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**Wg2: Political Pluralism – the Role of Regulators
Emmanuelle Machet
EPRA Secretariat**

The topic of political pluralism has already been dealt with at previous EPRA meetings. Political communication on television was the focus of a plenary session in 2000 in Paris. The relevant background paper identified key issues revolving around general principles of pluralism, specific rules around and during election campaigns and rules outside the electoral period¹. Political pluralism was also dealt with in 2002 in Ljubljana in the form of a working group and, more recently, at the Elsinore meeting in May 2006². However, on these two last occasions, the particular focus was on the issue of political advertising.

This time, the scope of the working group has been broadened to discuss the role played by regulators in ensuring political pluralism on radio and television during and outside election periods. In the course of this working group, we will hear two presentations by EPRA members whose authorities are particularly involved in monitoring political pluralism:

- Mr José Alberto de Azeredo Lopes, Chairman of the Portuguese ERC, *the Entidade Reguladora para a Comunicação Social*;
- Dr László Majtényi, President of the Hungarian ORTT, *the National Radio and Television Commission*.

In order to provide background information for the working group, this paper provides an overview of the responses to a questionnaire on the existing rules concerning media coverage of politics and electoral campaigns and the role played by national regulatory authorities, which was circulated within the EPRA network in summer 2008.

The following overview is based on answers from 18 regulatory authorities: Bosnia and Herzegovina (CRA), Belgium (VRM and CSA), Bulgaria (CEM), Switzerland (OFCOM), Czech Republic (Council for Radio and TV Broadcasting), Cyprus (CRTA), Germany (DLM), United Kingdom (Ofcom), Hungary (ORTT), Italy (AGCOM), Luxembourg (CNP), Malta (Broadcasting Authority), Macedonia (Broadcasting Council), the Netherlands (Commissariaat voor de Media), Norway (Norwegian Media Authority), Romania (National Audiovisual Council) and Serbia (Republic Broadcasting Agency). Occasionally, and where appropriate, information based on research on further countries has been added to the overview as well as references to a key European-wide document in this field, i.e. the Council of Europe's Recommendation on measures concerning media coverage of election campaigns³.

¹ Political Communication on Television, Matters for debate: EPRA/2000/02
http://www.epra.org/content/english/members/working_papers/epra0002.doc

² Working Group 2 Political Advertising: EPRA/2002/09
http://www.epra.org/content/english/members/working_papers/Ljubljana/EPRA200209.doc
Political advertising: case studies and monitoring: EPRA/2006/02
http://www.epra.org/content/english/members/working_papers/Elsinore/Political_advertising_final.doc

³ Recommendation CM/Rec(2007)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns, adopted by the Committee of Ministers on 7 November 2007 at the 1010th meeting of the Ministers' Deputies:
<http://wcd.coe.int/ViewDoc.jsp?id=1207243&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>

Role of the regulatory authority in the regulation of the coverage of political and/or electoral information by broadcasting media

- 1.1. Do you have any say about the way political and/or electoral information is covered by broadcasting media under your jurisdiction?
- 1.2. If the answer is "NO", which other body has this power?

The totality of respondents - with the exception of Norway and the Netherlands - answered that their regulatory authority had a role to play in the regulation of the coverage of political and electoral information by broadcasting media. This role is usually spelled out in the respective **broadcasting laws**, which often include provisions on objectiveness, balance and impartiality of television and radio broadcasts. As an example, in the Czech Republic, Article 31, paragraph 2 – 4 of the Broadcasting Act No. 231/2001 states:

"(2) The broadcaster shall provide objective and balanced information as needed for opinions to be freely formed. Any opinions or evaluating commentaries shall be separated from information having the nature of news.

(3) The broadcaster shall ensure that principles of objectivity and equilibrium are complied with in news and political programme units and that, in particular, no one-sided advantage is - within the broadcast programme as a whole - given to any political party or movement, or to their views, or the views of any groups of the public, taking account of their real position within the political and social life.

(4) The statutory broadcaster shall prepare its programme structure so as to provide, in its broadcasting, a well-balanced portfolio offered to all the population with respect to their age, gender, colour of the skin, faith, religion, political or other opinions, ethnic, national or social origin, and membership of a minority."

