i>Agency for Electronic Communications</i> )
CfPC	Komisija za zaštita na konkurencijata ( <i>Commission for Protection of Competition</i> )
AVMS	Agencija za audio i audiovizuelni medijumski uslugi ( <i>Agency for Audio and Audio-Visual Media Services</i> )
ERC	Regulator na komisija za energetika ( <i>Energy Regulatory Commission</i> )
DfE	Uprava za životna sredina ( <i>Directorate for Environment</i> )

## Appendix II

Table 17. Formal independence of the agencies

Index components	RATEL	AEC	GrPC (S)	GrPC (M)	REM	AVMS	EA	ERC	SEPA	DfE (M)
<i>Agency head</i>										
Term length	0.60	0.60	0.60	0.60	0.60	0.80	0.80	0.60		
Appointed by	1.00	1.00	0.50	0.50	1.00	1.00	0.50	0.67		
Dismissal rationale	0.67	0.67	0.67	0.67	0.67	0.67	0.67	0.67		
Head's multiple posts	0.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00		
Is appointment renewable?	0.00	0.50	0.00	0.00	0.50	1.00	0.50	1.00		
Is independence formally stated?	0.00	0.00	1.00	0.00	1.00	0.00	1.00	1.00		
	<b>0.38</b>	<b>0.63</b>	<b>0.63</b>	<b>0.46</b>	<b>0.78</b>	<b>0.74</b>	<b>0.74</b>	<b>0.82</b>		
<i>Management Board</i>										
Term length	0.60	0.60	0.60	0.60	0.60	0.80	0.80	0.60		
Appointed by	0.75	0.50	0.50	0.50	0.50	0.75	0.50	0.67		
Dismissal rationale	0.67	0.67	0.67	0.67	0.67	0.67	0.67	0.67		
Multiple posts	0.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00		
Is appointment renewable?	0.50	0.50	0.00	0.00	0.50	1.00	0.50	0.50		
Is independence a formal requirement for appointment?	0.00	0.00	1.00	0.00	1.00	1.00	1.00	0.00		
	<b>0.42</b>	<b>0.51</b>	<b>0.63</b>	<b>0.46</b>	<b>0.71</b>	<b>0.87</b>	<b>0.74</b>	<b>0.57</b>		
<i>Relationship with government and parliament</i>										
Is independence formally stated?	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00		
Obligation toward government	0.67	1.00	0.33	1.00	1.00	1.00	1.00	0.67		
Obligation toward parliament	0.67	0.67	0.67	0.67	0.67	0.67	0.67	0.67		
Who can overturn decisions?	1.00	1.00	0.67	1.00	1.00	1.00	1.00	1.00		
	<b>0.83</b>	<b>0.92</b>	<b>0.67</b>	<b>0.92</b>	<b>0.91</b>	<b>0.92</b>	<b>0.92</b>	<b>0.83</b>		
<i>Financial and organisational autonomy</i>										
Source of budget	1.00	1.00	1.00	0.00	1.00	1.00	1.00	1.00		
How is the budget controlled?	0.67	0.67	0.33	1.00	0.67	0.67	1.00	0.67		
Who control personnel policy?	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00		
	<b>0.89</b>	<b>0.89</b>	<b>0.77</b>	<b>0.67</b>	<b>0.89</b>	<b>0.89</b>	<b>1.00</b>	<b>0.89</b>		
<i>Regulatory competencies</i>										
Who regulates the field?	1.00	1.00	0.75	1.00	1.00	1.00	1.00	1.00		
	<b>0.70</b>	<b>0.79</b>	<b>0.69</b>	<b>0.70</b>	<b>0.86</b>	<b>0.90</b>	<b>0.88</b>	<b>0.82</b>		
<b>Index of de-jure independence</b>									<b>Low</b>	<b>Low</b>

**Source:** Relevant laws regulating the legal status of the ten agencies.

**Explanation:** The table shows how the de-jure independence index is calculated for each of the agencies (apart from the two environmental agencies which do not enjoy the status of non-majoritarian institutions and as such enjoy a low degree of formal independence by definition). The left column contains components of the “Gibaldi index” (2002) with its constituent elements; points are assigned for each of these elements according to the options listed in the original formula.

