

**46th EPRA Meeting Vienna:
12-13 October 2017**

Plenary Session 1: News in the Digital Age
Session focus: the Role of Regulators
Implementing Accuracy, Objectivity and Impartiality in practice
Comparative Background Document ¹

Maria Donde, Asja Rokša-Zubčević, Emmanuelle Machet

Final post-meeting version of 20 December 2017

1. Introduction

The [EPRA Annual Work Programme 2017](#) focused on the topical issue of News in the Digital Age. While the spring meeting in Edinburgh addressed the topic from the perspective of media service providers, industry and international organizations, notably through presentations from journalists and social media², the autumn session focused on the particular role that media regulators can play in this context.

At the spring Plenary meeting in Edinburgh, this topic was discussed in detail by a panel of experts. These included Simon Milner, Facebook's Policy Director for UK, Middle East, Africa and Turkey, who represents Facebook on issues such as privacy, safety, security and Internet access; Gary Smith, Head of News and Current Affairs at BBC Scotland, whose career has been in broadcast news journalism; and Sejal Parmar, Senior Adviser at the Office of the Organisation for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, whose main field of expertise and research is international and European human rights law, particularly on freedom of expression.

The session was framed by an introductory keynote from Chris Banatvala, an independent media consultant whose career began in broadcast journalism with Channel 4 News in the UK and who went on to be Ofcom's founding Director of Standards and an executive member of its Content Board. Chris Banatvala set out the terms of the current global debate on news media – including the focus on 'Fake News' – and provided an overview of the key questions that both the media and regulators are asking themselves about the threats to a strong and impartial news environment and as well as the opportunities offered by the online space.

¹ **Disclaimer:** This 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 Plenary 1: News in Digital Age - EPRA Background Document
<https://www.epra.org/attachments/edinburgh-plenary-1-news-in-digital-age-epra-background-document>

The BBC and Facebook then discussed their individual understanding of their own role in the dissemination of information – and what constitutes editorial activity in this context – and the changing environment. They talked about the way in which they responded to these changes, in the case of Facebook to the challenges posed by hosting a vast amount of content over which they did not exercise editorial control, and in the case of the BBC how they responded to a fast-paced information sphere where traditional broadcasting strategies might result in falling audiences. They also reflected on the ways in which audiences behaved, changes in trust and values, and opportunities for re-engaging viewers and readers in the future.

Finally, the OSCE's RFoM office talked about the threats posed to freedom of expression by both the new media players – who inadvertently might play a role in restricting the range of views that Internet users had access to – and by attempts to regulate that same sphere.

As participants touched upon the question of what could be common solutions to some of the problems identified, the topic of critical understanding and media literacy was inevitably mentioned, which carried through in the discussion in EPRA's Working group on Media Literacy³.

In the environment in which traditional media represent just one of many actors who influence the creation of public opinion and perception of the world around us, in times when accurate, balanced and confirmed news become scarce, it is highly desirable for regulators to assess the standards and practice pertaining to rules related to accuracy and balance and the role they play in enforcing these standards, as well as more widely in measuring and analysing media plurality.

For this reason, and to prepare for the session, a questionnaire⁴ was circulated to gather information from EPRA members.

There were a total of 27 responses to the questionnaire. Respondents included the regulatory authorities from: Belgium CSA of the French speaking Community (BE), Belgium VRM of the Flemish speaking Community (BE), Bosnia and Herzegovina CRA (BA), Bulgaria CEM (BG), Czech Republic RRTV (CZ), Denmark RTB (DK), Estonia TRA (EE), France CSA (FR), Greece NCRT (GR), Germany DLM (DE), Gibraltar GRA (GI), Ireland BAI (IE), Israel SATR (IL), Kosovo⁵ IMC (XK), Macedonia AAAMS (MK), Lithuania RTCL (LT), Netherlands CvdM (NL), Norway NMA (NO), Serbia REM (RS), Slovakia CBR (SK), Slovenia AKOS (SI), Spain CNMC and Catalan CAC (ES), Sweden SPBA (SE), Switzerland OFCOM and AIEP (CH), United Kingdom Ofcom (GB) and Ukraine NCTR (UA).

³ The final output of the Working group can be accessed at this link: <https://www.epra.org/attachments/vienna-wg-i-media-literacy-focus-on-the-role-of-regulators-background-document>

⁴ The full results of the questionnaire can be accessed at this link: <https://www.epra.org/surveys/ps1-news-in-the-digital-age/results> (members' only).

⁵ *This designation is without prejudice to positions on status and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of Independence.*

2. Questionnaire Responses

To address the challenges and developments described in the first Plenary Session in Edinburgh, the questionnaire began by asking about existing regulatory provisions related to accuracy, objectivity and impartiality, their recent changes and application of these rules, i.e. whether they are general rules or they apply only to specific programme genres such as news and current affairs.

It is worth noting at this point that the concepts of accuracy, objectivity and impartiality overlap to a certain extent and are considered vital tenets of journalism. The three concepts pertain to, in general, all broadcast media content but in particular to news and current affairs, as these programmes attract a wide audience and are likely to have an impact on the shaping of public opinion. Thus, for content makers, these principles should have priority over speed of information placement, exclusivity and sensationalism. Being accurate has always been a core journalistic value, but in an age of viral news, verification is an increasingly essential skill, owing to the volume of material requiring verification and the pressure of shrinking budgets. Objectivity requires evidence and verification and is more than just attempting to be neutral. It has also been remarked that impartiality in the digital age may have evolved from its original meaning of about not taking sides to providing context and breadth of view⁶. And however it is understood, we know that audiences expect and want accuracy and impartiality instinctively and that their trust in media is founded on these concepts, which allow them to form their own opinions on all matters presented. In abiding by these principles, broadcast media providers build credibility and trust with their audience. Programmes offered on the bases of accuracy, objectivity and impartiality are in fact the cornerstones of professional reporting and content-making.

