

**44th EPRA Meeting Yerevan:
20-21 October 2016**

**Working Group 1: Media in Times of Crisis:
The role of regulatory authorities
Background Questionnaire Report¹
by WG-Content Producer Asja Rokša – Zubčević, CRA (BiH)
(Final post-meeting version of 15 November 2016)**

1. Introduction

The EPRA Annual Work Programme focused this year on the topical issue of Media in Times of Crisis. While the spring meeting in Barcelona² addressed the topic from the perspective of media service providers, notably through presentations from journalists and broadcasters, the autumn session focused on the particular role that media regulators can play in this context.

The past years have witnessed their fair share of crises, be it wars and conflicts, terrorist attacks, natural and man-made disasters. And as was highlighted during the working group in Barcelona, truth is as a rule the first victim during conflicts. In times of crises, with numerous media outlets on different platforms, it is often the case that biased, untrue and unreliable information, including ‘propaganda’ and hate speech may spread within minutes.

This leads us immediately to the issue of definitions. As was pointed out in the introductory paper for Barcelona, **hate speech** is an emotive concept, and there is no universally accepted definition of it in international human rights law. International and regional human rights instruments imply varying standards for defining and limiting ‘hate speech’: these variations are reflected in differences in domestic legislation. There is also very much confusion when it comes to the term of ‘propaganda’ as it may cover illegal propaganda, such as war propaganda for example, and other forms of propaganda, such as fabricated news, or trolling which doesn’t necessarily violate international laws.

In the second acceptance of the word, propaganda can be defined: “as a form of persuasion and the spreading of ideas used to influence people's attitudes, beliefs, and behaviors or for the purpose of helping or injuring an institution, a cause, or a person, and/or bias reporting – bias or perceived bias of media in the selection of events and stories that are reported and how they are covered³”.

¹ **Disclaimer:** this background document has been produced for an internal meeting by EPRA, an informal network of 52 regulatory authorities in the field of audiovisual media services. It is not a fully comprehensive overview of the issues, nor it represents the views nor the official position of EPRA or of any member within the EPRA network.

² WG 1: Media in times of crises – Introductory document <http://www.epra.org/attachments/barcelona-wg1-media-in-times-of-crisis-introductory-document>

³ “Media's Use of Propaganda to Persuade People's Attitude, Beliefs and Behaviors”, by Johnnie Manzaria & Jonathon Bruck, War & Peace: Media and War, http://web.stanford.edu/class/e297c/war_peace/media/hpropaganda.html,

This second definition became the focus of our attention in the autumn meeting of this working group: in times of acute crises, broadcasting regulators may be faced with particularly difficult dilemmas: How to deal with bias, false and deceptive materials? What is the right balance between regulatory intervention and editorial freedom? How to protect freedom of expression and information in times of crisis?

The autumn session of the Working group therefore examined the role of national media regulatory authorities (NRAs) in the presence of various crises, in an effort to highlight the variety of strategies, and regulatory practices that have been used by EPRA members in such a context. The discussion during the group also provided an opportunity for EPRA members to look introspectively at their own legal and practical responsibilities and their activities, to exchange experiences and to identify best practice.

In preparation for the session, a questionnaire⁴ was circulated to gather information from EPRA members. The responses to the questionnaire are presented here as a comparative background for the meeting of the Working group in Yerevan, where recent cases and experiences from NRAs in France, UK and Macedonia were presented in detail - followed by a very stimulating and fruitful discussion.

Respondents to the questionnaire included the regulatory authorities from: Austria – KommAustria (AT), Belgium – Flemish speaking Community VRM (BE); Belgium – French speaking Community CSA (BE); Bosnia and Herzegovina – CRA (BA); Bulgaria – CEM (BG); Croatia – AEM (HR); Cyprus – CRTA (CY); Denmark – Radio and Television Board, c/o Agency for Culture and Palaces (DK); Estonia – TRA (EE); France – CSA (FR); Greece – NCRT (GR); Germany – DLM (DE); Ireland – BAI (IE); Latvia – NEPLP (LV); Lithuania – RTCL (LT); Macedonia – AAAMS (MK); Montenegro – AEM (ME); Netherlands – CvdM (NL); Norway – NMA (NO); Poland – KRRiT (PL); Romania – NAC (RO); Slovakia – CBR (SK); Spain – CAC (ES); Switzerland – BAKOM / OFCOM / UFCOM (CH); United Kingdom – Ofcom (GB); and Ukraine – NCTRB (UA).

2. Questionnaire Responses

The questionnaire began by asking about recent changes to legal provisions governing ‘propaganda’⁵. It also included questions related to concrete cases that media regulators might have dealt with in the recent period, as well as actions that NRAs took in that respect, including the identification of programme genre such content appeared in. The question related to the different techniques used by media to spread ‘propaganda’ was followed by a request to measure the impact of NRAs decisions and actions in such cases, including questions related to pressures that NRAs might have experienced when dealing with such cases. There was a total of 24 responses.

