

INTERNAL MEDIA PLURALITY IN AUDIOVISUAL  
MEDIA SERVICES IN THE EU:  
RULES & PRACTICES  
(ERGA REPORT)



Rules covering news, current affairs programmes and the framework for ensuring citizens are adequately informed during electoral campaigns constitute a significant part of electronic media regulation in many EU countries. So much so that, in some countries, the application of these rules comprises the majority of regulators' daily workload. Despite this, it may be the most under-explored area of all media regulation, at least from an international comparative perspective.

The main reason for this is likely that these rules are also those least harmonised. While there is some basic background for them in the Council of Europe legislation (European Convention on Transfrontier Television<sup>1</sup>), the EU regulatory framework is not concerned with this type of regulation, and there is generally a considerable variety among national rules. Furthermore, as these rules apply to so-called traditional media (predominately radio and TV), and as their application usually deals with domestic policy priorities in the relevant country, their international impact is fairly limited. It is therefore not surprising that these rules have yet to attract widespread attention (scholarly or otherwise) at the European level.

The current media situation may change this. The ever-increasing number of sources of media content, the degree of their relevance in the eyes of recipients, combined with the subsequent proliferation of dis/misinformation and outright hoaxes, provide a strong impetus for a wide range of players to seek solutions. If there is indeed a relevant legal framework that connects past and present regulatory experience to the current information crisis, it lies precisely in this area. The vibrant patchwork of standards, regulations and legal provisions set out in this report will not fit the new situation seamlessly, but there is much to learn from these frameworks and from the experience of the National Regulatory Authority (NRA) in applying them. For that reason, it seems that the time has come to bring national internal plurality frameworks (as they are referred to in this report) to the debate.

The report is divided into four major areas. The first two chapters set the conceptual framework by explaining why it was important to write the report and establishing its scope (including a working definition). The second part, dealt with in Chapter Three, considers the current state of regulation of internal media plurality during, and also outside of, election periods in all countries participating in ERGA (including all EU countries). In addition to providing a detailed catalogue of available measures, this also grants a unique picture of their application from the perspective of regulators. To cover all areas, the third section considers changes in the media landscape and their impact on the existing rules. This includes not only the general challenges created and encountered by the evolving media landscape from the perspective of regulators, but also the specific issue of disinformation, where it provides a preliminary snapshot of the existing and planned initiatives. In its final part, the report offers a non-conventional look at media plurality from a cross-border perspective.

<sup>1</sup> Article 7 (3), 10bis, European Convention on Transfrontier Television, ETS No.132, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007b0d8>

This report would not have been possible but for the dedication and work of all of national regulatory authorities of ERGA. A special thanks also goes to the leading drafters of the report: Levente Nyakas from NMHH (HU), Bianca Heuser from DLM (DE), Rosa Cavallaro from AGCOM (IT), Maria Donde and Lewis McQuarrie from OFCOM (UK), Raphaël Honoré from CSA (FR), Martin Hari from AKOS (SI) and Michal Hradický from CBR (SK). Part of the work on the report also included a dialogue between some prominent experts in this field, including especially Mrs Elda Brogi from the Centre for Media Pluralism and Freedom and Mr Damian Tambini from the London School of Economics and Political Science and we would like to thank both for their valuable feedback.

Ľuboš Kukliš  
ERGA Chair

## ABOUT ERGA

National regulators in audiovisual media services have, not exclusively, the role of implementing the rules set by the European legislative framework – the Audiovisual Media Services Directive (AVMSD). The European Regulators Group for Audiovisual Media Services brings together the leaders or high level representatives of these regulatory bodies to advise the Commission on the implementation of the EU's Audiovisual Media Services Directive (AVMSD). The responsibilities of ERGA Members (i.e. statutory regulatory bodies responsible for applying a legal framework) vary significantly. In some cases, NRAs have a level of involvement in the development of voluntary codes, whereas others have a very clear delineation between aspects of statutory regulation.

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The media environment changes rapidly in regard to both the quantity and the quality of sources of information and content consumption. These changes are challenging established approaches to media plurality in many respects. Despite this, there has yet to be a comprehensive report analysing the actual measures on media pluralism at the disposal of independent regulators in individual EU member states, and how these measures stand up to the challenges posed by changes to the media and information landscape. This report aims to fill this void. It does so by providing an overview of existing measures underpinning plurality, analysing the evidence base that informs our regulators' understanding of change and risk, and considering the way in which current standards are being tested. In that context, it also strives to take a snapshot of the reactions of regulatory authorities concerning some of the most contentious topics of the current media regulation debate; naturally including the issue of disinformation. This report, therefore, encapsulates not only the existing and planned initiatives in Europe, but also the thought of national regulatory authorities on this topic for the first time.