## Appendix III

### Media exposure

**Table 18.** The following media count shows the frequency of an agency's appearance in the media on an annual basis (2010-2014).  
 "AV": the average for the four years; "Indexed": adjusted values (divided by 1.49) for the Macedonian agencies, as explained below.

	2014	2013	2012	2011	2010	AV	Indexed	Exposure
<b>RATEL</b>	98	111	67	87	48	82.2	82.2	Medium
<b>AEC</b>	247	488	333	185	75	265	177.8	High
<b>CfPC (S)</b>	77	60	72	166	105	96	96	Medium
<b>CfPC (M)</b>	52	16	53	24	22	33.4	22.4	Low
<b>REM</b>	294	368	282	166	84	238.8	238.8	High
<b>AVMS</b>	198	428	632	567	142	393.4	265	High
<b>EA</b>	145	145	68	89	27	94.8	94.8	Medium
<b>ERC</b>	1036	1108	957	520	249	774	519	High
<b>SEPA</b>	57	20	28	28	8	28.2	28.2	Low
<b>DfE</b>	1	9	9	2	7	5.6	3.76	Low

**Sources** Macedonian: "Time" search engines for the media sources ([www.time.mk](http://www.time.mk) - for Macedonia, and [www.time.rs](http://www.time.rs) - for Serbia)

**Index:** We selected four major international events in 2014, which are assumed to have been covered with similar degrees of interest by both Serbian and Macedonian media. We measured the proportion of appearance of these events when searched on the Macedonian press-clipping service, compared to the Serbian press-clipping. Surprisingly, the Macedonian media tend to produce more search results than the Serbian media for events that are assumed to generate similar degrees of interest in the two countries. The average value of these four proportions is 1.49, in favour of the Macedonian media. To make the media exposure between the two countries comparable, we divided the scores obtained for the Macedonian agencies by 1.49 (presented in the “indexed” column in the table above).

<b>Ukraine:</b> 38665 (M) vs. 27605 (S)	proportion: 1.4
<b>Malaysia:</b> 5559 vs. 2912 (for Macedonia)	proportion: 1.9
<b>Sochi:</b> 3757 (M) vs. 2688 (S)	proportion: 1.39
<b>Ebola:</b> 4855 (M) vs. 3735 (S)	proportion: 1.29

**Average proportion (used for „indexation“ between the two countries): 1.49**

## Appendix IV

**Table 19. Coding of the de-facto transparency of the agencies.**

Five elements of transparency	Question of interest	What sorts of materials indicate presence of the given element	Partial presence
1. Decision-making process	Are decisions made known to the public?	All decisions the agency makes, published in full.	Release of a portion, but not all decisions.
2. Rules	Are the rules of the game clear and spelled out by the regulator?	All rules which the agencies apply in a given competence	Selective publishing or rules.
3. Conduct of the regulated subjects	Can the public get information about the regulatees' conduct?	Detailed reports, analyses, databases, decisions containing relevant information about particular regulatees' conduct, information about ownership structure, quality, cost of services of individual regulated entities, and other information relevant for a given sector. Registers and statistics are not taken as evidence of existence of the third element of transparency.	It is possible to find certain information about regulated entities, yet neither are the full information collected by the regulator available nor are all regulated entities within the given jurisdiction covered.
4. Regulator's conduct	Can the public find out more about the work of the regulator herself?	Detailed reports on conducted monitoring, reports of market inspections, decisions containing measures against regulated entities who did not act in accordance with the law, the steps the agencies were taking to control individual entities and so forth. General rules and norms of control are not taken as evidence of existence of the fourth element of transparency; rather, only information about control exercised in specific cases is regarded as sufficient evidence for coding the fourth element of transparency as present.	It is possible to find certain information about how the agency monitors and controls specific cases, but the full information which about the conducted controls and inspections is not publicly available.
5. Feedback	Does the public have access to the content of the regulatees' or other stakeholders' feedback to the regulator's decisions?	Information about who submitted feedback: (1) citizens; (2) regulated entities; (3) experts; (4) courts; (5) other stakeholders. Two sorts of feedback in relation to the object of feedback are: (1) feedback on the regulator's behaviour; (2) feedback on regulated entities' behaviour.	Partial presence of information who provided feedback and/or who the object of this feedback is. For instance, disclosing feedback about the regulator's, while withholding details about the regulatee's conduct.

