

NON-DIGITALISATION OF THE RADIO BROADCASTING IN BULGARIA

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The digitisation of the transmission of radio and television signals is not only a technical and technological process – it is also one with many social and cultural dimensions. Media are cultural services, and offering a greater variety of media content to society is an important democratic value. Access to quality media content is part of the problem of access of the audience to cultural and creative products, so it is essential and necessary to provide such access free of charge to the end user/ recipient, without payment to the media distribution medium, in as much as possible a large degree.

The digitisation of the broadcast and, respectively, the transfer of media content is such a shortcut to the free reception and offering of media services as creators of cultural products.

Unlike the digitisation of the television broadcasting in Bulgaria, there is not much talk or action about that of the radio broadcasting. The digitalization of the radio would shift the layers of the market of radio services, as new players will enter, with new technological methods, and this will multiply radioprogram offers.

Against this background, little has been done at the institutional level in the field of radio spectrum management for the use of terrestrial networks for digital broadcasting of radio signals. And in fact, there are interested parties who want to make digital radio in our country - including the national public provider Bulgarian National Radio, and they systematically express their business intentions.

SOCIAL ASPECTS OF DIGITALISATION OF MEDIA CONTENT, INCLUDING RADIOBROADCASTING

The transition from analogue to digital terrestrial distribution of media content provides new opportunities for users by:

- providing access to digital content to the general public;
- increases consumer choice;
- creates an opportunity to increase the number of Bulgarian programs with a national scope;

- greater variety of television and radio programs; better picture and sound quality and more reliable reception;
- portable and mobile reception; a richer palette of information services - news, sports, „teletext“, exchange rates, competition results, electronic program guides, Internet and e-mail, e-commerce, electronic banking operations;
- educational services, e-government, e-health;
- video on demand, interactive games;
- content enrichment with audio description, audio subtitles, specialized subtitles and sign language for the disabled.

Market overview

The European Media Industry Outlook builds on the analysis of the Media and Audiovisual Action Plan (MAAP) and provides more comprehensive and up-to-date data. **The market analysis shows that the three main media subsectors compete to a large extent on the same attention economy market.** Media companies seek to capture and monetise people's time. Growth is mostly driven by online players and the adoption of new distribution methods, while many traditional players struggle to adapt. In this context, the EU industries face growing competition from non-EU players (e.g. social media platforms, US-based streamers, gaming companies in China and Japan), which are present across sectors and value chains. In the meantime, consumers continue to shift online to consume more content on digital media, streaming or gaming platforms, although TV remains the preferred medium for most Europeans to watch films and series or to consume news.¹

It is the responsibility of EU Member States to cooperate with each other and with the European Commission in the strategic planning and coordination of spectrum policy, avoiding harmful interference, through the Spectrum Policy Group (RSPG). The RSPG is a high-level advisory group assisting the Commission in the development of radio spectrum policy. The Group contributes to the development of a Radio Spectrum Policy in the EU taking into account not only technical parameters, but also economic, political, cultural, strategic, health and social considerations. The high-level advisory group also considers the various potentially conflicting needs of radio spectrum users with a view to ensuring that a fair, non-discriminatory and proportionate balance is achieved. The RSPG can also be requested by the European Parliament and/or the Council, in addition to the Commission, to issue an opinion or write a report on specific Radio Spectrum Policy issues relating to electronic communications.²

The Commission proposed a common EU position for negotiations at the World Radiocommunication Conference 2023. On 4 May, the Commission adopted its proposal for a Council Decision establishing the EU's position on issues related to spectrum use to be discussed at the World Radiocommunication Conference 2023 of

¹ The European Media Industry Outlook, Official website of the European Commission, Retrieved from: <https://digital-strategy.ec.europa.eu/en/library/european-media-industry-outlook>;

² The Radio spectrum policy group, Official website of the European Commission, Retrieved from: The Radio spectrum policy group | Shaping Europe's digital future (europa.eu);

the International Telecommunication Union (ITU). A common EU Member States' position ensures that EU citizens and businesses have smooth access to services such as **5G, TV broadcasting and events**, as well as the **the Galileo global radio navigation system** and **maritime radio communications** without cross-border interferences. **Radio spectrum is the key resource that enables all wireless communications and it is the fundamental prerequisite for innovation in Europe's technology, industry and public services. Spectrum is also at the base of a booming global market for wireless connectivity and assigning spectrum for particular uses can impact manufacturing, operators, users and the environment.**

The Commission works with Member States to find a balanced position, so European countries can voice a common stance on spectrum matters and defend common EU objectives.

