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Plenary Session 2  
Hate Speech – Old Enemy, New Battles

Draft Background Paper<sup>1</sup>  
Summary of the Answers to the Hate Speech Questionnaire

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## Introduction

The topic of Hate Speech and Incitement to Hatred has been twice on the agenda of an EPRA meeting, with a working group in Istanbul in 2004 and a plenary session in Sarajevo in 2005. The plenary session in Sarajevo was based on a survey carried out by the French CSA among EPRA members, which aimed at establishing a typology of cases<sup>3</sup>, notably dealing with incitation to hatred on nationality, ethnic and religious grounds.

The EPRA Annual Work Programme 2014<sup>4</sup>, which was adopted by the Executive Board in February in London, includes a yearly plenary session on "Tackling discriminatory and hateful content in a convergent media environment". The yearly session will bring together two related content issues that of hate speech and diversity and representation in the media, both currently raising new challenges in the convergent media environment. While the present Budva session will look at free speech abuses, especially from the aspect of new media, analysing the adequacy of current legal sanctions and remedies as well as the effects of NRAs' measures regarding hate speech and looking at the respective degrees of involvement and responsibility of regulators, public prosecution office, courts, and the wider social arena, the session on 10 October 2014 in Tbilisi will explore how predominant manners of representations of age, social class, ethnicity, gender, sexuality and disability in the media are treated by national regulators.

Nine years after the session in Sarajevo, a questionnaire aimed at gathering information on the definition of hate speech and recent cases of hate speech from service providers the jurisdiction of EPRA members or emanating from another country was circulated to the EPRA network. The results of the questionnaire are henceforth presented with the goal of providing a short introduction to a number of interesting presentations and hopefully a stimulating and fruitful discussion on this topic at the meeting in Budva.

The large number of responses to this questionnaire provided an insight into a number of interesting cases and provided evidence that the issue of hate speech is an extremely important topic and that,

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<sup>1</sup> **Disclaimer:** This document has been produced by EPRA, an informal network of 52 regulatory authorities in the field of broadcasting. It is not a fully comprehensive overview of the issues, nor does it purport to represent the views or the official position of EPRA or of any member within the EPRA network.

<sup>2</sup> The author would like to thank Helena Mandić, Vice Chair of EPRA and Board sponsor of this Plenary session for her assistance with the preparation of this background paper.

<sup>3</sup> <http://www.epra.org/attachments/sarajevo-plenary-2-incitation-to-hatred-presentation-fr>

<sup>4</sup> [http://epra3-production.s3.amazonaws.com/attachments/files/2321/original/ANNUAL\\_WORK\\_%20PROGRAMME\\_2014\\_EN.pdf](http://epra3-production.s3.amazonaws.com/attachments/files/2321/original/ANNUAL_WORK_%20PROGRAMME_2014_EN.pdf)

especially taking into account new technologies and the abundance of services offered, hate speech manages to always reinvent itself and is present in different shapes and forms in audiovisual media services in Europe.

It is an acknowledged fact that the issue of hate speech dictates very detailed and careful considerations, in order for it to be classified as such. As has been long established, offensive and shocking content does not necessarily represent hate speech and NRAs should take into account the premise of right to freedom of expression in their deliberations.

Additionally, it is important to consider the scope of the mandate of NRAs as civil administrations when dealing with cases, which, reportedly also represent criminal activities.

The development of new media, the emergence of open journalism as well as the plethora of media services offered throughout Europe are contextual factors which provide fresh angles for the issue of hate speech.

Last, but certainly not least, one should also consider the geopolitical context dimension of these deliberations, with a number of regional and global situations affecting the media scene at present. The promulgation of hate speech must be regarded taking into account the wider societal landscape, which reinforces the efforts of NRAs to, collectively with the wider society, create a professional environment in audiovisual media services throughout Europe.

The survey included questions related to the definition of hate speech, cases of hate speech, both originating from the Member State and other countries, as well as proceedings and sanctions issued in that respect. 36 responses were collected. The individual responses to the questionnaire are accessible to EPRA members on the EPRA website<sup>5</sup>.

