



**Report on the third expert roundtable:
The role of independent national media regulatory authorities
in regaining trust in the media**

2 November 2021

Opening speech

Teresa Ribeiro
OSCE Representative on Freedom of the Media

Dear colleagues, ladies and gentlemen,

It is with great pleasure that I welcome you to the third expert meeting in our series of roundtables dedicated to the issue of disinformation and freedom of the media.

Our previous sessions examined the issue of disinformation specifically and the various means of tackling it through effective intergovernmental policies and media self-regulation. I welcome you to look at our webpage where you will find more information on these previous events.

Today's session will build on these roundtables by focusing on the role that independent national media regulatory authorities can play in regaining trust in the media.

Yesterday, while preparing this introduction, I pondered over what to say to you. It is easy to put on paper some of the established truths we all know and agree upon and which we easily repeat when talking about disinformation. Let me be clear: I have nothing against them, and I do not mean to diminish their value, as such commonplaces oftentimes bear much truth and can contribute greatly to our understanding of the phenomenon of disinformation.

However, I do want to avoid the crystallization of our thoughts, to circumvent the beaten track. When discussing a reality that is so dynamic and complex, we need a constant, open-minded debate.

So yes, when looking at disinformation from the angle of freedom of expression, we need to speak about a vibrant media landscape; media literacy; and good journalism as tools to fight disinformation. When taken together, these things perhaps will allow us to restore some of the lost trust in media, which, as we all know, is crucial for the life (and survival) of our democratic societies.

My deep belief is, however, that we need more than these answers. That, to counter disinformation, we need the involvement of the whole of society.

We all know that disinformation is as old as humankind. But we are now facing the problems that come with it on a different level, with the framework of a digital evolution and with the immensely powerful capability of social media platforms to spread huge amounts of information – or disinformation – with a speed and a global reach that give a whole new scale and pervasiveness to this phenomenon.

So, we need new answers and a different perspective. This whole of society approach should include a multi-layered approach, on a national, as well as a multilateral level. With its wide membership, the OSCE is, by all means, an excellent platform for such a debate.

Let me conclude.

I am confident that today's discussions will be a refreshing and valuable contribution to understand what role the National media regulatory authorities can and should have in fighting disinformation and, in doing so, helping us to clarify what issues and concerns beyond their scope require careful consideration.

The challenges are huge, and so are the questions that are raised. One thing I do know is that the answers of the past will not suffice to find the right tools; the tools that we need to mitigate the problem of disinformation.

I wish you an open mind.

Panel 1 presentations Regional Approach

Maja Cappello
Head of Department for Legal Information, European Audiovisual Observatory (EAO) Strasbourg

Thank you very much for having me at this roundtable on a both timely and crucial topic. The European Audiovisual Observatory is currently working on a

publication on “NRAs across Europe: organisation, functioning and cooperation”, and I will share some of the publication’s first findings.

1. Independence is key

In order to answer the question that we are addressing today, on the role of independent national media regulatory authorities in regaining trust in the media, we need to answer another question first: namely, “What is the role of an NRA?” In a nutshell, NRAs are the guardians of freedom of expression in broadcast and online media. They perform this fundamental duty every day by interpreting rules and balancing interests, as reflected in their regulatory, monitoring, and sanctioning activities.

Now, we could also ask ourselves, like the Roman/Latin poet Juvenal did, *quis custodiet ipsos custodes*, that is, “Who guards the guardians themselves?”

Well, the courts of law, for starters. Any decision of an NRA may be challenged in court. But there are several other mechanisms that contribute to guarding the guardians themselves: adequate staffing, enough resources, autonomous decision-making processes, accounting obligations, these are just a few examples. These mechanisms can be summarised in one word: independence.

Indeed, the regulation and supervision of the audiovisual media sector is a fundamental pillar of the right to freedom of expression and information, which must be placed in the hands of an institution that bows to no one, neither the government nor private third parties. Only then is it guaranteed that decisions affecting one of the most fundamental rights – indeed a cornerstone – of democracy are made without taking into consideration any spurious interests and that those affected by them (broadcasters, VoD services, VSPs but also citizens) can trust them.

1.1. The 2000(23) Recommendation of the Council of Europe

This was already recognized, for example, by the Recommendation of the Council of Europe’s Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector. This recommendation dates back to December 2000, and therefore reflects quite a different media environment than the one we are experiencing today, but nevertheless it contains a certain set of principles that are still valid.

For example, according to this legal instrument member states should establish independent regulatory authorities for the broadcasting sector and include provisions in their legislation and measures in their policies entrusting regulatory authorities with powers that enable them to fulfill their missions in an effective, independent, and transparent manner. These regulatory authorities should be protected against any interference, in particular from political forces or economic interests. In this regard, the procedure for

appointing the members of these organizations should be transparent.

However, until recently, no international instrument has ever obliged a country to set up independent regulatory authorities in the media field. This means, in principle, that a country could decide not to have one, even if the exceptions (at least, at the European level) are rare. Moreover, every country has its own legal traditions and administrative practices, which makes for a varied picture of the role and powers of media regulatory authorities throughout Europe.

1.2. The 2018 revision of the AVMSD

With the purpose of providing a harmonized framework for the activities of media regulatory authorities in the European Union, the revised version of the Audiovisual Media Services Directive (AVMSD), which was adopted in 2018, introduces an obligation for EU member states to designate one or more national regulatory authorities or bodies that are legally distinct from the government and functionally independent from their respective governments and from any other public or private body. It also outlines detailed rights and obligations for them, like for example that their competences and powers, as well as the ways of making them accountable, are clearly defined by law, or that they have adequate financial and human resources and enforcement powers to carry out their functions effectively.