It should be noted that respondents reported no specific provisions dealing with ‘propaganda’ per se.

accessed on September 26, 2016.

⁴ The full results of the questionnaire can be accessed at this link (accessible for EPRA members’ only): <http://www.epra.org/surveys/epra-yerevan-wg1-media-in-times-of-crisis-focus-on-the-role-of-regulators/results>

⁵ For ease, this term is used throughout the paper for convenience to cover a variety of situations including hate speech, bias, false and deceptive materials related to crisis situations such as conflict, migrant crisis, terrorist attacks and similar

Instead, recent provisions use other concepts such as hate speech, harmful and offensive content and impartiality and accuracy.

Moreover, certain members, as is the case in Denmark and the Netherlands, made explicitly clear that they have no jurisdiction over hate speech/propaganda, concepts that are regulated by criminal codes. In the Netherlands, the Dutch Multi Media Act from 2008 contained a provision which assigned the CvdM the competence to either refuse or withdraw a broadcasting license if the media service provider was convicted for a violation of the Penal Code, which prohibits hate speech in general. However, it was repealed by the legislator following critical comments of the Dutch Council of State as the measure was deemed likely to hinder freedom of speech. The measures to combat hate speech in media services are thus still exclusively governed by the Penal Code, and its enforcement lies entirely with the public prosecutor. The CvdM drafted a proposal for a cooperation covenant with the public prosecutor to facilitate the cooperation and exchange of information between the two institutions and avoid situations of duplication of work or gaps in enforcement. With regard to cases in which both parties would be competent, it is stated that the Penal code would prevail and the public prosecutor would be the first party to intervene.

i) Recent changes to the regulatory framework related to bias, false and deceptive materials

The first question was intended to gather information on any recent changes to the national regulatory framework with a twofold purpose: to get an update related to these provisions, but also to detect activities by NRAs and/or national legislators due to the increased number of crises at the national and international level.

No recent changes to relevant provisions have been reported by respondents from Bosnia and Herzegovina, Croatia, Ireland, Estonia, Germany, Montenegro, Poland, Romania and Bulgaria.

A number of recent changes and amendments to relevant legislations and rules have been reported in France, Greece, Latvia, Lithuania, Switzerland, the UK and Ukraine.

The reported changes are very varied with regard to the content covered, their legal nature and their binding character (e.g. criminal code, broadcasting law, broadcasting code, code of conduct). They also follow very different purposes:

- **Combatting racism and xenophobia (GR)**
Greece recently amended its **criminal legal framework** which had proved inefficient in combating racial discrimination. The same Law provides provisions related to public condemnation or denial of crimes such as war crimes and crimes against humanity.
- **Introducing measures against dissemination of certain type of information in the context of safeguarding national security (UA, LT, LV)**
In *Ukraine*, new laws prevent the dissemination of information such as: calls for change of the constitutional system, war propaganda, violence, etc. Audiovisual works cannot be shown if one of their participants is included into the List of persons who create hazards to the national security, and broadcasters are also forbidden from showing works that deny or justify the criminal nature of the communist regime of 1917-1991 in Ukraine, the criminal nature of the Nazi regime, or create a positive image of people who took senior

positions at the communist party. TV programmes produced after 1 August 1991 that contain promotion or propaganda that justify or legitimate the occupation of the territory of Ukraine are not permitted.

In *Lithuania*, the Law on the Provision of Information to the Public (PIP) was amended to safeguard the national security of Lithuania from unfriendly "propaganda" and make the sanctioning process less time-consuming. From October 2015, RTCL has been able to require re-broadcasters of TV programmes under the jurisdiction of Lithuania, to move the channel which violated the law to pay TV programme packages that subscribers may purchase at an additional cost. The law on PIP thus does not prevent the content from being disseminated, but possibly restricts the area of dissemination and lessens the possible harm such information might inflict.

In *Latvia*, a new chapter of the Electronic Mass Media Law entitled "Prohibition to broadcast electronic media programmes and on-demand services from other countries" entered into force on January 19, 2016.

- **Modify the regulation of content such as hate speech, and abusive or derogatory treatment (UK)**
In *the UK*, in May 2016, Ofcom made changes to Broadcasting Code, by introducing two additional rules to address content containing hate speech and abusive or derogatory treatment. Ofcom also included additional information to explain the rules and how they are applied (in particular defining and expanding on terms such as "hate speech", "incitement", and "disorder"). Separately, potential new legislation was proposed in the UK in 2016 by the government, specifically related to the Extremism Bill.
- **Introducing a code of conduct on the coverage of terrorist acts on TV (FR)**
In *France*, in July 2016, the Parliament requested the CSA to enact a "code of conduct concerning the audiovisual coverage of terrorist acts". The Code of conduct was adopted on 20 Oct. 2016: <http://www.csa.fr/Espace-juridique/Codes-de-bonne-conduite-et-textes-de-precautions-relatives-a-la-couverture-audiovisuelle/Precautions-relatives-a-la-couverture-audiovisuelle-d-actes-terroristes>.
- **Introduction of a provision on the independence of broadcasters (CH)**
In *Switzerland*, a new provision, which states that "*broadcasters are independent from the state*" was recently introduced to prohibit state authorities to own the majority of a Swiss TV or radio broadcasting company. Structural and organisational measures have to be put in place, so that state authorities cannot exert their influence on the editorial activities of the concerned broadcaster. This principle has already existed for a long time in the Swiss Constitution.

ii) **Recent cases in times of crisis related to bias, false and deceptive materials**

Ten NRAs reported a number of recent cases. Here again, they cover very different types of content.