Respondents included the regulatory authorities from: Albania AMA (AL), Armenia NCTR (AM), Austria KommAustria (AT), Bosnia and Herzegovina CRA (BA), Belgium CSA of the French speaking Community (BE), Belgium VRM of the Flemish speaking Community (BE), Bulgaria CEM (BG), Switzerland AIEP/UBI (CH), Cyprus CRTA (CY), Czech Republic RRTV (CZ), Germany DLM (DE), Estonia TSA (EE), Spain CNMC (ES), Finland FICORA (FI), France CSA (FR), United Kingdom Ofcom (GB), Gibraltar GRA (GI), Greece NCRT (GR), Croatia AEM (HR), Hungary NMHH (HU), Israel SATR (IL), Iceland MC, (IS), Macedonia AAAMS (MK), Lithuania RTCL (LT), Luxembourg ALIA (LU), Latvia NEPLP (LV), Malta BC (MT), Netherlands CvdM (NL), , Norway NMA (NO), Poland KRRiT (PL), Romania NAC (RO), Sweden SBA (SE), Slovenia AKOS (SI), Slovakia CBR (SK), Ukraine NCTR (UA), and Kosovo IMC (XK).

## **I. Definition of hate speech**

The aim of the first two questions was to gather evidence on the legal background related to the definition of hate speech, whether it is provided for in NRAs Rules and Regulations or in the media legislation. 16 regulators answered positively, while 19 NRAs gave a negative response and one did not provide any answer.

From the responses, it appears that while broadcasting laws, as a rule, contain an explicit provision prohibiting the incitement to hatred, sometimes as a rather literal transposition of Article 6 of the

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<sup>5</sup> <http://www.epra.org/surveys/epra-2nd-plenary-questionnaire-hate-speech-old-enemy-new-battles/results.pdf>

AVMS Directive<sup>6</sup> (as in Gibraltar), or refer to incitement of hatred, they rarely provide for a detailed definition of the concept.

Respondents report elements of definitions of hate speech as well as information about sanctions in the criminal or penal Codes (as in Israel, Norway, Poland or Spain) and/or inclusion of similar provisions in both media and criminal legislations.

While details of the constitutive elements of hate speech are rarely to be found in a definition, the legal provisions provide information on the various grounds on which the incitement of hatred is prohibited. In addition to the references to race, sex, religion and nationality, other frequently cited grounds include: national or social origin, belief, ethnic background, skin colour, language, morals, sexual identity/ expression/orientation/preferences, education, “membership in a trade union” (Croatia/Bosnia and Herzegovina), disability, *“the negation, mitigation, justification approval of the genocide caused by the Nazis during WW2 as well as any other type of genocide”* (Belgium - CSA).

For its part, the Council of Europe’s Committee of Ministers’ Recommendation 97(20) on “hate speech” defined it as follows: *“the term “hate speech” shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.”*

Generally, the legal provisions apply to both linear and non-linear audiovisual media services, with the example of the United Kingdom’s co-regulatory system which includes the regulation of VoD by ATVOD, with Ofcom rules related to extremist content being applied to VoD.

Some legal derogations from the general prohibition of hate speech are reported, but only in cases of broadcast of content that is a part of scientific or feature documentary and/or part of objective journalistic report published with no intention to promote or promulgate hate speech, and which are intended only to criticize it, such as the example in Bosnia and Herzegovina. (CRA BA)

The following are only but a few examples of responses.

*In Finland, hate speech as such is not defined. However, according to the Office of the Prosecutor General, when trying to define punishable hate speech, the basis should be in the definition of Ethnic agitation (and its aggravated version), which is criminalized in the Criminal Code of Finland. Ethnic agitation is an offence subject to public prosecution. More explicitly, Ethnic agitation (Chapter 11, Section 10) states: « A person who spreads statements, opinions or other information among the public where a certain group is threatened, defamed or insulted based on race, colour, ancestry, national or ethnic origin, religion or conviction, sexual orientation or invalidity or a comparable basis shall be sentenced for ethnic agitation to a fine or to imprisonment for at most two years. » (FICORA FI)*

*In Poland, hate speech is defined in the Polish Penal Code. It is stated: « Whoever publicly promotes a fascist or other totalitarian system of state or incites hatred based on national, ethnic, race or religious differences or for reason of lack of any religious denomination shall be subject to a fine, the penalty of restriction of liberty or*

<sup>6</sup> Article 6 AVMSD

*“Member States shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality”*

*the penalty of deprivation of liberty for up to 2 years... Whoever publicly insults a group within the population or a particular person because of his national, ethnic, race or religious affiliation or because of his lack of any religious denomination or for these reasons breaches the personal inviolability of another individual, shall be subject to the penalty of deprivation of liberty for up to 3 years. »* However, hate speech is also mentioned in the Broadcasting Act of 1992, where it is stated: *« Programmes or other broadcasts may not encourage actions contrary to law and Poland's raison d'Etat or propagate attitudes and beliefs contrary to the moral values and social interest. In particular, they may not include contents inciting to hatred or discriminating on grounds of race, disability, sex, religion or nationality. »* (KRRiP PL)

