

Complaints and Sanctions
Comparative Background Document for the plenary session
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The power to enforce compliance with regulatory decisions, laws and sector policy is one of the main attributes of effective regulation. Even though a regulator's role is much more than merely *to licence and to sanction*, it is generally agreed that an effective sanctioning system is essential in order to give effect to those rules necessary for maintaining the proper functioning and development of the sector, protecting the public and safeguarding the core values of pluralism and democracy. It can also provide a deterrent, as well as signal trends threatening to endanger those same values. The importance of RAs power to consider, investigate and decide upon complaints lodged by the public is twofold: it ensures that the public interest is adequately protected, but it also enables public participation in the regulatory process.

The issue of the *Complaints and Sanctions*, though indirectly treated during various sessions dealing with content regulation matters, the independence and the accountability of regulatory authorities was only briefly debated once at the EPRA meeting in Lisbon in 1997¹.

This is somewhat surprising, as it is a topic which concerns all broadcasting regulators across the board and is one of the main powers usually vested in regulators as a corollary of the power of supervision. This may be explained by the fact that the topic is not within the scope of European harmonization and therefore not in the spotlight of European media policy.

This background document is based on the responses to a brief survey prepared and circulated by the EPRA Secretariat². It compiles answers from 34 regulatory authorities from 31 countries: The National Radio and Television Council (AL), the National Council for Radio and Television (AZ), KommAustria (AT), The Communications Regulatory Agency (BA), The Flemish Regulator for the Media and the CSA of the French Community of Belgium (BE), The Council for Electronic Media (BG), the OFCOM and the AIEP (CH), the CRTA (CY), the Council for Radio and TV Broadcasting (CZ), the Director's Conference of the Länder Media Authorities (DE), the Catalan Audiovisual Council and the Audiovisual Council of Andalusia (ES), the Conseil supérieur de l'audiovisuel - CSA (FR), the Ofcom (GB), the National Radio and Television Commission - ORTT (HU), The Broadcasting Authority of Ireland (IE), the AGCOM (IT), The Radio and Television Commission of Lithuania (LT), the Conseil national des programmes - CNP (LU), the Broadcasting Council of Latvia (LV), the Council on the coordination of the audiovisual activity - CCA (MD), the Broadcasting Agency (ME), The Broadcasting Authority (MT), the Commissariaat voor de Media (NL), the Norwegian Media Authority (NO), the National Broadcasting Council - KRRiT (PL), the Entidade Reguladora para a Comunicação Social - ERC (PT), the National Audiovisual Council (RO), the Republic Broadcasting Agency (RS), the Swedish Broadcasting Commission (SE), the Post and Electronic Communication Agency of the Republic of Slovenia - APEK (SI) and the Council for Broadcasting and Retransmission (SK).

Additional information has been gathered from the results of an information request sent via the Secretariat on behalf of the Polish National Broadcasting Council to EPRA members and by some intensive browsing of the websites of regulatory authorities.

The Council of Europe Recommendation (2000) 23 and its explanatory Memorandum on the Independence and functions of regulatory authorities³ serves as a reference and an Ariadne thread at the beginning of each thematic section.

¹ EPRA/1997/02: http://www.epra.org/content/francais/members/working_papers/epra9702.doc

² The questionnaire was prepared with very valuable input from Maida Čulahović, Head of Audiovisual services Department of the Communications Regulatory Agency (BA), who will be acting as the content producer of the plenary session and Monica Ariño, EPRA Vice-Chair. Many thanks to Maida Čulahović and Susanne Nikoltchev for providing their very constructive comments to a first draft of this paper.

³ RECOMMENDATION REC (2000) 23 of the Committee of Ministers to Member States on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector, (Adopted by the Committee of Ministers on 20 December 2000 at the 735th meeting of the Ministers' Deputies)
http://www.ebu.ch/CMSimages/en/leg_ref_coe_r2000_23_regulatory_authorities_201200_tcm6-4442.pdf

I – COMPLAINTS

Appendix to CoE Recommendation Rec(2000)23

Guidelines concerning the independence and functions of regulatory authorities for the broadcasting sector

21. Regulatory authorities should have the power to consider complaints, within their field of competence, concerning the broadcasters' activity and to publish their conclusions regularly.

44. It is recommended that complaints concerning broadcasters' activity which fall under the field of regulatory authorities' competencies (in particular in relation to programme content) or the violation of licensing procedures or laws (on broadcasting, rules governing advertising and sponsorship, competition etc) be examined by the latter. In order to make the procedure for examining complaints more efficient, both in the public interest and to provide legal certainty for operators, the regulatory authorities should publish the conclusions of such examinations regularly.

1.1. Power to decide upon complaints

All the regulatory authorities who answered the questionnaire stated that they have the power to decide upon complaints. In some countries with several regulatory authorities, the remit for complaints is divided between the existing bodies according to their respective field of competence. In Austria, complaints against the public broadcaster ORF are subject to the jurisdiction of the Federal Communications Board (Bundeskommunikationsenat) while the KommAustria is responsible for complaints concerning private broadcasters.

In Switzerland, the AIEP/UBI is a complaint body exclusively competent for complaints on radio and TV programmes in case of violation of dispositions regarding content matters or in case of refusal from the broadcaster to give access to programmes while the OFCOM is responsible for complaints on matters not related to content, such as advertising amount and insertion rules.

In several countries as in the UK, Ireland or the Flemish Community of Belgium, there used to be complaints-handling bodies, distinct and independent from the regulator. This type of bodies has sometimes been qualified as "quasi-judicial", potential supervision and sanctions powers being only accessories to the main aim, i.e. to help resolve disputes. The justification of this system is to operate "a separation between the legislature (the regulator who sets the rules) and the judiciary (the body which adjudicates on whether the rules have been broken)"⁴.

The model of separate complaints-handling body, as is illustrated by the Swiss UBI, is however becoming increasingly rare in Europe. This type of bodies included for instance the Broadcasting Complaints Commission (BCC) in the UK, the Vlaamse Geschillenraad in Belgium Flanders or the Irish Broadcasting Complaints Commission. These authorities have progressively disappeared in the wake of the various structural changes which took place in these countries. In Ireland, the BAI, the recently created authority centralised the missions which were until recently jointly conducted by the Broadcasting Commission of Ireland and the Broadcasting Complaints Commission. In Hungary, a complaints-handling body (the Complaints Committee) operates under the auspices of the ORTT, the regulatory authority.

1.2. Who can complain?

As a rule, any interested party, be it a natural or legal person, can file a complaint.

Some authorities, however, seem to interpret the notion of *interested parties* in a stricter manner than others. In Austria, strict provisions seem to apply which require the plaintiff either to have directly incurred damage by the violation of the law, or to be supported by minimum of 120 (TV)/100 (radio) persons (TV and radio), or to demonstrate in a satisfactory manner that the violation of specific legal provisions affected his specific interests.

In the Netherlands, anyone can lodge a complaint but the Dutch regulator is only obliged to act and take a decision when the party has a direct, legally protected interest in a specific issue.

In Switzerland, with regard to non-content related matters, the general public, broadcasters or authorities may all file a complaint. However, they do not have the rights of a party as they are not

⁴ GUIDELINES FOR BROADCASTING REGULATION Eve Salomon, for the CBA and UNESCO

<http://portal.unesco.org/ci/en/files/22182/11483071431Guidelines+for+Broadcasting+Regulation.pdf/Guidelines+for+Broadcasting+Regulation.pdf>

usually specifically affected by the advertisement broadcast. In Switzerland, with regard to content-related programmes, both individual complaints and group complaints are possible (20 signatures minimum for a group complaint). The Federal Department for environment, transports, energy and communication can also file a complaint without any conditions.