International negotiations on radio spectrum at the **World Radiocommunication Conference 2023 (WRC-23)** take place every four years with the participation of some 193 ITU Member States and 3000 delegates. The international forum aims to provide options for harmonised uses of radio spectrum across regions and globally to protect against radio interference. The resulting amendments to the ITU Radio Regulations (an international treaty) ensure cross-border functioning of different radio services which also underpin the EU's digital and green transition. It is now up to the Council to finalise the common EU position and to adopt its Decision in time for WRC-23, which will take place from November to December 2023.³

WHY RADIOBROADCASTING IS A CHALLENGE?

The introduction of digital television broadcasting has led to significantly higher efficiency in the use of radio frequency spectrum due to the possibility of distributing several television programs using the same channel. In this regard, it is planned to release a frequency resource after the transition to terrestrial digital radio broadcasting, the so-called digital dividend. The European Commission's Radio Spectrum Policy Group (RSPG) defines the digital dividend as a frequency resource in the VHF (III band: 174-230 MHz) and UHF (IV and V bands: 470-862 MHz) bands in excess of that required to bring of existing analogue television services into digital. This is the volume released from the radio spectrum as a result of the switch from analogue to digital broadcasting.

When television broadcasters switch from analog-only platforms to digital platforms, some of the electromagnetic spectrum is freed up because digital television needs less spectrum than analogue television. It provides a unique opportunity to meet the huge public demand for new wireless communications services, allowing broadcasters to significantly expand their services while providing adequate spectrum for social and economic purposes. Applications in

³ Radio spectrum: the Commission proposes a common EU position for negotiations at the World Radiocommunication Conference 2023, Official website of the European Commission, Retrieved from: <https://digital-strategy.ec.europa.eu/en/news/radio-spectrum-commission-proposes-common-eu-position-negotiations-world-radiocommunication>

the latter category will include broadband applications to help bridge the „digital dividend“.

Potential uses of the digital dividend

They are at least in two directions. The first is about radio broadcasting: more programs; improved coverage; local television and radio broadcasting; high-definition television broadcasting; mobile or portable reception; data broadcasting. The second is for electronic communications: mobile telephony/broadband services; broadband access for sparsely populated areas; ancillary activities in radio broadcasting; low-power devices; the protection of the population during disasters and accidents.

Bulgaria made some efforts to digitalize the television broadcasting.

While the Plan for the introduction of digital terrestrial television broadcasting (DVB-T) in Republic of Bulgaria has existed since 2012, the state policy and regulatory framework is scarce in the field of radio broadcasting.⁴ And the reason that it is so important to have much more variety of radio programmes is – the radio frequency spectrum is state-owned and it should be efficiently regulated and exploited.

RADIO FREQUENCY SPECTRUM MANAGEMENT AND STEERING IN BULGARIA

Art. 18, para. 3 of the Constitution of the Republic of Bulgaria stipulates that „The State exercises sovereign rights over the radio frequency spectrum and the positions of the geostationary orbit determined for the Republic of Bulgaria by international agreements“. The state holds the sovereign power over the frequency spectrum and positions of the geostationary orbit, and only it can determine, in compliance with international agreements, how this spectrum and positions will be allocated and used for civil, defence and security needs.

Only after the determination of these general conditions by the state, the regulatory authority has the opportunity to rule on requests to issue licenses for the use of the frequency spectrum for civil needs by individuals and legal entities, within the guidelines specified by the state.

EU DIRECTIVE 2018/1972 of the European Parliament and of the Council from 11 December 2018 established a European Electronic Communications Code (recast)

Competition rules alone may not always be sufficient to ensure cultural diversity and media pluralism in the area of digital television. Technological and market developments make it necessary to review obligations to provide conditional access

⁴ DECISION 494 of August, 22, 2013 on updating the Plan for the introduction of terrestrial digital television broadcasting (DVB-T) in the Republic of Bulgaria, adopted by Decision 604 of the Council of Ministers in 2012, Retrieved from The State Gazette, official edition of the Republic of Bulgaria, <https://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=78459>

on fair, reasonable and non-discriminatory terms on a regular basis, by a Member State for its national market, in particular to determine whether it is justified to extend obligations to Electronic Program Guides (EPG) - a software application that provides a list of television programs that are scheduled to be broadcast on various channels, and (APIs). APIs allow developers to sync data between multiple platforms and can facilitate communication among the various microservices in web applications.

