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Working Group 3
The prevention of Hate Speech in the media in countries with multicultural communities

Introductory Document[1]
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1. Introduction

EPRA members have supported the inclusion of the theme of hate speech in the EPRA annual Work Programme for 2019, under the title: "*The prevention of Hate Speech in the media in countries with multicultural communities*". This is an opportunity to continue the long-lasting discussion among EPRA members, which started with a Plenary Session in 2014 held in Budva[2] and continued with a bi-annual working group on "Media in Times of Crisis" which convened in Barcelona[3] and Yerevan[4] in 2016. Previous discussions included an acknowledgment that the definition of hate speech is often contested, an exploration of recent cases of hate speech that NRAs had dealt with and highlighted the enduring challenge for regulators to weigh freedom of expression against the level and nature of alleged hate speech cases that they encounter. Also, issues around online harm and hate speech were touched upon, as well as particular topics likely to fuel hate speech, such as terrorism and migrant crises. The range of remedies offered included reliance on and support of professional journalism, promotion of media literacy and promotion of self and co-regulation.

Unfortunately, hate speech is not only widespread throughout Europe, it seems to be thriving with reinforced vigour and intensity. Its notable characteristic, that of pushing the limits and eventually becoming unobjectionable and acceptable public discourse, repeatedly places it on the agenda of many national, supra and international fora. When faced with dis/mal/misinformation, spreading via social networks, the issues can become heated. When emotions run high, cognition is forgotten. Human beings are driven by emotions[5], and the present media landscape seems to elevate this. In the online environment, we are witnessing the instrumentalization of emotions for propaganda and hate purposes, fuelled by a variety of commercial and political interests, especially in relation to elections and holding power positions. There are currently many national and international policy initiatives and activities in

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

[2] https://www.epra.org/attachments/budva-plenary-2-hate-speech-background-paper

[3] https://www.epra.org/attachments/barcelona-wg1-media-in-times-of-crisis-summary-of-the-discussion

[4] https://www.epra.org/attachments/yerevan-wg-i-media-in-times-of-crisis-the-role-of-regulatory-authorities-comparative-background-document

[5] For misinformation to be successful, it should evoke strong emotion, include appealing visuals, a strong narrative and be repeated over and over. A recent study by MIT scholars found that falsehood diffuses significantly farther, faster, deeper, and more broadly on Twitter than the truth, in all categories of information, and in many cases by an order of magnitude. Evoking strong emotions can mobilise people, hence the prevalence of false news on topics such as gender or migrants, areas where there are strong beliefs and values, EPRA Minutes for Bratislava.

relation to the fight against hate speech off and online, as presented below. However, beyond what appears to be determination of the governing bodies on the one hand and of big players of the Internet on the other hand (very often received with a high dose of justified scepticism), hate speech is prevalent and countering it effectively constitutes a major challenge.

Hate speech is not illegal because it is hateful, but because it is dangerous[6], its impact being exacerbated in multicultural societies. It is dangerous because it can lead directly or indirectly to discrimination and violence. It becomes increasingly problematic through online proliferation. Tragic events are being directly transmitted online, such as the viral footage of the Christchurch mosque shooting in New Zealand earlier this year. Never has the world been so (inter)connected, while, simultaneously, seemed to be driven by divisions, conflicts, discords and alienation. In such circumstances, the fundamental question of balancing the right to freedom of expression against restrictive legal measures aimed at countering hate speech becomes even more acute in an online environment.

Derogations to Article 10 of ECHR have been established by the European Court of Human Rights during the analogue era, prior to the emergence of digital technologies. In recent judgments in relation to hate speech online, the ECHR acknowledged that Article 10 had to be interpreted as imposing on States a positive obligation to create an appropriate regulatory framework to ensure the effective protection of journalists' freedom of expression on the Internet[7]. The ECHR also established the possibility of contracting States to impose liability on Internet news portals, without contravening Article 10 of the Convention, if they fail to take measures to remove hate speech without delay, even without notice from the alleged victim or from third parties[8].

2. Online Hate Speech: overview of some recent and ongoing legal and policy developments

Hate speech in broadcasting is unfortunately quite a familiar issue for many regulators and has been at the centre of many debates in EPRA. However, the recent headlines and public debate on hate speech revolve almost exclusively around the online space and the regulation of social networks, considering the role of web giants in this respect, which inevitably opens many questions, such as the issues of public policy being "entrusted" to be executed by private, business-oriented companies[9]. Prompted by public opinion, public authorities in Europe have started to act, both at the European and at the national level.