1.3. Formal requirements

Indication of complainant (name, address etc)

Many RAs will require the *name and the contact details* of the plaintiff, as is the case in Bulgaria, the French and the Flemish Community of Belgium and Portugal. In the Flemish Community, the complaint should refer to the name, status and address and should be signed by the complainant. Should the complaint originate with a legal person, it shall be signed by the person entitled by law or the articles of association to represent the said legal person. The disclosure of the identity of the complainant is however not compulsory in Slovakia.

The issue of *anonymous complaints* may be handled quite differently. In Bosnia and Herzegovina, complainants can withhold their contact information, in which case they cannot be informed of the outcome of the case, but the complaint is nevertheless processed. In the French Community of Belgium, anonymous complaints are not receivable. However, the online complaint form allows the plaintiff to specify whether he wishes to withhold his contact information towards the broadcasters he is filing a complaint against. In Germany, complaints about child pornography can be made anonymously. In some regional Landesmedienanstalten, online complaints are forwarded to broadcasters only if the complainant agrees.

In Ireland, if the complainant does not wish to disclose his/her name and address, he/she may make an application for anonymity. In Cyprus, there is a special online form for anonymous complaints.

Indication of rule that is allegedly violated

It is a widespread requirement that the complainant provides the RA with *the name of the radio/TV station, the date and time, the title of the programme and a short description of the complaint* (as in Bosnia and Herzegovina). In addition to these above mentioned requirements, in Slovakia it must be clear from the complaint what breach of Act on Broadcasting and retransmission is being alleged. This provision is however interpreted quite widely.

In The Flemish Community of Belgium, in addition to specifying the *purpose* of the complaint, content related complaints must also justify the *relevance* of lodging the complaint.

By what means (online, writing, phone...)

The requirements related to the *form and/or content of the complaints* vary greatly from country to country. In a few countries such as Lithuania or Latvia or Italy (for audiovisual matters), there are no specific formal requirements to be followed. Any interested party may lodge a complaint, either online, by post, or over the phone.

There may be different *formal requirements applicable according to the medium used to file the complaint*. As an example, in Germany, there are no formal requirements for a complaint and people can complain by simply sending an e-mail or a letter. However, complaints which have been made online must include specific provisions, such as the indication of the complainant's name; date and time, name of the programme and focus of the complaint.

Some authorities also require that the complaint is submitted in *written form* and/or only via a *specially made complaint form* available on the website of the regulator. This is requested by the Ofcom (GB), the BAI (IE), or the ERC (PT). In Catalonia, whereas anybody can file a complaint over the telephone, in person or by post, the online complaint form requires access via a digital certificate, or the prior filling out of a registration form.

Time limits to file a complaint

Several authorities, as in Azerbaijan, Belgium (CSA), France, Montenegro, Moldova, Norway, Netherlands and Switzerland (OFCOM) do not appear to specify any time limits to file a complaint.

In France, while there are no time limits for complaints on broadcasts, a deadline of two months applies for complaints against decisions taken by the CSA running from the date of the notification of the CSA decision.

In the Netherlands, even if no time limit is specified, the Dutch regulator will not act, further to internal regulations, when the violation by a broadcaster has taken place more than one year ago.

In Italy, complaints can be made without time limits, apart from a general limit of five years from the date of violation.

Even though this may not always be a mandatory requirement, many RAs have introduced a time limit in practice. It is often based on the duration of the obligation imposed on broadcasters to save their broadcast content: 14 days in Bosnia and Herzegovina, 20 days in the UK, 28 days in Poland, 30 days in Slovenia and Ireland, 6 weeks in Austria, 45 days in Slovakia, three months in Bulgaria. In Portugal, complaints shall be "*submitted within 30 days of actual knowledge being gained of the facts, and the actual knowledge does not occur more than 120 days from the date the alleged infringement takes place*".

Time limits to handle complaints

The enforcement procedure generally provides for a certain degree of due process before the decision is reached, which is important in order to ensure transparency and accountability. However, timeliness is also crucial to ensuring that the purpose of the sanction is accomplished, as well as to maintain the credibility of the regulator.

Several RAs may themselves be subject to a *time limit* to handle complaints. This is kept rather general in Norway, as the Public Administration Act states that the administrative agency in question must prepare and decide the case *without undue delay*. However, many jurisdictions, as in Lithuania, Poland, Romania and Sweden, impose a precise time limit to tackle complaints, generally amounting to one month after receiving the complaint.

1.4. Special procedures required prior to lodging a formal complaint

In Switzerland, in order to reduce the number of complaints handled by the Swiss complaints body, complaints need to be first addressed to a mediator, i.e. a person in charge of complaints within the broadcasters. A complaint can only be filed to the Swiss complaint commission, once the written opinion of the mediator was notified to the complainant.

Similarly, in Malta, all complaints have to be made in writing to the broadcaster concerned with a copy to the Authority. Broadcasters have three days from the date of receipt of the complaint to deal with it. Only if the complainant is not satisfied with the broadcaster's reply or proposed remedy, he may request the Authority to hear and decide upon his complaint.

The Ofcom, in its guidance on how to complain, also encourages viewers to contact the broadcaster directly to express their views.

1.5. Guidance provided by RAs on how to complain

In order to have an efficient complaint system, viewers and listeners should be aware that they may file a complaint and be informed to whom they should turn and on the procedure to follow. This is all the more important in countries which do not have a complaints culture. Even if awareness could be achieved also by other organisations, regulatory authorities should take active steps to inform the audience about the possibility to complain.

The extent of the guidance provided in practice varies greatly. A few regulators, as in Latvia, Lithuania or Slovenia, indicate that they do not give any guidance on how to complain. In Norway guidance is only provided on request.

As a rule, guidance is provided, often through the provision of a complaint form, on the websites of regulatory authorities. Some authorities make sure that *complaint forms* are clearly visible on the structure of the websites, as a link on the homepage. Here are a few examples:

- the Belgian CSA ("porter plainte"): <http://www.csa.be/quichet/plainte>,
- the Broadcasting Agency of Montenegro ("Uložite prigovor na program radio ili TV stanice"): http://www.ardcg.org/index.php?option=com_artforms&formid=1&Itemid=1
- the Agency for electronic Media of Croatia ("Pritužbe"): <http://www.e-mediji.hr/kontakt/prituzbe.php>

Some authorities go further by providing an easily accessed *complaint page* providing guidance on how to complain in practice and sometimes explanations about the powers of the regulatory authority:

- Ofcom with a detailed "how to complain page": <http://www.ofcom.org.uk/complain/>
- The BAI ("The Complaints process"): http://www.bai.ie/broadcasting_complaints_complaintprocess.html