1.3. De jure vs de facto independence

This is the theory. However, as explained in different studies (such as the Media Pluralism Monitor, INDIREG and RADAR studies on the independence of media NRAs, along with further academic research), “de jure” independence does not always coincide with “de facto” independence. De facto independence is shaped by a complex chain of aspects, from statutory provisions granting independence to behavioural patterns demonstrating independence and policy decisions.

Building on the introduction of mandatory provisions in the AVMS Directive on the independence of media NRAs, regulators will have to foster a real culture of independence – at arm’s length from both political and market forces – to support the independence of media players under their jurisdiction. Given the far-reaching changes in the political climate in Europe and the market power of global players, this may not be an easy task everywhere.

2. Building trust through actual compliance with regulation

Now, coming back to the topic of today’s roundtable, building trust can be achieved in many different ways. For example, a clear, predictable legal framework may lead the media to behave in a way that is conducive to produce trust in the viewership.

But a good legal framework means nothing if it is not implemented in practice.

That is, *actual* compliance with regulation is a relevant factor to build *real* trust. At the same time, even good regulation can be complex, and overlaps and gaps can create inefficiencies that in turn may lead to non-compliance. A situation of non-compliance could have immediate negative repercussions on trust. And here is where NRAs have an important role to play.

2.1 Accountability and transparency are key...

As we explain in our forthcoming publication on “NRAs across Europe: organization, functioning and cooperation”, adherence to accountability and transparency mechanisms can enhance the regulators’ credibility and public trust. This is because the accountability of regulators towards consumers and citizens contributes to its reliability and thus indirectly supports public trust towards the media landscape. Moreover, promoting media literacy allows citizens to distinguish content that is trustworthy from what is not.

Therefore, the relationship of many media regulatory authorities with citizens has gradually been evolving towards an active engagement with citizens and their empowerment to turn them into partners of regulation.

In this regard, media literacy is expected to become a key remit for media NRAs for the future, and collaboration among media literacy stakeholders is particularly important, especially since media literacy development is expensive and might even create further divides between richer and poorer countries.

2.2. ...to combat the growing mistrust in the media

Of course, in a perfect world, legislation would be perfect, the media would have perfect behaviour, and NRAs would have perfectly little to do. But the hard truth is that NRAs have been facing unprecedented challenges over the last years notably due to the complexity of the media ecosystem and the changing nature of regulation.

I do not need to explain how the Internet has changed the world, and especially the media world. This revolution has plenty of good sides indeed, but a couple of downsides too.

Information found on social media has the appeal of being immediate and accessible, whereas curated content has for many citizens the flavour of politically tainted journalism. And as you know, content that appeals to emotion rather than reason spreads much more easily on the internet.

This is one reason why we can observe a continuing erosion of TV viewing figures, as well as a severe loss of advertising revenues, which the COVID-19 crisis has exacerbated, and which seems, at least at first sight, to reflect a growing mistrust in traditional media. Unfortunately, this leads to more disinformation and less diversity and pluralism.

3. New tasks and responsibilities on the horizon for NRAs

It is unfortunate also that the current legislative framework has not been up to the task of minimising these harmful effects. This is why a major overhaul of the rules applicable to the media and communications sectors is currently taking place at the European Union level. The adoption of the revised AVMS Directive, the recent Democracy Action Plan and the Audiovisual Media Action Plan, as well as the draft Digital Services Act package and the future Media Freedom Act have already had, or are likely to have, an impact on the media regulatory authorities' field of competences and remit.

Obviously, regulators must adapt to all these technological, market-related, and legislative changes, taking over new tasks and responsibilities, and even develop new approaches to regulation, including self- and co-regulation, and co-operation between national authorities. Problems that may arise in this regard are the lack of accessible data from online actors, a heterogeneous legal framework, the cross-border nature of content and a potential lack of financial resources.

As you can see, the media world is far from perfect and NRAs are probably busier than ever. And as I mentioned before, actual compliance with regulation is a relevant factor to build real trust in the media. This is the regulators' job.

Nyakas Levente

Head of the NMHH's Institute of Media Sciences, Hungary

The ERGA Group is dedicated to disinformation; I will discuss the outcome of the ERGA report, entitled Internal Media Plurality in Audiovisual Media Services in the EU: Rules and Practices, conducted in 2018. I will first discuss this report and its primary outcomes, which will reflect what the current NRAs can do in connection with media pluralism concerning traditional media. Then I will shortly outline the main challenges NRAs face in the new media environment, as in the meantime ERGA has been working in connection with the Code of Practice on Disinformation, so we had some experience in relation to other type of media.

The main aim of this report was to explore the current regulatory frameworks and tools for ensuring citizens' access to information. These regulations are based on the informed citizen concept to access information and to help democratic processes.

The main areas of this report dealt with the general regulatory framework connected to political pluralism, namely the regulation and ethical standards covering news and current affairs programmes. The main regulation is connected to editorial independence, objectivity, impartiality as well as accuracy and veracity of news reporting.

The report also dealt with the specific period when news coverage and current affairs programmes are very important, namely in election periods and the media coverage of elections. It also deals with the scheduling and the balance of programmes, the moratorium, the function of opinion polls and, importantly, political advertising.