According to the Electronic Communications Act in Bulgaria the state management of electronic communications is carried out by the Council of Ministers, the National Radio Frequency Spectrum Council and by the Minister of Transport and Communications. The Government, on the proposal of the National Radio Spectrum Council, adopts a policy on radio frequency spectrum planning and allocation. The Council of Ministers, on the proposal of the Council on the National Radio Frequency Spectrum, adopts the National Plan for Allocation of the Radio Frequency Spectrum.

The Electronic Communications Act stipulates that National Radio Spectrum Council is launched. According to art. 9. The Council on the National Radio Frequency Spectrum is an advisory and coordinating body to the Council of Ministers, which prepares and proposes for adoption by the Council of Ministers a state policy on the planning and allocation of the radio frequency spectrum and carries out its implementation. The Council prepares a draft of the National Plan for the allocation of the radio frequency spectrum. The plan is prepared and updated in accordance with the policy of the European Union, the documents of international organizations, as well as according to the proposals of the departments and services concerned with the aim of harmonized and efficient use of the radio frequency spectrum. The radio frequency spectrum is allocated to radio frequencies, radio frequency bands and radio services for civil needs, for the needs of state bodies and services related to national security, and for joint use between them. The allocation is carried out in accordance with the principles of the allocation and use of the radio frequency spectrum in the European Union and by the International Telecommunication Union.

In and outside Europe - countries with regular digital radio services, according to the website of the association WORLD DAB, are: Austria, Azerbaijan, Belgium, Croatia, Czech Republic, Denmark, France, Germany, Gibraltar, Greece, Holy See (Vatican City State), Italy, Malta, Monaco, Netherlands, Norway, Poland, Qatar, Slovenia, South Korea, Spain, Sweden, Switzerland, Tunisia, Ukraine, United Kingdom.

Bulgaria is in between Algeria, Belarus, Brunei Darussalam, China, Cyprus, Estonia, Indonesia, Ireland – that are pointed as countries with trials and/or regulation.⁵

⁵ WorldDAB is the global forum for digital radio, facilitating the adoption and implementation of DAB digital radio. WorldDAB is the global industry forum for digital radio, facilitating the adoption and implementation of broadcast digital radio based on DAB / DAB+. It provides advice and support on all aspects of the switch from analogue to digital radio including regulation, licensing, technical trials, network build out, marketing and production of new digital radio content. WorldDAB is a not-for-profit association with legal personality governed by Swiss law and by its Statutes. Retrieved from the official website: <https://www.worlddab.org/countries>

The REGULATORY POLICY for the management of the radio frequency spectrum is in force from April 2, 2019. It was adopted by Decision 112 of 14.03.2019 of the Communications Regulation Commission (the CRC).

The regulatory policy sets the stage for future Communications Regulation Commission decisions that will contribute to the achievement of key spectrum management objectives over the next three years. The document describes the main activities ensuring the efficient use of the radio frequency spectrum. A review of the use of spectrum for civil needs over the past three years for different types of networks has been made. Emphasis is placed on upcoming policy changes in the field of electronic communications in the European Union and their implementation in Bulgaria. It outlines the next steps the Communications Regulatory Commission should take to ensure more competition, lower prices and more choice for businesses and consumers.

At the beginning of the process, during public consultations on the prospects for the introduction of terrestrial digital radio broadcasting of radio signals in the radio frequency bands 174-230 MHz and 526.5-1606.5 kHz, the enterprises showed principled interest in using only the 174-230 MHz band.

With successful coordination of the frequency resource in the range 174-230 MHz, it will be possible to form 6 national networks and 28 regional networks for the city of Sofia - 10 networks: for the city of Varna - 6 networks, and for the areas of Plovdiv, Smolyan and Stara Zagora - 4 networks each). The distribution of the frequency resource available to Bulgaria for the construction of digital radio networks (T-DAB/T-DAB+) depends on the policy and/or strategy of the country regarding the type and number of networks (national, regional or local), which is tied to the content of the programs and is directly dependent on the needs of our country.

