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**Working Group 3:
Regulatory Approaches to News and Current Affairs Programmes**

Introduction & Structure of WG - DRAFT

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The results of consultations on the EPRA Work Programme for 2012 identified regulatory aspects of news and current affairs programmes as a topic of high interest among EPRA members. This is the first time EPRA directly treats news and current affairs as programme genres. The genre will provide a starting point for discussion at this working group which aims at exploring various regulatory issues connected with it.

This introductory document serves to provide brief background information on selected aspects of regulation of news and current affairs programmes, to outline the structure of the working group, as well as to raise concrete issues for debate. For the purpose of discussion at this working group, several regulatory aspects of news and current affairs programmes have been selected, which either stem from the requirements of the AVMS Directive (such as provisions on sponsorship and protection of minors) or have been identified as highly relevant even though not directly covered by the AVMSD (such as fairness and impartiality rules).

Structure of WG and issues for debate

The WG will be structured as a round table discussion and divided into two parts:

1. Various format aspects from the point of view of rules on commercial communications and sponsorship in particular.
2. Content aspects focusing on portrayal of violence and matters of fairness and impartiality in news and current affairs programmes.

News and Current Affairs Formats and Commercial Communications

Article 10 of the AVMSD clearly prohibits news and current affairs programmes from being sponsored. It supports the important principle that a broadcaster's editorial control over the content of its news and current affairs programming should not be, or appear to be, compromised. Product placement is also implicitly banned in news programmes. As regards prop and prize placement, some members (the French Community of Belgium, Germany, Austria for PBS) have decided to ban them completely in news programmes¹

¹ See Comparative Background Document EPRA/2010/02 for the plenary session "AVMS Implementation: Product Placement", 31st EPRA meeting - Barcelona, 12-14 May 2010: <http://www.epra.org/attachments/1791>

Rules provided by Article 20 of the AVMSD on insertion of television advertising or teleshopping apply to news programmes as well:

1. Member States shall ensure, where television advertising or teleshopping is inserted during programmes, that the integrity of the programmes, taking into account natural breaks in and the duration and the nature of the programme concerned, and the rights of the right holders are not prejudiced.

2. The transmission of films made for television (excluding series, serials and documentaries), cinematographic works and news programmes may be interrupted by television advertising and/or teleshopping once for each scheduled period of at least 30 minutes.

Since interpretation and application of the above rules largely depend on a specific programme format, the debate is envisaged to focus on formats of news and current affairs programmes. As a starting point for the first part of the round table debate, practical examples of cases on commercial communications rules in news programming from Croatia and BiH will be shown. Participants are invited to share their experience and highlight relevant decisions and cases. More specific issues for debate could include:

- *What is news - how to define news and current affairs programmes: general news programmes vs. infotainment; current affairs vs. talk shows / interviews;*
- *How to apply sponsorship rules in mixed genres: e.g. programmes that have the format of talk shows and, depending on the topic being discussed, can be classified as a current affairs programme in one issue and as light entertainment in another issue.*
- *What about non-current affairs segments in current affairs programmes and vice versa?*
- *Various advertising techniques in news: split screen, advertising during announcements...*

The second part of the round table will start with discussion on **portrayal of violence in news and current affairs programmes.**

Article 27 of the AVMSD directly deals with the portrayal of violence as a matter of protection of minors:

1. Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include any programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence.

2. The measures provided for in paragraph 1 shall also extend to other programmes which are likely to impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts.

3. In addition, when such programmes are broadcast in unencoded form Member States shall ensure that they are preceded by an acoustic warning or are identified by the presence of a visual symbol throughout their duration.

Unlike the AVMSD, at the Council of Europe level, the requirement not to give undue prominence to violence goes beyond the context of the protection of minors. The Recommendation No. R (97) 19 of the Committee of Ministers to

member states on the portrayal of violence in the electronic media² reflects concern over *"the overall increase in the portrayal of violence in the electronic media, which makes it an important social issue"*.

The Recommendation furthermore recognizes the role of the context and, in its appendix, contains parameters to be taken into account when determining whether in a given case the portrayal of violence in a programme is justified or unjustified. In connection to that, it is stressed that *"it is important to recall that the same violent message, word or image may have a different impact depending on whether it is situated in the context of news and information or entertainment, fictional or real, and depending on the intellectual, cultural, social and educational background. It is also necessary to consider the means of delivery - free to air, encrypted, subscription - and the nature of the particular media - generalist, thematic, etc."*

A recent request circulated to EPRA members by colleagues from the Swiss AEIP/UBI concerning the broadcast of violent images in news programmes has shown that the majority of members do not have specific criteria/rules for broadcasting of violent images in news and current affairs. In most cases, general rules pertaining to violent material and the protection of minors apply to all programming including news.

However, some authorities (SE, PT) reported that, in practice, images of violent nature might be justifiable if the news item demands it, *i.e.* if they have journalistic relevance and are presented with respect for the professional ethical standards. In the German legal system, there is a so-called privilege of reporting which excludes "reporting about current or historical events" from the prohibition of depiction of violence in a trivializing or exalting way. Only if the portrayal of violence in news programming violates human dignity as an indefeasible right, the dissemination is prohibited.

There can also be certain exemptions when it comes to mechanisms applied in order to guarantee the protection protecting the minors from harmful content such as watershed rules. In Norway, for instance, news and current affairs programmes are explicitly exempted from the watershed rule. In Sweden, even though watershed for all material of a violent nature is set to 21.00, the regulator has shown acceptance for violent news images at several occasions, deciding that images of a violent nature might be justifiable in news broadcasts if the news item in itself demands it. In the UK and Romania, on the other hand, the watershed is consistently applied to images of violence or harmful behaviour broadcast in news programming.