It also important to say that these detailed regulations concerned traditional media, predominantly broadcasting, as in the past this was the most effective media, and because the frequency spectrum used for broadcasting is a scarce source.

The report also covers the national character, reflecting not only common regulation but also direct solutions according to the media landscape and the constitutional environment.

It embraces 28 ERGA members and three observers.

Main conclusions

The conclusions of the general measures show that all NRAs have some concrete measures aimed at protecting political pluralism. However, not all categories of measures are available in all countries but they are widespread in every category assessed.

The report further showed that almost all NRAs reported that editorial independence, impartiality and the right to reply can be found in their legislation and practice. Most NRAs also found that they have regulation related to accuracy and veracity.

We can also conclude that many of the existing media plurality measures indirectly but effectively cover disinformation.

Election period regulations

The report found that broadcast media have traditionally been subject to detailed and rigorous regulation during election periods due to its potential influence.

The aim of the regulation was also to ensure that all “political representatives” participating in the political-institutional debate give the right of access to media and equal opportunity. As we also see, during the period assessed, almost all countries have specific regulations.

Main challenges faced by NRAs

The first aspect we face is the question of responsibility. NRAs are dealing with traditional media, which have editorial responsibility and produce the

news. Intermediaries, such as social media, have no editorial responsibility on the other hand for the content they are disseminating. So one question is how can we regulate them and what solutions are available to make them accountable for false news?

One aspect is to look at how they are trying to focus on how they handle and disseminate content and handle complaints. We do not have the right to oblige them to monitor their activities, because if they do so, they can be held liable as an editor of the content. Instead, we can expect them to take proactive measures, voluntary monitoring (so-called “Good Samaritan” actions) to tackle disinformation. This is a good activity to ensure the protection of this principle.

If dealing with responsibility, one could face the public utility problem – this shows us the old type of regulation of platforms. It raises the question of whether intermediaries are a public utility, which has a monopoly power and a broad public influence, so shall we place on them positive obligations serving diversity?

The information/transparency question. If talking about NRAs, they have a strong monitoring activity in connection with traditional media. How can we measure access reliable information about platforms’ performance? What is the way to do this, if they have no editorial responsibility and are not media in the traditional sense?

During the monitoring of the implementation of the Code of Practice, we face this problem in connection with the reporting and data provision of the platforms. To get a clear picture of their activity, we need hard data in connection with their activity. Beside the more detailed data provision, it is also important to see what academic research can show us in connection with the activity of new media, and also the practice from the user side. What we have seen is that we need multi-level sources to be able to monitor effectively their compliance with the provisions of the Code.

Last but not least, we have to talk about the global platforms’ local effect. Disinformation disseminated by the platforms is appearing in a national public sphere and constitutional environment. It has a local context. Therefore, it has to be addressed according to the local legal and constitutional tradition and practice which reflects a unique system of freedom of speech and media in every country. Platforms, as global players, are following their own self-regulation based on their own local regulation, even if in some cases they do not follow their own local constitutional background, which creates a permanent collision with local constitutional systems. To protect the local public sphere and constitutional practices, it needs to have a high level of co-operation with the platforms.

Richard Burnley
Director of Legal and Policy, European Broadcasting Union (EBU)

My focus will be on Public Service Media and Public Service Media Supervisory Bodies.

Independence is absolutely a cornerstone of public service media. Together with accountability, objectivity and quality, independence builds the foundation of citizens' trust on which we rely as public service media. We have always said in these kinds of forums that citizens turn to us in a crisis, and the COVID-19 crisis bore that out like never before. We had a surge in popularity on news and information from citizens coming to us to learn the truth and to learn what is going on, as well as for education. It was very encouraging for us as public service media and an endorsement of what we do and provide.

I want to use this opportunity as a reminder of how PSM and supervisory bodies promote independence – how we get there; those two things are inextricably linked, it is hard to talk about the independence of a PSM supervisory body without talking about PSM itself.

To start with then, PSM independence – there is a distinction we need to make between internal and external independence. Internal independence we talk about editorial and financial autonomy, which are absolutely essential to PSM. External independence we are talking about the legal and regulatory framework. It is worth reminding about the Manole case from the European Court of Human Rights, which found that States have an obligation to put in place a legal framework to ensure PSM independence; this is a very important case in this context.

Internal independence of PSM

It is characterized by four aspects. Autonomy: PSM must be able to carry out their functions without any interference, be it political or commercial. Strongly linked to this is the existence of strong conflict rules for management – the management should work only in the interests of the PSM. There should be open and transparent recruitment procedures for the management board, based on expertise and ideally by the independent supervisory body. Fourthly, management should be protected from arbitrary dismissal.

You see in some countries, such as in Romania, the annual report has to be agreed by the Parliament every year. If there is a one-party majority in parliament that decides against the report, then the management can be dismissed at the will of the government; there clearly therefore needs to be some safeguards for management from these kinds of political decisions and threats.

Other safeguards include the protection of in-house journalists, editorial guidelines, and independent funding mechanisms.

External independence

Here we come to the core of the issue for today – the independence of (PSM) supervisory bodies. There are similar issues here on how to ensure it. The appointment procedure for these bodies must be open and transparent, and must ensure a balance and diversity of society, including minorities and across all sections of society. There are many ways of doing this, and we at EBU would not advocate for any particular way. I can give some examples, such as using appointments by qualified majority in parliament (3/5; 2/3 vote), which ideally gives a cross-party consensus (although this can also fail if one party is particularly strong in that parliament). Maybe an antidote to that would be a form of proportional representation such as that used in Belgium.