PUBLIC CONSULTATIONS AS A TOOL FOR DECLARING INTEREST AND INTENSION FOR RADIO FREQUENCY SPECTRUM UTILIZATION

The consultation process for studying attitudes towards digital broadcasting of radio programs started back in 2014. With Decision 454/14.07.2014 the Communications Regulatory Commission launched a procedure for public consultations regarding the prospects for the introduction of terrestrial digital radio broadcasting of radio signals. Only 2 statements have been submitted to the CRC. With Decision 624 of 11.09.2014, the results of the consultations were accepted - there is no specific interest regarding the introduction of terrestrial digital radio broadcasting of radio signals in the bands 174 MHz - 230 MHz and 526.5 kHz - 1606.5 kHz.

The Association of Bulgarian Private Broadcasters (ABBRO) - the largest organization that unites the commercial providers of media services, and especially uniting radio stations, informs about the lack of interest in utilizing a limited resource - radio frequency spectrum for digital broadcasting of radio signals in Bulgaria.

The opinion of ABBRO members is that the conditions and success of the introduction of digital broadcasting of radio signals depends on the characteristics of the national market, therefore such a step should be carefully and thoroughly discussed with the parties involved in this process. According to the experts, this step should simultaneously take into account the interests and opportunities of at least the state, radio operators, users of radio services, manufacturers and/or importers of digital radio receivers and those of cars.⁶

With Decision 300 dated 08.06.2017 the Communications Regulation Commission (the CRC) accepts the results of new public consultations held regarding the prospects for the introduction of terrestrial digital radio broadcasting of radio signals in the radio frequency bands 174 – 230 MHZ and 526.5 – 1606.5 KHZ. Three years later, within the framework of the procedure, 3 opinions were received from interested parties. The results are similar - there is no interest from the largest organisation of private radio stations ABBRO, it reiterates that Bulgarian radio operators would not participate in a CRC procedure for terrestrial digital radio broadcasting of radio signals. The legal entity DIP TRADING – Pavel Kostadinov considers it expedient to use the DAB+ standard because it offers more possibilities and better sound quality, and also in Europe almost all car manufacturers implement DAB+ receivers in cars.⁷

It was just that 2017 when in March the first meeting on the topic of digital radio broadcasting was organized - CEM together with CRC held a kind of consultations with representatives of the Bulgarian National Radio, ABBRO and the radio chain „Focus“. During the meeting attitudes towards future digital radio broadcasting in our country were discussed. The occasion was the stated intention and desire of the BNR, with General Director Alexander Velev at that time, to use this method of distribution. BNR presented will for experimental digital radio broadcasting. The representatives of the commercial radio stations expressed reservations and fears of inequality in the sector. CEM considers that the European experience in the distribution of digital radio is insufficient and declares its readiness to continue the dialogue in the direction of the development of the audiovisual media services market.⁸

In the following year, 2018, with Decision 258/05.07.2018, the Communications Regulation Commission re-opened a procedure for conducting public consultations on a draft position of the CRC regarding the issuance of permits for the

⁶ Decision 624 of 11, September, 2014, on accepting the results of the public consultations, Official website of the Communications Regulation Commission, Retrieved from: <https://crc.bg/bg/statii/833/komisijata-za-regulirane-na-syobshtenijata-s-reshenie-624-ot-11-09-2014-g-prie-rezulatitite-ot-provedeni-obshtestveni-konsultacii-otnosno-perspektivite-za-vyvejdane-na-nazemno-cifrovo-radiorazpryskane-na-radiosignalni>

⁷ Decision 300 of 08, June, 2017, on accepting the results of the public consultations, Official website of the Communications Regulation Commission, Retrieved from: <https://www.crc.bg/bg/statii/1247/reshenie-300-ot-08-06-2017-g-komisijata-za-regulirane-na-syobshtenijata-prie-rezulatitite-ot-provedenite-obshtestveni-konsultacii-otnosno-perspektivite-za-vyvejdane-na-nazemno-cifrovo-radiorazpryskane-na-radiosignalni-v-radiochestotni-lenti-174-230-m-hz-i-526-5-1606-5-k-hz>