*In Germany*, there is no definition of hate speech as such in German media legislation. However, the Interstate Treaty on the Protection of Human Dignity and the Protection of Minors in Broadcasting and in Telemedia refers to hate speech, in the sense that, without prejudice to any liability under the German Criminal Code, content is illegal if it *“incites to hatred against parts of the population or against a national, racial, religious or ethnic group, encourages violent or arbitrary action against such a group or violates the human dignity of a person or group by insulting, maliciously degrading or defaming parts of the population or any of the aforementioned groups”*. The incitement to hatred is also a criminal offence. According to Article 41 (1) Sentence 4 of the Interstate Broadcasting Treaty (RStV), the general provisions of law (thus also Section 130 of the German Criminal Code) and the legal provisions protecting personal dignity must be complied with. Hence, cases of a criminal offence according to Section 130 of the German Criminal Code are at the same time a breach of the Interstate Broadcasting Treaty. (DLM DE)

*In Slovenia*, the legal definition of hate speech is very narrow; the essential characteristics of hate speech according to the Slovenian law includes the direct call to attack and the focus on a specific, vulnerable social group (not an individual). (AKOS SI).

*In the UK*, the Communications Act 2003 does not specifically define “hate speech”. However, Ofcom does have duties in the area of “incitement to crime” (Ofcom UK).

*In Spain*, while the Spanish legislation aims to reconcile the right to freedom of information with other rights, there is no precise definition of hate speech (CNMC ES).

## 1.2. Guiding principles in determining hate speech

Question 3 aimed at gathering information as to whether the NRAs have at their disposal any other guiding principles used when determining hate speech, as it has been established that precise definitions with constitutive elements of hate speech are rarely provided by law and that provisions at times can be too vague to interpret. Several NRAs report to having some guiding principles and guidelines, e.g. integrated in the Programme Standards Code in Gibraltar, Ofcom’s Guidance to the Broadcasting Code, ATVOD Rules and Guidance or the CRA’s Guidelines on Audiovisual and Radio Media Services (currently being developed).

Other NRAs refer to the case-law of domestic constitutional courts and to the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms and the European Court of Human Rights as guiding principles when dealing with cases of potential hate speech.

The Agency for Audio and Audiovisual Media Services (AAAMS – MK) also refers, among several other sources, to the Council of Europe Manual on hate speech <sup>7</sup> prepared by Ann Weber in 2009, whose aim is “to clarify the concept of hate speech and guide policy makers, experts and society as a whole on the criteria followed by the ECHR in its case law relating to the right to freedom of expression”.

There are also reports of the existence of special bodies which determine whether the public information published in the media incites hate on various grounds, such as the Polish and Lithuanian Offices of the Inspector of Journalist Ethics (both established by the Parliament), which have set up a group of experts for this. Similarly, the CSA of the French-speaking Community of Belgium asks the advice of the specialised public body in charge of this matter, the "Interfederal Center for Equal Opportunities" (KRRiT PL/RTCL LT/CSA BE).

Here are some examples of responses.

*In Gibraltar, the Programme Standards Code has a section regarding ethnic minorities, which provides detailed guidelines related to unacceptable content: "No programme should be transmitted which is intended to stir up racial hatred or, taking into account the circumstances, is likely to do so. Where appropriate, schedules should give a fair reflection of the contribution of all races to society. Racist terms should be avoided. Insensitive comments or stereotyped portrayal may cause offence. Their inclusion is acceptable only where it can be justified within the context of the programme. Careful account should be taken of the possible effect upon the racial minority concerned, as well as the population as a whole, and of changes in public attitudes to what is, and is not, acceptable." (GRA GI)*