The second option would be the co-operation of several State institutions; you see this in France and Poland. So, the parliament and government may be involved, as well as the President and regulator. In practice there can be risks though if these institutions are beholden to the same party.

A third option, which is quite rare, is that an equal number of members can be appointed by the government and opposition members, as is the case I believe still in Albania. Of course, it depends how such a system operates in practice and one could imagine that it can lead to an overly politicized and possibly dysfunctional body.

Another system is that a majority of members of the supervisory body could be nominated by civil groups or neutral institutions. This of course depends on the existence of well-developed civil society organizations in that country. I would like to mention the ZDF case, from 2014, where the German Federal Constitutional Court held that the number of members of parliament should not be more than 1/3 in the supervisory body in order to retain its independence, and the rest should be left to civil society organizations; another important case in this context.

In practice, ultimately, we see a wide variety of systems and many countries use a mixture or hybrid of the ones I mentioned. One good example of that is Austria, but I would stress that there is no abstract perfect model and it really depends on the constitutional systems as well as political and legal traditions. In practice, what works depends largely on the political, cultural and legal traditions in the relevant country.

Finally, I would mention there again should be clear conflict of interest rules when it comes to management. For instance, waiting periods between people holding political office and joining the supervisory body, and dismissal being only on clear and objective grounds which are set out for all to see.

The legal governance structures are certainly key to public service media independence. However, what is even more critical and effective is the development and existence of a critical public opinion culture. PSM must be accountable to the public. And this brings me back to my initial slide. PSM can

only operate effectively in a bed of public trust founded on editorial, financial and functional independence. Such independence must come from within, it must come from a culture within the public service media, a culture of editorial standards and independence, as well as a culture of journalists who can be independent thinkers whilst feeling protected. We also wish for such an environment within society, with the public holding PSM to account.

Luboš Kukliš

Chair of the European Platform of Regulatory Authorities (EPRA) and Chief Executive at the Council for Broadcasting and Retransmission of Slovakia

My presentation will mainly be about EPRA's approach, starting with its four main principles in this area.

The Principles for Regulatory Independence

The importance of the "de jure" and "de facto" independence is a very old distinction and we see it in our everyday experience. Of course there are countries where there is strong "de jure" independence but less "de facto" independence. In others, there are some where "de jure" independence is not that strong but we see no interference whatsoever.

The internal culture of independence, as Richard Burnely mentioned, is important. To have such a culture of independence, it is essential that the regulatory authorities are organized in a stable way, to build this internal culture. The link between independence, transparency, accountability and efficiency is also very important, because independence without the other elements can be just an arbitrary exercise of powers. To have trust with either media or the users of media, transparency is important in this regard, as is accountability. It is equally important that the independence media authorities and independent media are operating in a democratic environment that supports this independence.

Efficiency is another of our principles. Again, it is mainly about internal culture within the media regulatory authorities, that they are organized in a way that is efficient and can support the other elements in the chain.

Another important point is that independence increases the chance of adequately addressing the new challenges. To be able to really address these challenges, you need to be able to use your powers in a new way, to be able to try new things, to have different approaches. For example, in the co-regulatory world that we are heading into, especially in the digital environment, it is important to recognize that it will not be the regulators doing all the regulating. In this regard, it is not fitting to call it regulation in the future, perhaps governance would be a better term. This regulatory structure will still be there, but only as one of the elements in the picture.

To be able to efficiently influence the outcomes and address these new tasks, it will increasingly be important that the regulators can use their powers independently. This also means granting them new soft powers so to say, and it would be important to have research to understand what is happening.

Independence of Regulators in AVMSD

I would turn to audiovisual media service directive. There is a very strong notion about legal and functional independence, with no government or other form of interference in the exercise of regulatory powers. There is also a call for impartial and transparent exercise of power, as well as accountability. Lastly, and for the regulators it is difficult to call for it, but for all the elements to be there, it is extremely important to have adequate financial and human resources and enforcement powers. If we are talking about recommendations for governments, this would be an important area to recognise, as you can be independent and have competencies on paper but without the means to exercise those powers they become meaningless.

Independence of Regulators in the DSA proposal

I would also mention the Digital Services Act (DSA), which similarly has a strong notion of independence. It is important to have all necessary means to carry out their tasks, including sufficient adequate technical, financial and human resources. The question is, with the EU Commission having the strongest competences, how independent can a structure be if at its top is an inherently political body. Nevertheless, even from the DSA proposal we can see that the new legislative initiatives are heading in the direction of strong independence of regulators.

Independence and the New Regulatory Challenges

The last thing I would like to mention is the role of independence in the regulatory approach to the new challenges. And for this, I will use my experience with ERGA in addressing the problem of disinformation. In 2018, when we were writing the report that Levente mentioned, it was ERGA's starting point in fighting disinformation. After that report, we were tasked by the Commission to monitor the implementation of the Code of practice on disinformation, which signatories were writing themselves. We did that without any prior competence in our national law, we used only the competences given to us by the EU Commission via this task. At that point, there were many regulators who were hesitant to join such an initiative out of fear that their governments would not allow them to. You could see the split between those who felt they had enough independence to do such a thing and those who felt they did not. We have progressed quite a lot since then, we learned a lot. We now understand much more about what is required from the regulators in this area, that it is about research and working with data, and using self-powers to influence the network of other actors to go in the right direction. But all of this only makes sense if the regulators are independent.