In some instances, rules on broadcasting images of violence or disturbing images extends beyond the protection of minors and cover material that could cause harm, offence or distress to the general audience (BA, RS, IE, GB).

Furthermore, in Bosnia and Herzegovina, the French community of Belgium, Croatia, Romania, Portugal and Spain-Catalonia, it is specifically required that disturbing or violent scenes broadcast within news and current affairs programmes need to be announced by an appropriate warning.

² [http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec\(1997\)019&expmem_EN.asp](http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec(1997)019&expmem_EN.asp)

The roundtable debate will start with a brief introduction of Ms. Regula Bähler from the Swiss AIEP/UBI outlining their experience in regulating the issue of portrayal of violence in news and current affairs programmes. Possible issues for debate include:

- *How are general provisions on protection of minors applied in practice: balance between the right to inform/public interest on the one hand and unwarranted depiction of violence.*
- *How is watershed applied to news?*
- *Obligation to properly announce / warn about / blur scenes of violence or its after-effects or any scene that might impair the development of minors – is this enough?*
- *Question of context: what can be taken into account when determining whether the portrayal of violence in news is justified (e.g. violent or disturbing images are to a certain extent expected and justifiable in the news programmes by their very nature; news are predominantly targeted at adults; news are usually broadcast at the same time every day hence it is less likely that children will accidentally watch; news normally do not appeal to children...)*
- *Is this only a matter of protecting the minors or the more general principle of avoiding harm to the audience?*
- *Can we highlight some examples of best practice when it comes to matters of editorial responsibility of broadcasters / professional codes of conduct?*

Finally, issues of **fairness and impartiality in news and current affairs programmes** will be touched upon.

Standards of good journalism, as pointed out in the *GUIDELINES FOR BROADCASTING REGULATION*³ require news and other programmes dealing with controversial matters to be impartial: *“A healthy democracy needs a trusted medium which can present the facts without bias, so that citizens can reach their own conclusions. This does not mean that points of view and opinions cannot be aired, but that it is incumbent upon the broadcaster to ensure that appropriate opposing views are heard and that the television or radio service is not partial itself to any particular view. Political impartiality does not mean a lack of opinion or debate. While broadcasters themselves should not express a view, it is a welcome part of the democratic process for them to provide a platform for political debate. Impartiality requires balance to be demonstrated by a range of significant views being aired. And if it is not possible to get a speaker with an opposing view onto a programme, then the journalist or the presenter can play 'devil's advocate' and test the argument. In order to ensure the free formation of the viewer's opinion, news programmes should make a clear distinction in their presentation of facts (susceptible of proof) and opinions (value judgements).”*

At the CoE level, the obligation of member states to ensure that news fairly presents facts and events and encourages the free formation of opinions has been enshrined in the European Convention on Transfrontier Television. As stressed by the explanatory report to the Convention, this obligation *“embodies an important principle, which is moreover reflected in codes of conduct of professional organizations of journalists, and aims to guarantee the plurality of information*

³ GUIDELINES FOR BROADCASTING REGULATION; Eve Salomon, for the CBA and UNESCO
http://portal.unesco.org/ci/en/files/21345/11399384219Guidelines_for_Broadcasting_Regulation.pdf/Guidelines%2Bfor%2BBroadcasting%2BRegulation.pdf

sources and the independence of news programmes. Those responsible for programme services and journalists in charge of news services have a moral responsibility towards the public not only for the reporting of news but also for their comments on events and their developments."

General principles of responsible journalism have also been developed in the case-law of the European Court of Human Rights, including the requirement to clearly distinguish facts from value judgments.

Furthermore, Recommendation CM Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content⁴ notes that *"pluralism of information [...] will not be automatically guaranteed by the multiplication of the means of communication offered to the public. Therefore, member states should define and implement an active policy in this field, including monitoring procedures, and adopt any necessary measures in order to ensure that a sufficient variety of information, opinions and programmes is disseminated by the media and is available to the public."*

Discussion on fairness and impartiality will start by an introductory note by Bob Collins from the Irish BAI who will present the outcome of their public consultations on draft Code of Fairness, Objectivity and Impartiality in News and Current Affairs. WG participants will then be asked to share the practice in their own countries and mechanisms in place to ensure due impartiality in news and current affairs programmes.

Possible avenues for discussion:

- *Are balanced and impartial news a regulatory imperative or a matter of professional conduct (regulation vs. co- and self-regulation)?*
- *As stated in the recently published report⁵ within the MEDIADEM project, statutory regulation has imposed specific obligations for impartial, accurate and balanced reporting on particular media outlets in many of the countries under review. What has been the policy rationale for such "social responsibility" regulation, are the obligations that are imposed meaningfully monitored and do they result in news reporting that displays the required characteristics?*
- *What are the practices that broadcasters have adopted to ensure balance between editorial independence and principles of fairness and impartiality?*
- *Personal views and commentaries of presenters in news vs. current affairs programmes: unacceptable or allowed provided that facts are clearly distinguished from opinions?*
- *Possible implications of a light-touch approach in on-demand AVMS.*

⁴ <https://wcd.coe.int/ViewDoc.jsp?id=1089699>

⁵ <http://www.mediadem.eliamep.gr/wp-content/uploads/2010/05/theoretical-report.pdf>