

CULLEN INTERNATIONAL/EPRA CONFERENCE ON "MEDIA FOR GOOD AND FOR EVERYONE"

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The conference was hosted by the Representation of the Free State of Bavaria to the European Union (EU). It discussed with the help of critical thinkers, policymakers, industry and regulators how to ensure sustainable media in the wake of increasing content consumption through social media.

Three aspects were discussed in detail: how to ensure the financing of the sector; how to ensure that media is present on online platforms and is viewed by citizens; and what are the premises for good regulatory decisions.

The forthcoming European Media Freedom Act (EMFA, [Tracker](#)) and the future of the EU Audiovisual Media Services Directive (AVMS, [Tracker](#)) were at the centre of the discussions.

This report provides a summary of the main discussion points of the conference.

Welcome speech: Maria Donde (EPRA)

Ms Donde set the scene by saying that the focus of the European Platform for European Authorities' (EPRA) work programme for 2023 is media and information for the public good. As regulators (and EPRA), the question of how regulation can help safeguard the role that independent media play in the public good/interest is of critical importance, she added.

She underlined that the AVMS Directive has for a long time recognised the importance of pluralistic and cultural values and how these concepts work together in a regulatory framework.

The proposed EMFA deserves attention to ensure it brings improvements to the regulatory framework. It is critical that its objectives be cleared in a way which minimises the dependency of media while also ensure its sustainability. "These objectives must form the basis of how we define media in the future", she concluded.

Keynote speech: Amma Asante (Commissariaat voor de Media)

Ms Asante presented the perspective of the Netherlands (where many international audiovisual companies are established) to ensure a strong media landscape in Europe.

In her opinion, the cooperation between media regulators is crucial and ERGA is on the right track (thanks to its [Memorandum of Understanding](#)) to ensure effective cross border supervision of online services.

She said that the new and upcoming European legislation (such as the Digital Services Act (DSA, [Tracker](#)) and the proposed EMFA) aims to strike a right balance between protecting audiences from illegal and other harmful content and securing the fundamental freedoms. She however called for caution when it comes to regulatory interventions given the fundamental rights at stake.

She highlighted the importance for public media service (PSM) to function independently of governments and commercial interests and their need to be adequately financed at national level. In her view, if the proposed EMFA addresses this issue, there is room for stronger references and safeguards.

She also said that she believes that it is critical to empower journalists and the audience through the enforcement of funding mechanisms and schemes and media and information literacy policies (especially for socially deprived groups). She asked if prominence measures should focus on the accessibility and visibility of certain media offerings (which is the Dutch perspective), or on promoting a pluralistic consumption of media offerings. She added that a service of general interest should also include journalism of commercial media and that the focus for the future should be the prominence of journalistic media offerings on platforms.

Lastly, she said that making good regulatory decision goes through co-regulation (which has a long tradition in the Netherlands) as it allows keeping pace with fast changing technology and market trends while at the same time ensure that the rules are sustainable. She encouraged regulators to empower themselves by sharing best practices and keeping learning to better serve the interest of the media.

Session 1: Good financing

Michèle Ledger (Cullen International) introduced the discussion by sharing data showing that a majority of countries in the EU are imposing (or are planning to) investment obligations and/or levies on non-national AVMS providers (following article 13.2 of the AVMS Directive – [Benchmark](#)). She also explained that the level of the contribution varies quite significantly (from 0.5% to 20–25%) between the countries and that the situation is continuously evolving.

Mari Velsand (Norwegian Media authority), the moderator of the session, said that the key question to address is how to ensure a sustainable financing of media outlets while safeguarding their editorial independence and ensuring that audiovisual companies continue to invest in, and produce high quality content.

Thomas Myhr (Nordvision, representing seven Nordic PSM) focused on the question on how to guarantee editorial independence of PSM vis-à-vis public funding, where independence is defined as “no undue interference by political or economic powers”.

He said that the question cannot be answered in an abstract generic way, but depends on constitutional constructs, and national legal and political differences, as well as cultural and social traditions. He referred to the Amsterdam Protocol ([EU Treaty](#)) regulating that the state has the competence to provide the funding of PSM, based on the remit. He also said that PSM’s institutional proximity to the state and the public funding PSM receive can be handled by regulatory framework (as identified in the Council of Europe’s [recommendations](#) and in the draft EMFA) and stating that the state will not interfere or influence in editorial decisions. PSM must also have a clear and flexible remit (which includes to be empowered to propose diverse

programming offers to reach all audiences and be present on the internet) with which adequate funding must follow. Lastly, he added that good governance rules are needed, such as transparency and supervision rules and the appointment of management by independent bodies/procedures.

Christoph Schneider (Amazon Prime) questioned the need for investment obligations and levies (of article 13.2) as, in his view, the production industry is thriving without the intervention of the state. Viewers enjoy a variety of offers and producers are keen on making productions. He added that these obligations have no impact on the quality of content (as viewers will in any case look for high quality content) and they add extra burdens and compliance costs. He concluded by proposing a return to the country of origin principle (article 13.2 is an exception to the country of origin principle enshrined in the directive).