2.1. On the EU level

The new AVMS Directive[10], which entered into force on 19 December 2018 and from that date, will need to be transposed by EU Member States into national legislation by 19 September 2020, includes obligations on the part of audiovisual media services providers to have appropriate measures in place to

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[6] https://theconversation.com/combattre-la-haine-sur-internet-trois-defis-a-relever-113385

[7] Case of Magyar Tartalomszolgáltatók Egyesülete and index.hu zrt v. hungary, 2 February2016, http://merlin.obs.coe.int/iris/2016/3/article2.en.html

[8] Delfi AS v. Estonia 16 June 2015 (Grand Chamber), http://merlin.obs.coe.int/iris/2015/7/article1.en.html.

[9] Note, for example, one of latest Facebook's decision to impose a ban on far-right groups and leaders that Facebook says "spread hate, https://www.bbc.com/news/technology-47974579.

[10] Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities.

combat content inciting violence, hatred and terrorism. In addition, it extends the scope of application to cover video-sharing platforms (VSPs), such as YouTube, as well as the audiovisual content shared on social media services, such as Facebook.

The aim was to create: "a regulatory environment that is fairer for all players in the audiovisual sector, including more flexibility to broadcasters in terms of advertising, protecting minors and tackling hate speech in all audiovisual content, better promoting European audiovisual productions and ensuring the independence of audiovisual regulators.[11]"

The table below illustrates the most relevant features for this discussion:

MEDIA PROVIDERS	DEFINITION	LEGAL OBLIGATIONS
AUDIOVISUAL MEDIA SERVICES	**Art 1.1.a.: the principal purpose of the service or a dissociable section = to provide programmes, <u>under the editorial responsibility</u> of the media service provider, to the general public, in order to inform, entertain or educate.** *→ Traditional broadcasters + On-demand services + websites with dissociable sections of audiovisual programmes published under their own editorial responsability*	**Art 6: Member States shall ensure that audiovisual media services provided by media service providers under their jurisdiction <u>do not contain </u>any incitement to violence or hatred.** **The measures taken for the purposes of this Article shall be necessary and proportionate.** *→ States must ensure that there is no hate speech on audiovisual media services*
VIDEO-SHARING PLATFORM SERVICES (SCOPE EXTENDED TO INCLUDE VSPS IN 2018)	**Art 1.1.b.: the principal purpose of the service or of a dissociable section thereof or an essential functionality of the service = to provide programmes, user-generated videos, or both, to the general public, for which the video-sharing platform provider <u>does not have editorial responsibility</u>, in order to inform, entertain or educate.** *→ Platforms such as Youtube or social media with shared video functionality such as Facebook or Twitter.*	**Art 28b.: Member States shall ensure that video-sharing platform providers under their jurisdiction <u>take appropriate measures</u> to protect:** **the general public from programmes, user-generated videos and audiovisual commercial communications containing incitement to violence or hatred.** *→ States must ensure that platforms take appropriate measures to avoid hate speech.*

The AVMSD also gives a particular attention to "illegal terrorist content", including incitement, advocating for, glorification, promotion and encouragement of terrorist acts and groups. The new text of the AVMSD does not include automatic filtering of uploaded content, but envisages referral and request mechanisms, too. It remains to be seen in practice how and to what extent this will indeed be implemented, as it definitely opens many questions.

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[11] https://ec.europa.eu/luxembourg/news/council-adopts-new-rules-free-flow-non-personal-data-and-audiovisual-media-services_fr.

In this respect, it is relevant to mention a much debated Proposal for a Regulation of the European Parliament and of the Council on preventing the dissemination of terrorist content online[12]. The aim is to establish a clear and harmonised legal framework to prevent the misuse of hosting services for the dissemination of terrorist content online and to ensure a consistent approach across industry to the removal of online terrorist content by Hosting Service Providers, for example social media platforms and video sharing sites. The Council of the European Union adopted its general approach concerning this draft regulation on 6 December, while the European Parliament's plenary session approved a negotiating position on 17 April 2019. The majority of concerns expressed in relation to this text deal with the potential threat to freedoms of users online, undermining legitimate efforts to counter such activities online, threat of removal of legal content, etc[13].

On 1 March 2018, the European Commission adopted a [Recommendation on measures to effectively tackle illegal content online](). The Recommendation contains a set of operational measures – accompanied by the necessary safeguards – to be taken by companies and Member States and applies to all forms of illegal content, including racist and xenophobic incitement to hatred and violence[14].

