

44th EPRA Meeting – Yerevan, 19-21 October 2016

Plenary session 2

Compliance & Enforcement: Policies, Strategies and Methods put to test (Part II)

Introduction and objectives¹

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1. Introduction

This year's second annual Plenary theme "**Compliance and Enforcement Policies, Strategies and Methods of NRAs put to test**" builds on the EPRA tradition (and strength) of looking at internal processes and roles of media regulatory authorities and collecting best practices. Its aim is to encourage a frank and open dialogue between regulatory authorities on matters of compliance and enforcement by looking at policies, strategies, methods and results achieved with a particular focus on case studies of good (and sometimes bad) experiences.

The premise of this session is that independence, transparency, accountability and efficiency of NRAs are closely linked - thus contributing to the '*virtuous circle of regulation*'.

The focus of the spring session which took place in Barcelona in May 2016 was to discuss how regulators currently strategically determine their objectives and priorities in the area of compliance and enforcement and how they implement their activities in practice.

On that occasion, four representatives of media regulatory authorities from [Norway](#), [Ireland](#), UK and the [Netherlands](#) participated in a discussion panel to share with the audience a few success stories in the field of compliance and enforcement in their respective jurisdictions, some of them rooted on dialogue and encouragement, others based on the use of deterrent measures. As it is also important to learn from one's mistakes, a few examples where the outcome of the intervention of the regulator had not been positive were also discussed.

The outcome of the survey², which was conducted among EPRA members in spring 2016, confirmed that the law constitutes the main basis for the compliance and enforcement framework by defining the tasks, powers and competence of the regulator. In addition, strategy may be enshrined in a wide range of documents produced by NRAs, such as yearly or multiannual action plans. One of the main - and rather surprising - findings of the background comparative document³ was that policy and strategy documents which specifically deal with compliance and enforcement are actually quite rare.

The analysis also revealed the great variety among EPRA members concerning:

- The application of tools, the regulatory approaches and the resources that NRAs have at their disposal, the ecosystems in which they operate, and the procedure used to set priorities;

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 does it represent the views, nor the official position of EPRA or of any member within the EPRA network.

² <http://www.epra.org/surveys/plenary-session-2-barcelona-questionnaire-on-compliance-and-enforcement-policies-strategies-and-methods-of-nras-put-to-test> (members' only)

³ <http://www.epra.org/attachments/barcelona-plenary-2-compliance-and-enforcement-policies-strategies-and-methods-put-to-test-background-paper> (members' only)

- With regard to the toolkit for compliance, the two most widespread instruments mentioned were audience complaints and monitoring;
- The other instrument of compliance which was frequently quoted in the response is “advice and guidance on compliance with duties, codes and rules”: a tool **based on prevention**;
- Concerning the toolkit for enforcement, warning and fines were mentioned as the most widespread and most often used instruments.

Yet despite clear differences, the responses showed common points:

- In term of regulatory approach, regulators do not rely exclusively on a stand-alone but rather on a **mixed approach** which could be described as “persuade AND punish”;
- Most regulators rely to some extent on a **risk-based approach** for instance in their monitoring activities, even though formalised frameworks have only been rarely developed for this purpose.

The comparative research document also revealed that compliance and enforcement systems, while being strongly influenced by the political, cultural and institutional context that characterize each individual media landscape, are by no means static and evolve over time to **adapt to the changing environment**. Interestingly, systems do tend to evolve over time in the same direction:

- Some traditionally “complaint-led NRAs” have recently expanded their content monitoring activities, while several “monitoring-led regulators” have improved and developed their complaints procedure over the recent years.
- Similarly, several NRAs have evolved from a more comprehensive, systematic monitoring to a more risk-based approach.
- Compared to the situation of the last 5 to 10 years, a certain degree of homogenisation of practices could thus be observed.

Another key finding of the background paper was that compliance and enforcement strategies and practices **may need to be adapted further to address the challenges of the rapidly and substantially changing media landscape; especially with regard to growth of on-demand services as well as shifts in consumption and distribution patterns**. This topic will be the main focus of our autumn session in Yerevan.

When asked to list the main regulatory challenges that they encounter in the field of compliance and enforcement, the respondents to the survey highlighted the following main points:

- The growing number of media service providers;
- The complexity of the converging media landscape with new services, devices and platforms;
- The challenges to ensure compliance with audiovisual media regulation especially in relation to protection of minors with the increasing distribution of audiovisual content over the internet;
- The aging of traditional *linear broadcasting* audience and the changing media habits of young people;
- Ensuring the sustainability of a strong, independent and relevant PSB in a changing media environment;
- The changing financial models which jeopardise the audiovisual industry’s financial stability;
- Identifying on demand audiovisual media services;
- Jurisdiction challenges,
- Lack of human and financial resources in the field of compliance and enforcement

It is worth noting that all the challenges that were mentioned, with the exception of the last one, are external and relate to the impact of the new converged media landscape on regulation.

On this particular point, Ofcom interestingly emphasised in its response that: “*no system for compliance and enforcement will ever be able to provide complete assurance*” (for the future) and that “*a statutory regime carries the risk of being less able to adapt quickly to advances in technology, developing business models and changes to consumer behaviour*”(…) “*The connected media*

environment will continue to challenge the current regulatory structure in terms of continuing to meet evolving audience expectations”(...) “The challenge for regulators is to ensure that a regulatory regime delivers effective and proportionate levels of protection while being flexible enough to take account of varying levels of audience expectation associated with different devices and means of distribution. This also highlights the importance of regulation working alongside other protection tools and measures to help audiences empower themselves, such as content access control tools and information guidance”.

2. Structure of Session

The autumn session will start with an address by *Jean-François Furnémont*. His background as former regulator (Director General of the CSA of the French speaking Community of Belgium from 2003 to 2014, and Member of the EPRA Board from 2008 to 2014, first as Vice-Chair, then as Chairman), gave him a first-hand experience of the challenges of compliance and enforcement in practice.

In addition, his experience as founding partner of the consultancy Wagner-Hatfield, which is providing regulatory advice for various public and private organisations in many jurisdictions, has enriched his comparative knowledge of existing regulatory systems and provided him with the necessary distance for the critical analysis of regulatory strategies.

His keynote will be followed by a debate focused on the challenges of compliance and enforcement in a new media environment, during which EPRA Board members will act as discussants, before opening the discussion with the floor.

3. Questions for Debate:

Possible questions that may be covered during the session include the following:

- **IDENTIFYING NEW CHALLENGES**
What are the main challenges for media regulatory authorities in order to ensure effective and sustainable compliance and enforcement systems in the new media environment?
- **DEALING WITH CHALLENGES LINKED TO AN EXTENDED MEDIA LANDSCAPE**
What are the challenges linked to dealing with an extended number of media service providers?
How to deal with challenges linked to an extended scope?
How to deal with challenges linked to lack of jurisdiction?
- **RETHINKING COMPLIANCE AND ENFORCEMENT STRATEGIES**
Are the current compliance and enforcement strategies sufficiently future-proof?
If not, should the changes be revolutionary or evolutionary?
Which process should be followed to set adequate strategic priorities?
- **REINVENTING TOOLS AND MINDSET**
Do the relationships between NRAs and the various media players need to evolve? If so how?
Can incentive-based regulation help?
What is the right balance to strike between macro vs. microregulation?
What is the right balance to strike between traditional regulation, self & coregulation?