With this in mind, we also asked how the rules on balance and accuracy have been applied in different countries, how successful such regulation has been and what challenges regulators identified in the existing frameworks.

We then asked respondents to consider how their powers and responsibilities had been challenged by the developments we have identified in the digital era. The discussions during the first Plenary session in Edinburgh reflected some of the current challenges.

Finally, we asked members to reflect on how their approaches to these responsibilities could be adapted in the future. And in relation to that more far-reaching question, the survey also asked about the responsibilities that EPRA members have in overseeing the media markets and landscapes as a whole – recognising that consumption of and trust in news are also affected by the plurality of offers available, by the strength of the public service broadcasting system, and other potential regulatory interventions.

The rest of this paper summarises the responses from EPRA members to these questions and attempts to draw some conclusions and identify key questions to be addressed in the plenary debate at the autumn EPRA meeting in Vienna in October 2017.

⁶ ACCURACY, INDEPENDENCE, AND IMPARTIALITY: How legacy media and digital natives approach standards in the digital age by Kellie Riordan, Reuters Institute Fellowship Paper, <https://reutersinstitute.politics.ox.ac.uk/sites/default/files/Accuracy%2C%20independence%2C%20impartiality-%20Look%20at%20legacy%20and%20digital%20natives.pdf>.

Section 1: Content regulation at work

i) NRAs' current responsibilities

Almost all respondents to the questionnaire reported the existence of rules pertaining to accuracy, objectivity and/or impartiality to some extent. Such rules are in most cases generally applicable to all services, with examples of more detailed obligations applied to public service broadcasting (SPBA SE, CAC ES, RTB DK, NMA NO, CEM BG, and CNMC ES). Also, there are cases where such provisions are to be found in defamation and even criminal legislation (AKOS SI), as well as in press acts or codes, but are applicable to broadcasting services as well (NMA NO, RTB DK). Interestingly, it is reported that there is no statutory provisions in the area in the Netherlands. And of course we recognize that not all EPRA members responded to the questionnaire, and we must acknowledge that there may be several other countries where no specific rules exist related to accuracy and impartiality.

At this point, it might be important to remark on the great variety and complexity of the media landscapes in Europe and of the systems of media governance and regulation in place. The importance given to editorial independence of the broadcaster, as well as its legal guarantees, also differ from country to country. This reflects the different political and institutional systems - whether polarised pluralist, north central European or the liberal models if one follows the categorisation proposed by Hallin and Mancini. The degree and nature of state intervention in the media system, the role played by public service media and the development of journalistic professionalism are important factors that would need to be taken into account to provide further insight into one specific media regulatory system. This background document does not aim to present an in-depth comparative media policy analysis.

In *Ireland*, besides the legislation provisions related to these issues, the regulator is obliged to develop a code dealing with fairness, objectivity and impartiality in news and current affairs, and a Code to this effect was introduced in 2011⁷ (BAI IE).

In the *UK*, relevant legislation and detailed rules require due impartiality in news and programmes which cover matters of political or industrial controversy and/or matters relating to current public policy, including the coverage of elections and referendums. Due impartiality is to be understood as an integral concept which avoids favouring one side over another. In this respect, it is important to consider the subject and nature of the programme. It does not mean equal division of time to every view, or that every argument and every facet of every argument has to be represented. The approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signaled to the audience⁸. There is also a requirement that factual content must not materially mislead the audience. Non-news programmes are not required to be duly accurate, but generally accepted standards must be applied to the contents of television and radio services to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material, including misleading material that might offend or harm (Ofcom UK).

⁷ The Code can be accessed on: <http://www.bai.ie/en/download/128534/>.

⁸ For more, please refer to. <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code/section-five-due-impartiality-accuracy>.

There have been very few reports of recent changes to legislation and other relevant acts pertaining to these issues. In *Norway*, the statutes of PSB will be revised during 2017; their draft version preserves provisions relating to accuracy, objectivity and impartiality (NMA NO). In *Ukraine*, the regulator prepared a draft Broadcasting Code, also pertaining to media market co-regulation principles, proposing the Code to be signed by all media market actors, with no support so far (NCTRB UA).

In *France*, legislation has recently undergone some changes, including those related to extension of the regulator's mandate to ensure independence and pluralism of information. The changes also introduce the requirement for broadcasters of setting up ethical committees concerning honesty, independence and pluralism of information and programmes. This article provides that "the modalities of functioning of the committee are set by the license signed by CSA and private radio or TV broadcasters" (CSA FR).

Also in the *UK*, in late 2016, the Government published a new Royal Charter and Framework Agreement for the BBC, which transferred all previous duties of BBC Trust to Ofcom, including the editorial standards in the areas of due impartiality and due accuracy, elections and referendums etc. Consequently, Ofcom amended the Broadcasting Code to encompass the BBC. In addition, there have been general changes to the relevant rules, applicable to all broadcasters. In 2017, Ofcom decided to remove the concept of the list of larger political parties. Presently, a general requirement is in place to base editorial decisions in relation to election coverage on evidence of past electoral support and/or current support (Ofcom, UK).

ii) Recent cases in times of crisis related to accuracy, objectivity and impartiality

14 NRAs reported a number of recent cases. The Swedish SPBA has handled a vast number of cases pertaining to these issues in 2017, with ca. 3 500 complaints last year, 80 % of which concerned PSBs.