⁸ First meeting for digital broadcasting in Bulgaria, Official website of the Council for Electronic Media, Retrieved from: <https://www.cem.bg/displaynewsbg/468>;

use of an individually determined limited resource - radio frequency spectrum for terrestrial digital broadcasting (T-DAB+). It states that: „Terrestrial digital radio broadcasting has not yet been introduced in Bulgaria, and therefore there is no wide supply of digital radio receivers in the commercial network of the country. Digital terrestrial radio trial/testing has two aspects – one is testing the performance of the network and/or facilities. The second aspect is related to testing the quality of electronic communications carried out by means of a digital platform, in order to show its advantages compared to the analog one. Such testing can be done most effectively when there is specific content to be broadcast that gives the audience a real idea of the sound quality of digital radio.

The distribution of the frequency resource available to Bulgaria for the construction of digital radio networks (T-DAB/T-DAB+) depends on the policy and/or strategy of the country regarding the type and number of networks (national, regional or local), which is tied to the content of the programs and is directly dependent on the needs of our country.”⁹

At the present moment in Bulgaria there is no developed state policy and/or strategy regarding the digital broadcasting of radio programs. According to the Electronic Communications Act, the CRC controls the effective use of the radio frequency spectrum for civil needs.

In the specific case, the efficient use of the frequency resource for terrestrial digital radio broadcasting implies the distribution of radio programs. It can be seen from the provisions of Art. 47 of the Electronic Communications Act, at the moment there is the principal possibility for CRC to issue a permit for the use of an individually determined limited resource - radio frequency spectrum for terrestrial digital radio broadcasting (T-DAB+) but the issuance of such a permit is not an end in itself. Given the requests received in the CRC for issuing permits for terrestrial digital radio broadcasting using T-DAB+ technology and the availability of a free frequency resource, on the one hand, but also the lack of licensed content and a long-term strategy in the field of terrestrial digital radio broadcasting of radio signals, on the other hand, the CRC together with the Council for Electronic Media has taken action to adopt an official document reflecting state policy on the issue.

In Art. 109 of the Electronic Communications Act, amended in 2021, the conditions under which the Communications Regulation Commission can issue temporary permits for the use of radio frequency spectrum are listed: for experimental use; for short-term projects or for short-term events. A temporary permit is issued without conducting a competition or auction procedure and is granted for a period not longer than 6 months, once within a year.

The provided radio frequency spectrum can only be used for the purpose and manner expressly defined by the temporary permit. An enterprise that has been granted

⁹ Decision 258 of 05, July, 2018, a procedure for conducting public consultations on a draft position of the CRC regarding the issuance of permits for the use of an individually determined limited resource - Official website of the Communications Regulation Commission, Retrieved from: <https://crc.bg/bg/statii/1405/s-reshenie-2>

a temporary authorization to use radio frequency spectrum from an electronic communications network for terrestrial digital broadcasting of radio and television signals may broadcast a voice message „You are listening to a test broadcast“ and/or a continuous tone beep, and/or test video table.¹⁰

In May 2018, the legal entity ET DIP Trading - Pavel Kostadinov started a digital radio broadcast in Sofia, using the DAB+ method. The transmitter is located on Vitosha, above the Simeonovo district and has coverage of the entire Sofia field. In the multiplex, 16 test channels are operating, broadcasting the sound message „DAB+ radio test“.

In 2020 the Commission discussed several times the request of the same player, the most willing on that topic - ET DIP Trading - Pavel Kostadinov, and it wanted a temporary permit.¹¹ In August 2020, the CRC postponed the decision on the temporary permit twice.

Until 17 September 2020, the members of the CRC voted on a decision to grant ET DIP Trading - Pavel Kostadinov an individually determined limited resource - radio frequency spectrum for temporary use, issuing it a temporary permit № 02416/17.09.2020. The radio frequency spectrum is provided for use for the period from 20 September 2020 to 19 March 2021 - six months altogether.

In February 2022, with Decision 69/24.02.2022, the Communications Regulatory Commission opened a procedure for public consultation, on the basis of Art. 90, para. 2 in connection with Art. 89, para. 1 of the ECA, regarding the intention to limit the number of issued permits for the use of frequency resources from the radio frequency band 174.0-230.0 MHz, by issuing 2 permits with a national scope and 42 permits covering the territorial boundaries of the respective service areas.