*In United Kingdom, Ofcom (and ATVOD) must take account of the right to freedom of expression and the right to freedom of thought, conscience and religion laid out in the European Convention on Human Rights (ECHR). Ofcom is required to consider the likely effect on the audience of material included in a service. This is fundamentally different from the test that would apply for bringing a criminal prosecution. In particular, determination is made as to whether the material appears to encourage or incite crime and whether either explicit or implicit calls to action are included. Additionally, Ofcom also takes into account the context, including: what statements are made and how they are made (e.g. did an individual make any call for violent action against particular individuals or organisations); audience expectations; the identity of the speaker; and the wider context in which statements are made (e.g. were the individual speaker's statements challenged within a programme, for example, by an interviewer). In this respect, Guidance to Section Three of the Code provides for additional explanations. For example, the filming of a criminal activity is not in itself, necessarily, an encouragement or incitement. As to the VoD, ATVOD's Rules and Guidance in this area state the following: “'Hatred' is a strong word. It is neither the purpose nor the intention of section 368E(1) of the Act to restrict legitimate freedom of speech by prohibiting or restricting discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse for groups covered by this requirement. For example it is permissible to express criticism, dislike or ridicule of a religious belief system or its practices or urge its adherents to cease practising or to express views which are sexist, insulting or offensive but which stop short of being likely to incite hatred. Content alleged to be likely to incite hatred will be considered in*

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<sup>7</sup> [http://www.coe.int/t/dghl/standardsetting/hrpolicy/publications/Hate\\_Speech\\_EN.pdf](http://www.coe.int/t/dghl/standardsetting/hrpolicy/publications/Hate_Speech_EN.pdf)

*the full context of the programme and/or on-demand programme service in which it is made available. Intention will be relevant to determining if material is likely to incite hatred. However, intention may be inferred having regard to all the circumstances. This requirement does not replace the applicable criminal law or give ATVOD powers which are the preserve of the law enforcement authorities. 'Race' means a group of persons defined by reference to colour, race or ethnic or national origins. Material likely to incite hatred could be contained in the spoken word, behaviour, visual images or audio sounds or a combination of all or any of these and is likely to include threatening behaviour or words". (Ofcom UK)*

*In Bosnia and Herzegovina, when dealing with cases involving hate speech, CRA takes into account factors such as: the source of such speech, the context in which it was made available to the public - editorial responsibility, i.e. whether the media service provider (journalist/reporter/editor) has made it clear that such speech does not reflect their editorial policy; or whether the media service provider failed to react to hate speech (e.g. in live programmes, interviews etc.) or has even made a commentary which added force to hate speech. They further elaborate whether the source of hate speech is media service provider, and take that element into consideration as an important factor when establishing responsibility. Broadcasting statements made by public officials, politicians or other prominent individuals that could be classified as hate speech bears different weight than broadcasting hateful comments by e.g. participants in a telephone contact program that media service provider fails to identify as hate speech. In that respect, it is considered that broadcaster's responsibility is highest if the reporter knowingly or deliberately provokes or uses hate speech. (CRA BA)*

## **2. Cases of hate speech and sanctions issued**

Certainly, some of the most interesting details related to the topic of hate speech have been revealed under the answers to questions 4 and 5, which dealt with concrete case(s) of hate speech that NRAs experienced in the past two years either originating at the national level or from providers under a different jurisdiction. In that respect, 19 responses included information about the existence of such cases, while 17 NRAs have not dealt with this issue in the past two years. As an element of comparison, the EPRA survey conducted by the French CSA in 2005 had listed 16 cases (from 1999 to 2005) reported from nine NRAs. Even though both surveys are difficult to compare because of the higher number of respondents to the most recent questionnaire, this could however point at an alarming number of cases related to hate speech, taking into account the fact that more than half respondents have dealt with such occurrences in the past two years.

This gets particularly more troublesome when one considers the nature of cases occurring. There were cases of gender discrimination, Islamist-fundamentalist matters, anti-Semitic and xenophobic language, derogatory language against immigrants, language targeting LGBT population, Roma, etc. There were reports of suspected hate speech programmes which were submitted to relevant prosecutorial bodies for further considerations.

The forms and platforms used to host hate speech vary from audiovisual media providers, programme guests and politicians, to text messages included into programmes and Internet-based articles.

In addition, there were reports of hate speech originating from other countries, such as certain satellite channels originating from Middle East countries, as well as programmes originating in Russian Federation, but also Member States, in connection with recent unfortunate events in

Ukraine, as reported by Lithuanian and Ukrainian NRA (RTCL LT, NCTR UA). These cases are also interesting from the perspective of jurisdiction and available recourses in dealing with such occurrences, as will be further elaborated, in the part dealing with procedural matters.