Election Laws may also contain provisions pertaining to the role of the media regulator in preserving pluralism during elections, as in Bosnia and Herzegovina. Further to Art. 16.7 of the Election Law, the *Communications Regulatory Agency* is the body authorized for monitoring the work of broadcast media, and for conducting the procedure in the event of failure to comply with the provisions of the Election law.

Constitutional provisions may also entrust the regulator with the preservation of political pluralism. As an example, in Malta, Article 119 (1) of the Constitution states that:

"It shall be the function of the Broadcasting Authority to ensure that, so far as possible, in such sound and television broadcasting services that may be provided in Malta, due impartiality is preserved in respect of matters of political and industrial controversy or relating to current public policy and that broadcasting facilities and time are fairly apportioned between persons belonging to different political parties."

In several countries, **Electoral Commissions** also play a significant role as in Bosnia and Herzegovina or in Bulgaria. In Bosnia and Herzegovina: "the Central Election Commission determines the rules pertaining to broadcast media behaviour in the election period, the time and manner of political representation of political parties, coalitions and lists of independent candidates, the time and duration of the broadcasting of electoral messages as well as geographical areas covered by broadcasts⁴. The media regulatory body may refer a matter to the Election Complaints and Appeals Council when it is alleged that there has been a violation of this chapter. In Bulgaria, even though the *CEM* plays a role regarding the regulation of the media coverage of politics and elections, in the case of a violation relating to the election campaigns the competent bodies are the Central Election Commission and the Regional Elections Commission.

⁴ Rulebook on media representation of political subjects during the election period.

In comparison to its counterparts, the Swiss *OFCOM*, however, only has a limited role. Since the coming into force of the revised Federal Law on Radio and Television in April 1st 2007, the *Federal Office of Communications* is competent "to regulate anything that involves any financial commitment of a third party (i.e. advertising/sponsorship). If a political party, an organisation, or an association finances a programme with political content or if somebody wants to broadcast an ad with political content, the *Federal Office of Communication* is competent for dealing with it. The same applies in the case where an organisation wants to finance a programme with political content. If, however, the prerequisites outlined above are not fulfilled, the *Independent Complaints Authority* (AIEP/UBI) is competent to deal with broadcasts containing political content".

The regulatory authorities in Norway and the Netherlands do not play a role in the regulation of media coverage of politics and electoral campaigns.

In Norway, no authority has been entrusted with the power of regulating the media coverage of politics and electoral campaigns, except for the Broadcasting Council⁵ of the Norwegian public service broadcaster NRK. In Norway (as in Sweden) parties are not granted any free airtime to present their programmes. The *Norwegian Media Authority*, however, oversees the compliance with the prohibition of paid political advertising⁶.

In the Netherlands, the presence of politicians in editorial programmes (manner and duration) is not regulated. The same goes for the presentation or broadcast of opinion polls during election periods. In addition, paid political advertising on radio and TV is not prohibited. As a consequence, the *CvdM* (*Commissariaat voor de Media*: the Dutch Media Authority), has no legal task to monitor those programmes. However, following further to 39g of the Dutch Media Act, the *CvdM*, allocates broadcasting time to political parties on the national radio and TV public service channels in the framework of a party political broadcast scheme.

Monitoring by the NRA of the presence of parties/politicians/candidates in news and current affairs programmes

- 2.1. Does your NRA monitor the presence of parties/politicians/candidates in news and current affairs programmes?
- 2.2. Is this monitoring a permanent activity or is it only during electoral periods?

The vast majority of respondents to the questionnaire (LU, BG, RO, RS, BA, CY, CZ, HU, IT, MK, MT, DE) stated that they monitored the presence of parties, politicians or candidates in the news and current affairs programmes. This is however not the case in Norway, Belgium (French and Flemish Communities), Switzerland and in the UK. In the UK, *Ofcom* does not monitor any channels or programmes in order to check for impartiality. It relies on complaints from viewers and others before launching any investigations. The Belgian (Flemish) *VRM* and the *Swiss Independent Complaint Commission* also only rely on complaints. In Switzerland, any person is entitled to make a complaint against a programme at any time; as they have a system of referendums, Switzerland is in a constant "polling period".

