

Let me start by stressing, as always when I am invited to speak as EPRA Chair, that EPRA has neither one voice nor one face. EPRA speaks with a plurality of voices, even if we share common goals.

That is the reason why I am not going to give the position of EPRA on the recommendations made by MEDIADEM, but only the personal views of its Chairman. Yet, my views are shaped to a great extent by what I know and what I hear from our 53 members.

I will focus mainly on the recommendations about regulation, and specifically on the recommendations about regulators. One reason is obviously that there are too many recommendations to comment on all of them, but the main reason is that, surprisingly and for the first time in a work of that kind, there are quite a lot of recommendations about EPRA itself.

I will address two types of recommendations: those about structure and functioning of NRAs and those about independence of NRAs.

I would have liked to address the recommendations on PSB as I believe that regulators have here a key role to play, but we will not have enough time. Suffice to say that EPRA will debate on this issue at its next plenary in Krakow in May and I warmly invite you to follow our activities by checking our website.

I see two types of recommendations in the report: those about principles and those about structures. I agree with most if not all those which are about principles and values, and for example:

- About the *"need for more outcome-based as well as principles-based regulation rather than "command and control" regulation"*: of course this is something we need, and I can reassure you, some of our members already do (as it has been shown by several national reports) and among those who might still be influenced by "old fashioned" regulation, most of them have started working on change.
- About the *"need for openness, transparency and accountability in all aspects of media policy"*: who would dare to disagree on such a recommendation? As far as regulation is concerned I could also add another set of three values, which could be agility, proportionality and consistency.

- About the need *"to keep respect and promotion of pluralism and freedom of expression always on the radar of policymakers"*. Indeed. But I would add this should be a concern not only for policymakers: it should also be in the radar of media outlets themselves since, as the report has shown, *"media outlets often serve as vehicles through which powerful groups, individuals and corporate bodies pursue their private, commercial or political interests"*.
- About the fact that *"Pan-European coordination of regulatory approaches, use of soft law and exchanges of best practices seem key to a more integrated single market"*. This is exactly EPRA's *raison d'être* : it was what EPRA's founding fathers had in mind in 1995, and it is still today what EPRA is about.
- And finally about the fact that *"the regulatory capacity of both public and private regulators should be strengthened, given the emerging complexity of the value chains that support media production and distribution in the EU and at the global level"*. I can, here again, only agree with such a recommendation, but as far as public regulators are concerned, I have to stress that what we had to deal with in the past 4-5 years is at the same time the extension of the scope of our activities (due to the AVMSD) and the sometimes severe cuts in our budgets. All of us are doing more, and often with less resources.

I see greater difficulties in the recommendations about structures and institutions. I totally agree with the idea which underpins all the reports, which is the need for more cooperation between media regulators, but also between media and telecom regulators, and finally between EU institutions and national regulators, be it separately or collectively. Actually, it's not only something that we need, it is already something we are experiencing, and this is only going to increase for many reasons.

More problematic is the question of the regulatory design of such a reinforced cooperation. 4 organizations are considered by MEDIADEM as "candidates" to drive this reinforced cooperation.

The first one is BEREC. Considering the scope of the MEDIADEM study, it seems far from reality, since out of the 14 Mediadem countries, only 3 have adopted a converged NRA (UK, Italy and Finland). If we take the broader EU perspective, they are 6 out of 27 (Austria – but only partly, Slovenia and Hungary), which gives the same ratio of around 20%. And if we take the even broader Council of Europe picture, the ratio remains the same : 53 members coming from 47 countries or territories are members of EPRA, and converged NRA's exist in only 10 out these 47 (Switzerland, Bosnia and Herzegovina, and the specific situations of Isle of Man and Gibraltar). Selecting BEREC for that task would

thus mean a sudden transfer of media/driven by culture regulation to telecom/driven by commerce regulation.