The report is based on data gathered from 31 national regulatory authorities (28 ERGA members + 3 observers) through a comprehensive questionnaire. It makes no recommendations but strives to ensure that policymakers contemplating possible interventions are as fully informed as possible.

### ***Chosen definition***

For the report, a **broad working definition** of media pluralism was needed to respect the differences in regulatory traditions in the different countries covered. For this reason, the pre-existing broad and embracing definition by the Council of Europe was chosen. According to said definition, media plurality is “a wide range of social, political and cultural values, opinions, information and interests to find expression through the media”. This reflects the broad nature of content that can contribute to media pluralism. In practice, however, analysis of risk and policy discussion in this field tends to focus on news and current affairs content, and on the more influential media outlets at a local, national and international level. The broad working definition of media pluralism covers all types of media (press, broadcasting, on-demand and online services), but the report's focus in the different chapters is framed, and in some cases limited, by the information provided by NRAs in the responses gathered regarding the measures and standards in place and the kind of media to which they apply, or may apply in the future.

*“...media plurality is “a wide range of social, political and cultural values, opinions, information and interests to find expression through the media”.”*

### *What is and is not covered*

As the outcome of the first part of ERGA's work on media plurality, this report focuses on the **theme of internal plurality** with an emphasis on information flow in the media environment. External plurality measures such as transparency of media ownership, rules on media concentration, must carry and must offer are not covered, as we will turn to these in the next stage of our work. The main focus is therefore on:

- regulation of and ethical standards applying to media content such as news or current affairs programming (editorial independence, objectivity, impartiality, accuracy, veracity, transparency); “general rules”
- and regulation of and ethical standards applying to media coverage of elections (the extent, scheduling and the balance of the programmes, moratorium, opinion polls, political advertising.); “election period rules”

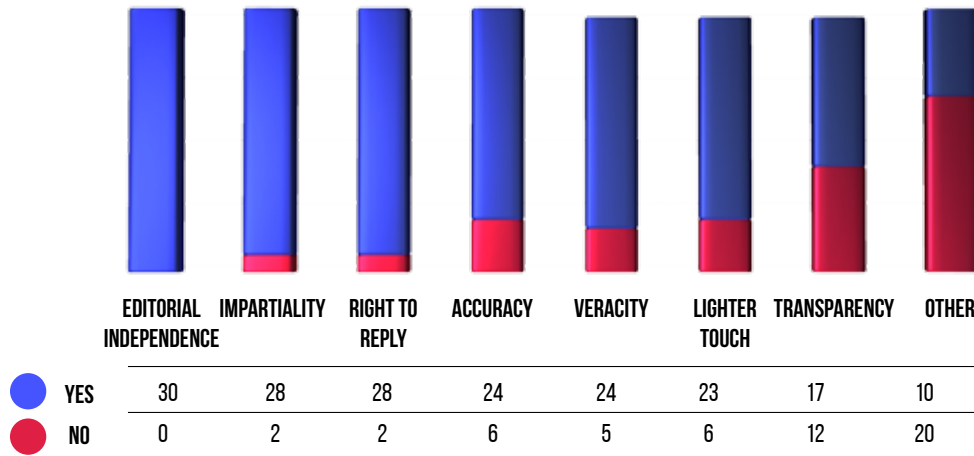
The report gathers input on all the measures (available or planned) in this area, comparing the practice on internal pluralism in the respective countries, including frameworks and standards that extend beyond those within the purview of the individual NRAs. Thus, the report provides information on non-statutory rules and standards concerning internal media plurality found in a number of EU member states, including in sub-legal frameworks set up by professional organisations, broadcasting and media organisations themselves or, in some cases, with the involvement of national regulators and supervisory bodies.

### *General rules*

In terms of **general rules**, all NRAs have some concrete measures aimed at protecting these aspects of internal media plurality. Of course, not all categories of measures are available in all countries as can be seen in the table which follows. It does seem, however, that these measures are widespread in every category assessed, ranging from those available to almost all NRAs (editorial independence, impartiality and right to reply), to those available to most NRAs (accuracy, veracity and light-touch approaches) and finally concluding with widespread measures in the area of transparency. Some NRAs pointed out that many of these existing media plurality measures could also indirectly but effectively cover disinformation.