The monitoring of the presence of parties, politicians or candidates in the news and current affairs programmes by the regulatory authority does only take place during electoral periods in Bulgaria, Macedonia and Luxembourg. In Cyprus, even though the monitoring mostly takes place during electoral periods, periodical monitoring outside election time is also conducted. In Malta, monitoring is performed "on a regular basis but is more intensive during electoral

⁵ Section 7-1 Function of the Broadcasting Council: "The Broadcasting Council shall discuss and express its opinion on the general programme policy of the Norwegian Broadcasting Corporation. The Broadcasting Council shall express its opinion on programme matters submitted to it by the Director General, or on programme matters which the Council itself sees reason to take up."

⁶ See the pending TV Vest case at the European Court of Human Rights:
<http://cmiskp.echr.coe.int/tkp197/viewhbkkm.asp?sessionId=9781632&skin=hudoc-en&action=html&table=F69A27FD8FB86142BF01C1166DEA398649&key=67182&highlight=>

periods when broadcasting stations must also comply with the provisions of a directive that is applicable to all broadcasters regarding programme content and advertising that is broadcast in the four weeks immediately preceding an election.”

The monitoring of the presence of parties, politicians or candidates in the news and current affairs programmes is a permanent activity of the regulatory authority, in Romania, Serbia, Bosnia and Herzegovina, France, Hungary, Italy and Catalonia. However, the extent of the monitoring of the presence of parties, politicians or candidates in the news and current affairs programmes differs greatly according to the country considered. While such monitoring is conducted in a continuous and large-scale basis by regulatory authorities such as the French CSA⁷, the Hungarian *ORTT*, the Romanian *NAC* or the Catalan *CAC*, monitoring is restricted to regular samples in Germany or the Czech Republic. In Germany, the Joint Commission on programming, advertising and media literacy (GSPWM) of the *DLM* monitors commercial broadcasters by taking samples.

Rules concerning the amount of air-time given to each party/politician/candidate or the distribution of screen presence among them

- 3.1. Are there rules concerning the amount of presence given to each party (or politician or candidate) or the distribution of screen presence among them?
- 3.2. Can you please summarize these rules?
- 3.3. Which Authority has established these rules? (NRA, Parliament, Electoral Commission...)

First of all, one needs to distinguish between editorial programmes and “party political” (British terminology) also known as “official campaign” (French terminology) broadcasts as different sets of rules may apply. A further level of differentiation needs to be operated between election time and periods outside elections.

With regard to *editorial programmes*, the main issue here is the balance to be struck between the autonomy of broadcasters and the necessity to ensure a fair treatment of political parties and candidates. As is stated in the Council of Europe Recommendation on measures concerning media coverage of election campaigns: “*With due respect for the editorial independence of broadcasters, regulatory frameworks should also provide for the obligation to cover election campaigns in a fair, balanced and impartial manner in the overall programme services of broadcasters*”. The extent of the rules applicable to editorial broadcasts as well as their origin (regulation vs. self-regulation) vary in the different European countries. There seems to be no rules concerning the amount of air time given to each party (or politician or candidate) or the distribution of screen presence among them in Norway. In most of the other countries, it seems that only general rules, i.e. not specifying a fixed amount or proportion of air time, apply. These rules are based on principles such as fair treatment, accuracy and due impartiality. They are usually stricter around the time of an election.

In the UK: “*the strictest rules are applied to programmes at the time of an election, when major political views must be presented with due weight. But, generally, there is no expectation that balance should be based simply on an equal division of airtime. Ofcom considers such an approach to be over-simplistic and that enforcement in that regard would be a disproportionate interference in the editorial integrity of broadcasters. Fairness overall is considered more important*”. The rules drawn up to Ofcom apply particularly to news programmes, but there are also “special impartiality requirements” for all programmes dealing

⁷ For more details about the French system of monitoring, see the presentation of Maryse Brugière at the EPRA meeting in Budapest in 2005:
http://www.epra.org/content/francais/members/working_papers/Budapest/pluralisme_Budapest_csa.Doc

with matters of political or industrial controversy or matters relating to current public policy. There are also additional rules governing the programmes at the time of elections.