- the CRTA from Cyprus: (Υποβολή Παραπόνου) <http://www.crt.a.org.cy/parapono.shtml>
- the CRA from Bosnia and Herzegovina ("How to lodge a complaint": <http://www.rak.ba/en/about/?cid=4466>,
- the LfM for Northrhine Westphalia (Beschwerde) <http://www.lfm-nrw.de/beschwerde/>, see also the specific brochure: <http://www.lfm-nrw.de/downloads/mediennutzerschutz.pdf>
- the Swedish Broadcasting Commission ("Vill du anmäla ett program?") http://www.grn.se/grn/pages/Page_602.aspx,
- the Broadcasting Council of Poland ("Skargi I wnioski"): <http://www.krrit.gov.pl/bip/Wiadomo%C5%9Bci/Skargiiwnioski/tabid/285/Default.aspx>,
- the National Audiovisual Council of Romania ("formulare de seizare") <http://www.cna.ro%2F-Formular-sesiz-ri-.html>
- The Slovak Council for Broadcasting and Retransmission ("Postup pri podávaní a šetrení sťažností"): <http://www.rada-rtv.sk/sk/spravy/index.php?aktualitaId=839>

On several websites, however, information on the complaint procedure or online complaints forms are somewhat hidden in the structure of the site and require some active searching. Complaints forms are sometimes provided only for certain types of violation. For example, the French CSA only provides a specific form for violent programmes:

http://www.csa.fr/protection_mineurs_TV/alerter.html

On the Dutch website of the Commissariaat voor de media, you need to browse the FAQ section to get some basic information on the complaint procedure and a brief explanation of the different remits of the CvDM, the NICAM or the Advertising Code Committee.

In addition to information available online, further guidance on how to complain may be provided by phone, through hotlines as in Cyprus, or direct phone contact with the complaints department as in Bosnia and Herzegovina.

Guidance on how to complain may be provided also by other organisations, such as government websites. As an example, the DCMS in the UK has developed a brief document entitled "*Complaining about Television and Radio Programmes and Advertisements*" <http://www.culture.gov.uk/images/publications/revise04complainingabouttvradio.pdf>

The requirement for information announcements to be broadcast by licensees telling audiences to whom they can complain which has been highlighted as a best practice⁵ does not seem very widespread. In any case, no reference to this practice was made in the answers to the questionnaire.

1.6. Case load handled by RAs per month in average

The workload of cases handled by regulatory authorities, not including ex officio cases, varies greatly according to the jurisdictions. Responses can be classified in three categories.

- The majority of authorities handle from one to ten cases per month on average which seems to indicate a rather *low level of "complaints culture"*.

This category includes several Central and Eastern countries, such as Azerbaijan, Hungary, Bosnia and Herzegovina, Moldova, Slovenia, Lithuania, Montenegro, but also Western European countries such as Austria, Germany, the Netherlands and Malta. For Malta, the limited number of cases may derive from the mandatory requirement that complaints need to be first addressed to broadcasters.

- The second cluster of authorities handles from 20 to 50 cases per month and may thus be qualified as having *middle to high level of "complaints culture"*. It is composed of Central and Eastern RAs as those from Bulgaria, Romania, Slovakia and the Czech Republic, Mediterranean countries such as Cyprus, Spain (Catalonia, Andalusia) or Italy and also Ireland.

⁵ GUIDELINES FOR BROADCASTING REGULATION, point 7.125, see supra.

- The third category of authorities characterised by a very *strong "complaints culture"* handles well over 50 cases per month and includes Portugal (66 per month in 2009 in average), Poland (100), Sweden (100-120) and the UK, where Ofcom receives 1500 complaints per month⁶.

It is to be highlighted that in the UK, the work of Ofcom is mainly led by handling complaints whereas the majority of broadcasting regulators undertake monitoring of some kind which may then result in ex-officio proceedings by the regulatory authority.

The high number of complaints received by the Portuguese ERC may result from its specific remit which also encompasses the press (complaints about right of reply and journalistic content represent about a third of complaints).

An interesting avenue for further research would be to find out whether all regulatory authorities publish the details of all significant complaints, even where no breach of rules has been found, as is in the case in the UK and Sweden⁷.

Another topic worth developing would be to look whether broadcasters are given an opportunity and if so, how, to respond to the issue raised by the complainant before the regulator reaches a conclusion in order to ensure that the right to a fair hearing enshrined in Art. 6 of the European Convention on Human Rights is respected.

II – THE SANCTIONS PROCEDURE

Appendix to CoE Recommendation Rec(2000)23

Guidelines concerning the independence and functions of regulatory authorities for the broadcasting sector

22. When a broadcaster fails to respect the law or the conditions specified in his licence, the regulatory authorities should have the power to impose sanctions, in accordance with the law.

(...)

47. Monitoring can never be effective without the power to impose sanctions. Under the Recommendation, when a broadcaster fails to respect the law or the conditions specified in the licence, the regulatory authorities should have the power to impose sanctions (graded in severity to reflect the seriousness of the failure), in accordance with the law.

(...)

49. It is stipulated that sanctions should be proportionate and should not be decided upon until the broadcaster in question has been given an opportunity to be heard. In fact, it is the primary task of regulatory bodies not to "police" the broadcasting sector, but rather to ensure that it functions smoothly by establishing a climate of dialogue, openness and trust in dealings with broadcasters. Nonetheless, the application of sanctions without prior warning may be justified in certain exceptional cases. For the sake of operators' legal certainty, such exceptional cases should be defined in law.

2. 1. Power to issue sanctions & Range of sanctions

Only one respondent to the questionnaire does not have the power to issue sanctions: the Conseil National des programmes in Luxembourg. The Ministry (Service des Médias et des Communications) is competent.

Appendix to CoE Recommendation Rec(2000)23

Guidelines concerning the independence and functions of regulatory authorities for the broadcasting sector

23. A range of sanctions which have to be prescribed by law should be available, starting with a warning. Sanctions should be proportionate and should not be decided upon until the broadcaster in question has been given an opportunity to be heard. All sanctions should also be open to review by the competent jurisdictions according to national law.

(...)

⁶ Note however that not all complaints Ofcom receives will be fully investigated and ruled on, and some complaints will relate to the same incident.

⁷ http://www.grn.se/grn/pages/Page_608.aspx&

48. The sanctions may range from a simple warning through moderate and heavier fines or the temporary suspension of a licence, to the ultimate penalty of withdrawing a licence. According to domestic law, sanctions can be made public in order to inform the public and ensure the transparency of the decisions of regulatory authorities. Given the gravity of licence withdrawal, it should be applied only in extreme cases where broadcasters are guilty of very serious failures of compliance.

As a rule, regulators may apply sanctions graded in severity to reflect the seriousness of the failure. They usually range from issuing a warning, imposing a fine, demanding to broadcast an announcement, suspend a broadcast, impose a reduction in the licensing period, suspend or revoke the licences.

There are however several exceptions.

In Sweden, the legal redress of a violation depends on which provision has been violated. If the provisions in the licences, e.g. impartiality and accuracy, have been violated, the broadcasting company must announce the decision in an appropriate manner. The announcement is usually made in an obligatory broadcast in which the SBC's decision is presented.

If the provisions on undue prominence, advertising and sponsorship in the Radio and Television Act are violated, the SBC may go to court and petition for the broadcaster to pay a special fee.

If the provisions on programmes with a local tie in commercial radio are violated, the broadcaster may be ordered to comply with the provisions. An order may be issued subject to a conditional fine.

The Slovenian APEK may not impose fines, which are imposed by the Ministry of Culture (Media Inspectorate). Similarly, the Republic Broadcasting Agency of Serbia does not have the power to impose financial sanctions. In these two instances, there is no other option than a mild sanction (issuing a reprimand and a warning) or an extremely severe sanction (suspending or revoking licences) which offers only a limited room for manoeuvre for the regulator.