In the Digital Plan Geneva 2006 for the introduction of terrestrial digital radio-and television broadcasting, at the radio frequency band 174 - 230 MHz, Bulgaria has protected 66 radio frequency blocks from which 2 national networks and 42 networks can be formed, covering the territorial boundaries of the following service areas - Varna city area - 2 networks, Sofia city zone - 10 networks, Strandzha zone - 2 networks and 4 networks each for zones Blagoevgrad, Burgas, Kardzali, Plovdiv, Smolyan, Sofia and Stara Zagora, for terrestrial digital broadcasting of radio programs. **At the moment the coordinated for ground digital radio broadcasting frequency resource for the Republic of Bulgaria is free.**¹²

¹⁰ Electronic Communications Act, Section VII., Temporary permits, Retrieved from: <https://lex.bg/laws/ldoc/2135553187>

¹¹ Official website of the Communications Regulation Commission, Agendas and Decisions from August 20, 2020, and August 27, 2020, Retrieved from: <https://crc.bg/bg/statii/1919/avgust-2020-g>

¹² Decision 69 of 24, February 2022, the CRC opens a procedure for public consultations on the basis of Art. 90, para. 2 in connection with Art. 89, para. 1 of the Electronic Communications Act, regarding an intention to limit the number of issued permits for the use of a frequency resource from the radio frequency band 174.0 - 230.0 MHz, Official website of the Communications Regulation Commission, Retrieved from: <https://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=6647>

Letters of interest have been received from Digital Audio Bulgaria Ltd., Digital Communications Ltd., Bulgarian Radio Company Ltd., Bulgarian Telecommunication Company Ltd., ABBRO, Vitosha Agency Ltd., Atlantic Agency Ltd., Radio Express Ltd., Radio Vesselina Ltd., Metroradio Ltd., BTV Media Group Ltd. With Decision 160/12.05.2022. The CRC accepts that there are 7 applications with intentions to use the frequency resource, submitted by 5 persons – 4 applicants for issuing permits for Sofia-city and 1 for Varna-city, Plovdiv and Stara Zagora, i.e. **the number of letters of intention submitted is less than the number of permits that can be issued. And that is very indicative.**

THE COUNCIL FOR ELECTRONIC MEDIA (the CEM) - CONSISTENT REFUSALS TO ISSUE DIGITAL LICENSES FOR RADIO BROADCASTING

The Radio and Television Act postulates that one of the main activities of the regulator is voting of decisions - individual administrative acts granting licenses for both television and radio activities/broadcasting. Radio broadcasting in Bulgaria is carried out on the basis of licensing of radio and television operators. The procedure for issuing a license is described in Art. 116f of the media law, providing that it will be opened at the request of an interested legal entity or at the initiative of the Council for Electronic Media, or the Communications Regulation Commission. CEM motivated by a decision should coordinate the type and profile of the licensed radio and/or television programs that will be distributed through terrestrial digital broadcasting networks.

During the period 2018-2020, several interested legal entities have submitted requests to the CEM to open a procedure under Art. 116e of the RTA for issuing digital licenses for radio activity/broadcasting. There follow all the administrative acts that the Council issued:

Decision RD-05-109 of 17.10.2019 – the CEM refuses to initiate a procedure for digital radio broadcasting license for a regional programme of the legal entity ET DIP Trading - Pavel Kostadinov¹³. A similar decision of refusal for a regional radio programme was issued for another legal entity - Digital Audio Bulgaria Ltd. (Decision RD-05-110 of 17.10.2019).¹⁴

Decision RD-05-123 of 20.11.2019 – it is at the request of Chrisi Vrazheva Ltd. to open a procedure under Art. 116e of the RTA for issuing a license for radio broadcasting for a program with a regional territorial scope for the Sofia region, CEM also decrees refusal.¹⁵

¹³ Decision RD-05-109 of 17.10.2019, Official website of the Council for Electronic Media, Retrieved from: <https://www.cem.bg/actbg/5842>

¹⁴ Decision RD-05-110 of 17.10.2019, Official website of the Council for Electronic Media, Retrieved from: <https://www.cem.bg/actbg/5843>

¹⁵ Decision RD-05-123 of 20.11.2019, Official website of the Council for Electronic Media, Retrieved from: <https://www.cem.bg/actbg/5857>

Decision RD-05-71 of 02.09.2020 - at the request of Media Productions Ltd. for initiating a procedure for digital radio broadcasting license - members of the CEM also vote to refuse to start the procedure.¹⁶

For all the listed above interested legal entities, the CEM issues individual administrative acts - Decisions by which it refuses to open a procedure for issuing a license for radio broadcasting for a program that can be distributed through electronic communication networks for terrestrial digital radio broadcasting.