Regulatory authorities often, before every election, issue specific recommendations or guidelines addressed to broadcasters summing up the main provisions to be complied with for that period, as in Belgium (CSA), France, Germany, Macedonia or Bulgaria. As an example, the Advisory body of the Belgian CSA issues non-binding recommendations for broadcasters with regard to political information. They rely on principles drawn from the legal and regulatory framework and broadcasters' good practices, such as impartiality of information programmes, balanced and representative portrayal of different ideological, philosophical and political trends, editorial responsibility, organisation of contradictory debates, freedom of speech etc⁸. In Malta: "during the four weeks prior to an election, the *Broadcasting Authority* issues a directive further to art. 15 and 23 of the Broadcasting Act. The Directive prohibits the broadcasting of programmes or advertisements with political content which might favour or give exposure to a political party or candidate, unless these are broadcast within a scheme approved by the Authority. For this purpose, broadcasters are required to submit, for the Authority's prior approval, all schedules of programmes giving details of programme plans covering presenters, subjects and participants in current affairs programmes, discussion programmes and programmes of an investigative journalism nature. This directive also provides for arrangements to be observed during this period by broadcasting stations, concerning the application of the Code for the Investigation and Determination of Complaints, concerning the day preceding the day of voting and the actual day of polling, concerning the broadcasting of public opinion polls and concerning the provision of programme schedules during the silent period".

A few countries, however, do have specific rules with regard to the amount of air time given to each party (or politician or candidate) or the distribution of screen presence among them. This is the case for France, but also Romania⁹. In France, **outside election periods**, broadcasters have to ensure a balance between the airtime of members of government, of the parliamentary majority and of the Parliamentary opposition and guarantee comparable transmission conditions. In addition, they have to ensure a fair ("équitable") speaking time to personalities from political parties not represented in Parliament. Unless justified by constraints linked to current affairs, the speaking time of representatives from parliamentary opposition cannot be less than half of the cumulated speaking time of representatives of government and the parliamentary majority.

Similar rules apply in Romania and Hungary – even though they are applicable to election periods. In Romania, during news and public interest topics on political, economical, social and cultural issues, broadcasters under Romania's jurisdiction shall grant one third of the air time to parliamentary opposition, representatives of central public administration and the parliamentary majority. During entertainment, talk-shows and sports programmes, the principle of equal access conditions for government and opposition representatives applies. In Hungary: "the non-mandatory rule states that the government and government parties should have twice as long airtime as the opposition parties during the election. The guideline also declares that editors should decide how much airtime would be appropriate to allocate to the parties or the contenders and emphasises that the pundits have to consider the social support, the Parliamentary weight of the parties and the number of their candidates".

During **election time**, however, the French CSA addresses specific recommendations to radio and TV broadcasters. As a rule, they stipulate that - with regard to news and current affairs programmes - TV and radio broadcasters have to ensure equal access ("principe d'équité") to the airtime for candidates and political parties. It does not mean, however, that each candidate should enjoy the same access to editorial programmes. This notion of "accès

⁸ Toutes ces références sont disponibles en annexe de l'avis remis par le Collège (http://www.csa.be/system/document/nom/557/CAV_20070116_avis_elections_2007.pdf) Les différents règlements, adoptés lors de chaque échéance électorale, sont disponibles à l'adresse http://www.csa.be/AVIS/ca_avis.asp.

⁹http://www.epra.org/content/english/members/working_papers/Budapest/CASE%20STUDY%20ON%20POLITICAL%20LURALSIM%20EPRA%20IN%20BUDAPEST%20.ppt

équitable” takes into account the representativity of political groups and is to be differentiated by the notion of strict equity (“égalité”) which is prevalent during presidential elections campaigns. The representativity can be assessed in the view of the results of the last elections, or trends from opinion polls. However, in keeping with the principle of editorial freedom, broadcasters enjoy a margin of appreciation in the use of the different criteria.

With regard to *party political or official campaigns broadcasts*, most of the respondents state that political parties or candidates are allocated airtime, usually in the form of brief electoral spots, according to specific rules. This is not the case in Norway, however, where there is no such system of party political broadcasts.

As a rule, public service broadcasters are entrusted with the task of making free airtime available to parties and candidates for short party political broadcasts (PPBs) as in Romania, Bosnia and Herzegovina, the Czech Republic, France and the Netherlands. In the Netherlands, further to art 39g of the Dutch Media Act, the *CvdM* allocates broadcasting time to political parties on national PSB radio and TV channels.