In Ireland, prior to the introduction of the Broadcasting Act 2009, there was no statutory provision enabling the BCI (the BAI predecessor) to fine for breaches of content regulations. The 2009 Act⁸ provides the Broadcasting Authority with the power to fine broadcasters but currently no mechanism is in place to implement this legislative power. Current contracts contain compliance requirements with the Authority retaining the right to issue breaches of contracts and to suspend or terminate contracts.

The Swiss complaint body AIEP/UBI has also a limited range of sanctions at its disposal. They can only issue a warning and impose fines. The latter is however an exceptional measure which has never been applied in practice. When adjudicating a case, the broadcaster is given a deadline to remedy the violation and take the appropriate measures to prevent any similar violation. If the AIEP/UBI considers the measures as inappropriate, it may propose to the DETEC (i.e. the Federal Department for environment, transports, energy and communication) to apply stricter measures such as the prohibiting a specific programme.

Three types of sanctions appear generally to be less widespread: demanding to broadcast an announcement, suspend a broadcast, and impose a reduction in the licensing period. It is particularly surprising that in many countries, such as Hungary, Netherlands, Spain (Catalonia), Bosnia and Herzegovina, Poland, Slovenia, Czech Republic, Norway and Albania, the range of sanctions does not include the demand to broadcast an announcement. This sanction, based on a 'name and shame approach' may act as a useful deterrent. The French CSA has recently, in a decision of 9 March 2010, ordered two channels (TF1 and Canal +) to read out a statement on air apologising for their failure to meet the obligation of rigour in information⁹.

Several authorities do not have the power to revoke a licence, such as the CAA from Andalusia, the Swedish SBC, the Swiss AIEP/UBI, and the Broadcasting Authority of Malta. Most of these authorities, though not the Maltese body, do not have the power to grant licences.

⁸ <http://www.irishstatutebook.ie/2009/en/act/pub/0018/print.html>

⁹ <http://merlin.obs.coe.int/iris/2010/4/article22.en.html>

Other sanctions mentioned by regulatory authorities include:

- The inspection of licensed facilities and concrete demands for action or cessation to be complied within a specified time limit (Bosnia and Herzegovina)
- The publication of a press release in any periodical at the costs of sanctioned party (Belgium CSA - but never used in practice)
- Compensative measures in case of political broadcasts, e.g. allowing extra time to a damaged political party (Italy)
- Information about the measures taken to prevent future breaches (Switzerland)
- Time limited prohibition of the broadcasting of advertisements (Norway)
- Imposition of an administrative enforcement order; a reparation sanction requiring full or partial reparation of the violation and empowering the administrative authority to carry out the order itself if it is not carried out or not carried out in time (The Netherlands)
- Suspension of the editing, broadcasting, or distribution of the services or a category of programme, or of part of a programme, or of one or several advertisements for up to a month (France).

2.2. Initiative of the procedure: ex officio, upon a complaint, or both?

Almost all respondents with sanctioning powers may both initiate the procedure ex officio or upon a complaint with the exception of the Swiss AIEP/UBI which can only act upon a complaint. In Slovakia, the Council for Broadcasting and Retransmission initiates the procedure always ex officio, for practical reasons owing to some elements in Act on Administrative procedure. Similarly in Spain (Catalonia), when a complaint filed by an individual results in starting sanction proceedings, the Catalan Audiovisual Council initiates the procedure ex officio.

2.3. Determination of the rules of procedure for handling cases

The question aimed at finding out whether regulatory authorities apply provisions of the Law on Administrative Procedure, or whether they are authorised to pass a separate set of procedural rules.

In several countries, in addition to the rules on administrative procedure, the procedure for handling cases is enshrined in the Broadcasting Law. In Albania, the procedure in general is prescribed in the Law on "Public and private radio and Television". The Law on Administrative Procedure is also applied, for issues that are not regulated by the first law. The same applies for Cyprus, Switzerland (OFCOM), Hungary, Portugal and the Netherlands.

Many authorities, as the CRA from Bosnia and Herzegovina, the National Broadcasting Council of Poland, the Belgian CSA, the Broadcasting Agency of Montenegro, the Italian AGCOM, The French CSA, The Irish BAI, the CCA from Moldova and the Swedish Broadcasting Commission are authorised to establish their own internal procedural rules to specify the provisions of the rules on Administrative Procedure or the Broadcasting Law.

2.4. Breaches subject to sanctions

It is clear that breaches subject to sanctions and the procedures in relation to all powers exercised by regulatory bodies should be explicitly provided for in the legal framework.

As a rule, the breaches which are subject to sanction include the non-compliance with legal provisions and the non-compliance with licence conditions. The Swiss UBI/AIEP, as a complaint driven body, may only sanction in case of non compliance with legal provisions. In addition to the non compliance with licence conditions, the French CSA mentioned that they were entitled to sanction the non-compliance with the contracts ("conventions") signed between the CSA and the broadcasters.

Several authorities also mentioned that breaches of what could be qualified as "secondary legislation", i.e. texts derived from the main broadcasting Act, such as audiovisual Codes (as in Moldova), formal decisions taken by regulators (as for the CRA, Bosnia and Herzegovina and the French CSA). The Italian AGCOM also stated that they may sanction in case of non compliance with self regulatory rules in the field of the protection of minors.

It seems that, generally speaking, breaches of different legal provisions are subject to the same range of sanctions, even though minor breaches will, as a matter of proportionality, not be heavily sanctioned.

Having said that, there are a few exceptions. In Italy, in case of violations aimed at protecting minors, fines are higher and the reduction provided for local providers is lower than in other cases (1/5 instead of 1/10). In Norway, the sanctions applicable vary depending on which provision has been breached. In Sweden, as previously outlined, violations of the provisions in the licences are sanctioned by a broadcast announcement presenting the SBC decision, legal provisions on undue prominence, advertising and sponsorship, may be sanctioned by a fine petitioned by the regulator and issued by the court.

2.5. Public service broadcasters & sanctions

An interesting issue to examine is whether the same sanctions apply to all broadcasters across the board, irrespective of their public or commercial nature, or whether the specificities of public broadcasters are reflected by different sanctions.

It appears that in many countries such as Albania, Belgium (VRM and CSA), Bosnia and Herzegovina, Bulgaria, Cyprus, Montenegro, Malta, Portugal and Switzerland (UBI), the same range of sanction apply for all broadcasters, with the notable exception of the suspension or revocation of the licences. The granting of broadcasting permits to PSBs is, as a rule, a prerogative of governments, it seems thus logical that RAs do not have any power to withdraw them.

In Sweden, provisions regarding breaches of the impartiality requirements apply only valid to PSB. In Norway, the general statutes in the Broadcasting Act apply to all broadcasters. However, breaches of the obligations under which the PSBs have to produce public service content cannot be sanctioned at all. In Austria, the extent of the fines that can be imposed differs (see the next paragraph for more details). In the Netherlands, sanctions are generally the same for all broadcasters. There are however specific stipulations for PSB such as the possibility to reduce the public financing of 20% if a public broadcaster does not submit - or submits too late - its financial yearly account to the Dutch regulator CvdM for control.

In the UK, there are limits on the amount of a fine that can be imposed to a PSB (see next paragraph for more details).

In Italy, the AGCOM may request the activation of disciplinary proceedings against Directors of programming in case of violations of the provisions adopted by the special parliamentary committee competent with PSB issues.