- **Incitement to hatred (HR)**

In *Croatia*, AEM decided to suspend the license of the Zagreb-based local television channel Z1, owing to an alleged incitement to hatred in the programme "Markov trg" which was aired in January 2016. The Council decided to suspend the licence for a period of three days and to inform the State Attorney's Office of possible breaches of the Penal Law.

- **Bias/impartiality/alleged propaganda** (EE, UK, LV, PL, LT, RO, CH)

Estonia reported a case of alleged propaganda on REN TV in a documentary related to the relationship between Russia and the Baltic States, with critical statements which were dwelling on the negative consequences for the Baltic States, including Estonia, of turning away from Russia. In addition, the programme included statements which suggested that Russian minorities within the Baltic States were being deliberately marginalised. As this particular channel was licensed in the UK, the complaint was forwarded to Ofcom, who, after the investigation, concluded that there was no breach of relevant rules. The cooperation between the NRAs in relation to the implementation of the relevant provisions of the AVMS Directive in this particular instance has been highlighted.

In *the UK*, in July 2015, Ofcom found NTV Mir Lithuania in breach of the Broadcasting Code, related to news reports covering fighting in Donetsk and the activities of Ukrainian military forces (with claims that the Ukrainian Government and/or its military forces had been accused of deliberately shelling civilians). Another programme of the same station was also found in breach, for reporting on Lithuania's education policy in a one-sided manner without reflecting the official government position on the subject. Further, on Russia Today (RT) – Ofcom found that claims made about the BBC's reporting of the war in Syria had materially misled the audience – a finding serious enough for Ofcom to require RT to broadcast a summary of Ofcom's decision. In these findings, RT was found to be in breach of provisions related to harm (in the form of material misleadingness), the special impartiality rules and the requirement to ensure due impartiality in news.

In *Latvia*, the NEPLP recently issued a 6-months ban of the distribution of Rossiya RTR TV for alleged incitement of ethnic hatred based on race or nationality. Additionally, NEPLP warned Latvian cable operators to pay attention to the content of the retransmitted programmes of Rossiya 24 as regard to their compliance with the law. Another case in relation to NTV Mir (licensed by the UK) was forwarded to Ofcom concerning a programme portraying the possible revival of Nazism in Europe.

In *Poland*, in 2014, a procedure was initiated against the public broadcaster for broadcasting disturbing images regarding the events in Kiev (portrayal of agony of a young man), while in 2016, the President of the KRRiT intervened against a private TV channel, for alleged bias content in a documentary about the conflict in Ukraine. The station issued an apology.

In *Lithuania*, RTCL issued several decisions recently, including the suspension of the distribution of Russian channels PBK Lithuania, NTV Mir Lithuania, RTR Planeta and Ren TV Baltic. Additionally, RTCL issued an obligation for cable distributors to offer RTR Planeta and NTV Mir Lithuania only on pay-TV packages for 1 year.

In *Romania*, in December 2015, B1 TV channel aired several editions of the show commenting the “*quasi terrorist attack*” attempts planned by leaders of an extremist Hungarian organization. The Council sanctioned the broadcaster with a fine amounting to over 10.000 EUR.

In *Switzerland*, a recent decision of the Federal Tribunal in relation to the run-up to a vote on the revision of a Federal Act on old-age and disability insurance, dismissed the claim of the plaintiff that a short TV interview had been imbalanced and one-sided. Another recent case involved a satirical programme and complaint by a Swiss political party against it. This case was also dismissed, especially considering the nature of a satirical programme.

- **Incitement to violence, distortion of public order and hate speech (NL, BA, UK)**

In the *Netherlands*, the growing trend towards online videos portraying youngsters glorifying provocative or aggressive acts towards civilians and police has already caused heated public debates during the last weeks.

In *Bosnia and Herzegovina*, in 2013, the CRA processed a case related to propaganda on the public service broadcaster Radio-televizija Republike Srpske (RTRS – the entity PSB) while reporting on issues related to the Tuzlanska kapija massacre⁶. The station broadcast a short story within the regular newscast, in which it presented documents prepared by a former member of the French secret service, questioning these events. After the newscast, the station aired a talk-show hosting this former secret agent, and other guests who entirely supported the thesis that the Hague decision in this case was unjust. The station supported the opinion and documentation presented by the guests and invited the public to contribute to reopening the case. The Agency issued a financial penalty in the amount of ca.1500 EUR.