Panel 2 presentations National Approaches

Raphaël Honoré

Head of mission for European and international affairs, Conseil supérieur de l'audiovisuel (CSA)

As touched upon by some of the participants in the first panel, one of the roles of NRAs is to create the conditions for trust by accomplishing their missions, for instance by granting freedom of expression, editorial freedom, honesty of information, independence of news etc.

Today I will focus my presentation on a case study in France, the fight against the manipulation of information on online platforms. We might be in quite a unique situation in France, because, since December 2018, we have the law against the manipulation of information, giving powers to the CSA in the field of online disinformation. It provided two main powers, namely one to issue recommendations to online platforms, which happened in May 2019, and another to draft periodic reports – the CSA decided to do it on a yearly basis – on the measures taken by online platforms to fight online disinformation and their effectiveness. So far, we have published two reports, one in 2020 on the measures in 2019, and the last report was published in September 2021. Please note that we do not have any power on the content itself, we can only monitor the measures taken by the platforms, and we do not have any sanctioning powers, just to name and shame platforms that do not do enough.

How did we implement these new powers? It is important to rethink the organisation and way of work to work in this new digital world. In 2019, we created a project team within the CSA, which was composed of people from every directorates of the Council. Its role was to think about online regulation and to draft the aforementioned reports. It was replaced in 2021 by a more stable and robust structure; the creation of a new directorate within the organisation of the CSA. On top of that, we decided in 2019 to create an expert committee on online disinformation in an effort of collaboration and co-operation. This committee is composed of around 20 people, coming from the academic world, fact-checkers, journalists, and representatives of NGOs and stakeholders, but no representative from online platforms. Since the beginning of the process, the CSA has maintained a continuous dialogue with the online platforms and has been fully transparent towards the public, communicating a lot on these new powers.

How did we write the different reports? We first had a dialogue with the online platforms then sent surveys/questionnaires to online platform providers, and we analyzed the contributions. The last report, published in September 2021, is available on our website. On top of that, we have published all the contributions, to ensure transparency. The report is divided into six strands of recommended measures: 1) Reporting mechanism; 2) transparency of

algorithms; 3) promotion of press and audiovisual content; 4) the fight against massive dissemination of disinformation; 5) Monetization of “fake news” and information to users about sponsored content in relation to a debate of general interest; 6) Media and information literacy and collaboration with researchers.

For each of these strands, we have conducted an analysis and come up with 16 recommendations aimed at improving transparency for the good of citizens. Some have a direct link with the trust of citizens, for instance improving the visibility and usability of reporting mechanisms offered by search engines; providing users with features that allow them to understand, if possible in a personalized and contextual way, the effects of algorithmic recommendation and moderation systems; increasing user awareness of coordinated influence operations and the risks involved, especially during election periods.

The 2021 report has focused on the need for increased transparency on several levels on the part of platforms, including for users, citizens, civil society, and regulators.

Recommendations include, on the service, to proactively provide users, if possible in a personalized and contextual manner, with clear and accessible explanations of the measures implemented in response to the risks associated with the manipulation of information. Another recommendation involves being more transparent with the public by providing more detail and context, including in statements, and providing the CSA with all information, even if confidential, that would allow for a better understanding of the measures taken and their impact.

In conclusion, I want to highlight the issue of communication of the NRAs as a mean of regaining trust. NRAs need to communicate with the public in order to improve trust of the public in the media and to be accountable. There are two ways of communicating: 1) communication based on the results obtained; 2) communication aimed at having an educational outreach (in terms of explaining what the CSA can do). A good practice that we implemented last year include short videos of no more than two minutes that we post on our website and social media channels that explain the situation to the public (for instance, there is a video called “One minute to understand: the fight against online disinformation”).

Aurēlija Druviete

Vice Chair of the Latvian National Electronic Mass Media Council

I would like to say that the National Electronic Mass Media Council of Latvia (NEPLP) since August this year has also been the supervisory body of public service media. I would begin with some contextual data to highlight trends in Latvia.

We see in Latvia that people tend to trust locally produced news sources in comparison to Western and Russian news sources. Moreover, public service media are the most trusted media in Latvia, namely radio and television. But what we see is that overall trust has decreased, in both forms but television especially.

Here we can touch upon the issue of COVID-19 and whether people trust locally produced content and programmes – we see that half of people surveyed either fully and rather agree while 40 per cent disagree. We need to look at the reasons for this – of course disinformation is a huge factor. What we see as well is that the pandemic escalated actual issues related to the quality of journalism. We cannot say that there is no quality journalism but there are some aspects that we have to pay attention to, one of them is diversity of opinions and worldviews. For now, we have seen that it is particularly challenging for media and especially public service media, they often follow political agenda, more than necessary. This is problematic when we need to inform the population more than ever. We also see an issue of how we view society and the values they follow.

We therefore stress that qualitative journalism and strengthening media pluralism are key to ensuring trust in the media.

Strategies to strengthen qualitative information space. What we do is a protective strategy of content monitoring – we protect people from harm from online content, in this regard it is important to inform society and communicate what we as NRAs are doing. The other part is this proactive part, including education and media literacy, so that people can protect themselves and decide for themselves what to trust, as well as media support activities.

Regarding content monitoring, I would share the Electronic Mass Media Law of Latvia, which ensures that we can monitor that facts and events are reported factually, accurately and impartially. It has not been used that frequently, but recently cases that have been brought to court are linked to COVID-19.