Some cases are not dealt by the regulator, but by press councils, as is the case in *Denmark* (RTB DK). In the *French-speaking Community of Belgium*, since the creation of the Council for journalistic deontology, the questions related to accuracy, objectivity and impartiality of information are transferred to this body, which is in charge of all questions concerning the way news are treated.

In *Lithuania*, on 5 April 2017, RTCL issued a decision restricting the free reception of the Russian Federation television channel "TVCI" for one month, for its coverage of the events of 13th January 1991 in Lithuania, when the Soviet military troops attacked the TV centre and in the course of which 14 people were killed. The programme was deemed to be one-sided, biased, defamatory and inciting to hatred (RTCL LT).

In *Germany*, there were no actual cases of breaches, but one very interesting case is reported. In March 2016, one of the regional public service broadcasters (i.e. Südwestdeutscher Rundfunk, SWR) provoked intense public debate by sticking to its practice of inviting to its political debate, which was held only days prior to regional elections, parties not represented in Parliament, but which, according to polls, had a reasonable chance of entering Parliament. This meant that, the broadcaster would allow the participation of the right-wing party AfD, thus inducing the governing party SPD to

cancel their own participation. Following this, the broadcaster announced that they would hold the debate only with the parties that were currently members of Parliament, while the other parties would be interviewed separately. This prompted the conservative party CDU to cancel its participation in the debate, claiming undue political influence on SWR by the governing party SPD. The broadcaster thus returned to the original practice of inviting all “aspiring” parties. The governing party also agreed to participate, but without its main candidate (DLM DE).

In *Ireland*, over 50% of complaints dealt by the regulator relate to fairness, objectivity and impartiality. A recent case involved the treatment of Irish law on abortion by a programme broadcast on RTÉ Radio 1, the public service broadcaster. Complaints were upheld against one programme on three occasions because the content was not considered to meet the requirements of fairness, objectivity and impartiality. The station was issued a Warning Notice⁹, which requires that the broadcaster is to meet and agree a plan with the BAI which will address the compliance issues highlighted. The next sanction, if the matter is not resolved, can be a statutory investigation where fines of €250k may be made against the broadcaster (BAI IE).

In *Bosnia and Herzegovina*, the regulator recently completed a two and a half month monitoring period of the news and current affairs programmes on dual-entity level public service broadcasters which resulted in a case being initiated against one of them, which in turn led to a financial fine of ca €14 000, due to the breach of provisions on fairness and impartiality (CRA BA).

In *Ukraine*, cases pertaining to breaches of relevant provisions led to the identification of foreign channels which violated Ukrainian legislation and the provisions of the European Convention on Transfrontier Television. Decisions restricting terrestrial and cable distribution of 78 foreign programmes in the territory of Ukraine were issued from 2014 onwards. The programmes were found to be in violation of various provisions of the Law of Ukraine “On Information”, such as those related to dissemination of false and distorted information concerning the current situation in Ukraine, war propaganda, violence, cruelty, incitement of ethnic, racial or religious hatred, terroristic acts commitment, attacks on human rights and freedoms (NCTRB UA).

In *FYR Macedonia*, during 2016, the AAAMS conducted several programme monitoring exercises intended to establish whether broadcasters respected the principle of presentation of events with equal treatment to the different standpoints and views and enabling freedom of thought for the public. The broadcasters in question were informed and the monitoring reports were published on the NRA’s website. Additionally, the regulator also published general appeals to all the media outlets to comply with professional journalistic standards on several occasions, based on regular monitoring and in particular during electoral campaigns (AAAMS MK).

In the *Czech Republic*, a few cases pertaining to these issues are usually dealt with each month. Recently, there was a case of news coverage with the title “150 million allocated non-check” at FTV Prima, in which the viewers were informed that there is no effective control over the use of funds that are compulsorily collected in a fond of loss prevention (prevention of car accidents). The news coverage gave incomplete, distorted and misleading information ignoring some important facts which are necessary for the full comprehension of the matter. This programme was found in breach and the station was issued a warning (RRTV CZ).

⁹ The decision is available at this link: <http://www.bai.ie/en/download/131629/> (see pages 4-17).

In *Slovakia*, the CBR handles these cases quite frequently, mostly in relation to news items in main news programmes. The most common issue is the absence of a relevant opinion of the party concerned, including political affairs programmes which are unbalanced and present one-sided opinions. The most recent case was an administrative proceeding against a regional radio broadcaster who hosted an extreme right-wing politician in a programme with a duration of about 90 minutes, providing for only one, extreme right-wing view on important topics relating to race, skin colour, faith and religion. CBR found this broadcast to be in breach of relevant provisions and imposed two sanctions for various breaches, a warning and a financial sanction of €15 000 (CBR SK).

In *France*, recent examples include coverage of the terrorist attacks in France in January 2015. The NRA found 36 breaches resulting in formal notices to broadcasters. An important issue that was raised related to CCTV camera footage of a policeman shot dead by terrorists. Though the very moment of the shooting was not showed, firearms blasts as well as the voice of the victim could however be heard, the policeman's face could also be seen. The CSA found a breach of provisions related to human dignity and the broadcaster (France 24) was given formal notice. Also, the CSA found that the broadcast on France 5 which showed the cover of British paper Dailynews picturing the policeman lying on the ground and begging for his life was not in compliance with human dignity (CSA FR).