The *UK case* Noor TV was about a religious programme in which an Islamic scholar made clear statements that religious obedience within the Islamic faith could be demonstrated through murder of Jewish people. Ofcom found that the programme could be interpreted as spreading anti-Semitism and that the comments could be a form of ‘hate speech’⁷. Ofcom also found while the programme had the potential to cause harm and cause grave offence, it was not likely to encourage or incite crime. The channel is under consideration for a statutory sanction (e.g. a financial penalty). In another instance, Peace TV Urdu was found in breach of rules on harm and offence as a result of the broadcasts of lectures by an Islamic cleric that made extensive and repeated anti-Semitic comments and was issued a financial penalty in the amount of £ 65,000 (cca EUR 75, 525). Further, Ofcom found NTV Mir Lithuania’s programme *Norkin’s List* in breach of offence rules because of statements made by a guest of this panel discussion programme indicating his view that Russia should take the position: “‘*Take that, Kiev! We will wipe out Kiev! We will burn Kiev down! We will napalm them out!*”

- **Reporting on Ukrainian crises (UA)**

⁶ A massacre which happened in 1995, during the war in Bosnia and Herzegovina, which was subject to the decision of the UN Hague Tribunal for war crimes in former Yugoslavia, sentencing a high ranking officer of the Republika Srpska Army to 25 years for this massacre.

⁷ In this context Ofcom was mindful of the Council of Europe’s definition of ‘hate speech’.

In *Ukraine*, further to the monitoring of foreign programmes, restrictions related to the dissemination of about 69 foreign programmes were enforced. With regard to national broadcasters, it was decided not to renew the broadcasting license of the 64 Channel in Kyiv, following 2 warnings issued to this station for various offenses such as inciting to hatred, humiliating the honour and dignity of the Ukrainian people, denying or justifying the criminal nature of the totalitarian communist regime of 1917-1991 in Ukraine, the criminal nature of National Socialist totalitarian regime, creating a positive image of people who held senior positions at the communist party, etc.

- **Coverage of terrorist attacks on TV (FR, BE)**

In *France*, the CSA intervened in February 2015, following the first large-scale attacks perpetrated in France, requesting on this occasion radio and TV stations to meet their obligations concerning the respect of human dignity. Since the attacks, the CSA is regularly requested to react concerning statements or comments considered as discriminatory. However, the French media generally tend to prevent such statements from spreading.

In *Belgium* (French speaking Community), a recent case involved live coverage of investigations of terrorist attacks and police interventions by Belgian media. The issue was the "sensational" approach and the creation of a situation potentially obstructing the investigation as well as putting at risk the agents involved. These live and breaking news programmes included the disclosure of the exact location of police interventions and police actions, the disclosure of the identities of police officers on duty, etc. CSA retweeted the request of the police to the media to stay cautious and measured while discussing the events. The CSA was criticized by the Conseil de la Déontologie Journalistique (The Council of Journalistic Code of Ethics), who argued that the journalists are not under the obligation to submit to the police orders.

- **Discrimination based on race, nationality and sexual orientation (PL, MK)**

In *Poland*, on-going procedures against two commercial radio stations were initiated related to discriminatory content based on race and nationality, as well as against a satirical programme on a public TV, alleged to have insulted people based on their political views, sexual orientation and include anti-Semitic comments.

In *Macedonia*, in March 2016, on the occasion of the *ad hoc* supervision of several editions of a talk-show, AAAMS found a TV show in violation of legal provisions relating discrimination, intolerance and hatred on the grounds of sexual orientation. As the law does not envisage a sanction against violating this specific article, AAAMS sent a letter demanding the station to stop this practice. Additionally, AAAMS submitted the recordings of several editions of this programme to the Committee on Protection Against Discrimination.

iii) **Programme genres and “propaganda” techniques**

One of the questions referred to specific genres in which “propaganda” content appeared, and was intended to get a clearer picture of media attitudes and of the specific techniques that have been used deliberately.

It turns out from the responses that programme genres in which such content is found are much diversified, and include not only news and current affairs, discussion programmes and panel debates⁸, but also religious programmes and political advertisement.

There are many techniques and persuasion tactics that the media might use to disseminate information.

The analysis of the responses shows that the techniques vary greatly with regard to form and influence level. It should be noted that techniques can also depend on a particular national context. Some of the reported techniques (UK, Switzerland) are those typically related to unbalanced and partial presentation of information or views, and naturally include misleading presentation of information, presentation of information in a partial manner, offensive language, unbalanced representation of views and candidates of elections or political parties and similar.

In relation to cases which are identified as hate speech, the reported techniques are those that directly incite to hatred (AEM – HR)⁹.

With regard to the political and social climate of a particular national environment, it has been reported that these techniques in the past have included dehumanization, ethnic prejudice, national intolerance and stereotypes, incitement and offence, openly promoting inter-national hatred, as well as unequal treatment of parties involved (CRA – BA).