THE INSTITUTIONAL EXCUSE - NO LEGAL GROUNDS FOR LICENSING

The reasons are due to the lack of a legal instrument to regulate this matter. There is no official document that reflects the state policy related to the terrestrial digital broadcasting of radio programs - by analogy with the Plan for the introduction of terrestrial digital television broadcasting (DVB-T) in the Republic of Bulgaria, adopted by the Council of Ministers.

With Decision 391 of 08.07.2019 the Council of Ministers adopted a draft of the Updated Policy in the field of electronic communications of the Republic of Bulgaria 2019-2022, which states that „in the coming years, the national regulator should continue to periodically study through public consultations the market interest in building a national public network for terrestrial digital radio broadcasting of radio signals according to the T-DAB/T-DAB+ (Terrestrial Digital Audio Broadcasting) standard. To make real this possibility, 34 radio frequency allocations in the radio frequency band 174-230 MHz are protected for Bulgaria. CRC and CEM should take actions to facilitate the introduction of digital technologies in the terrestrial distribution of radio programs“.¹⁷

With the position of the Commission for the Regulation of Communications, adopted by Decision 258/ 05.07.2018, the CRC finds it appropriate not to issue permits, including temporary ones, until a document/strategy for the development of terrestrial digital radio broadcasting is adopted. **With Decision 112/14.03.2019, the CRC has adopted a Regulatory policy for the management of the radio frequency spectrum, where in item 2.2. arguments are presented regarding the introduction of digital broadcasting of radio signals.** The following is noted in the Decision: „... It is important to point out that with successful coordination of the frequency resource in the range 174-230 MHz, 6 national networks and 28 regional networks will be able to be formed (for Sofia-city - 10 networks; for Varna - city - 6 networks and for Plovdiv, Smolyan and Stara Zagora zones - 4 networks each). The distribution of the frequency resource available to Bulgaria for the construction of digital radio

¹⁶ Decision RD-05-71 of 02.09.2020, Official website of the Council for Electronic Media, Retrieved from: <https://www.cem.bg/actbg/5942>

¹⁷ Decision 391 of 08.07.2019 of the Council of Ministers for adopting a draft of the Updated Policy in the field of electronic communications of the Republic of Bulgaria 2019-2022, Updated National Plan for Next Generation Broadband Access Infrastructure, Retrieved from: <https://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=5306>

networks (T-DAB/T-DAB+) depends on the policy and/or strategy of the country regarding the type and number of networks (national, regional or local), which is tied to the content of the programs and is directly dependent on the needs of the country.

However, an interdepartmental working group with the participation of representatives of the Communications Regulation Commission and the Council for Electronic Media has been initiated with a view to prepare an official document reflecting the state policy in the field of terrestrial digital radio broadcasting of radio signals. After developing a state policy and/or strategy regarding the digital broadcasting of radio programs, and after licensing radio programs to be distributed digitally, the Communications Regulation Commission will take appropriate actions to provide radio frequency spectrum for the construction of digital radio networks (T-DAB/T-DAB+).“

Art. 116e of the Radio and Television Act provides the terms and conditions for conducting a procedure for issuing a license for radio and television activity for national/regional programs, that can be distributed through electronic communications networks for terrestrial digital radio broadcasting. P. 9 of this clause, however, provides the procedure under Art. 116 to end only with the issuing of licensing for digital television broadcasting, not for digital radio-broadcasting. This is precisely the state policy and strategy, the absence of which the CEM relied on to justify the refusals to open the procedure related to the terrestrial digital broadcasting of radio programs.

