

Regulators of the digital: Mapping out challenges and expectations for media regulators
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Good morning, everyone, also a warm welcome from me to our thematic session ‘Media NRAs in a Digital Environment’ and a big thank you to Stephanie for the wonderful introduction!

I am here today to set the scene for the discussion among three great colleagues – Frederic, Celene and Kevin – who will continue their exchange started back in 2020 on ‘Great Expectations’ and the changing paradigm of media regulators. The dialogue they have started was around **“how regulators face(d) change resulting from the key market trends and the evolving legal framework, and what it mean(t) for them concretely in terms of strategy, structure, processes or resources”**. Today, they/you will continue focusing on **“What’s new?”** since then with allowing for a **“peek behind the curtain”**.

But before doing so, I recommend that we take a step back and consider the notion of ‘Great Expectations’ within the rationale of regulation and the role, the place and the mission of regulators in our digital societies. Through this lens and within this frame we could map out the manifold perspectives regulators are observed from, the different - often competing - needs they have to adhere to and the possible responses in meeting those expectations.

It was as early as 2003 – almost 20 years ago – when similar types of expectations were directed towards regulators under the title ‘convergence’. It was about requests to *align with the shifts in technology-markets and services*, adopt to the blurring lines between media and telecommunication, and to *‘translate’ convergence to regulation* by finding new ways and methods to regulate. Back then, within this effort, the switch-over from analogue to digital television on the terrestrial platform posed regulators numerous challenges to adjust to (at least) two extremely different regulatory regimes in parallel and respond to the often-competing paradigms. *The task was no less than to mitigate the aims and objectives of democratically and culturally configured content-regulation with economically and technologically set infrastructure-regulation at the lowest costs for the public.*

The responses to the convergence expectations were partly institutional and organisational but also paradigmatic, and habituated in processes and procedures. We have seen the birth of Ofcom in the midst of these changes as an exemplary move towards structural but also deeply cultural adaptation to the transformations of the markets, of the services and of the audiences. The Ofcom case was exemplary of ‘good governance’ and converged regulators became the standard followed upon in several national jurisdictions. Unfortunately, it has also become apparent that this standard was used and abused in some other national settings lacking democratic traditions and the rule of law, and the convergence label was hiding in certain cases the extreme and uncontrolled cumulation of power in the hands of ‘super-regulators’ at odds with democratic policy objectives.

Ever since then, we could only recall the gradual rise of ‘Great Expectations’ towards regulators to become...

- better
 - faster
 - more adaptive and
 - flexible but also
 - resilient and
- change.

No meeting, no event or discussion took place in the past two decades without concluding how much **you** needed to transform – though it was less clear, into what and for which purpose exactly. Today, I will argue for the contrary: do not change, do not transform, but stay true to your mandate and play your precious role in society representing public interest and building public trust.

In line with my argument, I suggest, we take the perspective of the **public** first and see what their Great Expectations would be towards you under the current settings.

(The expectations of the publics)

If we look at the recent but definitely formative decades of digital disruptions stemming from *technology, globalization and changing demographics*, we could agree, that this period was:

- enormously complex,
- non-path determined and
- at least partially – regulation driven.

The *digital step-change in technology* brought about exponential and unprecedented innovations, and artificial intelligence, cognitive technologies, the Internet of Things, virtual reality and robotics reinvented media production and dissemination at scale and at pace.

Globalization, accelerated trade liberalization and emerging market power of platforms manifested in a growingly multipolar world but also in fragmented societies.

Meanwhile, the massive shifts in *Demographics* have not only transformed the notion of audiences but the subjects of regulation in terms of protection.

Against this background, the **publics** have observed - and often suffered - that

1. the promise of Information Societies on more digital justice around the world failed, and inequalities in various intersectional forms grew steadily; meanwhile
2. hate speech, gendered violence, disinformation and digital propaganda directly and imminently confronted them to dangers in the digital public sphere, and brought along uncertainties and fears about their communicative environments.

Within these contexts, institutions play a critical role in (re)building trust in the digital. Regulators/you are potentially among those distinguished institutions who could and should play a precarious role of trust-building. You are to represent public interest, to safeguard freedoms and enforce rights in times of disruptive changes. The Great Expectations of the **publics** towards **you** are exactly about acting as their **trustees**, to navigate, guide and protect individuals within these unsafe and unsecure environments.

(The expectations of the executive)

Well, this is easier said than done, so one might legitimately ask whether the enablers for the fulfilment of these tasks in *forms of legislation, statutory policy, financials and political backup were in place during these times*, and what the executives – the Governments and alike (European Commission) – expected the regulators should have acted upon.