Other techniques place huge importance on a particular paradigm, repetition, presentation of a particular view from the perspective of authority, often using expertise (voice of an expert), testimonies, simplification, labelling, in-out grouping, we vs. them language, the Common Man (voicing opinions of ordinary people), moral superiority, hypothetical future, pseudo-plurality, victimisation, statistics, evaluation, instructing, role model (integrity/solidarity) as reported by NEPLP - LV. Similarly, in the case surrounding the Ukrainian conflict, it is reported that the techniques include the manipulation of societal consciousness by the dissemination of false, incomplete or biased information, direct calls for change of the constitutional system, calls for violence, inciting ethnical, racial, religious hatred, and the creation, featuring and dissemination of fake TV and video spots, and news (NCTRB – UA). In relation to the specific situations in the Baltic States, it is reported that unambiguous instigation of war and incitement to hatred were some of the techniques used (RTCL – LT).

iv) Impact of regulatory tools/activities

⁸ As pointed out by the Macedonian NRA, propaganda appears not only in the news but also in informative publications, debates and interviews. As it is shown in the "Summary report on the monitoring of interviews, debates and other information programmes in the period from the calling of elections until the start of the election campaign 15 April - 14 May 2016", in some of the shows, one could hear the rudest forms of speech, insults and slanders exceeding the broadest boundaries of a (heated) democratic debate, which breached the programming principles under the Law on Audio and Audiovisual Media Services.

⁹ In this respect, in the case presented by AEM HR, where the anchor of the TV show has incited to hatred when he, in his message aired at the very end of the show, warned citizens of Zagreb, "notably mothers with children", to be careful while walking next to the city's downtown Serb Orthodox church to ensure priests would not kill them. He also labelled Serb Orthodox priests 'Chetniks', the term for members of the notorious Serb movement that during World War II committed crimes against other ethnic groups in the Balkans, notably Croats and Muslims.

This part of the questionnaire examined the impact that the actions of NRAs had in relation to cases described above and pertaining to matters, such as hate speech, bias and impartiality. Any examples of good practice such as self-regulatory measures, guidelines developed by the regulator, negotiations or similar that had preempted the need for regulatory measures were also sought in an effort to measure the overall impact, particularly from the perspective of prevention.

It is important to emphasize that the extent of regulatory tools regarding these issues vary among members. Also, each of the possible cases must be regarded first and foremost from the perspective of the right to freedom of expression. The difficult task of the NRAs in times of crisis is to weigh freedom of expression against the level and nature of the case which is presented to them. It is also difficult to measure "success" in this area.

Some respondents consider that their actions have had some positive impact by preventing "propaganda" from being freely spread at least to some extent (RTCL – LT).

In *Ukraine*, it is reported that the action of the regulator in cooperation with the Ministry of internal affairs to exclude prohibited foreign programmes from distribution, and retransmission in resorts, hotels, health centres, was effective and that inspections showed no further continuation of violations.

In *the UK*, Ofcom reports a visible high level of compliance among UK licensed broadcasters¹⁰ believed to be due to the transparency of NRA's activities and the fact that the majority of broadcasters know and want to be seen as complying with the rules. This is also the case with French broadcasters, where the regulator barely intervened concerning statements inciting to hatred or discrimination. The French audience doesn't hesitate to alert the regulator whenever it considers that some statements are shocking and the NRA's intervention is generally seen as a deterrent. Evidence of impact is also visible in *Switzerland*, where the existing case-law has, as reported, led to the improvement of the internal rules of the national public service broadcaster SRG SSR on how to deal with candidates, political views and parties in the run-up to votes and elections.

Other NRAs consider that while there might not have had a huge impact in terms of a wider prevention of propaganda in the media, it had some on media professionals and the public in general (AEM – HR). It has also been reported that authors of propaganda will use any avenue available to spread the message. When faced with a situation when they can't spread "propaganda" through broadcast media, authors of such speech turn to print or the Internet (AAAMS – MK). In that respect, the regulatory approach is questioned from the perspective of its efficiency.

Another issue worth mentioning is that NRAs are sometimes expected to deal with cases and issues about which there is no political or social consensus or which are not legally resolved on a national level¹¹, and the impact that NRAs might have can be regarded as overstepping the boundaries of jurisdiction and authority provided for in the relevant legislation.

¹⁰ It should be noted that relatively few sanctions in this area have been enforced so far.

¹¹ In Bosnia and Herzegovina, a largely divided society where the fragile peace is questioned by the current political situation, the biased portrayal by some media of certain sensitive issues, creates an atmosphere of tension among citizens, even calling to arms. These tensions may be reflected in the media in a way that could make the entire situation more complex than it is.