In the *UK*, there were several cases of breaches of relevant rules, three of which are presented below:

1. Fox News – 2016: The three current affairs programmes featured various statements which either strongly criticised Hillary Clinton and her presidential campaign and/or gave support to the campaign of Donald Trump, without offering a significant, balancing view. The programmes were broadcast during the US presidential election period. Ofcom found the breach of relevant rules.
2. RT – 2016: RT's 'CrossTalk' show is a series of 30-minute current affairs debate programmes broadcast three times a week. The programme included a number of statements critical of NATO policy following the NATO summit in Warsaw in 2016, without reflecting alternative viewpoints. Ofcom decided that the station breached relevant rules and that, as there had been recent number of breaches of same rules by this station, it was required to attend a meeting to discuss its compliance in this area.
3. NTV Mir Lithuania – 2016: NTV's 'The Incident' is a documentary series broadcast in Russian, which deals with a variety of current affairs topics. This programme contained a number of statements critical of Latvian and Lithuanian Governments, without reflecting alternative viewpoints. Ofcom found the breach of relevant rules and, in view of three previous breaches of the due impartiality rules involving this station, it was required to attend a meeting to discuss its compliance processes in this area.

iii) Impact of existing regulatory tools/activities

The questionnaire also enquired about the impact that the actions of NRAs had in relation to cases described above.

It is of course difficult to judge the success of measures against a hypothetical alternative, and it is important to emphasize that the extent of regulatory tools regarding these issues vary among members. Nevertheless, most respondents consider that their actions have had positive impact by

preventing these rules from being subsequently breached. Positive impact can indeed be measured by the non-repetition of breaches, once the initial breaches were established and made public. Several regulators report that this is particularly valid for cases related to important topics that attract a wide audience and are topical within a given society (BAI IE, IMC XK).

Impacts can be measured by the NRAs' ability to issue statutory sanctions: this mechanism makes both the public and broadcasters aware of relevant rules, and also demonstrates the importance of compliance. Such an impact is reported by many respondents (CAC ES, CSA FR, RTCL LT, GRA GI, RRTV CZ, SATR IL, Ofcom GB, CRA BA).

One prominent illustration of this is to be found in reports by the French CSA, where it is established that, after the tragic events of killings of journalists of Charlie Hebdo in France in 2015 led to a number of decisions by the CSA, the subsequent coverage of further tragic terrorist attacks was found in compliance of the rules.

However, this is not the only approach, as many broadcasters are actually very much interested in abiding by the rules, regardless of the possibility of sanctions (see also section (vii) on alternative approaches, below).

iv) Challenges faced by regulatory authorities when dealing with accuracy, objectivity and impartiality issues

Generally speaking, as outlined at the spring session, the main challenges lie with the difficulty in achieving balance between the right to freedom of expression and the audience's right to receive information and ideas, on the one hand, and with potential cases of breaches of relevant rules which pertain directly to editorial decisions, especially when dealing with provisions related to due impartiality on the other. In that respect, there is no clear formula and these issues have to be considered on a case-by-case basis, examining different factors, such as the nature of the subject matter, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signaled to the audience. This becomes especially difficult in the current context of distortion of reality, false news, alternative facts. Even in that segment, it appears that the main challenge for the regulator is to determine if such instances can be attributed to an individual, accidental oversight (which can be easily corrected by publishing an apology, reply or correction) or is it a case of editorial policy intention, in which case, once the intent has been established, an appropriate measure by the NRA should be imposed. Indeed, EPRA considered these difficulties in particular detail in its 2016 Working group, 'Media in Times of Crisis'¹⁰.

Additionally, many NRAs report a very difficult position in distinguishing between opinion and factual

¹⁰ For more details, please refer to EPRA papers: Barcelona - WG1: Media in times of crisis - Introductory Document at <https://www.epra.org/attachments/barcelona-wg1-media-in-times-of-crisis-introductory-document> as well as Yerevan - WG I: Media In times of Crisis: the role of regulatory authorities - Comparative background document, at <https://www.epra.org/attachments/yerevan-wg-i-media-in-times-of-crisis-the-role-of-regulatory-authorities-comparative-background-document>.

parts of programming. This “thin” line that NRAs should consider becomes even thinner when the issue of editorial independence is in question, taking into consideration the level and extent of NRA’s “imposition” on it.

Challenges related to these issues can be particularly acute when dealing with subjects that are a matter of much public debate and controversy, and the need for freedom of expression coupled with responsible broadcasting is of particular relevance, such as issues relating to Irish abortion law and marriage rights for same sex couples in Ireland. In such instances, NRAs tend to be accused of taking sides and supporting one or other side of the debate. The objectivity of the NRA’s decision-process becomes increasingly scrutinized from the position of the debated subject-matter and not from the perspective of applicable rules.

The use of social media and its role in programme making also poses significant challenges. The BAI explains that in *Ireland* social media comments are not subject to fairness, objectivity and impartiality requirements on the platforms where they are published, but their use in broadcast content must have regard to news and current affairs rules. The Irish regulator reports that such a distinction has not always been adhered to and there is one instance where an unverified tweet, which subsequently proved to be incorrect, influenced the shape of an election for the President of Ireland.

