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Plenary Session 1

**Public service & public interest content in the digital age: the role of regulators**  
Introductory Document<sup>1</sup>

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**1. Introduction**

The current challenges and problems facing the institution of public service media (PSM) in Europe are described in the background document EPRA/2018/02 "Public service and public interest in the digital age"<sup>2</sup>. In many parts of Europe, the institution of PSM considers itself faced with the need to legitimise itself to a greater extent. In individual countries (e.g. Switzerland), the fundamental right of the PSM organisations to exist has been called into question, as well as their societal funding. Such discussions of principles are not new. However, digitalisation and the consequences of digitalisation on the national media markets have re-activated or intensified the discussions concerning the scope, nature and remit of PSM.

At the plenary session on 24 May 2018 in Luxembourg, various questions in relation to these challenges were discussed. The viewpoint of the stakeholders (PSM, commercial media, the advertising industry, among others) was in the foreground:

**Organisation of the production of public value and the relationship between PSM and private commercial media:** one question which is being discussed more and more frequently is whether commercial media can fulfil public service remits, in full or in part, equally well (and maybe even more cheaply) than PSM organisations. Experiences with such strategies from New Zealand and the USA have shown that the high expectations have largely not been met. As a minimum, strong public support in the form of financing or other privileges seems to continue to be necessary for commercial entities to fulfil the socially desired PSM mission. There are corresponding models in various countries, e.g. Ireland with the "Sound & Vision" scheme, or Norway, where the commercial broadcaster TV 2 will broadcast information and youth-orientated transmissions as well as drama series with public financial support from 2019<sup>3</sup>. In these two countries, however, the schemes are a complementary to, but not a replacement for, existing - and generally thriving - PSM organisations.

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<sup>1</sup> **Disclaimer:** this document has been produced for an internal meeting by EPRA, an informal network of 53 regulatory authorities in the field of audiovisual media services. It is not a fully comprehensive overview of the issues, neither does it represent the views nor the official position of EPRA or of any member within the EPRA network.

<sup>2</sup> EPRA Background Document by Samuel Studer, OFCOM (CH), for the Plenary Session 1: "Public service and public interest content in the digital age: taking stock of stakeholders' views" <https://www.epra.org/attachments/luxembourg-plenary-1-public-service-and-public-interest-content-in-the-digital-age-background-document>

<sup>3</sup> Presentation by Tomas Myrbostad (TV2) for the Plenary Session 1: "Public service and public interest content in the digital age: taking stock of stakeholders' views" <https://www.epra.org/attachments/luxembourg-plenary-1-public-service-and-public-interest-content-in-the-digital-age-presentation-by-tomas-myrbostad-tv2>

**Audience reach:** In many European countries PSM continues to be very popular and often achieves a large audience reach. Nevertheless, it has become more difficult for PSM to reach all parts of the population regularly. However, in many countries this is one of its tasks. The reason for this is increasing social and political fragmentation, corresponding to an ever larger offering of targeted media formats.

At the same time, PSM content is confronted with the issue of "discoverability" which is increasingly difficult. Within an enormous range of media, consumption of which is increasingly time-shifted (asynchronous) and mobile, PSM content risks being "found" less often, in particular by fewer and fewer children and young people.

Various PSM are accordingly trying to reach these target groups using new and innovative offerings. *Kioski* for example, the young people's offering of the Finnish PSM YLE, as outlined by Mika Rahkonen in Luxembourg<sup>4</sup>, is successful in this regard. According to Rahkonen, this is because the PSM broadcaster is taking a courageous approach, taking risks and offering controversial content for young people. In this context it is natural that *Kioski*, like other offerings for young people, is making intensive use of the most popular social media in order to reach its target audience.

**Financing of PSM and PSM content:** the financing of PSM is also coming under pressure in different countries. The question therefore arises as to how the sustainable funding of PSM can be assured in the long term and which funding models are appropriate for this. In more and more countries the classic equipment-based fee is being replaced by a general household charge or the PSM are being funded out of state budgets (e.g. taxes). In the case of the second model, however, increasing dependence on politics is a threat: if, for example, national parliaments are able to determine the PSM budget, they potentially have the possibility of making attempts at control.

**Production of high-quality content:** The erosion of the funding basis of PSM can also have negative consequences in relation to a core competency of PSM: to produce and disseminate high-quality national, regional and local content. In digitalised media landscapes PSM is in intensified competition with global competitors. In Luxembourg, Florence Hartmann (EBU)<sup>5</sup> pointed out the striking differences in size between PSM and GAFAN (Google, Apple, Facebook, Amazon and Netflix). The operating income of all 64 EBU members amounted to 35.8 billion euros in 2016. GAFAN revenues are some twelve times higher, at 432.21 billion euros. However, according to Hartmann, the fact that PSM invests comparatively more in content than the global players should be taken into consideration. Greater cooperation between different PSM organisations and between PSM organisations and national private media could be a way of combatting the international giants.