Taking into account recent protests in Bosnia and Herzegovina, although there were no cases of hate speech initiated, the CRA reacted by issuing a press release appealing to compliance with relevant rules, especially in relation to provisions on hate speech. During the protests, many conflicting and inaccurate information appeared in public, mostly in print and online media, some of which indicating terrorist activities or even a possibility of an outbreak of armed conflict in the country. Bearing in mind the power of the media, especially in Bosnia and Herzegovina, where they played a central role in promoting the war, CRA felt that its licensees – as well as the general public – needed to be reminded of a special obligation of the media to present news and opinions based on facts, as well as to recognize the kind of statements which, if presented emotionally and without careful consideration of the potential impact on the audience, may incite violence, encourage intolerance and hatred. (CRA BA)

Some examples of cases are presented hereinafter, while some may also be presented at the Budva Plenary.

*In the United Kingdom*, Radio Asian Fever, a community radio station serving the South Asian communities of Leeds broadcast two programmes with a presenter ('Sister Ruby'), in which a presenter gave her interpretation of Qur'anic scripture. Sister Ruby gave her interpretation of one verse as being highly critical of homosexuality. On another issue, Ofcom dealt with the issue of Sangat TV, which is a digital satellite channel broadcasting religious and general entertainment content in English and Punjabi, primarily directed towards the Sikh community in the UK. This discussion programme featured eight panellists discussing a violent street attack, which took place in London on 30 September 2012 on a former Indian Army officer, Lieutenant-General Brar. Ofcom found that the panellists made various statements that cumulatively constituted an indirect call to action to members of the Sikh community to take violent action against Lieutenant-General Brar, other members of the Indian armed forces who had taken part in Operation Bluestar, or those who supported this military operation. In another case, involving a digital satellite television channel, primarily aimed at an Asian UK audience, a programme in question featured an Islamic scholar, delivering a live televised lecture about Islamic theology with reference to the murder in early 2011 of the Punjab governor Salmaan Taseer by his bodyguard Malik Mumtaz Qadri. Salmaan Taseer had been a vocal critic of Pakistan's blasphemy law. Ofcom found that the scholar made various statements, which could be interpreted as personally advocating that all Muslims had a duty to attack or kill apostates or those perceived to have insulted the Prophet. (Ofcom UK)

*In Poland*, a rock radio station was fined because of comedians in a morning talk insulting Ukrainian women working as domestics in Warsaw. The same station was also fined for the same comedians making racist remarks about a Polish citizen of Indian origin. (KRRiT PL)

*In the Czech Republic*, a case emanated from a TV station's programme related to reports on an assault committed against a family, repeatedly stating that the perpetrators of the assault had been Roma. When reporting

on the subsequent demonstrations in Varnsdorf, the programme labeled Roma people as being to blame for the tense situation in North Bohemia. The programme gave no room to members of the Roma minority to express their views. All statements by local residents were exclusively devoted to representatives of the majority society who expressed their fears of ethnic Roma people. The programme repeatedly advertised when the demonstrations would take place, calling them anti-Roma. The authors of the reporting also used information about the death of the woman assaulted in a manipulative way for an ulterior motive, repeatedly directly linking her death to the "Roma attack" even though the woman did not die until several days after the assault and her death was from natural causes. (RRTV CZ)

*In Hungary*, a case involved an article published in print and on the Internet, related to a crime which attracted huge public interest. The article portrayed a "considerable part" of the Roma population as being inclined to committing crimes, criminalised, refuting the norms of social coexistence, regularly violating the laws of Hungary. According to the article "*The facts are the following: the majority of the Roma people are not fit for coexistence, they are unfit to live among humans*". The author drew up a "*proposal for solution*" which involved retaliation for committed crimes. The author practically legitimised extrajudicial authority as a possible means of solving social problems in the lack of an immediate intervention by the police. One of the sentences in the article even encouraged the reader to resort to the extrajudicial authority when it projects the end of the "*human society*" should people fail to resort to violent means of resolving conflicts. The article was found to be likely to create prejudice not only against the people connected with the crime or the "majority" of the Roma people, but against all members of the minority group. (NMHH HU)

*In Bosnia and Herzegovina*, a case involved a TV station broadcasting a live talk-show on the topic of gender change, during which viewers had an opportunity to send SMS messages which were displayed on screen. The dialogues between the host and guests in the studio and the content of the show in general were not found to be in breach of applicable Rules and Regulations. However, some of the SMS messages contained extremely hateful and discriminatory language. According to the rules, media service providers are editorially responsible for all content, regardless of its source, including SMS and other messages sent by the viewers/listeners. In the concrete case, the NRA established that the broadcaster should have predicted viewers' negative reactions having in mind the sensitivity of the topic, and should have undertaken measures to filter incoming messages and prevent provocative and emotional statements that carried a clear risk of inciting hatred and violence from appearing on the screen. The broadcaster also failed to take responsibility for the violation, claiming that it was their role to convey public opinion, which added to the severity of the breach. The second case involving the same broadcaster happened several months after the NRA decision for the first offense was issued, and involved the same talk show, this time dealing with the topic of gay marriage. Again, SMS messages containing hate speech were displayed on the screen, and some of the messages were actually read by the host. This time, the broadcaster admitted to the violation, justifying it by an unintentional technical oversight. The

broadcaster was again found in breach of rules, especially having in mind the repeated violation of same nature in a relatively short period of time.