In Latvia, fines and the suspension/revocation of licences are not possible as the regulator is the trustee shareholder of the PSBs.

2.6. Ensuring the proportionality of fines with the offence

Most respondents indicate that, as a rule, financial penalties must be proportionate to the nature and gravity of the violation, taking into consideration all relevant factors.

Such factors or circumstances may include:

- The seriousness of the infringement (CSA - BE, OFCOM - CH, AGCOM - IT, ERC - PT, NMA NO)
- The extent of damage resulting from the offence or the danger it causes to the interests to be protected by the sanction and to what extent the offence resulted in further detrimental consequences (KommAustria - AT NCRT - AL)
- The recurring character of the same violations (NCRT - AL, CEM- BG, CRA - BA)
- The track record of compliance with the decisions of the RA (CRA - BA)
- The absence of any precedents (CSA - BE)
- The intentionality of the offence: was it on purpose or a simple mistake? (CvdM - NL)
- Attitude of the broadcaster: whether the broadcaster has admitted the infringement, shown any initiative to become conversant with rules and their interpretation and taken measures to prevent further violations (CRA - BA, CSA - BE, BA - MT),
- Whether the broadcaster is public or private (CRA - BA)
- Capital and financial standing of the company (AGCOM - IT)
- The coverage of broadcasters: local vs. regional vs. national broadcasters. In the Netherlands, three categories have been introduced in the guidelines: national broadcasters can be imposed the highest fines and local broadcasters the lowest, regional broadcasters being somewhere in between.
- Listening/viewing figures (NMA - NO)
- The economic gain resulting from the violation (CSA - BE, NMA - NO, SBC - SE), with the possibility of applying a multiplicative coefficient (CSA - FR)
- For sponsorship infringements: the size of the sponsors' contribution (NMA - NO)

- In cases of surreptitious advertising, the regulator can refer to the tariffs in use for legal advertising in order to determine the level of the fine (CSA – FR)
- In case of a violation of quota provisions, the RA may evaluate the cost incurred by the production or broadcasting of such audiovisual works (cost for an hour of production) and apply a multiplicative coefficient¹⁰ (CSA - FR).
- The nature of the complaint (BA - MT)
- The sanction that the self or co-regulatory body has already imposed (CBR – SK)
- The repercussion or social impact of the sanction, in particular in terms of its influence on the pluralistic formation of public opinion (CAC - ES).

In the UK, the Ofcom considers the penalty in accordance with their penalty guidelines (<http://www.ofcom.org.uk/about/accoun/pg>) and their Precedent List (http://www.ofcom.org.uk/tv/obb/ocsc_adjud/) which sets out Ofcom’s previous practice with respect to the imposition of statutory sanctions.

In Montenegro or Sweden however, there are no specific rules or safeguards to ensure that fines are proportional to the offence. In Sweden, the SBC may collect information on the economic gain that the broadcaster has had from the breach, but this very rare and the fine petitioned (via the court) is usually calculated on previous SBC decisions and court decisions.

2.7. Maximum level of fines that can be imposed & maximum fines ever imposed

Financial penalties may be expressed as a monetary value (the solution favoured by most), or a percentage of the turnover (the solution favoured by most long established jurisdictions with a big operators), a certain number of minimum wages (100 to 300 minimum wages in Moldova), or a percentage of the annual fee for the use of frequency allocated for broadcasting the programme service (Poland).

Rather "modest" financial penalties (less than 10,000 EUR)

Country/RA	Maximum fine payable (EUR)	Maximum imposed (EUR) & grounds
AZ (NCRT)	380 \$	380\$
LT (RTCL)	2,895	868
ME (BA)	2,750	2,750 for breach of advertising rules
LV (BC)	7,076	7,076 for breach on rules on surreptitious advertising for a political party during pre-election period
CY (CRTA)	8,543 (national TV) 3,417 (national radio) 1,708 (local TV & radio) 854 (small local radio)	8,500 for breach of advertising rules

Middle to high financial penalties (10,000 – 100,000 EUR)

Country/RA	Maximum fine payable (EUR)	Maximum imposed (EUR) & grounds
BG (CEM)	15,000	5,000
AL (NCRT)	35,000	35,000 - Local radio station broadcasting without a licence
MT (BA)	35,000	
AT (KommAustria)	depends on offence, type of broadcaster & medium, e.g.: - for advertising breach: up to 36,000 (PSB), up to 8,000 (private TV), up to 3,600 (private radio) - violation of license requirement: up to 40,000 EUR (private TV), up to 7,260 (private radio)	
RO (NAC)	48,900	24,450 Infringements related to protection of minors & human dignity

¹⁰ i.e. the calculated amount will then be multiplied by a co-efficient in order to apply a sanction on top of the loss of original funding

High to very high financial penalties (100,000 – 600,000 EUR) – Monetary Value

Country/RA	Maximum fine payable (EUR)	Maximum imposed (EUR) & grounds
ES (CAC)	depends on offence - Very grave infringement: between 90,001 and 300,000 - Grave infringements: between 12, 001 and 90,000 - Minor infringements: between 60 and 12,000	90,001 for free to air pornographic content
BE (VRM)	125,000	25,000 (2007) against NV SBS Belgium for breach of advertising regulations (products & trademarks in programmes)
SK (CBR)	165,969	165,969 EUR for pornographic content
BA (CRA)	not more than 75,000 (150,000 in case of repeated violations) ¹¹	50,000
NL (CvdM)	225,000 (national broadcasters)	The maximum fine imposed was two times 135,000 (so in total 270,000)
NO (NMA)	253,000	88,556 (pending appeal) breach of sponsorship identification rules
IT (Agcom)	250,000 (for violations of protection of minors) and non compliance with prior sanctions adopted by Agcom.	250,000 for political pluralism during an electoral campaign (del.69/06/CSP)
GB (Ofcom)	£250,000 (BBC or SC4) (See also next table)	(See also next table)
PT (ERC)	375,000	
SE (SBC)	500,000	250,000 against TV4 (2000) for breaches of advertising rules (amount). The case was dismissed due to a change in the broadcasting laws in 2005
CZ (RRTV)	400,000	100,000 for repeated breach of advertising rules
DE (DLM)	depends on Länder (in Hesse: 500,000)	12 million against RTL (2004) imposed by NLM (RA for Lower Saxony) for repeated breaches of advertising regulation (amount and insertion of ad breaks)
ES (CAA)	601,012.10	300,506.05 for pornographic material before watershed

Percentage of the turnover: the ultimate weapon for big market players?