It is also reported that television services tend to view the services of web platforms, social networks, etc. as unfair competition, because they provide information reaching mass audience, but fall outside of the AVMS regulatory environment. Their information may be less reliable, but is immediate (CSA-FR).

Additionally, a challenge may be in maintaining (by law) the independence of the journalistic team from the media management’s control. Legal provisions in the French-speaking Community of Belgium stipulate that in the field of local television the news editor in chief is not allowed to belong to the direction team of the television as an effort to ensure this independence.

The ongoing shifts in genres away from a relatively clear differentiation between news and current affairs programming and non-news and current affairs programming toward greater melding of genres has also been reported as an emerging challenge, thus increasing the difficulty of the regulator’s decision making in some instances (BAI IE).

Section 2: Looking to the Future

v) Adapting the role of NRAs in relation to accuracy, objectivity and impartiality to the changing media environment in the digital age

On the one hand, a good number of respondents suggested that the role of NRAs in relation to accuracy, objectivity and impartiality – that is, in the regulation of editorial content – should be adapted to the changing environment in the digital age (CAC ES, RTCL LT, NCRB UA, AAAMS MK, CEM BG, RRTV CZ). As pointed out by the Irish response, concern for the impact and influence of media as well as issues of plurality and diversity remain relevant regardless of the platform on which news and current affairs content appears. Given the important role of current affairs and news content for the

democratic fabric, there is an argument to be made that, in principle, standards around fairness, objectivity and impartiality should apply to online and social media content.

On the other hand, several respondents considered that the current role of the regulators in relation to accuracy, objectivity and impartiality should not be modified (VRM BE, NCRT GR, IMC XK, CSA BE, SATR IL, OFCOM CH). Several responses highlight that it would not seem practical to apply the same degree of regulation to digital media as applies to traditional linear media.

Most respondents seem to be in favour of a cautious approach, requiring further deliberations on the matter (DLM DE, BAI IE, CVDM NL, CRA BA, GRA GI, CBR SK, CSA FR, Ofcom GB, CNMC ES). However, as online media and social networks content have an increasing influence and presence, there is no doubt that NRAs should closely monitor these developments. Research of the relevant markets, including measuring plurality and of consumer/viewer behaviours, expectations and understanding are thus deemed important and desirable.

In the UK, Ofcom considers that an effective approach to securing public policy outcomes in the online/digital media environment should feature a combination of self-regulation, information provision and critical understanding on the part of citizens, where the regulator's role as working collaboratively with stakeholders to develop best practice guides, codes and self-regulatory approaches has a crucial role to play.

In line with this view, the Czech NRA reports an initiative to openly reflect on these issues within the wider platform of stakeholders, through with the launch of public debate within their annual media conference.

Media literacy is also perceived as a crucial tool to cope with these issues (TRA EE, Ofcom GB, GRA GI).

Self-regulatory mechanisms are mentioned in several responses (REM RS, BAI IE, NCRT UA, Ofcom UK). In *Ireland*, the self-regulatory body for on-demand AV services has developed and introduced a code that includes requirements for news and current affairs. Specifically, this includes an obligation that where content is purported to be news or current affairs the concepts of fairness, objectivity and impartiality should apply. Several respondents also point to the long-term existence in their countries of self-regulatory press councils with responsibility for these matters in the print media.

Additional relevant measures revolve around ensuring access, findability and discoverability of quality content as pointed out by the Dutch CvdM. Against the background of the current drafting of a new Act on electronic Media, the Swiss OFCOM is of the opinion that, regardless of the development of newer online media formats, provisions for radio and television on accuracy, objectivity and impartiality are still important for democracy. One idea that is being tackled is considerations to find adequate ways to promote certain Internet services that take over the role of Swiss "lighthouses of trust", i. e. that offer content, which has a certain "public service value" and respects the rules on accuracy, objectivity and impartiality.

As pointed out by the Slovak CBR, a high level of expertise and experience within the structures of NRAs is desirable, especially in such a fast evolving and diverse environment as media in a digital age.

vi) Social Media and the impact on election messaging

Research to understand the impact of content and activity on social media on the outcomes of elections is ongoing. But there is clearly an acknowledgement that social media might have played a role in recent elections – even if the nature of that role is not yet clear. Because of the clear differences between strict oversight of election messaging in broadcasting and the need for balance and impartiality in election period broadcasting coverage on the one hand, and the very limited provisions that apply to election advertising and information online on the other, we felt it was important to ask whether that difference was fair or sustainable. NRAs were therefore asked to provide their opinion on whether current regulatory requirements of balance and impartiality (in the areas where they have responsibility) should be relaxed in light of social networks and online media, particularly in the context of elections – or whether they remain valid and important.

In asking this question, we remained aware that NRAs of course play no role in many other aspects of overseeing election activity, such as the targeting of individuals, use of data and accuracy in claims made in election advertising (all of which are highly relevant to the concerns related to the role that social media has played in recent elections).

Many respondents are of the opinion that regulatory requirements should NOT be relaxed in the light of social networks and online media (RTCL LT, VRM BE, TRA EE, BAI IE, NCRT GR, AAAMS MK, GRA GI, CBR SK, SATR IL, AKOS SI, Ofcom CH, CNMC ES), while there are others who consider that rules should be adapted to include social networks and online media (CAC ES, IMC XK). Also, as with the issues regarding the accuracy and impartiality in general, there are positions which call for more deliberation (CRA BA, CEM BG, RRTV CZ, CSA FR). For example, DLM DE reports that, along-side the current discussions on the revision of the AVMS Directive, national debate is focusing on the extent of which the existing legal framework for audiovisual media services should be extended to the different forms of intermediaries.