Patrick Ager (Bertelsmann) said that to be sustainable financially, a company like Bertelsmann needs a media sector which ensures that European companies are held by European shareholders, and which allows entrepreneurship freedom. He believes that European companies need scale to compete and invest and that competition authorities should rethink their approach and procedures to support national champions and ensure a more level playing field with US groups. In his view, the regulatory framework is too complex and fragments the market. In particular, the financial contribution obligations are disproportionate.

He also said that even if the forthcoming EMFA has good intentions, it brings more complexity and bureaucracy and includes rules that already exist in some member states. He called for simpler rules and the need to preserve the principle of subsidiarity.

Laura Becana Ball (Global Forum for Media Development, an organisation aiming to support journalists and local media outlets) said that because of market changes (e.g. the capture of advertising revenues by digital platforms, the concentration of the media...) independent journalism has become a luxury rather than a universal public good. She called for context-based mechanisms that support public interest journalism, for long-term and flexible funding of news organisations, for transparency and reporting requirements (to minimise funding capture) and for trustworthy content which is made visible online.

Marta Sanagustin (European Commission) said that the financial contribution obligations extended to on-demand services are important as they bring cultural diversity, more investment into EU works and ensure a level playing field between market players.

She announced that the Commission will publish a report on EU works in mid-2023 (based on member states' contributions and an independent study).

She highlighted that the AVMS Directive includes rules aimed to preserve the editorial independence of media outlets in relation to advertising (e.g. those which ban product placement and sponsorship in current and news affairs content). However, the proposed EMFA is the key instrument to ensure that these outlets are funded without interference. She explained that the proposed EMFA includes rules on audience measurement because some players have audience measurement systems that are not transparent enough which has a significant impact on pluralism (i.e. on the players' decisions to invest in the production/distribution of content).

Session 2: Good presence online

Maria-Luisa Stasi (article 19) set the scene from the perspective of a free speech non-profit organisation. She underlined that platforms and algorithms disrupt the news media's power over individual news consumption and exposure.

Therefore, she stressed the importance of both empowering users, and addressing structural asymmetries and the structural dependency between the very large online platforms (VLOPs) and content providers.

She welcomed article 27 of the DSA (on the transparency of recommender systems) in this regard. However, Ms Stasi said that rather than giving an option to choose among recommender systems offered by online platforms, rules should empower users to choose recommender systems which are, by definition, designed to expose users to a certain degree of diversity.

Following Ms Stasi's keynote, representatives of two media regulators (AGCOM and BLM), PSM and journalists explored how to ensure the accessibility and visibility of content of editorially responsible media to make sure that media effectively continue to play their role in the democratic discourse in the digital environment.

In particular, they discussed:

- the existing national rules on prominence of audiovisual services of general interest ([Benchmark](#)) presented by the moderator **Laura Sboarina** (Cullen International); and
- moderation of media content by online platforms against their terms and conditions under the draft EMFA and the DSA.

On prominence and findability of content of general interest, **Richard Burnley** (European Broadcasting Union) said that the prominence rules should be applied broadly, i.e. not only in favour of PSM but also of commercial offers. He said that it should be up to media regulators to determine who provides a general interest content. In his opinion, prominence obligations should apply to all key user interfaces online, including voice assistants, connected TV, car entertainment and remote controls. Mr Burnley said, "For the EMFA, we are looking for an obligation for prominence (instead of an option provided in the AVMS Directive), because it is what will preserve EU media and democracy and pluralism and freedoms that EMFA is trying to underpin".

Thorsten Schmiede (Bavarian regulatory authority for new media, BLM) outlined the legal and procedural status quo on prominence and findability in Germany. NRAs were mandated to determine which of the private audiovisual media services are of general interest. Following a call for tender, private media services of that nature and their special contribution to diversity and plurality of opinion have been awarded a "public value"-status (on top of those designed as general interest services by law). Determination criteria were, among others, share of local and regional news and of EU works, young people as a target group, etc. Services of general interest are entitled to prominence and easy findability. NRAs are currently monitoring how these rules are implemented and whether services are given enhanced prominence on user interfaces. Dr. Schmiede said that any future EU approach on prominence should not contradict existing national approaches.

On the moderation of media content by online platforms, **Renate Schroeder** (European Federation of Journalists) welcomed article 17 of the proposed EMFA but regretted that “platforms are the final arbitrators who decide which media services have the privilege”.

Elisa Giomi (AGCOM, Italy) said that the assessment of whether content moderation is likely to harm media pluralism and qualifying which subjects are entitled to additional protection is a difficult assessment.

Mr **Burnley** said that “article 17 is well-intentioned but does not go far enough. The content of professional media should stay up while platforms provide a speedy and reasoned opinion (for restricting media content), because news move fast and for PSM this is content that is already heavily regulated. Disputes should be handled within 24 hours”.

Regarding the obligation for platforms to engage in good faith with media services to find an amicable solution on content moderation disputes, Ms **Schroeder** said the imbalance is too high between small media companies and large platforms to hold such negotiations.