In general, private broadcasters are not subject to such an obligation but they are obliged to provide equal opportunities to other parties and have a professional and ethical responsibility for fair reporting.

In Germany, however, private broadcasters are also obliged to offer timeslots to political parties during elections. Political parties are obliged to reimburse commercial broadcasters for the transmission costs of political advertising spots (so-called “Selbstkosten” – self-costs).

Principles guiding the allocation of free airtime.

The allocation of free airtime does not always entail any right to absolute equality of access to the airwaves between parties and candidates.

Most Western European countries, such as Germany, the Netherlands or Malta, have chosen a system of proportional access in their distribution of free air time. Thereby, broadcasters are obliged to offer non-discriminatory access to airtime, but they have the right to differentiate with regard to the importance of the party. This means that criteria such as the latest results of the political parties are taken into account in allocating broadcasting opportunities.

Many Eastern and Central European countries have adopted a system of equal representation where parties/candidates should be allocated the same amount of airtime (e.g. Czech Republic, Latvia, and Lithuania).

Even though this is not the focus of the present working group, it can be mentioned that while the majority of respondents do not allow paid political advertising, several countries allow this practice, such as Bulgaria, Bosnia and Herzegovina and Macedonia. In the Netherlands, though political advertising is not prohibited, the possibility to buy advertising time is hardly used by political parties and candidates.

Authority in charge of setting up the rules applicable to the coverage of political and or electoral information by broadcasting media

The rules pertaining to the coverage of political and/or electoral information by broadcasting media may be set up by the **regulatory authority**, as in the UK (*Ofcom*’s broadcasting code, section 5 and 6), Belgium (French Speaking), Hungary (Non mandatory rule established by the *ORTT*) Serbia or Macedonia. The Broadcasting Council of the Republic of Macedonia prepares and adopts the Decision for additional time for political advertising on the electronic media during the elections campaign, the Decision on media presentation which is submitted to the Parliament for adoption, and guidelines on election silence.

They may also be set up by **Parliament** as in Bulgaria, Luxembourg, Cyprus, Czech Republic, Switzerland and Belgium (Flemish Community), by the Parliamentary Commission for Culture and Media as in Romania, or by the Parliament and the regulator as in Italy and Germany.

Finally, they may also be set by the **Electoral Commission**, as in Bosnia and Herzegovina, or by the regulator following consultation with the Electoral Commission, as in Malta.

Sanctions:

- What are the sanctions in the case of non-compliance with the rules?

Most of the respondents stated that sanctions were foreseen in the case of non-compliance with the rules pertaining to the coverage of political and or electoral information by broadcasting media.

However, several exceptions can be mentioned. No sanctions are foreseen in the Czech Republic. In the French Community of Belgium, the recommendations made by the advisory Board of the CSA are not binding. However, they are usually complied with. Complaints related to a legal provision from the Broadcasting Act referred to in the recommendation are subject to the usual procedure applicable for other type of complaints.

The same principles apply in Hungary, where the rules set by the *ORTT* are not binding. However, the permanent analysis conducted by the Hungarian regulator provides the public with detailed information on the screen presence of politicians in the news programmes¹⁰.

It appears that in the majority of the countries, as in Bosnia and Herzegovina, Cyprus, Romania, Belgium Flanders, Luxembourg, Switzerland, there is no specific sanction (other than the usual ones) in the case of non-compliance with the rules pertaining to the coverage of political and or electoral information by broadcasting media. Sanctions usually range (subject to a great variety according to the country considered) from a warning, the publication or broadcast of the regulator's findings ("name and shame approach"), a direction not to repeat a programme, a direction to broadcast a correction, fines, to the suspension, shortening or revocation of the licence.

It is worth remarking that the *Broadcasting Council of the Republic of Macedonia* may also report to the State Electoral Commission, which may impose sanctions according to the Electoral Code.

In Italy, a specific *two-step* procedure is foreseen. As a *first step*, the AGCOM can order a broadcaster to give access to a politician or a party in a specific programme. This remedy aims at ensuring a balance between each candidate during the electoral period. As a *second step*, if the broadcaster does not follow AGCOM's order, the Authority can apply an economic sanction ranging from EUR 10.000 to EUR 258.000.