Let me recall here a recent and direct, also telling example, namely the **issue of the regulation of Video-Sharing Platforms (VSPs)** in the European Union to showcase the controversies of those expectations and the consequences to meeting them. As a reminder: it was agreed as early as 2015, that “the protection of minors and consumers in video-sharing platforms was insufficient” but also that “broadcasters were put at a competitive disadvantage”ⁱ. Therefore regulators were called in 2016ⁱⁱ, proposals discussed and finally put in hard law in 2018ⁱⁱⁱ on extending the scope of regulation

to VSPs. In other words: regulators were expected from this moment on to take care of safe online spaces and protect vulnerable groups of the public – minors and hate-prone communities especially. NRAs/you have taken several steps since then not only about the design and adoption of “new methods of work”, but also towards becoming the European ‘co-operative of regulators’ in order to meet the requests in a coordinated manner.

However, these efforts often came at cross-roads with interventions – or the lack thereof - by the executives both on the European, and on national levels.

1. The extreme delays in national transpositions (8 years since the process start)^{iv} damaged the realisation of policy objectives and hindered regulators across Europe to meet the expectations.
2. The legislative ‘criss-crossing’ of platform regulations in some countries in overlapping policy areas - such as hate speech - confused the publics – or even stakeholders – and potentially weakened the regulators to fulfil their respective roles. And lastly,
3. The proposed EU Digital Services Act – the elephant in the room – put the preparatory work ‘on hold’ in the past two years in many aspects since it was far from clear what exactly the role of NRAs will be with regards to platform regulation. Moreover, the political agreement reached just a few weeks ago on the European Commission getting exclusive (!) powers to supervise very large platforms further deteriorates this situation.^v

I argue that these, often contradicting, largely politically-driven processes systematically undermined your opportunities and weakened your capabilities in meeting the Great Expectations becoming the regulators of the digital.

So, what next? Since the sub-title of this session not only expects me to ‘map out the challenges’ but also to answer the question, whether ‘media regulators could fix it all?’, here are my suggestions for your upcoming discussion to be considered in answering this intriguing question:

1. Despite all the hinderances and counter-actions you are essential and indispensable to governing the digital public sphere. Only you are in that precious position to systematically learn about the depth, the gravity and the intrinsic matters of digital communicative spaces. You have – or could have and should have – the data and the information about the vulnerabilities of your publics, the harms they suffer and the injuries they are exposed to.
2. You have the mandate to understand your publics. It means, you are expected to constantly and relentlessly search for that understanding: work with the best and carefully selected experts, researchers and scholars in joint efforts questing the best-possible answers on what concerns digital societies, who to protect and in what ways to reach out to them.
3. You know your stakeholders best and they expect you to act as partners in mutual trust while – of course - keeping arm’s length distance in order to preserve your independence. Once it comes to **enforcement**, it will be you to utilise these networks for efficient regulation. Just recall the recent dreadful events requesting you to act in the old-fashioned way against propaganda for war and take the most severe measures^{vi} never applied^{vii} across Europe since the end of the 2nd World War.

I believe, the greatest expectation today towards you is **not** to change, nor transform or disappear, but to stand as the ‘**regulators of competence and trust**’ in a non-trustable communication environment. There are less and less meaningful opportunities of **regaining public control over the digital. You are expected to do so.**

Thank you for your attention.

ⁱ COMMISSION STAFF WORKING DOCUMENT Executive summary of the ex-post REFIT evaluation of the Audiovisual Media Services Directive 2010/13/EU Accompanying the document Proposal for a Directive of the European Parliament and of the Council 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 in view of changing market realities {COM(2016) 287 final} {SWD(2016) 170 final}

ⁱⁱ Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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 in view of changing market realities; Brussels, 25.5.2016 COM(2016) 287 final 2016/0151 (COD).

ⁱⁱⁱ 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.

^{iv} <https://www.obs.coe.int/en/web/observatoire/avmsd-tracking>

^v “Governance - In order to ensure effective and uniform implementation of requirements under the DSA, the Council and Parliament have decided to confer on the Commission exclusive power to supervise VLOPs and VLOSEs for the obligations specific to this type of actor. They will be supervised at European level in cooperation with the member states. This new supervisory mechanism maintains the country-of-origin principle, which will continue to apply to other actors and requirements covered by the DSA.” At:

<https://www.consilium.europa.eu/en/press/press-releases/2022/04/23/digital-services-act-council-and-european-parliament-reach-deal-on-a-safer-online-space/>

^{vi} <https://rm.coe.int/note-rt-sputnik/1680a5dd5d>

^{vii} See at: https://www.epra.org/news_items/new-reactions-by-media-regulatory-authorities-to-the-crisis-in-ukraine