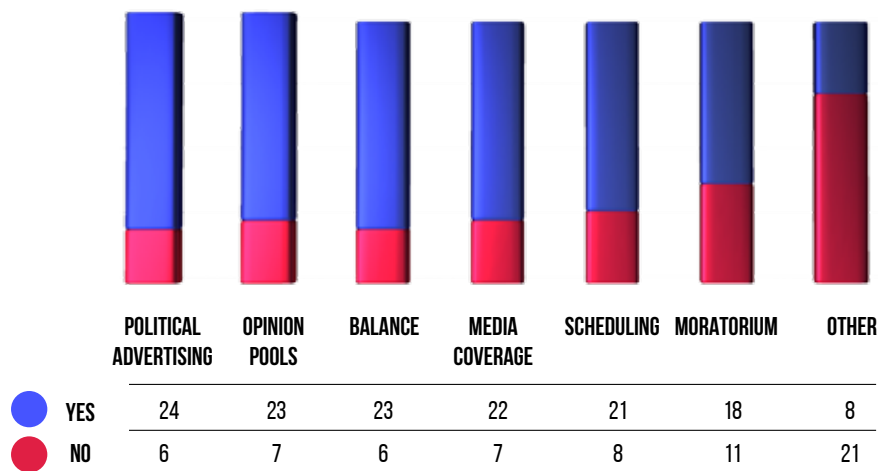
*Overview of general measures outside of an election period*



*Election period rules*

The second category of internal plurality measures were those applied during election **periods**. Due to their potential influence, broadcast media have traditionally been subject to detailed and rigorous regulation during election periods. This was to ensure the effectiveness of the protection of the pluralism of all “political representatives” participating in the political-institutional debate and, therefore, requiring access to the media in order to inform the public of their positions. In fact, almost all countries have specific regulations regarding the electoral campaign aimed at traditional broadcasters. At the same time, NRAs have the role of drafting the rules for the electoral campaigns under their respective legal frameworks in some countries.

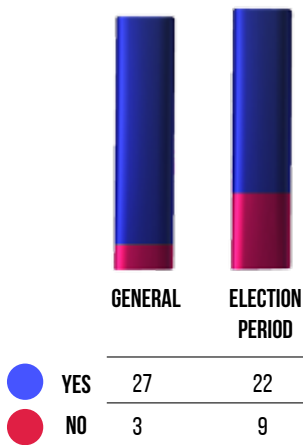
*Overview of internal plurality measures during elections in ERGA countries*



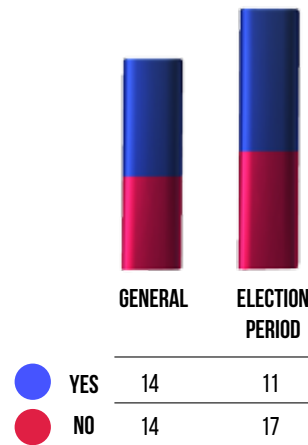
*Specific measures for public service media and specific genres*

Most countries have additional measures for internal plurality applied to **public service broadcasters** (both general and election period specific) as can be seen in the graph below. These findings, and additional indicators explored in the report, reveal the importance of the role that PSBs play in earning the public’s trust in news and in acting as a common reference for public discourse. For half of the NRAs, existing measures of media plurality only apply to specific **genres of programmes** (although they are less prevalent in regard to specific rules during the election period), namely and mainly news, political, and current affairs programmes as specific genres, as well as programmes broadcast by public service media.