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<sup>4</sup> Presentation by Mika Rahkonen (YLE) for the Plenary Session 1: "Public service and public interest content in the digital age: taking stock of stakeholders' views" <https://www.epra.org/attachments/luxembourg-plenary-1-public-service-and-public-interest-content-in-the-digital-age-presentation-by-mika-rahkonen-yle>

<sup>5</sup> Presentation by Florence Hartmann, EBU-MIS, for the Plenary Session 1: "Public service and public interest content in the digital age: taking stock of stakeholders' views" <https://www.epra.org/attachments/luxembourg-plenary-1-public-service-and-public-interest-content-in-the-digital-age-presentation-by-florence-hartmann-ebu-mis>

## 2. Challenges for PSM: the role of regulation

At the plenary session on 24 May 2018 in Luxembourg, the questions described in section 1 were discussed primarily from the stakeholders' viewpoint. Though regulatory and organisational responses to the political and social pressure confronting PSM were addressed, these were not discussed in depth. These include, among other things:

- Increased transparency and accountability in relation to politics and regulation or honing the public service profile of PSM.
- Measures relating to distinctiveness: discussions are currently ongoing in various countries about how PSM can be better differentiated from private (commercial) media. Appropriate opportunities are envisaged in the areas of (programme) production, quality of content, ethics, readiness to take risks and innovation. Rules relating to distinctiveness are, for example, currently being envisaged in the United Kingdom in the BBC's licence and in Switzerland in the SRG SSR's licence.
- The concept of a "shared value": the core idea of this measure as proposed by Professor Matthias Künzler in Luxembourg<sup>6</sup> is reinforcement of the dialogue between PSM and civil society. The aim is to take up and evaluate its needs (and not just politics), and on this basis to elaborate a clear strategy.

At the second EPRA meeting in Bratislava the focus is now **on the view of the audiovisual regulatory authorities regarding the current challenges facing PSM and the possibilities of addressing them against the background of the given competencies of the individual regulatory authorities.**

The media structures and the role of the PSM organisations, the general legal conditions, the competencies of the regulators and the governance of PSM take different forms in the respective national media landscapes. And it is clearly the will of a majority of European governments that they should be able to determine independently the remit and funding of PSM. In any event, the states of the European Union, in the Treaty of Amsterdam, insisted on continuing to decide on these matters independently. They thereby rejected extended European harmonisation (with the notable exception of the implications in competition law of fee financing via the EU regulation concerning subsidies). Nonetheless, most regulatory authorities are faced with the question of how they can best deal with the challenges which the digital age throws up for PSM.

In the run-up to the EPRA meeting in Bratislava and as a basis for discussion among EPRA members, the objective of providing an overview of the role of the regulatory authorities, of their competencies and of the challenges which they face in connection with PSM has been formulated.

A questionnaire was accordingly drafted for the attention of the regulatory authorities and posted on the EPRA homepage. This questionnaire contained questions in three blocks of topics:

- Firstly it was asked whether the regulators in principle considered the typical ideal concept of PSM as described in the 1990s by various authors (cf. background document EPRA/2018/02

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<sup>6</sup> Presentation by Matthias Künzler, University of Chur, for the Plenary Session 1: "Public service and public interest content in the digital age: taking stock of stakeholders' views" <https://www.epra.org/attachments/luxembourg-plenary-1-public-service-and-public-interest-content-in-the-digital-age-presentation-by-matthias-kunzler-university-of-chur>

"Public service and public interest in the digital age") to still be appropriate. The question therefore is whether from the regulators' viewpoint PSM has to be completely "rethought" or whether the challenge primarily exists in adapting to digital conditions.

- A second block of questions asked about the greatest challenges facing the regulatory authorities in connection with PSM, now and in the recent past. Precisely because of different circumstances (small state/large state; political system, historical development, etc.) it cannot be taken as granted that regulatory authorities and PSM are facing the same challenges in all countries.
- Finally, a third block of questions asked about the competencies of the regulatory authorities in a broader sense. This may provide information on what (different) amounts of leeway the various regulatory authorities have in which regulatory domains.

### **3. Results of the survey**

Altogether 16 open questions were posed to the EPRA members. 31 regulatory authorities (AT, BA, BE-VRM, BE-CSA, BG, CH, CZ, DE, DK, EE, ES-CAC, ES-CNMC, FR, GB, GR, HR, IE, IS, LT, LV, MK, NL, NO, PL, PT, RO, RS, SE, SI, SK, UA) answered these with commendable detail and precision. The analysis of the responses indicated on the one hand that on certain topics sets of common themes and challenges do indeed exist. On the other hand, competencies and challenges of PSM and regulatory authorities in different areas are quite country-specific and consequently take on diverse forms<sup>7</sup>.

#### **3.1 Requirements of PSM in the digital age**

Most regulators generally continue to consider the traditional concept of PSM and hence the requirements imposed on these broadcasters to be valid and important. No regulatory authority expressed the view that the concept is outdated or that fundamental adjustments are necessary.