**Explanation:** De-facto transparency of the ten agencies was measured by looking at what these agencies published on their websites. For each element to be marked as present relevant data need to be published in full, rather than partially. The coding results, contained in Part II of the publication, are displayed through 2x2 tables which help review which elements of transparency have been exercised, from one jurisdiction to another

## **Appendix V**

### **De-jure transparency of the ten agencies**

De-jure transparency was measured by looking at the legal provisions that define what kind of information the agency has to publish on its website. All provisions that explicitly spell out this sort of obligation were taken into account. Submission of annual reports and financial plans, as well as decisions concerning public competitions, are not included in the tables below. The same framework that was used for de-facto transparency is applied for de-jure transparency as well.

The two environment protection agencies (SEPA, DfE) are not analysed here because the legislation regulating their work does not contain particular provision that define what levels of transparency they should meet.

The tables below present how the de-jure transparency of agency is worked out.

**Table 20.** Serbian RATEL's de-jure transparency.

De-jure transparency	Transparency extensiveness
- Session proceedings and decisions of the Managing Board	1*
- By-laws and other regulation	2
- Registers and databases	3*
- Comparative overviews of quality and price of the public services offered	3*
- Statistical data and other indicators of development of electronic communications	3*
- Analysis of relevant markets	3*
- Experts' opinions, studies and analyses ordered by the Agency	5*
- Program of public consultation and opinions on the subject of public consultation	5*
<b>Overall de-jure transparency of the agency</b>	<b>1*, 2, 3*, 5*</b>

**Source:** Law on Electronic Communications (Official Gazette 44/10); available from: [www.ratel.rs/upload/documents/Zakon/Law%20on%20Electronic%20Communications%20rev%20June%202014.pdf](http://www.ratel.rs/upload/documents/Zakon/Law%20on%20Electronic%20Communications%20rev%20June%202014.pdf)



**Table 21. Macedonian AEC's de-jure transparency.**

De-jure transparency	Transparency extensiveness
- The agenda, minutes from the Commission's meetings and the decisions taken	1
- Approval for the use of radio frequencies	1*
- Decisions about the right to use number	1*
- Decisions on disputes	1* and 5*
- By-laws and other regulation	2
- Rules and standards	2
- Quarterly and annual reports analysing the market	3*
- Information about operators commanding significant market power	3*
- Costs for universal services	3*
- Registers	3*
- Completed procedures of supervision	4*
- Comments and opinions received by the participants in public meetings and debates	5*
<b>Overall de-jure transparency</b>	<b>1, 2, 3, 5*</b>

**Source:** Law on Electronic Communications (Official Gazette 39/14); available from: [www.mioa.gov.mk/files/pdf/dokument/zakon/zakon%20za%20elektronskite%20komunikacii\\_2014.pdf](http://www.mioa.gov.mk/files/pdf/dokument/zakon/zakon%20za%20elektronskite%20komunikacii_2014.pdf)

**Table 22.** Serbian CfPC's de-jure transparency.

De-jure transparency	Transparency extensiveness
- Decisions about infringement of competition	1 and 3*
- Initiation of the ex officio procedure	1 and 3*
- Law	2
- Sectorial analyses	3*
- Announcement of submission of requests for suspension of procedure	3*
<b>Overall de-jure transparency of the agency</b>	<b>1, 2, 3*</b>

**Source:** Law on Protection of Competition (Official Gazette 51/09 and 95/13); available from: [www.kzk.org.rs/kzk/wp-content/uploads/2011/07/ZAKON-O-ZASTITI-KONKURENCIJE.pdf](http://www.kzk.org.rs/kzk/wp-content/uploads/2011/07/ZAKON-O-ZASTITI-KONKURENCIJE.pdf) and [www.kzk.org.rs/kzk/wp-content/uploads/2014/01/ZK.pdf](http://www.kzk.org.rs/kzk/wp-content/uploads/2014/01/ZK.pdf)