On 4 February 2019, the European Commission presented the results of the 4th monitoring exercise on the implementation of Code of Conduct on Countering Illegal Hate Speech Online[15], estimating the progress in removal rate of illegal hate speech, and assessing the positive effects of the Code of Conduct, while still assessing the need for continuous efforts in this direction. This monitoring exercise follows the 2016's agreement between the Commission with Facebook, Microsoft, Twitter and YouTube on a "[Code of conduct on countering illegal hate speech online]()" to help users notifying illegal hate speech on these social platforms, improve the support to civil society as well as the coordination with national authorities. The four platforms agreed to assess the majority of users' notifications in 24h also respecting EU and national legislation on hate speech and committed to remove, if necessary, those messages assessed as illegal. The four companies also agreed to further work on improving the feedback to users and being more transparent towards society. Between 2018 and early 2019 Instagram, Google+, Snapchat, Dailymotion and jeuxvideo.com announced the intention to join the Code of conduct. The European Commission has also recently asked ERGA to assist in its efforts to monitor the application and efficacy of the Code.

2.2. On the national level

Some of the notable recent national initiatives include:

1. *Germany*: adopted the Network Enforcement Act ('NetzDG') in 2017 requiring online platforms with more than two million registered users in Germany to remove 'manifestly unlawful' content, which contravenes specific elements of the German criminal code, such as holocaust

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[12] Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018PC0640.
[13] Some of the opinions include:
European Union Agency for Fundamental Rights' Opinion, at:
https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-opinion-online-terrorism-regulation-02-2019_en.pdf
European Digital Rights' Open letter in relation to it, at:
https://edri.org/open-letter-regulation-on-terrorist-content-online-endangers-freedom-of-expression/
[14] https://ec.europa.eu/digital-single-market/en/news/commission-recommendation-measures-effectively-tackle-illegal-content-online.
[15] https://ec.europa.eu/info/files/factsheet-4th-monitoring-round-code-conduct_en.

denial and hate speech, within 24 hours of receiving a notification or complaint, and to remove all other 'unlawful' content within seven days of notification[16].

2. *France*: the draft law to tackle hate speech on the Internet aims to introduce a new regime of administrative responsibility applicable to high-traffic platform operators in terms of withdrawal or inaccessibility, within a maximum of 24 hours after notification, of any content that clearly encourages incitement to hatred or discriminatory insult on grounds of race, religion, sex, sexual orientation or disability. The breach of this obligation would be liable to a sanction of up to 4% of the annual global turnover of these operators[17].

3. *Italy*: public consultation by AGCOM on draft resolution aimed at fostering the protection of human dignity and the principle of non-discrimination, as well as combating hate speech. The scope of the application of the draft regulation includes both audiovisual media service providers and video-sharing service providers. [18]

4. *United Kingdom*: on April 8, 2019 the Government of the UK presented the Parliament with an Online Harm White Paper. The White Paper proposes establishing in law a new duty of care towards users, which will be overseen by an independent regulator. Companies will be held to account for tackling a comprehensive set of online harms (including hate crime and incitement of violence), ranging from illegal activity and content to behaviours which are harmful but not necessarily illegal[19].

3. Structure and objectives of the working group

This working group will tackle the issue of hate speech from the particular perspective of the remit and mandate of regulatory authorities, with a focus on the online environment.

The structure of the group is designed so as to encourage interactivity and contribution from all participants. In that respect, participants are warmly encouraged to actively engage in the discussion, by presenting hate speech cases they dealt with recently, and/or by contributing to the debate.

As an introduction to the discussion, the working group will start off with a keynote speech by University *Professor Bojan Šošić*, an expert in psychology, on the impact on people of hate speech spread via mass media. NRAs, who have a mandate to process potential cases of hate speech, and while doing so, need to consider its impact and possible consequences also from a wider perspective, will have an opportunity to gain insight into the mechanisms and effects of hate speech from a psychological point of view.

The role of NRAs with regard to hate speech will be addressed through the presentation of recent case studies by *Georgios Anagnostaras*, legal expert at the National Council for Radio and Television (GR) and *Lewis McQuarrie*, international policy adviser at Ofcom (GB).