*Additional measures for public service media*



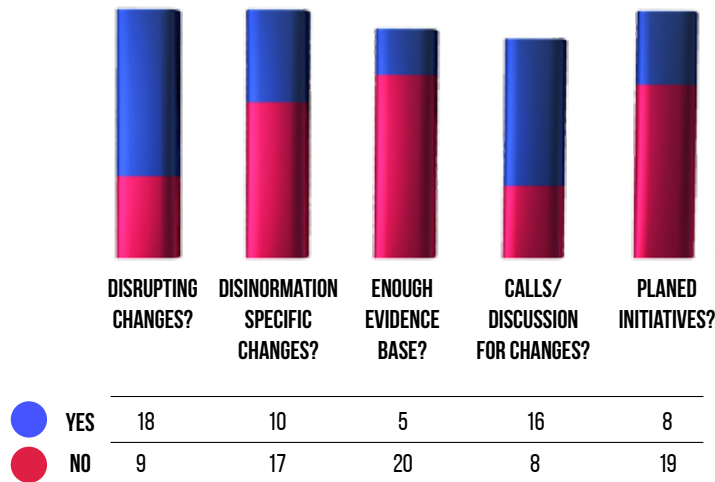
*Additional measures specific genres*



*Current challenges*

**The current challenges** faced by the NRAs were also examined closely. As part of this exercise, the NRAs expressed their views, with replies summarised in the table below. It is clear that most NRAs agree on the insufficiency of evidence to properly assess the need for regulatory intervention to secure internal plurality against changes to the media landscape and call for more research on this phenomenon. It also seems that there are discussions and calls for change at the national level of many of the NRAs and indeed concrete proposals are already being made in this regard in some countries. Insofar as proposed interventions might involve the wider application of the current internal plurality framework analysed in this report, the trends in the media landscape described below could offer some helpful direction.

*Views on the current challenges*



The following general trends in the **changing media landscape** have been observed in the report:

- the internet reduces barriers to entry into the market for news, leading to an abundance of news services available to citizens online;
- most people accessing news online do so indirectly instead of going through news websites or applications;
- the news is increasingly viewed on smartphones in the form of ‘news feeds’;
- content discovery online is fragmented;
- in the absence of editorial curation, the news is now sorted into ‘news feeds’ by a combination of algorithms and personalisation by users;
- for most users of social media, the route of content discovery is guided by endorsements and recommendations by friends, with news items discovered in this way less likely to be challenged;
- news content which particularly resonates with members of a social network can go viral, intensifying its effect.

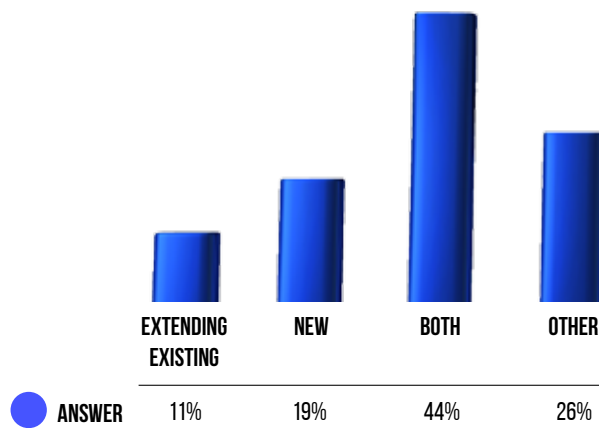
**Disinformation**

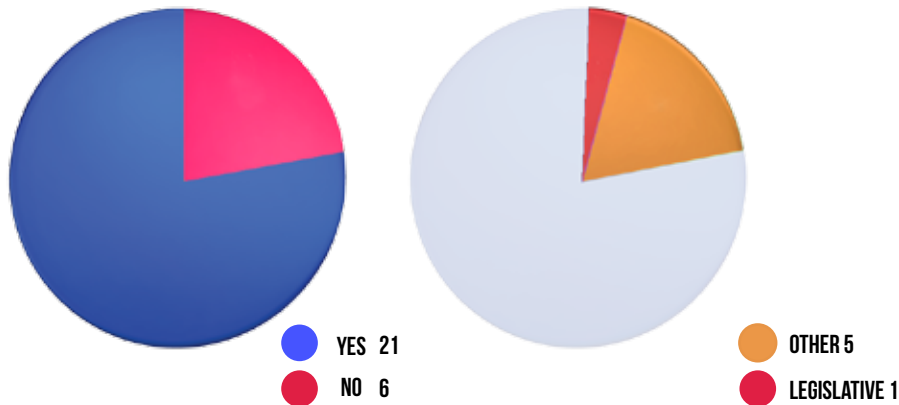
A part of the report also focused on the specific challenges of the phenomenon of **disinformation**. Where online consumption of news occurs in a largely unregulated space, this could potentially risk undermining the policy objective of internal plurality as an aid to democratic public discourse. It seems that the growing importance of the phenomenon of disinformation is undeniable. Although current concerns stem mostly from the specific ways that the internet and new technologies profoundly affect the dissemination of information, disinformation also exists in the linear and traditional world of media. The approach to intervention in this field is a sensitive topic, especially considering the rights and principles at stake (in particular the freedom of expression and the freedom of information).