As to the **examples of voluntary or non-binding good practice** in dealing with "propaganda" issues¹², apart from the reported broadcaster's obligation to, when faced with potential propaganda-related items, ensure that news and opinions are presented in a way that minimizes the possibility of encouraging violence or reinforcing attitudes of hatred, measures include journalistic codes of practices, meetings and self-regulatory measures and codes (for print, on-line and VoD¹³), but also additional measures carried out by NRAs themselves, which in some instances came about as the result of concrete cases the regulator dealt with or as a response to the general national climate and environment.

Some NRAs, such as the AEM in *Croatia*, have prepared guidelines to clarify legal provisions with examples offering best practice on how to deal with propaganda issues and maintain professional standards in reporting. In *Bosnia and Herzegovina*, the CRA has developed Guidelines on implementation of the Code on audio-visual and radio media services, with sections dealing with provocative statements and accuracy and balance, in order to help broadcasters solve a possible dilemma on what to do with statements/announcements/information which contain propaganda. In *the UK*, Ofcom has introduced guidance on the application of the impartiality and accuracy provisions of the relevant code. In *France*, the CSA developed detailed rules that the media must comply with, including a recommendation on international conflicts. In *Switzerland*, the PSB has developed a very refined 'rulebook' on how to deal with candidates, political views and parties in the run-up to votes and elections, based on the existing case-law.

Another crucial aspect related to this topic is **media literacy**, which enables people to have the skills, knowledge and understanding they need to make full use of the opportunities presented both by traditional and by new communications services. Additionally, it also helps people to manage content and communications, and protect themselves and their families from the potential risks associated with using these services. In this context in particular, the development of cognitive skills, or **critical understanding**, is a useful means by which children and adults can learn to identify the relative trustworthiness of different forms of content and information. This in turn can lead to an awareness of the range of possible messages and points of view about any given topic. (Ofcom – GB and AEM – ME¹⁴).

In *Macedonia*, AAAMS, decided to work on supervision and on educational measures as the relevant legislation does not foresee any sanctions in cases of incitement or spreading discrimination, hostility or hatred based on race, sex, religion or nationality. This NRA has published its suggestions while urging broadcasters to adhere to journalistic standards and principles, at the same time urging media owners to distinguish between business, political and private interest versus professional reporting. The AAAMS also drafted a "Guide for monitoring hate speech", and organised meetings, trainings and

¹² Examples of self-regulatory measures, guidelines developed by the regulator, negotiations or similar that had preempted the need for regulatory measures.

¹³ Self-regulatory framework for the press: <https://www.ipso.co.uk/>. Another initiative worth mentioning is the development of a Statement of Practice for Video-on-Demand by members of the Commercial Broadcasters Association (COBA) in the UK (an industry body for digital, cable and satellite broadcasters and on-demand services). This Statement makes a clear set of commitments to providing child protection in line with broadcasting standards by the most popular on-demand services in the UK, and also covers hate speech.

¹⁴ Other measures reported for Montenegro include: risk assessment, constant communication with broadcasters aimed at developing the climate of mutual confidence, cooperation with self-regulatory bodies.

workshops related to hate speech and general respect for professional journalistic standards. However, the regulator is reporting only low interest on the side of broadcasters.

In *Poland*, the KRRiT reported a cooperation with the University of Warsaw to analyse the quality of public debate in the media during the last four election campaigns (2014- 2015). Findings revealed that many aspects of this content would benefit from improvements in the level of political discourse in the media. However, despite the findings which have been presented to stations in question, the regulator did not manage to get a joint declaration in that direction.

In *Estonia*, the TRA reported on the creation of a new public broadcasting channel (ETV+), which was launched in September 2015 to create a better local information space for local Russian-speaking people in their mother tongue.

v) Obstacles faced by regulatory authorities when dealing with sensitive cases in times of crisis

Two further questions in the survey aimed at gathering information in relation to the main obstacles that the regulatory authorities face in performing their tasks in cases dealing with sensitive issues, and to enquire whether NRAs had experienced any kind of external or internal pressures on that occasion and how NRAs were able to resist.

“Walking the thin-line” is a situation that regulators can experience when deciding between right to freedom of expression vs. propaganda (as defined for the purpose of this questionnaire).

As mentioned in the introduction, one of the problems faced is the lack of any universal definition of hate speech. The most quoted definition of hate speech is the one enshrined in the Council of Europe’s Committee of Ministers’ Recommendation 97(20), which states: *“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.”* In this sense, “hate speech” covers comments which are necessarily directed against a person or a particular group of persons. The case law of the European Court of Human Rights also provides a valuable source of insight into this notion. However, hate speech is not the only factor to consider when dealing with the wider scope of “propaganda”. That is why it is always important to reflect that a principal duty for regulatory authorities is to protect and cherish the right to freedom of expression.

Several obstacles to performing regulatory functions have been mentioned by the respondents of the survey. These obstacles include the lack of legal punitive measures, political influence, public pressure, diversity or conflict of opinions of media professionals, problems with enforcement, and can go as far as threatening the independence of the regulator.