Sanctions used for such cases include regular sanctions available to NRAs and vary from warnings to predominantly financial fines, in some instances in connection with orders to issue findings of NRA or orders to issue corrections of information.

In the UK, the reported case involving a digital satellite television channel, primarily aimed at an Asian UK audience was issued a financial penalty of £ 85 000 (EUR 105 000) with the requirement for the broadcaster to broadcast a statement of Ofcom's findings and a requirement that such programming is not to be repeated. In the case of Sister Ruby, the penalty imposed was £4,000 with the requirement for the broadcaster to broadcast a statement of Ofcom's findings<sup>8</sup>.

In the Polish case, a financial sanction amounting to 70 000 PLN (EUR 17 000) was issued by the Polish NRA KRRiT, but was later reduced by court to 50 000 PLN (EUR 12 000). The Hungarian case resulted in a financial penalty of EUR 800, issued by Hungarian NRA – NMHH, while Bosnia and Herzegovina's cases amounted to financial penalties of EUR 1 000 and EUR 2 000 respectively (the second amount doubling the first penalties, since it was a repeated offense). In the case of programme related to Roma population in the Czech Republic, the penalty issued was a warning.

## 2.1. Hate speech originating from other countries

NRAs from Ukraine and Lithuania reported about cases of hate speech originating from foreign jurisdictions.

### Lithuanian cases (RTCL LT)

The Lithuanian NRA has dealt with cases originating from both EU countries and the Russian Federation, i.e. the PBK cases of October 2013 and March 2014 under the Latvian NRA's jurisdiction, the NTV Mir Lithuania case of March 2014 concerning the UK NRA's jurisdiction and the RTR Planeta case of March 2014 case involving the Russian Federation.

The Office of the Inspector of Journalist Ethics (mentioned on page 5) concluded that certain parts (i.e. broadcasts) of these programmes (channels) violated Article 19 para 1 clause 3 of the Law on Provision of Information to the Public, which includes a prohibition to publish information that instigates war or hatred, sneers, scorns, instigates discrimination, violence, harsh treatment of a group of people or a person belonging to it on the basis of gender, sexual orientation, race, nationality, language, origins, social status, religion, beliefs or standpoints.

In the case of PBK of October 2013 and NTV Mir programmes (under the Latvian and UK jurisdictions respectively), one broadcast disseminated information regarding the events in Lithuania on 13 January 1991<sup>9</sup> which was judged as false and offensive by the Lithuanian regulator. It is reported that

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<sup>8</sup> In deliberating on a sanction, Ofcom considered several factors, such as the fact that no prior breaches of Rules and Regulations occurred by the station in question, that the breach had not been repeated; that the breach resulted from a broadcast by an inexperienced volunteer presenter at a community station. As to the amount of financial penalty issued, the issues considered were the size and turnover of this community radio station and the documentary evidence provided by the station about its financial situation, as well as the nature of the station (i.e. community non-for-profit radio), as well as the need for the penalty to act as a deterrent to other licensees, but not to be set too high so that it would probably close the station.

<sup>9</sup> Events of re-establishment of the state of Lithuania, when as a result of the Soviet military actions 13 people were killed and around 700 hundred were severely injured.

negation or negative interpretation of the said facts can incur criminal liability according to the Criminal Code.

In the PBK case of March 2014, the RTCL considered that the news programme *Vremia* deliberately tried to instigate hatred between Lithuanian and Russian citizens by spreading disinformation about hit men for Maidan trained in Lithuania and funded by European funds.

In the case of Russian RTR Planeta, the RTCL considered that the programme *Vesti nedeli* (Weekly News) which concerned recent events in Ukraine, disseminated a biased and tendentious information which was justifying violence against civilians, instigating hatred between Russians and Ukrainians and against USA and its allies, justifying military intervention in the sovereign state and annexation of part of its territory.