We also adopt a systemic approach, if we identify systemic violations of the law. This promotes the understanding of the legal provisions that support this quality of content, which we connect with trust in media.

Other activities: we organized competitions for commercial media for content projects, to increase the amount of local content during the pandemic. Next year this will be the function of the Media Support Fund. We have also supported the dissemination of qualitative content among the platforms that people use. The third part is conducting reviews of the content by media experts, resulting in a qualitative discussion among journalists and media experts.

We also need to develop the National Strategy for the Development of the Electronic Media Industry 2018-2022, so that we are able to address the new challenges. Here we also come together with relevant stakeholders to find ways of dealing with these issues, including through trust in the media.

Larisa Manole

Member of the Audiovisual Council of Moldova

I believe that the media regulation role in regaining trust is huge, because only regulation based on the law can direct the mass media so that they act in a proper way and work under the principles of democracy. Of course, regaining trust without media independence is impossible, at least disinformation has to be minimized if not eradicated. Real facts must be presented, as well as a wide variety of opinions. The news must provide information in an impartial way and promote a free exchange of opinions – this is the only way of regaining trust. Therefore, the audiovisual council of Moldova is trying to perform those tasks, at least over the last year. Unfortunately, there is so much fake content spreading, that people have difficulty in telling fakes. Fighting this phenomenon becomes increasingly challenging, but it is possible if regulators are truly independent.

Transparency of the council is important; unfortunately though there is a lack of legislative framework that could help us fight “fake news”. The main leverage that we can use is legitimate sanctions. This year, after monitoring the situation, we analyzed some claims and registered 52 cases of non-compliance with the principles of impartiality and dissemination of patently false information, and we sanctioned some of those media outlets. Unfortunately, there are some grey areas in the legislation, and sometimes event courts have trouble coming to a decision based on such legislation whenever they look into such cases.

Unfortunately, political advertisement was also a reality. Our code of audiovisual media services does not provide a definition of political advertisement, and you cannot find one anywhere in the law. Those laws are out-dated; as a result they follow the simple principle of everything being allowed unless it is banned. That is obviously a problem for us. We hope that a new law will soon come out and provide a clear definition of political advertisement so that we can fight it more efficiently, but is pending adoption by parliamentarians who have been reluctant to do so.

But you cannot rely solely on sanctions when you want to regain trust. I believe that sanctions will not work unless journalists themselves are truly conscientious and truly professional, performing their duties in good faith and resisting any kind of pressure from either media or politicians alike. The government must also perform its function of promoting media literacy at all levels, from the general public to journalists. This should help fight disinformation, it has not happened yet, but in the meantime our council has decided to organize educational activities together with the Council of Europe.

Together with the Council of Europe, we have a project promoting European standards, and a number of workshops were organized for those who monitor TV and radio. Overall, we aim to develop the skills needed to identify different types of “fake news” and to study the ways of legislative response. As a result, I believe those workshops are designed to regain trust.

I would briefly discuss the status quo in the audiovisual sphere in Moldova. Parliament has adopted some amendments, whereby the PSM would be controlled by the parliament so they can sack via the Director if they so wish, without explaining the criteria they would follow if they wish to remove the Director of public TV and radio. Also, if you look at the main provisions whereby the Council could be fully disbanded if parliament fails to approve the report, this very much runs counter to the overall principles that any risk of political pressure must be excluded. This is not happening yet, although the legislation says that regulators must be immune/protected from any pressure. Now parliament has the mandate to do it, even though we are supposed to be protected from such control. Non-government media organizations have expressed their concerns over this situation; they also want this to be further analyzed. The opposition believes that this draft law is another step towards dictatorship.

Natalie Rose

Principal, Standards and Audience Protection team, Ofcom

Ofcom is the UK’s communications regulator and our team works to protect audiences from harm and offence in broadcasting. We regulate TV, radio and video on demand sectors, video sharing platforms and some other areas as well. There are three principle areas for broadcasters, we licence over 2,000 broadcast services that are aimed at a wide variety of audiences and we have our Broadcasting Code which contains rules that all the licence services must follow, which includes rules on due impartiality and due accuracy. We also regulate on-demand programme services where they have editorial content, and these have to keep to rules on harmful material and commercial references but there are no due impartiality requirements on those services.

On online safety, we have a new role coming up. The government has a draft Online Safety Bill in the UK, which will introduce new laws to improve online safety, which Ofcom will enforce. These rules will apply to sites and apps like social media, search engines, messaging platforms, and other online services. Companies will need to take proportionate steps to tackle risk of harm arising from illegal content as well as protecting children’s online safety. That Bill at the moment includes measures to tackle disinformation and misinformation in online safety. It is worth noting that Ofcom has no active role in regulating the UK press.

Trust in the UK’s media – what we know. Ofcom produces a number of research reports to understand what audiences feel about the media. We produce a Media Nations survey each year – the most recent one produced

showed that viewing patterns for broadcast TV mirrored the COVID-19 lockdowns in the UK; people were watching TV more during the lockdown. We also learned from the survey that increasing viewing of broadcast TV was actually due to higher viewership of news.

We have another report called News Consumption in the UK survey, which showed that TV is the most used platform for watching news, closely followed by online, which is the most used platform for young users. Online news consumption is made up mostly of consumption directly from news providers and social media platforms. We also know that trusted news is important to citizens in the democratic process, and our research shows that, when rated by users on measures such as importance, trustworthiness, range of opinions, impartiality, TV and magazines were ranked the strongest and social media was the weakest. On trustworthiness and accuracy, only three in 10 users rate social media highly in comparison to two-thirds of users of TV, print newspapers and magazines.