The Council for Electronic media expresses on a regular basis its position that there is no legal ground for the authority to expand the scope of the legal clause in the RTA, which in turn would lead to the enactment of acts that are not provided within the law, with the real danger that they will be declared null and void by the court. The issuance of digital licenses should be supported by a clear state policy for the development of the sector.

In 2021, the Council for Electronic Media was informed from the Ministry of Transport, Information Technologies and Communications on a complaint received by the Ministry from the Association of Bulgarian Radio and Television Operators (BORT) about the lack of action by the CEM and the CRC to issue licenses/permits for radio activity in the specified method.

At the beginning of 2022, an online multilateral meeting was held at the initiative of the communication authority in which participated representatives of the CEM, the CRC, Ministry of transport and communications, Bulgarian National Radio, ABBRO and Digital Audio Bulgaria Ltd. **The participants in the meeting united over the opinion that there is a legislative gap in the provision of Art. 116e, para. 9 of the Radio and Television Act, according to which CEM issues licenses only for digital television broadcasting. In connection with this conclusion, the CRC proposes to undertake legislative changes to remove this incompleteness in the legal framework.**

The Association of Bulgarian Radio and Television Operators established in 2018 and bringing together the leading more than 10 regional radio stations in

Bulgaria, **disagrees over the fact that there is no legal ground to issue licenses concerning digital radiobroadcasting. Their official statement back in 2018 gives legal arguments.**

The statement that with Art. 47, para. 2 of the Electronic Communications Act gives the CRC an opportunity in principle to issue a permit for the use of an individually determined limited resource - radio frequency spectrum for terrestrial digital radio broadcasting (T-DAB+).

With Art. 47, para. 1 of the ECA, the legislator assigns to the powers of CEM to issue licenses to interested parties for the distribution of programs through electronic communication networks for terrestrial digital radio broadcasting. And in Art. 47, para. 2 of the ECA only specifies that the licenses entitle the programs to be distributed by an enterprise that has been issued a permit by the CRC for the use of an individually determined limited resource - radio frequency spectrum, for the implementation of electronic communications through electronic communication networks for terrestrial digital radio broadcasting of the territorial scope specified in the permit (as an administrative act). In the powers of the CRC the legislator has assigned to issue the permits, and this authority is given to the CRC by Art. 48, which refers to the express procedures for issuing permits found in Chapter Five of the same law.

As can be seen from the text of the law, **this is a power, not an opportunity in principle for the CRC.** From the legal point of view, the concept of authority means a set of two interrelated components - a right and an obligation. The legislator gave the right and assigned the obligation to issue the described permits to the Commission. He did not give the CRC a principal opportunity to decide whether to issue such licenses at all - it bears the right and obligation by law to conduct tenders and issue permits to interested persons if they meet the requirements of the law. In this regard, the draft decision contradicts the law, as with it the CRC exceeds the limits of its operational autonomy and makes a decision that is not within its competence. A decision to suspend the issuance of licenses can be taken by the Council of Ministers, not by the CRC.¹⁸

The organization emphasizes that regulatory authorities the CRC and the CEM do not adopt state policies but are only responsible for their implementation. It is not within the competence of these commissions to adopt state policies, especially since such a state policy, as we noted above, already exists and has been adopted by the Council of Ministers. **The organization consistently fights against the attempts of the CRC and the CEM to block the digitisation of radio broadcasting in Bulgaria.**

CONCLUSION

The analogue status quo - the broadcasting of radio programs via analogue distribution networks - has been holding for more than ten years after the start of talks and some actions about digitalisation of the radio broadcasting.

¹⁸ Expert and Legal Opinion of BORT, Association of Bulgarian Radio and Television Operators, Official website of the BORT, Retrieved from: <http://bort-bg.org/BORT%20-POZICIQ%20CEM-KPC-PDF.pdf>.

In the meantime, in Bulgaria there was a pick of creating radio programmes on the Internet. Over three hundred Bulgarian net-only-radios were active during the last 10 years. That trend is down already. But since 2014 we experience the rise of the audio Podcasts as some new for Bulgaria type of radiobroadcasting, though only on Internet. In this case radiobroadcasting does not rely and use frequency spectrum that is on our disposal because of the multiplex infrastructure for terrestrial digital television broadcasting. And that makes the frequency spectrum not properly and sufficiently used, as it is a main obligation of the state policy.

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