In three out of the four the cases<sup>10</sup>, the following steps were followed:

1. The Lithuanian NRA requested the Office of the Inspector of Journalist Ethics for an official conclusion on the broadcast content;
2. Based on the findings of the aforementioned body, the Lithuanian RTCL adopted a decision to suspend the parts (broadcasts) produced in countries other than EU Member States, states of the European Economic Area and other European states which have ratified the Council of Europe from being re-broadcast by the re-broadcasters falling within the Lithuanian jurisdiction for a period of three months;
3. As required by the legal procedure in Lithuania, the RTCL addressed the Vilnius Regional Administrative Court to validate its decision;
4. The Vilnius Regional Administrative Court confirmed the decision of the regulator which thus came into force;
5. The RTCL informed the programme providers (cable operators) and the respective regulatory authorities of the decision;
6. The re-broadcasters provided information about the NRAs decision with contact information in place of the suspended programme parts.

From the moment the Commission's decision was validated by the court, the re-broadcasters were bound to it and had to stop providing the mentioned parts (broadcasts) of the mentioned programmes (channels) for a period of three months, i. e. from 22 March to 21 June for programme parts of the Russian production of the programme (channel) NTV Mir Lithuania, and from 8 April to 7 July for the RTR Planeta. All re-broadcasters complied with the decision.

It is unclear from the reports dealing with these cases whether and how the procedure stipulated by the AVMS Directive was followed. It appears that Lithuanian NRA did not seem to have recourse to the procedure set by Article 4 of the Directive, according to which a Member State which objects to the content in a foreign television broadcast which is wholly or mostly directed to it, can use a **consultation procedure** (cooperation procedure) to address the country of origin. The latter shall then issue a non-binding request for the broadcaster to comply with the stricter rules of the targeted country. Should the broadcaster **circumvent** these national rules; the objecting country can also - with the Commission's prior approval – **take binding measures** (circumvention procedure).

What has been reported is that in the case of PBK October 2013 broadcast (jurisdiction of Latvia) after the broadcaster was notified that the content of one of its programmes violated Lithuania's laws, it immediately recomposed its programmes so that the content produced in countries other

<sup>10</sup> In the PBK case of March 2014 (Latvian jurisdiction), no sanctions were applied, the RTCL informed its Latvian counterpart on the „dubious content“ of the broadcast.

than the EU Member States, states of the European Economic Area and other European states which have ratified the Council of Europe Convention on Transfrontier Television were no longer available. The broadcaster also apologized for the hurt feelings and incurred damage.

In the case of NTV Mir programmes (jurisdiction of UK) the broadcaster complained to the Lithuanian NRA claiming that the Commission's decision was "intimidation and an attempt to bring pressure upon the commercial broadcaster".

Since these cases represent very interesting issues to be regarded from the perspective of the implementation of AVMS Directive, the author of this report hopes that further information will be available, which can be included in the final version of the text.

### **Ukrainian cases (NCTV)**

As reported, Russian channels have been broadcasting programmes containing violent upheaval of the constitutional government of Ukraine and threatening the national security of Ukraine and its territorial integrity. The Ukrainian NRA referred the case before the Court. The final outcome is that the retransmission of four Russian channels (First Channel Wideworld Network, RTR Planet, NTV World, Russia 24) was temporarily banned in Ukrainian cable networks further to the relevant court decision.

There have also been cases reported by the Dutch NRA from an earlier period (2005), involving some Middle-East satellite channels, which were removed from a Dutch satellite, following a formal notice of the regulator (CvdM NL).

## **2.2. Hate speech decisions by prosecutorial/judicial authorities**

One of the last questions dealt with potential cases of hate speech dealt by prosecution/judicial bodies of Member States. Some cases were reported although the vast majority of respondents state that there were either no cases of such nature or that NRAs are not aware of such cases.

Here is the outline of the cases which were reported.