Due accuracy and due impartiality (broadcasting) – legal framework

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the relevant standards objectives in this area, which include the requirements that: 1) news included in television and radio services is presented with due impartiality and reported with due accuracy; and 2) due impartiality is preserved in other programming which covers matters of political or industrial controversy and/or matters relating to current public policy.

These standards are reflected in Section Five (due impartiality and due accuracy) of Ofcom's Broadcasting Code and in Section Two (harm and offence) in relation to material misleadingness. Freedom of expression: When regulating broadcast services, Ofcom must take into account Article 10 of the European Convention on Human Rights.

What is due impartiality and due accuracy?

“Due” is an important qualification to the concept of impartiality. Impartiality itself means not favouring one side over another. “Due” means adequate or appropriate to the subject and nature of the programme. So “due impartiality” does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. The approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the audience. Context, as defined in Section Two: Harm and Offence of the Code, is important.

Accuracy entails getting the facts right. In complying with the requirement to report news with “due accuracy,” broadcasters should refer to the clarification

of “due” set out in the meaning of “due impartiality,” as laid out above. For example, where a matter is of particular public interest, the requirement to present that matter with due accuracy will be correspondingly higher.

How is due impartiality and accuracy achieved?

In news programmes, Rule 5.1 stipulates that “news, in whatever form, must be reported with due accuracy and presented with due impartiality. It is a matter for broadcasters how due impartiality is preserved, provided that they comply with the Code. There are various editorial techniques that broadcasters may use to represent alternative viewpoints in news: inviting an individual/organization to participate or provide comments; summarizing alternative viewpoints with due objectivity and in context; ensuring the views expressed in a news item are challenged critically by presenters/reporters within the programme.

In non-news programmes, Rules 5.5 to 5.12 set out the requirements to apply due impartiality in non-news content when that content is dealing with matters of political and industrial controversy and matters relating to current public policy. There are greater obligations when dealing with matters of major political or industrial controversy and major matters relating to current public policy.

For understanding, due impartiality is not about neutrality; broadcasters are not required to be strictly neutral on particular topics, they have to ensure a range of views are reflected as appropriate, rather than giving equal air time or weight in a broadcast. It is not about giving false equivalence, by portraying both sides as equal, such as on topics like climate change.

Disinformation/misinformation (online safety regime)

The issue is currently due to be encompassed in the forthcoming online safety legislation. Social media platforms and other online platforms will be categorized based on the number of users. Category 1 platforms will be under duties in respect of content that is “legal but harmful to adults.” This could include certain disinformation and misinformation that could cause significant physical or psychological harm to an individual. It will be risk-based and proportionate as well as focused on systems and processes, not individual pieces of content. Ofcom will issue codes of practice which outline recommended steps that companies can adopt to comply with their duties. Category 1 platforms will also have duties in respect of transparency. Services will also have to have effective and accessible mechanisms for users to report concerns. Ofcom will also be required to establish a Misinformation and Disinformation Advisory Committee.

Due impartiality: Case studies

RT (breach and sanction) – in 2019 several of its programmes were found to have violated the due impartiality rules. RT appealed our decision to the UK courts, but both the High Court in March 2020 and – just last week – the Court of Appeals upheld Ofcom’s decisions.

We have done a lot of work on COVID-19 and the way it is reported in programmes, with several channels being fined for not providing materially misleading and potentially harmful information. One example is the Full Disclosure programme on Loveworld in February 2021, which was sanctioned.

Discussion

Question: Regarding the impartiality rules, it was said that most NRAs have the possibility to do something about it, but do NRAs use this power in practice? Or maybe there is this hesitation from the side of NRAs to actively deal with the impartiality rules as it might contribute to lose trust in the media?

Luboš Kukliš

Regarding impartiality, I think it is important to recognize how sensitive this area is and how intrusive this could be into the freedom of expression and media freedom. Legally speaking, it is quite difficult to implement, but there are approaches in Europe that are functioning quite well. Our experience in Slovakia is that we almost never experience any disinformation in the main media and I would ascribe this to our competence over objectivity and impartiality. There are of course different approaches in different countries. When we did our report with Levente for ERGA, you can see that for example in Slovakia and Czech Republic the approach is quite different compared to Ireland and the UK. But all those approaches are worth looking into, because just to have this competence and if it is really applied, helps the media environment. Regarding whether media regulators should go into regulating platforms, I think definitely yes. From the EU perspective, it is a must because of the AVMSD directive and the video sharing platform regulation there, but also it is important now to go even beyond that.

Maya Cappello

I would like to underline the importance of having an appropriate legal framework that allows NRAs to act according to impartiality rules. I understand that many times the difficulties lay in the fact that the regulatory system does not provide all the tools, then it is difficult to act in a way that is not set in the legal framework. This is linked to conceptions, impression and many psychological elements that are difficult to address, but trust is made of this. One thing is the de jure and the other is the de facto, you need both. You cannot start with just the factual arrangements without a proper regulatory framework. IN this regard, the work of the OSCE and Council of Europe is of crucial importance, because we might tend to look at the “lucky” EU countries who have a “good” legal framework, but not everyone has reached the same

level, so it is important to a look at the good practices to address gaps that might exist in the legal framework.