One important remedy - though not a sanction - mentioned by the Bulgarian *CEM* is providing individuals and organisations with rights of reply to incorrect allegations in the broadcast media.

In Malta, during the last electoral period, stations were informed by the *Authority* beforehand that if any station was alleged to be in breach of the Authority's Directive or any part of it, the station would be charged with breaking the Directive. If the charges were found to be proven, no warning would be issued and the station would be obliged to pay an administrative penalty of no more than EUR 34,940.

¹⁰ The *ORTT* informs the public via the media authority's website (http://www.ortt.hu/politika_stat.php?ev=2008&nyelv=angol), the monthly and quarterly bulletins (which include a larger sample) are only available in Hungarian: http://www.ortt.hu/elemzesek.php?menu_id=53&parent=12).

Conflicts:

- **Have conflicts arisen as a consequence of enforcing these rules?**
- **Can you please describe briefly?**
- **How have those conflicts been solved?**

Several respondents reported that so far they did not experience any conflicts in the enforcement of the rules, as in the Netherlands, Belgium (French Community), Bosnia and Herzegovina, Germany, Luxembourg, Romania and the Czech Republic. *The Republic Broadcasting Agency* of Serbia reported that "since the issuance of general binding instructions, broadcasters have commented that they facilitated their work and defined more clearly the manner of reporting in the pre-election and election period". In Belgium Flanders, only one relevant decision has been reported. A warning has been imposed to the public broadcaster VRT because of the violation of art. 111 bis¹¹.

Guidelines on election period

In Hungary, the guidelines relating to the election period raised a big turmoil among journalists in 2002. The *ORTT* had numerous cases in the past eleven years all pertaining to particular reports or programmes.

Coverage of candidates with no or little party support

In Cyprus, some conflicts have arisen mostly due to the coverage given to candidates with no or little Party support. The *CRTA* has initiated a discussion amongst all parties involved (*CRTA*, Parliament, Political Parties, Ministry of Interior) in order to resolve all the issues that have arisen and also look into possibly changing some provisions of the legislation so that it becomes simpler to implement.

Effective implementation of sanctions and potential conflict between broadcasting law and Electoral Code

The *Broadcasting Council of the Republic of Macedonia* has proposed changes to the legislation regarding the Electoral Code and media coverage during the Election campaign in order to provide effective implementation of the sanctions and to solve the possibility of conflict between the Electoral Code and the Law on Broadcasting Activity.

Compliance with spot advertising provisions

In Malta, there were some initial problems in enforcing compliance particularly with regard to spot advertising but these difficulties were solved without unnecessary conflict when the Authority intervened to lay down the law.

Protest against quantitative indicators

In Italy, on the one hand, political parties and broadcasters complain that the quantitative indicators (time) used to evaluate screen presence are too rigid and not useful to measure the quality of the access to the media, but on the other hand they often complain about the enforcement of qualitative indicators.

Political advertising cases

The Swiss *OFCOM* reported about several decisions and court cases pertaining to political advertising, the most well-known being the ECHR-Decision *VgT (Verein gegen Tierfabriken) v. Switzerland*¹².

¹¹ decision 2007/032 of 26 June 2007 – case F. Vanhecke/VRT

¹² See also the Decisions of the Independent Complaints Authority http://www.ubi.admin.ch/fr/dokumentation_entscheide.htm (available in French/German/Italian only; choose mot – clé "émissions consacrées à des élections" / "votes populaires"; "publicité politique")
Recent case (that turned out not to be a case):
<http://www.bakom.admin.ch/dokumentation/medieninformationen/00471/index.html?lang=fr&msg-id=15305> (available in French / German / Italian only)

Some Issues for the Debate:

- The issue of enforceable rights of access for minority parties - especially parties which are not represented in parliament.
- Given the explosion in the number of channels, should the requirement for fairness and impartiality apply to every channel taken individually or should rather the 'general picture' be taken into account ?
- Are remedies in case of violations sufficiently quick and effective? Are there any practical problems?
- Are there any new developments worth mentioning in the regulation of political pluralism in EPRA countries?
- What are the other tools at the disposal of regulators to secure political pluralism and how efficient are they?