The second candidate is the Contact Committee. Why do I personally think it would be difficult? Technically and legally, it would presuppose quite a reformulation of article 29 AVMSD to extend its powers. Politically, it could prove quite difficult to achieve, the main hurdle being that the Contact Committee represents Member States and is mainly composed of Ministries and not NRAs.

The third candidate is DG CONNECT. I would like to stress that it's not only a candidate, it's already a fact. And when the reports stresses the fact that *"the lack of a body that is in charge of achieving a degree of coordination, for example by issuing guidelines on requirements for regulatory legitimacy and supervising compliance, is a relevant issue in the European regulatory framework"*, it seems that it is already partly the role of the Commission.

And the last candidate is EPRA. About such a "candidate", I would just say that if we are far away from an internal market for infrastructures, we are even further away from an internal market for content. One of the findings of one of the reports *"shows that, in the context of public service media, homogenization is still a very distant prospect and that marked differences, noted in political, cultural and economic circumstances, remain in evidence"*. The evidence is exactly the same for NRAs: even if coordinated by the AVMSD, national regulations (and inevitably national regulators) remain deep rooted in their national cultures.

But maybe there are other solutions than these 4.

And above all, maybe before thinking who could be this welcome new coordinator, we could start not by the "who" but by the "what" and, at first, work on a harmonization of our regulatory framework instead of the coordinated one we've been living with for almost 25 years. It is a view that some of our members have already expressed.

To conclude, I would like to address one of the three last recommendations of the policy report, which stresses that *"Independent regulatory authorities, regardless the width of their remit, should be provided with sufficient regulatory powers vis-à-vis State bodies. At the same time, the independence of their members should be ensured."*

Again, who would dare to disagree on such a recommendation? Formal independence is indeed enshrined in all national frameworks. But let's face reality: in too many European countries, both inside and outside the European Union, the provisions often remain empty shells and too many NRA's are struggling to protect their independence.

Regulatory capture, either by the government or market players or a combination of both – remains a reality, and it is a reality of which too many regulators are suffering.

This leads us to the difficult to believe absence of requirements for the independence of broadcasting authorities in the AVMSD. You'll find such requirements, and quite strong ones, for telecom regulators, energy regulators, for privacy commissions, but when it comes to broadcasting regulation, the EU regulatory framework is silent (with the exception of recital 94).

This absence reveals a paradox. On one hand we have regulations which deal with fundamental human rights but which, according to their legal framework, are implemented with less or even none of the safeguards attached to regulation of telecommunication or financial services. Even if it is sector-based, broadcasting regulation goes to the very heart of most public policies as it revolves around fundamental issues such as freedom of speech, freedom to inform, freedom to receive information, freedom to make business and to innovate, political pluralism, social cohesion and responsible citizenship, and globally the contribution to a more democratic, open, and peaceful society. And on the other hand, when it comes to public regulation of all these essential issues, it is getting difficult to understand why it should be implemented without the safeguards granted to the NRA's who regulate the price of your internet access, the price of your electricity bill or the quality of the information that you get from your banker when you decide to buy a few bonds.

There were indeed provisions about independence of NRAs in the AVMS Directive proposed by the Commission to the Council in 2005, but they disappeared in the legislative process in 2007 owing to the wish of a few Member States. Ironically enough, some of these MS are also those who have recently criticized the Commission for failing to act in favor of the independence of the NRA in Hungary.

But what happened between 2005 and 2007 is not only difficult to believe: it is also a missed opportunity. One of the reports highlights the *"formative impact of European influence"* and stresses that *"the broadcast systems – with regulations, regulators and common playing rules – have benefitted clearly from the EU influence, as it imposed the creation of certain institutions, delivering a standard set of services in an independent manner"*. I clearly agree, and that is why I do hope that when the AVMSD is reviewed, the EU lawmaker won't miss this opportunity a second time.

*Jean-François Furnémont, EPRA Chairman – 7 February 2013*

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