As more people read the news on social media platforms, which are not subject to the same rules that editorial actors must follow in relation to objectivity and accuracy, NMA NO suggests that it becomes even more important that some media services, for example the public service broadcasters, are subject to obligations on accuracy, balance and impartiality in the context of elections. Similarly, Ofcom GB said there were no plans to relax any of its current rules on election coverage in broadcasting.

The national context in this matter is important, and several responses state that traditional media is still strong and has a key role to play in the democratic process in informing public knowledge and debate (CRA BA, BAI IE). The Ukrainian regulator reports on lack of media regulation during election, which requires amending the election legislation.

Most of the functions and mandates of NRAs in relation to elections is to ensure compliance with relevant rules, encompassing equal access, information for voters, restrictions related to hate speech and offensive speech, with the safeguard of underlying principles of balance, objectivity and impartiality. In addition to that, and perhaps more importantly, regulators also examine possible interference with the freedom of the media in relation to coverage of electoral process and campaign, from the state or from any political party, which are normally referred to relevant bodies. The role of NRAs in terms of assessing and processing complaints procedures in the timeliest manner possible is also highlighted in this context.

All of this comes into question when online and social content media are included. As stated previously, it is emphasised that NRAs should be adaptable and alert to all developments. The CSA of the French-speaking Community of Belgium reports that they are presently working on revision of election rules, and contemplating how to extend the rules of balance (at least) to social networks. The rules already apply to AVMS on the Internet, for the media services which are not clearly dedicated to the communication of a party or a candidate.

Section 3: Alternative approaches

vii) Self-regulation and the role of NRAs

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 of existing rules (as discussed in section (iii)) and to understand what, if any, alternative approaches to content regulation might be effective. Examples of good practices include the adoption of guidelines pertaining to these issues, workshops and either voluntary or statutory meetings with broadcasters, individual guidance to broadcasters on particular programme queries, followed by ethical codes developed and upheld by broadcasters themselves, including those related to election coverage, especially by public service broadcasters. Many guidelines are also developed by or with NRAs (CRA BA, Ofcom GB, BAI IE and GRA GI). Ofcom GB has run workshops with practitioners on compliance with election period rules.

NMA NO pointed to the example of its Press Complaints Commission, a self-regulatory body that promotes and oversees ethical standards in all areas of journalism, including broadcasting on TV and radio.

In addition, it is reported that media literacy activities, rather than enforcement measures, are the best regulatory way to cope with these issues as it enables consumers to better evaluate the source from which they receive information, while NRAs can be found to be lacking in capacities to cope with a rapidly increasing number of AVMS providers (TRA EE).

Finally, it is worth noting that regulators are understandably sometimes skeptical. RTCL LT commented that although voluntary responsible measures are positive, practice shows they are not sufficient in a world “facing information wars” and a lighter-touch is not necessarily going to be effective in the future. CSA FR considered that statutory rules were an important intervention to have during election periods and at other times where questions of plurality are concerned. It has also been reported that workshops organized in FYR Macedonia to connect citizens, academia and the journalistic profession clearly have a positive motive but have yet to yield results.

viii) The role of NRAs in measuring or analysing media plurality

The responsibilities that NRAs have in relation to ensuring sufficient plurality, including monitoring

ownership of media and media concentration, can play a significant role in mitigating some of the risks posed by changing patterns of news distribution and consumption.

As mentioned above, research on measuring or analysing the level of media pluralism is particularly relevant in order to collect essential evidence based on which the regulator can develop its approach and consider whether policy changes are necessary. A failure to act to preserve media pluralism can lead to media concentration and to a lack of different voices available to the public, which can result in situations of bias, non-objectivity and partiality. Measurement and analysis can thus form the basis for regulatory intervention proposals of the kinds discussed in section (v) above, which deals with how regulators' roles can be adapted to the digital age.

That is why this issue is so important to consider, also building on EPRA's previous considerations on the issue, with several recent sessions being dedicated to the assessment of plurality in online environment, such as "how to ensure and assess media pluralism and diversity of media content?" (Berne 2015), "the regulators' toolkit to encourage diversity of sources and output" (Nuremberg 2015) "the impact of algorithms on diversity" (Edinburgh 2017).

NRAs' roles can vary, including research, analysis as well as responsibilities for decisions in cases of media mergers. Some NRAs report on their role in relation to transparency of media ownership, including research activities, while there are also reports of the role of NRAs related to media plurality specifically related to elections.

In *Ireland*, the NRA has a statutory role in media plurality. Specifically, the NRA may be required by the relevant Minister to perform a "media mergers examination" on a proposed acquisition or merger of media businesses. In such an examination, the BAI is required to apply the relevant legal criteria and make a recommendation to the Minister on whether the proposed transaction should not proceed or should proceed with or without conditions. The test the NRA applies is whether the proposed transaction would be contrary to the public interest in protecting plurality of the media. The BAI also has a statutory role in conducting methodological research on matters relating to plurality (BAI IE).

In FYR Macedonia, AAAMS has a legal role in terms of protection and development of media pluralism. In 2012, the regulator adopted a Manual for Media Pluralism Assessment (Internal Pluralism) as well as a Manual for Creating Market Conditions for Sustainable Economic Growth of the Media Industry and Fair Competition¹¹ (AAAMS MK).