Another obstacle identified by the Latvian regulator is related to the questions of jurisdiction and the scope (or lack of it) of the Council of Europe’s European Convention on Transfrontier Television in the context of cross border channels, and channels from non EU countries.

The majority of respondents stated that they did not face any kind of pressure whether external or internal, in dealing or in their decision-making process related to cases in times of crises. However,

some cases of pressure on regulators were reported. For example, in *Croatia*, extremely high pressure from the public and the politics was directed towards to the Council and the Agency, including the organization of demonstrations in front of the NRA's premises after the broadcasting ban imposed to Z1 (case described earlier). One of the Vice Presidents of the Croatian Parliament had expressed his support to the protesters. In *Ukraine*, the National Council reports that European human rights organisations are occasionally "manipulatively encouraged by propagandists" to criticize actions aimed at propaganda restriction. As a response, the regulator attempts to get involved into debates and discussions, and to provide reasoning and legal references underpinning their decision making. In *Lithuania*, the RTCL reported having experienced pressure from the European Commission and that the RTCL's decisions on some cases had to be modified as a consequence of this pressure.

In *Macedonia*, members of the AAAMS's staff involved in the analysis and preparation of a report regarding a case that NRA dealt with (as reported earlier) were publicly named and slandered on line and in print.

3. Conclusions of Questionnaire Responses

The results of the questionnaire show that **several changes to relevant legislative and regulatory norms have taken place**, as was the case in Greece, UK, Ukraine, Lithuania and Latvia, while some are being prepared, like in UK and France. A common trait of these changes is the willingness to strengthen legal restrictions regarding discrimination, hate speech, terrorism etc., particularly in areas not already covered by broadcast media regulation. These measures are regarded as efforts to respond to the overwhelming tensions and unrest in Europe and elsewhere in the world. Some of these changes are in relation to enhancing the codes of professional conduct of broadcasters, while others relate to more direct limitations of the dissemination of content.

The examination of recent cases that NRAs dealt with recently in relation to 'propaganda', as defined for the purpose of this questionnaire, highlights **a notable number of cases related to incitement to hatred, violence and public disorder, biased and partial reporting and discrimination**. In that respect, a visible tendency to use propaganda – as previously defined – could be seen in some cases as a direct result of numerous crises throughout Europe and the world, in a changing society and with profound changes in media consumption.

Programme genres in which propaganda appears are diverse in form and level of influence, and include a whole range of programmes. **The techniques employed are also very varied.**

As to the **impact of regulatory activities in relation to propaganda**, it is generally regarded by regulators as positive and having a certain level of effectiveness. The development of broadcasters' codes of ethics and/or desire to uphold high professional standards is also reported, which is not a direct impact of the NRA's decision-making process, but is very much connected to its functioning and its perceived efficiency. Good-practice examples in this respect are numerous and are again related to the interconnection of industry and NRA's work, coupled with wider societal perception and needs.

When asked about the **difficulties that they face when dealing with sensitive cases in times of crisis**, respondents mention the need for specific expertise, also with regard to issues related to different audiences (jurisdiction issues). In this respect, high translation costs and the lack of knowledge about the receiving country's attitudes and perception are considered as challenges. Another challenge

which was mentioned derives from investigations into programme content on a case by case basis, where the regulatory framework is not well suited to situations when no concrete breaches of rules is found, but a service **as a whole** may represent an issue from the perspective of editorial decisions.

Some regulators, in a few instances, report to have experienced **direct pressure in dealing with sensitive cases in time of crisis**. However, **the majority of the respondents emphasise that the main challenge that they face is to strike the right balance to strike between the offence and the right to freedom of expression**.

In that sense, the importance of cooperation between actors in the society is emphasized, as expressed in regulatory and **self-regulatory approaches, media literacy and wider societal awareness** raising on these issues.

4. Summary of working group session

Many of these themes were reflected in the meeting of the working group in Yerevan.

Thomas Dautieu of CSA (FR) presented the recent activities of the CSA, particularly in relation to the very tragic events that took place in France from the killings of Charlie Hebdo journalists in January 2015 to the terrorist attacks in Paris and Nice.

The CSA has identified several breaches regarding the coverage of these events, including on issues related to human dignity (e.g. portrayal of killings of police officers), and public order (cases related to the identification of terrorists, full coverage of police operations and portrayal of hostage situations, with identification of hiding places). It appeared from discussions with broadcasters - initiated by the CSA - that there was some concern around the competition with social networks, the protection of sources and information and the lack of quick and reliable information from the police. The CSA conversed and consulted on these topics with a wide platform of stakeholders, from journalists to media outlets, including associations of victims. The result of this consultative work is a non-binding document outlining main principles and professional norms to be used and upheld in such situations¹⁵.

Dragica Ljubevska of the AAAMS (MK) presented the legal background related to the issues as well as problems concerning the lack of punitive measures at the disposal of the Macedonian regulator. She presented the group with a few cases that included - among other things - discriminatory speech based on sexual orientation. She also pointed out that the staff members from the Macedonian authority faced public naming and shaming by a journalist who was found to have used discriminatory speech. She emphasized the key importance of the regulator's independence especially in situations when the political situation does not provide for stability.