Country/RA	Maximum fine payable	Maximum ever imposed & Grounds
BE (CSA)	Up to 3% of the annual gross turnover 5% in case of a repeated offence	500,000 EUR against RTL-TVi et Club RTL for transmitting programmes without a licence
CH (OFCOM)	Up to 10% of average turnover achieved in Switzerland in the previous 3 business years	Never imposed in practice
FR (CSA)	Up to 3% of the annual gross turnover 5% in case of a repeated offence	4 million
GB (Ofcom)	£250,000 or 5% of the broadcaster revenue, whichever is the greater for commercial TV or Radio licensees. 5% of the revenue for licensed PSB (ITV, Channel 4, Channel 5)	In May 2008, Ofcom issued fines totalling £5.67 million against ITV companies for breaches of the Broadcasting Code relating to conducting competitions fairly and the use of premium rate telephone services in programmes. The single largest of these fines was £3 million imposed against LWT (Holdings) Limited ¹² .
IT (Agcom)	Up to 2% of the turnover (for dominant positions - media pluralism)	
PL (NBC)	Not more than 50% of the annual fee for the use of frequency allocated for broadcasting the programme service, while broadcasters who fail to make the payment of the frequency fee, shall be liable to a fine of up to 10% of the revenues generated by the broadcaster in the preceding tax year	319,164 against POLSAT in 2004 for breach of advertising rules

The cross-analysis of the outcome of the questionnaire with the results of the request circulated by the National Broadcasting of Poland on fines (annexed to this paper) provides interesting material. In 2009, the highest number of fines was imposed by the regulatory authorities in Romania (533) and in the Czech Republic (174), even though their average value (in EUR) was rather modest: 950 in Romania and 2,414 in the Czech Republic. The average value of fines (in EUR) imposed by the British Ofcom (90,000), the Turkish Supreme Council (71,155), the Swedish Broadcasting Commission (76,471) and the Dutch Commissariaat voor de Media (68,563) was the highest, even though the number of fines was relatively modest: 7 in the UK, 28 in Turkey, 17 in Sweden and 8 in the Netherlands.

Quite a few countries indicated that the highest sanction ever imposed was for breach of advertising rules, but the outcome of the Polish survey shows that most fines imposed in 2009 by 15 RAs were for content-related (380) rather than for advertising breaches (259). It would be interesting to examine whether the maximum level of fines stipulated in the legal framework applies equally to content-related and advertising matters and how this distinction is reflected in graded sanctions.

¹¹ In Bosnia and Herzegovina, the maximum fine payable stipulated in the law is rather high, however it should be noted that the CRA is a converged regulator so these figures apply to telecommunications as well, where penalties are generally higher than those in the audiovisual field.

¹² See http://www.ofcom.org.uk/tv/obb/ocsc_adjud/lwt.pdf

2.8. Where does the money go (Treasury, RA)?

As a rule, money collected from the fines goes to the Treasury/State budget - generally with no specific allocation. In Austria, fines collected as well as the proceeds of objects forfeited may be allocated to the Land for purposes of welfare, or to welfare organisations, if any, existing in the area where the fine has been imposed. In France, fines collected from broadcasters go to a special account called the COSIP (Compte de soutien à l'industrie des programmes audiovisuels) and contribute to financing audiovisual production.

There are however quite a few exceptions where the sums originating from the financial penalties go to the budget of regulatory authorities. In Spain (Catalan CAC), the money goes to the RA and is used to cover budget expenses. In Montenegro, the money also goes to the RA, for funding its regular activities. In Moldova, the money is used for the organisation of trainings, study visits and seminars. In Hungary, the money goes to the Broadcasting Fund and an independent monetary fund managed by the Board of the Commission. In Cyprus, the money goes to the CRTA, for the operation of the authority. In Malta, the money goes to the RA and there is no specified purpose to which it is directed. In Portugal, revenues from fines revert 60% to the State and 40% to ERC. In Germany, it depends on the Länder: fines may either be allocated to the State budget or the regulatory authority.

The number of these exceptions is rather surprising as this practice is generally frowned upon by general guidelines or recommendations published by international organisations or NGOs. As an example, the Guidelines For Broadcasting Regulation produced for the CBA and UNESCO state that¹³: *"the regulator should not keep the fine, but pass it over to the government Treasury. This is important in order for government not to expect the regulator to raise a certain amount of its own budget from fines, and hence put pressure on the regulator to look for breaches and increase the level of fines. Any fine should be a 'bonus' to the Exchequer, not an expectation."*

2.9. Revoking licences: How often does this happen?

As a rule, it seems that the revocation of licences is very rare and constitutes a kind of deterrent weapon. In some countries, as in Cyprus or Hungary, it never happened so far in practice. In Italy, it only happened in 2004 against a free to air pornographic satellite channel.

From the results of the questionnaire, it appears that a range from 1 to 10 licences is revoked per year in many countries but that the revocation often takes place:

- at the request of broadcasters, e.g. following the surrender of the licence due to bankruptcy, as stated by Latvia, or
- owing to a breach of licensing conditions, the most common instance being when the broadcaster fails to broadcast any programme, or broadcast a different programme than the licensed programme, as stated by the Belgian CSA.
- for lack of payment of the licensing fee or the annual renewal fee (as stated by the Republic Broadcasting Agency of Serbia and the British Ofcom)

In Romania, the revocation of licences happens frequently (37 last year) but is usually upon the owner's request and extremely rare as a sanction. In Serbia, 34 licences were revoked last year, 12 upon notification of the broadcaster that they no longer intended to broadcast their programmes, one licence was withdrawn as a result of the annulment of the broadcasting licence by the telecom regulator in accordance with the provisions of the telecommunication law and 21 broadcasters did not fulfill their obligation to pay the broadcasting licence fee despite a prior written warning.

The limits of discretion of the RA in applying this sanction are generally provided for by the national legal frameworks. The revocation of licences as a sanction may only be imposed in case of repeated or serious violations of the law by the broadcaster. The sanction must also follow the principle of proportionality. The margin of appreciation of regulators may however vary greatly according to the countries.

In Serbia, in case of pronouncing a measure of temporary or permanent licence withdrawal, the regulator has a certain amount of discretion when assessing whether the Law or the licence

¹³ GUIDELINES FOR BROADCASTING REGULATION, point 7.70, see supra.

conditions were violated. The pronouncement of a measure is only possible if the Council fully determines the facts, receives a written response of the broadcaster and gets its verbal response, and the broadcaster also has the right to complain against the Council's decision. In Slovakia, the Council has to revoke licences in the case of specific offences while for some offences it is left to the discretion of the RA, provided the decision is properly reasoned.

In the UK, the Ofcom provides details on its procedures for the consideration of statutory sanctions in broadcasting or other licence-related cases¹⁴ as well as on the procedure that Ofcom is required to follow when revoking a licence because of non payment¹⁵.

The six main steps to revoking a licence, include:

- i. Letter to licensee about the licence breach arising out of non-payment and possible revocation, and inviting representations*
- ii. Consideration of representations and decision whether to proceed to next stage*
- iii. Issue of notice of proposed revocation, with period to remedy breach (by paying outstanding fees).*
- iv. Second invitation to make representations about proposed revocation if still in breach (fees remain unpaid)*
- v. Consideration of further representations and decision whether to revoke licence*
- vi. Notice of revocation issued to licensee*

In France, the CSA enjoys a wide margin of discretion with regard to sanction powers in general, as the law stipulates that the RA MAY issue a warning or a sanction; there is however no automatism involved. The CSA has the leeway to evaluate whether a specific sanction measure should be decided immediately according to the circumstances and the nature of the violation, and is allowed to take into account in its appraisal of the situation any additional commitments in terms of production from the part of the broadcaster.

2.10 Information of the complainant about the outcome of the case

As a rule, the complainant is informed in writing by the regulator, unless the complaint was anonymous. As an example, the CSA of the French Community of Belgium sends a formal letter either stating the grounds why the complaint was rejected or filed or, if upheld, by providing the final decision.

There are a few exceptions however. In Switzerland, this depends on the case and the legal status of the complainant. If he/she does not have party's rights, the OFCOM is not required to inform complainants individually about the outcome of the case. In the Czech Republic, the complainant is not informed but may find the outcome of the case in the press release published on the RA website. In Spain (Catalonia), the complainant is not informed directly either. In Italy, the final decisions are published on the AGCOM website.