Natalie Rose

I agree that there must be a balance. In terms of trust and impartiality, we conducted a review two years ago of the BBC's news and current affairs, and we found that for audiences some of their views on impartiality are not actually based on the content they watch, they're based on other things, such as personal views about in this case the BBC and its brand. So for us there is an important balance between freedom of expression and legislation. Certainly, there is something about understanding why audiences do or do not have trust in the media.

Question: How do you see the role of national Parliaments in aiding the efforts of regulatory bodies against disinformation? Should we expect a more proactive role of parliaments beyond legislation and annual oversight hearings? Maybe some experiences from your countries.

Raphaël Honoré

In my view, national parliaments have a great role in this field, because as you know the regulators acquire their powers from the parliament, and the parliament also votes on the resources for regulators. Resources is something that is quite important, we can have all the powers of the world but if you do not have the resources to implement them then it is not efficient. National parliaments should also keep in mind that it should be done in the strict context of freedom of expression and not overpass this fundamental right. Parliaments need to find the right balance between this fundamental right and the fight against online disinformation.

Question: In her presentation Ms. Druviete mentioned that trust in Russian language media is lower than in Latvian ones. Taking into account that a large part of Latvia's population is a Russian-speaking minority, what steps is your NRA taking in order to promote trust in Russian language media as well?

Aurēlija Druviete

To answer the question on what steps NRA takes to promote trust in Russian media. Public Service Media had a huge project of launching a new platform for minorities, and of course this platform is in Russian but also in other languages. This is one way in which we support accessibility of qualitative content. Otherwise, I would say that we monitor the media somehow equally and do not divide them along national lines of whether they are Latvian or Russian. At the same time, we have also allowed including news and current affairs programmes from public service media in Russian to other Russian speaking media during the COVID-19 crisis. This was a way of spreading qualitative content in other Russian media.

Question: Today, we are talking about regaining trust in the media, while there is, arguably, even less trust in online platforms. We have already

touched upon regulating platforms in several presentations. So I have two questions to both panels: 1) Do you think that NRAs should make a bigger effort to regulate platforms (including major players) and the information “ecosystem” that they try to create? 2) Should all NRAs have powers beyond “naming and shaming” towards regulating platforms?

Richard Burnley

Regarding the broadcasting sector in Europe and whether we should do more to regulate platforms – the answer is certainly yes. There are of course the soft approaches, such as media literacy, which public service media play an important part in. I am pleased to say that the EU has made some great initiatives recently. If we look at the recast AVMS directive, in terms of tackling disinformation and problems with platforms, we have to ensure that trusted and objective information can be found in the digital environment. This means that there needs to be strong rules on findability and general interest content. We find a clause in the new AVMS directive for member States to do that, although only France and Germany have acted on that. We would call on all European regulators to enact those provisions and protect general interest content for the good of citizens. We then also have these two initiatives, the Digital Services Act. We are strongly advocating there that edited broadcasting content by national authorities should be untouched. Therefore, private platforms should not be interfering or taking down edited broadcasting content, because that happens a lot and is serious. In terms of the Digital Markets Act, there are a number of areas there in terms of new regulation. One I would touch upon is of course data, which means that broadcasters need access to their data, but also that their data is not exploited by the platforms.

Nyakas Levente

It depends on what kind of regulation we are speaking about. When NRAs are applying the law, they can act *ex officio*, to deal with a problem, but also when talking about impartiality, for Hungary it is mainly about individual complaints. It has the obligation not deal with such cases, and if the decision is not satisfactory it can be brought to court.

Luboš Kukliš

This environment is different from before; the old kind of regulation was always dealing with the dichotomy between media and regulator. Now we have the user as the third element – as an active user; this needs to be implemented in the old equation. Furthermore, the first line of regulation is not with the regulator, it is with the platform itself and the regulator is only overseeing the systemic implementation of the measures by the platforms, so this is regulation of distribution and not of every single item of content on the platforms. This is a whole different approach, and the regulators need to understand that and need to, with the governments and legislators, recognise this also in terms of how to draft the actual legislation and how to implement it, and what competences the regulators need. This is also why it is important to have soft competences, and to have the competence to do research. Not to

have the regulators do all the research, but mainly to increase their capacity to connect to other researchers and institutions. Media literacy, for instance, will be especially important because regulators will understand how the platforms function, and there is a great need to convey this information to users themselves. Data access is extremely important, too, we see a lot of competences in the DSA being put for the regulators, it is important for the regulators to understand these processes and how to access data and what to do with it afterwards

Concluding remarks

Moderator

The problems are much more complex than we thought and lie not so much in regaining trust of the media in the eyes of the public as well as the role of NRAs in this regard, but also in regaining trust in the NRAs in the public and the government's eyes.

We have heard today about the necessary elements of this kind of trust discussed, such as independence and transparency of NRAs, as well as education and media literacy activities for the public to better understand what NRAs do and to gain trust to the national regulatory authorities. There is also another element, that of trust of the governments towards NRAs. Here too we see problems. If writing an acceptable annual report is more important than the actual work of the NRAs, then that is a big problem. Even if you have a perfect report, a majority in parliament could vote it down. While putting NRAs under the control of parliaments is perhaps better than putting them under the control of the Executive or the President, the difference is not so significant if the control means the control of the *majority* of the parliament without any safeguards for the opposition and other parties. And this is a worse solution compared to having the control shared by the civil society and parliament.

An important decision in this regard was that passed by the Constitutional Court in Germany, which found that one-third control by parliament is enough, if not more than enough, and civil society must have a bigger say. Here again we come back to the issue of trust of the civil society to the NRAs.