Ofcom UK presented a number of cases dealing with hate speech, due impartiality and due accuracy and misleading content. The case studies included:

¹⁵ <http://www.csa.fr/Espace-juridique/Codes-de-bonne-conduite-et-textes-de-precautions-relatives-a-la-couverture-audiovisuelle/Precautions-relatives-a-la-couverture-audiovisuelle-d-actes-terroristes>.

- Two cases of anti-Semitic speech on Urdu/Arabic language channels in the UK (Noor TV and Peace TV, discussed in detail above), Peace TV was issued a financial penalty, while Noor TV is under consideration for a statutory sanction by Ofcom.
- A news broadcast by NTV Mir Lithuania, which was found to be in breach of Ofcom Broadcasting Code rule 5.1 (due impartiality in news) because it made allegations of “atrocities” and intentional killing of civilians against the Ukrainian authorities without presenting the Ukrainian official position on the events featured.
- A documentary on Russia Today (RT) in which very serious allegations were made about Ukrainian government and military actions against the civilian population of Eastern Ukraine was found to have breached rule 5.5 (due impartiality in matters of political controversy) for failing to give sufficient weight to an alternative viewpoint; in its finding, Ofcom also expressed serious concerns about the evidence on which RT had relied in making the allegations that it did.
- A discussion programme on Fox News, a US channel, which was found to have included claims so misleading (that Birmingham in the UK was a city closed to the UK population, and an entirely Muslim city, for example) that they were capable of causing harm to the audience by eroding their trust in current affairs programmes.

Ofcom’s view was that increasingly such cases were based on questions over the veracity of the claims and information provided, but, for several reasons including the importance of balancing any decisions in this sphere with the rights to freedom of expression and freedom of information, it was not the role of the broadcasting regulator to determine what was true or not in these complex and highly sensitive geo-political matters. As a result, Ofcom mostly relied on its “due impartiality” provisions to address these problems. This allowed Ofcom to indicate that when making very serious allegations, broadcasters were under an obligation to provide an alternative viewpoint (in a manner that ensured “due” impartiality) – no matter how difficult that might be. Ofcom provides details on these expectations and how they should be met in its guidance on Section Five of the Broadcasting Code¹⁶. And, in the cases presented, when it was clear that misleading statements had been made (and that was not in dispute) Ofcom was able to make a judgement about whether these statements could cause harm, and could act accordingly.

5. Discussion, alternative approaches and conclusions

Ofcom suggested that there was a lot that could be achieved in this sphere through the existing regulatory framework and the traditional tools available to media regulators. Cooperation between independent regulators to share best practice and handle cross-jurisdiction cases was also particularly important when dealing with politically sensitive, complex content.

However, it was clear that there were areas where that traditional regulation was not appropriate, either because the powers given to regulators were limited to specific media or because the rules applied by regulators did not capture the editorial techniques used – in both cases, this was arguably because to go any further might in some circumstances pose a risk to freedom of expression (indeed one comment from the Belgian CSA expressed concern about the potential for media regulation to go down just this route). Ofcom’s view was that in such cases, it was important for regulators to be open-minded in their response if they wanted to play a role in finding solutions. Ofcom also pointed out that co-regulation was, in the end, regulation – and should be seen as another form of statutory response rather than as a full alternative.

¹⁶ https://www.ofcom.org.uk/data/assets/pdf_file/0018/24534/section5.pdf

In the group's wider discussion, alternative and additional solutions were discussed.

Firstly, it was noted that regulators might in some cases have other relevant powers – for example, to research and report on levels of media pluralism in their media landscape; to promote media literacy (in this case, critical understanding); or to support the activities of Public Service Broadcasters (for example, in setting the highest standards for news and current affairs coverage).

It was also interesting to explore the possibility of regulators using their experience and expertise to facilitate and encourage self-regulatory projects to develop. These could be best practice-setting by industry (as described by the French CSA) or initiatives to improve critical understanding. In such cases, an independent regulator with the trust of citizens and industry could play an important background role.

Ultimately, there were potential solutions – as outlined in the first session of this working group – which fell entirely outside of the scope of regulators' activities: professional journalistic ethics; international governmental standard-setting activities (for example through bodies such as the Council of Europe or OSCE); and monitoring and reporting by fact-checking specialist organisations.

But it was always important for broadcasting regulators to be aware of all relevant initiatives while continuing to fulfil their specific powers as set down in legislation.

Finally, it was underpinned that the unhindered exercise of the right to freedom of expression and free media is vital in any democratic society. Despite difficult circumstances and turbulent times, NRAs should continue to provide independent, transparent, open, effective and efficient regulation, in cooperation with the industries and the wider society, with the aim of serving the public in the best possible manner. Continued exchanges of best practice through EPRA will surely continue to remain crucial in the coming years.