III – APPEALS

Appendix to CoE Recommendation Rec(2000)23

Guidelines concerning the independence and functions of regulatory authorities for the broadcasting sector

50. In performing their tasks of monitoring and of applying fines or other sanctions, regulatory authorities should not only act equitably and impartially, treating all broadcasters equally, but should also have a concern for openness and responsibility. The Recommendation therefore stipulates that all sanctions should be open to review by competent jurisdictions according to national law.

3.1. Appeal process: 2nd instance body within the RA or judicial review?

As a rule, decisions on sanctions are open to review by competent jurisdictions, generally directly through the courts.

¹⁴ <http://www.ofcom.org.uk/radio/ifi/ifi guidance/sanctions/procedures.pdf>

¹⁵ <http://www.ofcom.org.uk/tv/ifi/guidance/nonpayment/>

In a few countries, however, there is an appeal process through a second instance within the regulatory authority or a specific appeal body.

In Albania, based on the Code of Administrative Procedures, the first step is the administrative appeal to the RA itself, then the appeal to the courts.

In Austria, the Federal Communications Board, as the highest appellate authority, shall decide on appeals against decisions of KommAustria, with the exception of appeals in administrative penal cases (competence of the Independent Administrative Panel of Appeal of the Land).

In Bosnia and Herzegovina, all the decisions of the RA are appealable to the Agency's Council as the second instance body. Decisions of the Council are final and binding in administrative procedure. A legal review of the decision can be initiated before the State Court. In Spain (Catalonia), complainants may appeal to the Catalan Audiovisual Council before appealing to the administrative courts or appeal straight to the administrative court.

In the UK, The decision whether or not to grant a review will be taken by a member of the Ofcom Executive not previously involved in the case. A review will be granted when the Ofcom Executive considers that the requesting party has put forward a case that a Decision is materially flawed and that:

1. *the case has a reasonable prospect of success; or*
2. *there is another compelling reason why the review should be granted.*

Any review granted will be undertaken by the Broadcasting Review Committee, a sub-committee of the Ofcom Board, consisting of members drawn from the Ofcom Content Board. The Committee will be provided with the request for review, any response, and all other relevant material (including all material originally before the Ofcom Executive).

In Montenegro, further to the Book of rules on Complaints procedures, the second instance for the decisions adopted by the Director is the Agency Council, in case of warnings and financial fines. With regard to suspension and revocation of licences, the second instance is the court.

In the Netherlands, with specific regard to violations in the field of advertising and sponsoring, the independent committee of advice on objections can be asked by the CvdM to provide its opinion. The experts of the committee are appointed by the CvdM but act independently and are specialised in topics pertaining to media law. The committee organises a hearing whereby both the regulator and the broadcaster can plead their case. The opinion of the committee of advice on objections is not binding: the Dutch regulator is free to follow or ignore the advice in making its decision but has to motivate its decision if it does not follow the opinion of the committee.

In Norway, decisions made by the RA are appealable to the Ministry of Culture in most cases, except for appeals concerning decisions related to the ban on political advertising which are appealable to the Market Council.

In contrast, judicial review is generally a supervisory rather than an appellate jurisdiction, i.e. it is concerned with the legality of administrative decisions rather than their substantive merits. In other words, the decision of the regulator may be quashed for procedural reasons but not debated on a merit-based approach or substituted by another decision¹⁶.

In Sweden, the appeal process is rather complex as it includes two forms of appeal. The first concerns cases when the Swedish Broadcasting Commission petitions the court to fine a broadcaster. In such cases the appeal is made in the judicial system as in any other court procedure. Secondly, the decisions by the Swedish Commission cannot be appealed as such. There is however a procedure for asking that the SBC retries a decision, something that might happen if new facts previously unknown to the SBC have been presented.

In France, two main types of legal review by the Conseil d'Etat of the CSA decisions are possible. The most common one is the "contentieux de l'excès de pouvoir" which is a control of the legality of the CSA decision and may end up with the annulment of the decision. The second one "le contentieux de pleine juridiction (ou de plein contentieux)" is applicable in the case of sanctions imposed by the CSA and allows the Court to adopt a merit-based approach and modify the decision of the CSA. In Romania, there are also two ways of solving litigations in the court: on the substance before the Court of Appeal, by appeal before the High Court of Cassation and Justice.

¹⁶ See EPRA background document on the transparency and accountability of RAs:
http://www.epra.org/content/english/members/working_papers/Tallinn/accountability_final_proofread_noannexes.pdf

3.2. *Suspensive effect of appeal procedure*

Appeals - irrespective of their nature - have a suspensive effect in the majority of jurisdictions considered and will therefore delay the implementation of the sanctions as a result.

In a few countries, however, such as Portugal or the Flemish Community of Belgium, administrative proceedings do not suspend the effect of the decision per se. In that case, the person concerned may bring the case before the administrative courts and ask for a preliminary action in order to suspend the effect of the regulator's decision. In Italy, the judicial review does not have a suspensive effect, even if the Court can suspend the sanction as an interim measure. In Cyprus, fines must be paid to the authority, regardless of any appeals.

3.3. *Frequency of appealed decisions*

According to the results of the questionnaire, three situations can be distinguished:

- Countries where decisions of regulatory authorities are *almost always or very often* appealed, such as Albania, Austria, Bulgaria, Germany, Hungary, Italy or Cyprus,
- Countries where decisions of regulatory authorities are *often* appealed, such as Bosnia and Herzegovina, Latvia or the Netherlands,
- Countries where decisions of regulatory authorities are *rarely* appealed, as in Ireland, Montenegro, Malta, Belgium (VRM and CSA), Serbia, UK and Slovenia.

Several authorities such as Sweden or Slovakia emphasise that while RA decisions are seldom appealed, decisions implying financial sanctions are nearly always appealed.

Notwithstanding the absolute necessity of a proper appeals system for the sake of the protection of human rights, it can be remarked that the combination of almost systematic appeals with their suspensive effect may contribute to undermining the standing of some regulatory authorities. It is interesting to note that at least in one country where decisions are very often appealed (Cyprus), the judicial review does not have as such a suspensive effect, at least with regard to the payment of fines.

IV - DEBATES & ENVISAGED REFORMS

With regard to fines and an extension of sanctioning powers

- In Slovenia, there is an ongoing debate that the RA should be given inspection powers by the new media law. In this case it would be able to impose fines by itself.
- In Montenegro, a debated issue is whether the RA should be entitled to retain its sanction powers especially with regard to fines. The new Electronic Media Law might result in the changes in this field as far as AVMS providers are concerned. While the RA believes that this competence should be preserved as a strong mechanism for dissuading and preventing breaches of the laws and standards, the government does not share that opinion.
- In the Netherlands, the Dutch Authority has an ongoing discussion with the Ministry to have extended sanction powers.
- In Luxembourg, the Ministry is drafting a law granting the power to sanctions to independent regulation authorities.

With regard to sanctions for PSB

In the UK, there has in the past been debate around whether publicly funded broadcasters (i.e. the BBC) should be required to pay financial penalties for breaches of the Broadcasting Code.

With regard to number of complaints & workload for RAs

In the UK, there has also been a steady rise in the level of complaints about content that Ofcom received – even without 'high profile' incidents such as the Russell Brand show. Ofcom is still fielding twice as many complaints as four years ago.