Various regulators addressed individual PSM tasks which they consider especially important. In this context, most referred to (different) quality criteria. "High-quality content" is generally demanded of PSM (BG, CH, DK, GB, FR, IS, MK, NO, RO, SE, RS, SI); in addition offerings must be diverse and pluralistic (in terms of opinion) (BA, BG, CH, DK, ES-CNMC, FR, GB, IS, MK, NO, SE). Furthermore, it was demanded that content should be objective (AT, BA, DK, ES-CNMC, RO), responsible, innovative and relevant (a few answers in each case).

The second most frequently cited element is the contribution of PSM to national and cultural identity. PSM should make a "contribution to democracy" (BA, DK, GR, IE, IS, LV, NO), to "national culture" (CH, ES-CNMC, IS, LV, NO, SK) and to cohesion (CH, ES-CNMC, FR, GR, UA). Also cited was the expectation that PSM contributes "to the perpetuation of the language" (CH, LV, NO), or to "national identity" (CH, IS, NO).

In third place, elements of the comprehensive mission (to inform, educate and entertain) were cited. Above all, maintaining or extending a diverse and trustworthy information offering is in the foreground here (CH, CK, GB, IE, IS, LV, PT, RO, SI, SK, UA), followed by the education mission (CH, FR, IE, SE, SI). However, entertainment was rarely cited as a central element of PSM.

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<sup>7</sup> Note that a more detailed analysis of the responses to the questionnaire will be prepared at a later date.

### 3.2 Regulatory challenges

The regulatory authorities were asked to state in their view the key challenges facing PSM and the associated regulatory challenges. Among other things, the following main themes emerged:

- The *reach* of PSM offerings. Most frequently cited was maintaining or improving the **reach** of PSM offerings. 15 regulatory authorities (AT, BE-SA, EE, ES-CAC, ES-CNMC, FR, GR, HR, IE, IS, LT, LV, NL, PT, RO) envisage difficulties in this context. It is one of the tasks of PSM to cover the entire population of a country, technically and in terms of content. However, it is precisely some parts of the young population which are not being reached adequately.
- The *financing* of PSM offerings. PSM organisations are dependent on a solid and stable funding basis if they are to fulfil their various tasks. However, in different countries the financing of PSM was and/or is the subject of discussions. Ten regulatory authorities (BE-CSA, BA, DK, ES-CAC, GB, IE, NL, NO, PL, SI) envisage major challenges for the PSM organisations in the area of funding. Approximately half see the challenge rather generally and prospectively as one of guaranteeing stable financing. The other half mentions the challenge that the PSM organisations are confronted by budget cuts or budgets which are too low.
- Maintaining or improving the *quality of content*. Especially with regard to the aspect of distinctiveness.
- Retaining or improving political and financial *independence*.

However, the *relationship between PSM organisations and private (commercial) media* was mentioned less frequently.

The main task of most regulatory authorities is, in many areas, to monitor compliance with standards as formulated in licences, management contracts, laws, etc. One considerable problem is therefore (also) from the regulators' viewpoint a regulatory competency which is sometimes lacking in order to be able to improve the situation of PSM (directly, e.g. via a budget increase).

Accordingly, eleven authorities (BE-CSA, CH, DK, GB, FR, GR, HR, IE, IS, PL, SE) see *challenges in the area of their competencies*. The additional competencies which are desired differ. One desire which was mentioned several times, however, is for greater regulatory remit in the online environment. For example, the Swedish regulatory authority sees a “*lack of possibility for the Swedish Broadcasting Commission to review content on the Internet with regards to e.g. privacy, accuracy and due impartiality*”, whilst the Irish regulatory authority stated: “*As previously noted, gaps in legislation have resulted in areas (online/on-demand) not being sufficiently regulated. It is still uncertain how this will affect the BAI; however the online/on-demand services provided by PSM will need practical regulation going forward – particularly in light of the pending updates to AVMS.*”

#### **4. Possible points for discussion**

There is generally a broad consensus that the “PSM concept” retains its validity and the tasks of the PSM organisations have not fundamentally changed. At the same time the PSM organisations are faced with various challenges. In this context, from the viewpoint of the regulatory authorities the following questions could be discussed:

- **How can regulatory authorities best facilitate that PSM organisations can provide a universal service to the whole of society? How can it be ensured that the PSM organisations reach all social strata?**
- **How can regulatory authorities best facilitate that PSM have sufficient financial resources so that they can fulfil their social tasks?**
- **How can regulatory authorities best facilitate (beyond the funding question) that PSM organisations can maintain or improve the quality of their offerings?**
- **How can regulatory authorities best facilitate that PSM organisations can operate free from political, financial and organisational influences?**
- **What (additional) competencies do regulatory authorities need?**
- **What forms of promotion of "public service content" or "content of general interest", which go beyond the traditional PSM model, do regulators have at hand? How do they value such models?**