In the *French-speaking Community of Belgium*, media companies cannot hold a dominant position in the market that adversely affects pluralism in broadcasting, and the NRA must carry out assessments in this area. If a dominant position is observed, the assessment process starts, considering two aspects: structural pluralism on one hand and content pluralism on the other hand. (CSA BE)

In *Serbia*, the NRA also has a legal role in the protection of media pluralism. In particular, that role comes into play in the case of mergers or of founding and/or controlling rights in two or more electronic media publishers, or cross-acquisition of at least one electronic medium, if the NRA determines a violation of media pluralism (REM RS).

¹¹ Can be accessed on: http://www.avmu.mk/index.php?option=com_content&view=article&id=665&Itemid=97&lang=en

In the *UK*, Ofcom is required to secure maintenance of a sufficient plurality of providers of TV and radio services, as well as a formal statutory role in relation to certain media mergers. Additionally, Ofcom is obliged to review the rules pertaining to media ownership for TV, radio and newspapers. For example, in 2011 and 2012, the UK Secretary of State asked Ofcom for advice on a series of specific questions on media plurality. One of the key outputs of the resulting advice was our recommended approach to a framework for measuring media plurality, which was consequently developed by Ofcom and published in 2015. Further, following a “media public interest consideration”, Ofcom is required to report whether there may be a case that of a merger that may be expected to operate against the public interest (Ofcom UK).

In the *Netherlands*, the Dutch Media Authority has published its annual ‘Mediamonitor’ for the last 15 years to provide an overview of the concentration and diversity of the Dutch media system. While in the early years, the focus was primarily on newspapers, radio and television, with the increased importance of the Internet in the formation of opinion, the Monitor now includes all the media markets that are relevant to news provision.

In *Germany*, the regulators have also recently developed an extensive tool to this effect, the ‘MedienKonvergenzMonitor’¹².

3. Conclusions

The world is seeing a revolutionary expansion of different media platforms and proliferation of various content, shaping important issues before our eyes. The era of the Internet has brought many new players to the creation and distribution of communications channels. It has raised both opportunities and risks for user-generated content and open journalism. People can now comment on the news and otherwise interact with others about different media output. People can now easily create and disseminate video content and news. The Internet, new media, social networks, etc., have allowed people to act in public as never before in the history.

Such developments have, to a certain extent, raised questions about the inclusion of digital online media into the regulatory realm. It is very timely and appropriate that, at such times, EPRA focuses on these matters. After consideration of these issues from the perspective of industry and academia in the spring session, the autumn session is dedicated to a deliberation on the role of NRAs.

Responses to the questionnaire demonstrated that the notions of objectivity and impartiality are commonly understood and that the provisions that NRAs apply are not intended to create artificial balance. There is no magic formula for achieving objectivity; it depends on many factors, including relevant facts, ways of reporting, inclusion or lack of representation of opposing views, if they exist, etc. In the same light, impartiality does not mean absolute neutrality in media content, nor do the provisions on impartiality require all possible views and opinions to be represented, but rather, it means that impartial reporting actively exercise editorial independence in the ways subjects are represented and do not prejudice any final view. Because of the sophistication of this delicate balance, impartiality not only calls for journalist/editorial independence, it calls for personal stamina and active professionalism in the treatment of any subject and any voice and opinion in relation to subjects in a fair and consistent manner. Some of this falls to regulators to oversee, but some is a matter of professional ethics.

¹² Can be accessed on: <https://medienkonvergenzmonitor.de>.

In terms of the current regulatory framework, we learned from the responses to the questionnaire that across Europe there are generally (with some limited exceptions) rules in place pertaining to accuracy, objectivity and/or impartiality, mostly applicable to all audiovisual services, with examples of more detailed obligations applied to PSB services. Only a few recent changes of the rules have been reported, where the powers of the NRAs have been extended, particularly when it comes to public broadcasting services (as in the UK), or when it comes to ensuring media pluralism (as in France).

The large number of reported cases of breaches of relevant rules provide confirmation that from the local to the global, programming reflects the heated debates taking place in society, with many very polarized views. Most of the cases dealt with biased and one-sided programmes, in which requirements of impartiality have been, intentionally – for the most part – neglected. It would appear that recent developments surrounding the area of fairness, balance and impartiality, in election periods or other times, suggest we may be entering a period when the value of such principles is being eroded. The cases described by regulators include programming where reasoned argument is lacking, facts are neglected, but there are plenty of populist statements intended to raise emotions rather than appeal to reason. As we have also heard from practitioners, it would appear that it is difficult, expensive and time-consuming to present issues in a fair, unbiased and impartial manner.

As is the case with many regulatory measures, the main challenges in implementing the rules related to fairness, balance and impartiality lie with the issue of protection of the right to freedom of expression and the preservation of editorial independence. Any regulatory measure taken against a media provider in this context inevitably means an intervention – at one level or another – in editorial decisions. That is why it is critical for NRAs to benefit from a full range of expertise in this field, to develop the mechanisms to examine the many different factors surrounding these issues and to, most of all, examine each case on an individual basis. Inevitably, in such instances, NRAs may be accused of partiality, especially in matters of controversy. In that respect, the requirements for transparency and objectivity from NRAs become even more important.

In terms of future developments, the questions that related to the role of regulators in light of changing public attitudes towards media, the changing media ecosystem and appropriate regulatory approaches, were deemed adequate and timely, but also very complex and without clear answers for the moment.