In a word, the **responses of NRAs on disinformation convey** that:

- NRAs have not identified radical changes that relate to disinformation but that the regulators and the public are fully aware of this phenomenon;
- NRAs have recently been expanding research in this field;
- Disinformation can have important consequences on political debate and on decision-making processes;
- Most countries have no measures in place tackling the issue of disinformation per se, and those that do almost never employ legislative measures;
- The vast majority of NRAs consider that there is not enough evidence to assess the need for regulatory intervention in this field. However, the number of proposals to tackle the problem of disinformation is growing;
- The vast majority of member states and NRAs favour self-regulation to address this issue; More and more actors (states, NRAs, stakeholders...) are working to address this phenomenon. There is recognition that achieving plurality depends on a wide series of measures.
- There are some published and other planned initiatives at the national, European and international level.

### *Disinformation: possible media plurality solutions*



*Disinformation: Planned initiatives**Cross-border dimension*

The **cross-border dimensions** of internal plurality were also examined. Cross-border cases involving traditional (audiovisual) media and media plurality are rare and, when they arise, cooperation between NRAs can offer solutions. A question has also been raised regarding the possible challenges posed by new services (Video Sharing Platforms/social media) in the context of internal plurality. Cooperation between NRAs is strong but most NRAs believe that more would be beneficial and stressed the added value of ERGA. Most see ERGA as a medium for the exchange of information and best practices (also as a discussion forum on the matter). Some regulators believe that ERGA should play a role in cross-border issues, and potentially act as a voice for regulators in discussions with global players over new services.

*Next steps*

This report should provide a unique NRA perspective on the discussed topics that had previously been missing and will hopefully contribute to a wider debate. However, internal media plurality is just part of the broader question of media plurality in society. At the same time, these questions are currently in the focus of wider debates including the impact of the new online services. **In 2019, therefore, ERGA will continue exploring these topics focusing on the regulatory aspects of external media plurality and possibly the topic of disinformation while simultaneously attempting to answer some of the questions raised in this report.**



# 1. INTRODUCTION

The media environment is changing rapidly both in terms of the quantity of sources of information and content consumption, and the quality of information provided and consumed. These changes are challenging established approaches to media pluralism in many respects with no consensus among policymakers or scholars in sight. Despite this, we were unaware of any comprehensive report analysing the actual measures on media pluralism that independent regulators have at their disposal in individual EU member states, and how they are responding to these challenges.

### *1.1 Why is ERGA currently looking at this topic?*

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In line with Article 3(c) of the ERGA rules of procedures, one of ERGA's missions is *"to provide for an exchange of experience and good practice as to the application of regulatory framework for audiovisual media services"*. The work of Sub-group 1 on Internal and External Plurality fulfils this aim and was created based on the 2018 work programme, with its work further developed in detail in its terms of reference. In 2018, the subgroup decided to focus on the theme of internal plurality due to the large scope of the topic. Despite this, the topic of external plurality should be tackled in the next period. Due to the necessity of avoiding overlaps and duplication of work, this report builds on the work already completed on the level of EPRA on the topic "News in the Digital Age" which looked at the issue of *"Implementing Accuracy, Objectivity and Impartiality in practice"*<sup>2</sup>. The report is based on data gathered from all 31 NRAs (including all EU countries) in the form of a comprehensive questionnaire. In this way, data was gathered not only on the current measures in place in the area of internal plurality and their application, but also on current challenges (including disinformation) and possible cross-border issues.

ERGA, being a group comprised of independent media regulators from all EU member states, was probably in the best position to write such a report. As approaches towards regulating media pluralism vary widely among national authorities, this initiative aimed to allow ERGA members to compare their practices with those of other members and potentially help them in the identification of suitable future practices. Furthermore, through this exercise, ERGA could contribute to the debates on media pluralism in two ways: by providing data that is currently not available, thus helping make such debate more informed, and by responding as appropriate to any calls for new regulatory interventions.

As the present report is produced by EU audiovisual regulators, it mainly, though not exclusively, covers and analyses measures concerning audiovisual media.