**Table 23.** Macedonian CfPC's de-jure transparency.

De-jure transparency	Transparency extensiveness
- By-laws	2
- Commission's decisions	1 and 3*
- The judgments (court decisions)	5*
- Notification of concentrations	1 and 3*
- Announcement about submission of requests for suspension of the procedure	3*
<b>Overall de-jure transparency of the agency</b>	<b>1, 2, 3*</b>

**Source:** Law on Protection of Competition (Official Gazette 145/10 and 136/11); available from: [www.kzk.gov.mk/images/ZakonZaZastitaNaKonkSlves%20145%2010.pdf](http://www.kzk.gov.mk/images/ZakonZaZastitaNaKonkSlves%20145%2010.pdf) and [www.kzk.gov.mk/images/ZakonZaZastitaNaKonkSlves%20136%2011.pdf](http://www.kzk.gov.mk/images/ZakonZaZastitaNaKonkSlves%20136%2011.pdf)

**Table 24.** Serbian REM's de-jure transparency.

De-jure transparency	Transparency extensiveness
- Minutes from the session	1 *
- Decisions which impose measures	1* and 4
- List of citizens with issues grant for emitting	1 *
- Decisions concerning complaints filed by legal entities and individuals	1*and 5 *
- Rules, guidelines, recommendations	2
- Registry of media services	3*
- Warning given for distorting media pluralism	4*
- Judgments in administrative disputes initiated against decisions of the regulator	5*
- Public debates along with the comments and opinions and the Agency's responses to them	5*
- Experts' opinions, studies and analyses	5*
<b>Overall de-jure transparency of the agency</b>	<b>1*, 2, 3*, 4, 5</b>

**Source:** Law on Broadcasting (Official Gazette 83/14); available from: [www.rra.org.rs/uploads/useruploads/PDF/5605-Zakon%20o%20elektronskim%20medijima.pdf](http://www.rra.org.rs/uploads/useruploads/PDF/5605-Zakon%20o%20elektronskim%20medijima.pdf)

**Table 25. Macedonian AVMS's de-jure transparency.**

De-jure transparency	Transparency extensiveness
- Sessions' summaries, minutes and decisions made thereof	1
- Decisions on granting or revoking licences for radio and television broadcasting	1*
- By-laws	2
- Programme concepts of radio broadcasters	3*
- Polls and analyses about market development	3*
- Registers	3*
- Measures taken against those who violate regulations	4*
- Comments and opinions received by the participants in public meetings and debates	5*
<b>Overall de-jure transparency of the agency</b>	<b>1, 2, 3, 4, 5*</b>

**Source:** Law on Audio and Audio-Visual Media Services (Official Gazette 184/13, 13/14, 44/14, 101/14, 132/14); available from: [www.avmu.mk/images/Zakon\\_z\\_a\\_audio\\_i\\_audiovizuelni\\_medijumski\\_uslugi\\_mkd\\_1.pdf](http://www.avmu.mk/images/Zakon_z_a_audio_i_audiovizuelni_medijumski_uslugi_mkd_1.pdf)

**Table 26. Serbian EA's de-jure transparency.**

De-jure transparency	Transparency extensiveness
- Regulated prices	1* and 3*
- Decision on the prices of systematic services	1*
- Rules	2
<b>Overall de-jure transparency of the agency</b>	<b>1*, 2, 3*</b>

**Source:** Energy Law (Official Gazette 57/11); available from: [www.aers.rs/FILES/Zakoni/Zakon%20o%20energetici\\_57-11.pdf](http://www.aers.rs/FILES/Zakoni/Zakon%20o%20energetici_57-11.pdf)

**Table 27.** Macedonian ERC's de-jure transparency.

De-jure transparency	Transparency extensiveness
- Decisions in the domain of its competence	1
- Decision on Tariff Systems and prices	1* and 3*
- Decision on initiating the procedure for licence revocation	1*
- Rules	2
- Guidelines	2*
- Registers	3*
<b>Overall de-jure transparency of the agency</b>	<b>1, 2, 3*</b>

**Source:** Energy Law (Official Gazette 16/11); available from: [www.erc.org.mk/odluki/SLUZ.VES.BR.16-10.02.2011-ZAKON%20ZA%20ENERGETIKA.pdf](http://www.erc.org.mk/odluki/SLUZ.VES.BR.16-10.02.2011-ZAKON%20ZA%20ENERGETIKA.pdf)