Discussion around such matters within regulatory authorities should include issues related to defining or perhaps redefining balance and objectivity, examining the role of NRAs in electoral process and media pluralism, how to achieve greater transparency, and, focus on activities related to media literacy and education. This requires the inclusion of many stakeholders at the national, supra and international levels.

In terms of alternative and additional factors, the final sections of the questionnaire dealt with the issue of media pluralism, and the role that regulators play in helping to sustain a rich, diverse and transparent media landscape - one that promotes freedom of expression, leads to well-informed public opinion, and guarantees that journalists can feel free to carry out their work to the highest standards.

Overall, the responses to the questionnaire suggest that regulators understand the need to be ready to adapt their approach, however that might be achieved. It seems that accuracy, objectivity and impartiality remain relevant as principles that should be reinforced at a wider scale, not only by regulatory requirements, but also by self and co-regulatory mechanisms, media literacy, etc. One of the most important issues to tackle is to develop an evidence-based approach, hence the key importance for NRAs to research and measure levels of plurality. Many regulators clearly felt the need to properly define the risks and problems in this area and find appropriate solutions to meet the identified needs. The questionnaire responses also indicated that, while some regulators felt those solutions might lie in the regulation of a wider range of editorial content, others wanted to consider alternative approaches.

4. Points for debate and discussion

Based on an assessment of EPRA members' views on this topic, the following themes and questions were selected to structure the discussion at the autumn Plenary session on News in a Digital Age.

1. The scope and nature of regulation

It is obvious that we are involved in a debate about which services and which kinds of media should fall within the scope of regulation. One key question that arises from the responses to the questionnaire is the role of new online players and social media in particular, and how to understand their impact on programme making, on accuracy, objectivity and impartiality, on trust in the media overall, on electoral processes and of course on the role of NRAs. In that respect, a number of respondents claimed that the remit of NRAs should be amended to include the regulation of digital media in this matter, with a range of views which call for status quo and/or activities related to research, close monitoring of developments and the need of NRAs to maintain high level of expertise on these issues.

Questions to consider in this context include:

- What are the factors that NRAs consider when dealing with cases of breaches of provisions related to accuracy, objectivity, and impartiality?
- Should there be and if so, what might be effective and enforceable measures against online media in case of their inclusion in fairness and impartiality requirements?
- With technological convergence is regulation of impartiality even achievable?

Perhaps less obvious is the question of the kind of regulation that should apply. Questions here include:

- Are we discussing direct regulation of editorial content? Or are we considering a more diverse range of interventions, associated with assessing plurality and attempting to incentivize responsible and trustworthy approaches to news provision?
- And who should be responsible for delivering these interventions?

2. Accountability/Transparency

One of the ideas explored in our questions to EPRA members was that of accountability and transparency, because of the way that these factors also affect the levels of trust that citizens have in their news media. Responses demonstrate that the regulation of editorial content for objectivity and accuracy requires a very light and careful touch and is fraught with difficulties. To some extent, therefore, we as regulators rely on editorial actors taking responsibility and being accountable for their own action: instead of turning to the easier road of neglecting facts, reporting disinformation, appealing to emotions, and disseminating biased views, we expect time, money and energy and most of all dedication to impartiality, professionalism and openness to be reinforced. Transparency comes in handy, where responsible reporting for the benefit of public includes transparent, consistent, evidence-based and verifiable reporting on certain claims. Genuine dialogue depends on the existence of audiovisual media services that engage and provide for a real debate among people who have very different opinions. In cases when media themselves do not provide for such a climate, NRAs could ask themselves whether they should record breaches of relevant rules or look for interventions that incentivise an accountable approach.

Questions to consider include:

- Are there lessons to be learned from the recent cases of breaches of relevant rules? Have there been any shift in the concepts of accuracy, objectivity and impartiality and in the implementation of these concepts by the regulators?
- Are NRAs' decisions related to fairness and impartiality "interference" with editorial decisions and if so, how far can NRAs can go?
- How best help reshape the editorial responsibilities of journalism itself?

3. The role of media and civil society

One should however not stop there. The whole of society has an interest in and should be engaged in ensuring values we are discussing thrive, for responsibility, accountability, credibility and dedication to democratic principles to continue being cherished paradigms. In that respect, proliferation of online media may represent an opportunity, as it can allow for greater commitment to editorial standards, better linking to primary sources of information, to greater commitment to transparency, and all in all incorporation of open, high-quality journalism. Newer forms of journalism such as user-generated content, social media, and data journalism can actually be exciting and innovative ways to engage audiences in an active conversation about the news. The challenge is for media outlets to use these tools to adhere to editorial strengths of verification, accuracy, independence, and a plurality of perspectives. Citizens themselves have a responsibility to exercise critical awareness in relation to the media that they consume, and greater interaction between audiences and news providers also provide an opportunity in this area.

Questions to consider include:

- Has the media landscape radically changed or not?
- What are recommended approaches to development and preservation of media plurality?
- Is it possible to say what is sufficient plurality for a healthy society?
- Who should be responsible for improving citizens' critical understanding and ability to critically appraise and engage with the content they encounter?

To further explore these themes, constant dialogue with all stakeholders is necessary, and not only on national level, since many developments in this field supersede any national boundaries. There are cases to be made for all expressed views, to those which point that relaxation of regulation does not necessarily help support a plurality and objectivity of views, to those that claim it impossible and anachronistic to include online media within the regulatory realms.

In any case, as these issues are so wide and, at times, very intangible, they, by the same token, provide for what is hoped to be a very lively, active and engaging discussion at the autumn session.