With regard to sanctions concerning the protection of minors

In Poland, on 26 January, the ODIHR organized in Warsaw a debate on the National Broadcasting Council's decisions concerning the breaches of rules of Art. 18 of the Broadcasting Law (protection of minors) in the context of protecting the freedom of speech.

With regard to suspensive character of appeals concerning licences

In Latvia, where a licence award is contested, the winner of the tender cannot begin operations and this could take years to resolve given the workload of the Latvian courts. The Council in this case would examine the possibility of awarding a special temporary licence which it is authorised to do. The draft media law has a provision according to which Council decisions on licence awards are not suspended.

With regard to recent and pending reforms

- In Ireland, the BAI's recent establishment under the Broadcasting Act 2009 will lead to the development of new policies in various areas as the Authority sets out its work plan. This will include revision of the complaint process inherited from the Broadcasting Complaints Commission and both sanctions inherited from the Broadcasting Commission of Ireland and new sanction provisions such as financial sanctions. The development of policy in this area will involve consultation and it is envisaged, that it will generate debate at that time (either late in 2010 or early in 2011). The Authority will develop its own complaint process over the coming months, which will involve Executive participation in decisions on complaints in certain instances and referral of complaints to the broadcaster in the first instance (complaints are currently registered with the BAI in the first instance).

- In Italy, there has recently been a reform (2008) allowing the RA to apply higher sanctions and eliminating preliminary warnings and the possibility for violators to pay a reduced amount in case of prompt payment before the proceedings is concluded with final decision.

- The Albanian Parliament is in the process of drafting a new media law, which will modify the sanction system.

- In Norway, the implementation of the AVMS Directive will most likely affect the sanctions system so that breaches of rules concerning on-demand services may be sanctioned.

- The remit of the Swiss regulators will also ultimately be enlarged to include on-demand services.

V – STRUCTURE OF SESSION & ISSUES FOR DISCUSSION

The following avenues for discussion may be handled by our panel, which will be composed of:

- Maja Cappello, AGCOM (IT)
- Emir Povlakić, CRA (BA)
- Tanja Kerševan Smokvina, APEK (SI)
- José Alberto de Azeredo Lopes, ERC (PT).

The panel discussion will be followed by a debate with the audience.

RAs Sanctioning Powers

Several countries seem to be considering more extensive sanctioning powers for the RAs. *What are the possible implications and anticipated reactions of the regulated industry?*

Effectiveness of Sanctions

What sanctions are considered in practice by RAs as the most effective: dissuasive financial sanctions or rather 'name & shame approach', e.g. through the diffusion of broadcast announcements? How important is it for RAs to have a full range of sanctions at its disposal?

Sanctions: compliance with legal & administrative framework vs. degree of discretion

It is clear that breaches subject to sanctions and the procedures in relation to all powers exercised by regulatory bodies should be explicitly provided for in the legal framework. In addition, many RAs are obliged to apply rules on administrative procedure when deciding upon breaches. While it is essential to ensure certainty and avoid making arbitrary or inconsistent decisions, it is also important to allow the regulator to have a degree of discretion. *How can the right balance between what is set out in legislation and RA's independence in decision-making be ensured?*

Variety of sanctions & potential risk of forum shopping

The survey highlighted that the range and seriousness of sanctions may vary greatly across Europe, even for neighbouring countries. One could imagine that forum shopping might also be done on the basis of what sanctions to fear in which countries. *Is there a need for a more equal practice and/or some degree of harmonisation of the legal framework for sanctioning – especially concerning the kind of sanction imposed and the seriousness/efficiency of applying them?*

Appeals & Implementation of Sanctions

In the majority of jurisdictions, appeals have a suspensive effect. The combination of almost systematic appeals with their suspensive effect may contribute to undermining the standing of some regulatory authorities. *Is this felt this way by RAs? How to ensure that the purpose of the sanction is accomplished even if the appeals are used by broadcasters as a means of delaying the implementation of the sanction, or if the process at the court is taking too long?*

Complaints Culture vs. Monitoring-led Approach & Role of RAs

The workload of cases handled by regulatory authorities varies greatly and indicates substantial differences in complaints culture across EPRA members. *Should RAs take a more proactive stance in order to inform the public that they can complain and provide guidance on how to complain? Are there any best practices which could be highlighted?*

Involving Broadcasters in the Complaints Procedure

On the other hand, some regulators are overburdened with complaints. *Can the complaints overload be avoided by encouraging the viewers/listeners to address the broadcaster first or even to make it compulsory before a complaint to the RA? Are there any positive experiences such as the appointment of Ombudsmen or mediators within broadcasters that can be observed? What other advantages are there in including the broadcaster in the process?*

Transparency of Complaints Procedure

How can regular publishing of RA's decisions contribute to the efficiency of the complaints procedure? What are the potential benefits of making available the details of all significant complaints regardless of whether or not a sanction was applied?

Impact of Co- and Self-Regulation on Complaints & Sanctions

Will the increased reliance on co- and self-regulation have any effect on the issue of complaints and sanctions and if so, how? What models of cooperation with co-and self-regulatory bodies can be highlighted in this regard?

Complaints & Sanctions in relation to on-demand Services

How will the implementation of the AVMS Directive affect the complaints-handling and sanctions system in relation to on-demand services?

Annex: Summary of research conducted by KRRiT in February 2010 among EPRA Members.

Answers received from EPRA Members -18 (12 completed). Information about 3 countries have been collected independently.

				Fines imposed in 2009						
L.p	Country	GDP per capita (EUR)	No. of TVchannles in jurisdiction	Total no. of fines imposed on broadcasters	No. of imposed fines in case of breaching content regulations	No. of imposed fines in case of breaching advertising regulations	No.of fines/No. of TV channles (%)	Total value of imposed fines (EUR)	Average value of imposed fines	Average value of imposed fines/GDP per capita (%)
1	Belgium (Flemish)	26315,4	54	24	0	24	44,44444	72750	3031	12
2	Belgium (French)	26315,4	21	8	7	1	38,09524	106000	13250	50
3	Montenegro	7046,2	No data available	0	0	0	0,00000	0	0	0
4	Czech Republic	18046,9	189	174	43	131	92,06349	420000	2414	13
5	France	23583,2	425	1	1	0	0,23529	1368	1368	6
6	Netherlands	28041	362	8	8	0	2,20994	548500	68563	245
7	Spain (Catalonia)	24230,3	No data available	1	0	1	0,00000	12001	12001	50
8	Lithuania	10785	56	4	3	1	7,14286	1786	447	4
9	Moldavia	1725,6	No data available	8	6	2	0,00000	1453	182	11
10	Poland	12798,2	251	3	1	2	1,19522	20833	6944	54
11	Rumania	8268,5	133	533	248	56	229,32330	506395	950	11
12	Slovakia	15170,9	45	52	39	13	115,55556	200835	3862	25
13	Sweden	26459,2	225	17	0	17	7,55556	1300000	76471	289
14	Turkey	8052,8	318	28	17	11	8,80503	1 992 335,66	71155	884
15	UK	25452,6	1081	7	7	0	0,64755	630 000	90000	354
Statistics										
X	Min	1725,6	21,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0
X	Max	28041	1081	305	248	131	116	1992336	90000	884
X	Avarage	17486,1	263,3	43	25	17	27	387617	23423	134