*In Luxembourg, the courts have dealt with two cases in relation with hate speech in the past two years. The first one concerns racial hatred discourse in flyers whereas the second one relates to the same kind of discourse in flyers as well as on the Internet. One of the services of Bee Secure, Lisa Stopline (where anybody can report illegal and harmful content on the Internet) has been advised of racial contents on the concerned Internet site. (ALIA LU)*

*In Macedonia, the NRA received a complaint stating that "a TV video that spread religious and national hatred was broadcast" and that "additionally, the video was broadcast before the programme for children (cartoons) and that this video and song should be banned from broadcasting." The NRA conducted programme monitoring and made the transcript of the video, based on what it determined that it is possible that the video contained elements of hate speech. The NRA then submitted a notice to the Public Prosecutor's Office for further proceedings in accordance with the relevant. In addition, the NRA submitted a notice to the broadcaster warning them*

that in the future they should be careful in terms of the content that is broadcast within their programme service. The case is still pending. (AAAMS MK)

*In Slovenia*, there was a case a few years ago tackling the alleged hate speech on Internet forum, but the charges were proven wrong, as the cases that were lacking the essential characteristics of the hate speech according to the Slovenian law: the direct call to attack and the focus on a specific, vulnerable social group (not an individual). (AKOS SI)

*In France*, associations/NGOs often simultaneously lodge a complaint with the CSA concerning an alleged breach of the licensing conditions or of the legal provisions of the Law on Freedom of communication (the French Broadcasting law) AND bring an action under criminal law for a breach of the Law of 1881 on the Freedom of the Press.<sup>11</sup> (CSA FR)

## Conclusions

This paper outlined the responses to EPRA questionnaire related to the definition and case-law of hate speech in the last two years.

From the responses, it appears that while broadcasting laws, as a rule, contain an explicit provision prohibiting the incitement to hatred, or refer to incitement of hatred, they rarely provide for a detailed definition of the concept.

While details of the constitutive elements of hate speech are rarely to be found in a definition, the legal provisions provide information on the various grounds on which the incitement of hatred is prohibited.

Most texts include a prohibition of discrimination on various grounds, including but not limited to race, sex, religion, nationality, sexual preferences, etc. prohibition of broadcasting freedoms in specific cases to prohibition of incitement to hatred, threat to national safety, etc.

As a rule, provisions apply to both linear and non-linear audiovisual media services.

When dealing with potential hate speech, the majority of respondents use the case-law of domestic courts and the European Court of Human Rights as guiding principles. There are also reports of the existence of special bodies whose mission is to determine whether the public information published in the media incites hate on various grounds.

19 out of 36 respondents reported on concrete case(s) of hate speech the past two years. There were cases of gender discrimination, Islamist-fundamentalist matters, anti-Semitic and xenophobic language, derogatory language against immigrants, language targeting LGBT population, Roma, etc. Some reports of suspected hate speech programmes were submitted to relevant prosecutorial bodies for further consideration.

The forms and platforms used to host hate-speech vary from audiovisual media providers, programme guests and politicians, to text messages included into programmes and Internet-based articles. The responses to the questionnaire however provided very little information about cases occurring on online or social media.

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<sup>11</sup> <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006070722>

Moreover, there were reports of hate speech originating from other jurisdictions, such as certain satellite channels originating from Middle East countries, as well as programmes originating in Russian Federation, but also Member States, in connection with the recent unfortunate events in Ukraine, as reported by Lithuanian and Ukrainian NRAs (RTCL LT, NCTR UA).

As has been seen in some responses, there are instances where some content is classified as hate speech, but when faced with dealing with concrete examples, it is often seen that not all such content can in fact be classified as hate speech. On the other hand, the regional and in times global political developments do indeed lead to an increased use of language that is detrimental to certain parts of population and that carries elements of incitement to hate and crime, even to threats to national security. It is especially important that, in such instances, legal mechanisms are in place to combat such practices.

We use this opportunity to thank all colleagues for taking their valuable time and providing answers and hope that the outline of responses will contribute to a lively debate at the EPRA meeting in Budva.

## Annex – EPRA Questionnaire on Hate Speech

1. Is the definition of hate speech given in your NRA's Rules and Regulations or in the media legislation in your country?  
- If so, could you please provide it?
  
2. Are there any other guiding principles that your NRA employs when determining hate speech?
  
3. Has your NRA dealt with case(s) of hate speech in the past two years?  
- If so, could you please provide details of the nature of the case and the issues surrounding it?  
- What was/were the sanction(s) issued?
  
4. Has your NRA dealt with cases of hate speech received in your country, originating from another country in the past two years?  
- If so, please provide the details of the nature of the case and the issues surrounding it particularly stressing the following:
  - a) Did it originate from an EPRA or a non EPRA country?
  - b) What procedure did you follow?
  - c) What was the outcome of the case?
  
5. Is your NRA aware of any hate speech cases dealt by prosecution/judicial institutions in your country in connection to AVMS, in the past two years?
  
6. Would you be willing to share your experiences at the EPRA panel theme dedicated to this subject?
  
7. Please add any other information you deem relevant with regard to hate speech