The subsequent discussion will focus on the online environment, with particular emphasis on the role of the regulators. The debate will notably include interventions from *Andrew Robinson*, senior manager at

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[16] https://merlin.obs.coe.int/iris/2018/1/article15.en.htm
[17] http://www2.assemblee-nationale.fr/documents/notice/15/propositions/pion1785/(index)/propositions-loi.
[18] http://merlin.obs.coe.int/newsletter.php?year=2019&issue=4&iris_ref=2019+4+25.
[19] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/793360/Online_Harms_White_Paper.pdf.

the Broadcasting Authority of Ireland (IE) and *Gil Moureaux*, Deputy Director of European and International affairs at the Conseil supérieur de l'audiovisuel (FR) on ongoing legal reforms related to online harms and the potential impact that they may have on the exiting regulatory structures in their respective countries. Also feeding into the discussion will be the participation of *Lejla Dervišagić* who will highlight some of the recommendations of the Council of Europe conference organised in Zagreb, Croatia in November 2018, on "Addressing hate speech in the media: the role of regulatory authorities and the judiciary".

4. Questions for debate

In order to foster a fruitful discussion in this working group, a non-exhaustive provisional list of questions for debate is included:

1. ROLE OF NRAs: *What role(s) can NRAs play in relation to online hate speech? And how could some of the currently envisaged legal measures to combat hate speech online affect the role of NRAs with regard to online hate speech?*

2. NRAS & CO-REGULATION: *How can the knowledge of media regulators on hate speech in broadcasting be used/applied in a co-regulatory online context? What are the important elements to consider when defining the interplay between self, co and regulatory schemes in relation to online hate speech?*

3. COOPERATION: *Which bodies are the most appropriate to tackle online hate speech, while preserving the right to freedom of expression? How could the repartition of roles look like in practice?*

4. JURISDICTION: *How will regulators deal with the tension between nationally-specific policy goals relating to online hate speech and the competent jurisdiction for a VSP under the revised AVMS Directive?*

5. BALANCING RIGHTS: *How to ensure that legitimate measures to preserve security and order do not censor and negatively affect the right to freedom of expression?*

6. TOOLS AND REMEDIES: *How effective can reporting mechanisms in relation to hate speech be? Can a concept as sensitive and as difficult to define and determine as hate speech be detected by algorithms, AI and alike? Can MIL activities effectively tackle the instrumentalization of emotional "appeal" (coupled with anonymity appeal), particularly relevant in matters related to hate speech online?*

Annex: Further resources on hate speech and regulatory authorities

- "Media regulatory authorities and hate speech" has been prepared in the framework of the implementation of the Council of Europe and the European Union Joint Programme "Reinforcing Judicial Expertise on Freedom of Expression and the Media in South-East Europe (JUFREX)". This publication explores the hate speech phenomenon, examines cases of hate speech dealt with by regulatory authorities from Albania, Bosnia and Herzegovina, Croatia, North Macedonia, Kosovo[20], Montenegro and Serbia. It also provides recommendations and describes mechanisms for fighting against and preventing hate speech. It is complemented by overviews of legal frameworks of covered jurisdictions and relevant case-law of the European Court of Human Rights.[21]

- L'Organisation internationale de la Francophonie (OIF) recently presented a Practical Guide on preventing hate speech entitled "Combatting hate speech in the audiovisual media: standards, case law, good practices and case studies", a comprehensive study which was the results of a pilot project coordinated by international expert Jean-François Furnémont in partnership with three member organisations of the network of the French speaking audiovisual regulatory authorities network[22]. It is a useful compilation of a very large number of documents relating to hate speech, from international human rights instruments, to related legal frameworks, hate speech case-law of several international courts, hate speech doctrine, etc. Among other things, it contains provisions in relation to building the culture of tolerance, a difficult, yet vastly important and needed concept to establish and maintain. Finally, this document includes parts dealing with the role of NRAs in the issue of hate speech.

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[20] This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration on Independence.

[21] Available at: https://www.coe.int/en/web/freedom-expression/home/-/asset_publisher/RAupmF2S6voG/content/media-regulatory-authorities-and-hate-speech?_101_INSTANCE_RAupmF2S6voG_viewMode=view/.

[22] Réseau francophone des régulateurs des medias - REFRAM): the High Authority for Audiovisual Communication (HACA) of Ivory Coast, the High Authority for Audiovisual Communication (HACA) of Morocco and the Independent High Authority for Audiovisual Communication (HAICA) of Tunisia, available at: https://www.epra.org/news_items/combating-hate-speech-in-the-media-oif-publishes-its-practical-guide.