Ms **Giomi** called for a balanced approach. Admitting that often disinformation and illegal content are spread via online platforms, she pointed at the beneficial role of online platforms for the society and at the “mutually beneficial” relationship between online platforms and media service providers. “We have never experienced such a level of pluralism as since the services such as news aggregators, search engines and social networks”, she concluded.

Session 3: Good regulatory decisions

This session focussed on what is expected from regulators when they put into application new rules (such as in the EMFA proposal), the expected impact of the creation of the new European Board for Media Services (EMBS, which will replace ERGA) on regulators’ decisions, and the challenges faced by regulators and those subject to regulation.

Krisztina Rozgonyi (Austrian Academy of Sciences/Institute for Comparative Media and Communications Studies) set the scene by depicting the situation of independence of regulators as not good considering democratic backsliding in several European countries.

In her view, although the AVMS Directive made a policy shift towards making independence an explicit and binding requirement (in article 30), it remained a policy “wish” and not a real change. The failure to address the non-independence and non-accountability of certain regulators led to set up the EMBS in the draft EMFA, she also said. She argued that the EMBS will have to play a highly political role in mitigating the inherent conflicts because of unresolved issues of non-independence of the past. This will lead to the politicisation of regulation to the detriment of regulated organisations. There is also a risk of politicisation of regulation when the draft EMFA grants to regulators a role to monitor the allocation of public advertising in media markets.

She concluded by saying that what is expected from regulators is that they take responsibility for their decisions, act in an accountable manner and focus on public-policy-driven regulation.

Ms **Ledger**, the moderator of the session, started the debate by asking the panellists what their wish list would be to ensure that regulators take good regulatory decisions.

Giulia Iop (Sky) called on regulators to stick to principles-based regulation (instead of detailed over regulation) because it could otherwise prevent companies like Sky to scale up and lead

other ones to shut down due to high compliance burden and costs. She also called regulators to remain independent so that they can play a proactive role in promoting and protecting the sector. She added that she would like to see more cross-border coordination between regulators to avoid that member states give different interpretation to some rules, such as those on the prominence of services of general interest.

Madeleine de Cock Buning (Netflix) made three observations and three wishes for good regulatory decisions. First, the audiovisual sector in Europe is thriving with €17.4bn investment in 2021, and this pace should be kept. Second, she noted that competition for resources (e.g. creators, talents...) is high and scarcity is coming. Skill development needs to become a priority. Third, what was considered a small deviation of the country of origin principle (in article 13.2, see above) has led to protectionist outcomes and is making it more challenging to both invest and operate cross-border.

On her wish list, she put, like Ms Iop, the need for principle-based regulation (to avoid over regulation) and invited regulators to look at the Commission's [Better Regulation Toolbox](#), especially the principle of proportionality. She also called for an EMFA which sticks to its goal (i.e. protecting our democracies, media freedom, pluralism and independence) and that strengthens the country of origin principle.

Stephanie Comey (Coimisiún na Meán) said that her organisation (i.e. the Irish media regulator) is very young (15 days old) but is also very old/seasoned as it builds on the work of the previous Broadcasting Authority of Ireland (BAI), where solid principle-based operations models were in place. She said that the new regulator is composed of an executive chair and three commissioners (for online safety, for media development – with interesting new roles for media regulators – and for broadcasting – which includes VOD).

She also highlighted that in most countries, regulators are not fully resourced and emphasised the key role that regulatory authorities can play to support media development (for instance by building trust from the audience and with long-term media literacy strategies).

Anna Herold (European Commission) said that she expects regulators to be independent, and there is a legislative arsenal for that purpose (i.e. the AVMS Directive and the draft EMFA) and tools to check their independence. She also said that there are expectations that regulators become effective, which means that they make use of the new enforcement mechanisms in place to ensure the protection of minors, viewers, etc. Lastly, she asked media authorities to show commitment to European values, i.e. that they to look at media regulation in their territories with a European perspective (of what is good for the European industry and citizens).

Sabine Verheyen (European Parliament, rapporteur for the proposed EMFA) spoke about the changes she will propose to the proposed regulation. According to her, there is a need to strengthen the independence of the newly created EMBS towards the Commission, which she sees as “more and more political”. This includes for instance replacing the Commission's secretariat with an independent bureau and removing the obligation to adopt opinions after consulting the Commission.

She also said she would have wanted that ERGA had a stronger role in particular in the DSA. She also addressed the articulation between the draft EMFA and the AVMS Directive and said that as the directive is very general on how the independence of regulators should be ensured, there are member states where independence is not guaranteed. There is a lack of clear

guiding rules on how to ensure independence and she asked if the EMFA will correct this lack, while at the same time not destroying well-functioning structures.

For **Karim Ibourki** (CSA), the situation of the regulatory framework is not as bad as Ms Rozgonyi described in her keynote speech. In his view, ERGA is functioning independently and checks and balances exist (by the Commission as guardian of the treaties, and by the Court of Justice of the European Union). He agreed with Ms Verheyen that the independence of the EMBS should be improved. He concurred with Ms Herold on the importance for regulators to be sufficiently resourced at national level (financially and with appropriate technical skills). He concluded on the importance to make the structured dialogue with stakeholders (which is foreseen in the EMFA) come true, especially for newcomers in the market.