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<sup>2</sup> [161/original/PS1\\_News\\_in\\_Digital\\_Age\\_final\\_postmeeting\\_version.pdf?1513763879](https://www.epra.europa.eu/original/PS1_News_in_Digital_Age_final_postmeeting_version.pdf?1513763879)

## 1.2 The importance of media pluralism in democratic societies

*“The business of the press, (...), is the promotion of truth regarding public matters by furnishing the basis for an understanding of them. Truth and understanding are not wares like peanuts or potatoes.”<sup>3</sup>*

The above-cited conclusion from the Associated Press case, decided by the US Supreme Court immediately after the end of World War II in Europe, clearly indicates the importance and responsibility of the press (media) in a democratic society, namely: to **supply** the public with reliable information which enables them to **exercise** their civil liberties and political rights. The conclusion also emphasises that media is not a private matter but a public affair, even if it is privately owned.

The cited Supreme Court decision also provides the details in which the press (media) should act to achieve this goal: “[...] industry serves one of the most vital of all general **interests**: the dissemination of news from as many different sources, and with as many different facets and colours as is possible.”<sup>4</sup> Accordingly, the press should provide **diverse** and accurate information to the public in order for the latter to be in the position to **formulate an opinion** on matters of public interest and to be able to **participate** in democratic processes.

The second description of the decision is the **principle of media pluralism** (the three terms ‘media pluralism’, ‘media plurality’, and ‘media diversity’ are often used interchangeably) which became the **cornerstone** of the rebuilding of media landscapes of the democracies in Europe after World War II.<sup>5</sup> The principle of media pluralism not only became part of several national constitutional systems but was expanded on in the Charter of Fundamental Rights of the European Union<sup>6</sup>, EU and Council of Europe policy statements and documents<sup>7</sup> and in case law<sup>8</sup>.

<sup>3</sup> Associated Press v. United States, 326 U.S. 1 (1945) concurring separate opinion of Justice Felix Frankfurter (1939–62), associate justice of the United States Supreme Court.

<sup>4</sup> Ibid.

<sup>5</sup> See e.g. Hardy, Jonathan (2008): Western Media Systems, London, Routledge.

<sup>6</sup> The Article 11 of the Charter of Fundamental Rights of the European Union regulates the principle of media pluralism and links it to fundamental rights in saying “1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. 2. The freedom and pluralism of the media shall be respected.”

<sup>7</sup> At the EU level see e.g. Media pluralism: Commission stresses need for transparency, freedom and diversity in Europe’s media landscape press release Brussels, 16 January 2007 (IP/07/52), Media pluralism in the Member States of the European Union, Commission Staff Working Document SEC(2007) 32 Brussels, 16 January 2007. See also the activity of The Centre for Media Pluralism and Media Freedom (CMPF) at EU level. At Council of Europe level see e.g. Recommendation CM/Rec(2007)2 on media pluralism and diversity of media content, the Declaration on protecting the role of the media in democracy in the context of media concentration (31 January 2007), Recommendation Rec(99)1 on measures to promote media pluralism, Recommendation Rec(94)13 on measures to promote media transparency. See also European Audiovisual Observatory’s work in this topic e.g. Cappello M. (ed.): Media ownership - Market realities and regulatory responses IRIS Special, European Audiovisual Observatory, Strasbourg, 2016

<sup>8</sup> For EU Court of Justice Case Law see e.g. ECJ, Case 148/91., Veronica [1993] ECR I-00487 ECJ, Case 23/93, TV10 SA., [1994], ], ECJ, Case 288/89, Gouda [1991] ECR I-04007 ECR I-04795, for European Court of Human Rights see e.g. Informationsverein Lentia and Others v. Austria (Application nos. 13914/88., 15041/89., 15717/89., 15779/89., 17207/90., Series A no. 276-A.), Centro Europa 7 S.r.l. and Di Stefano v. Italy (Application no. 38433/09.).



The **function** of the principle of media pluralism in democracies is summarised substantially for example in the most recent recommendation of the Committee of Ministers<sup>9</sup> of the Council of Europe. The recommendation indicates that media freedom and pluralism “[...]are central to the **functioning of a democratic society** as they help to ensure the availability and accessibility of diverse information and views, on the basis of which individuals can form and express their opinions and exchange information and ideas.”<sup>10</sup>

The ultimate aim of ensuring diverse information and views through the media is to create the possibility of a **public sphere** in which lively discourse can develop on public affairs which are inevitable for the functioning of democracies. As formulated for example in the European Commission (EC) policy paper (Oreja Report)<sup>11</sup> “[...] a modern democratic society cannot exist without communication media which [...] provide the means whereby the public debate which underpins free and democratic societies can take place, means that the market will not necessarily deliver on its own.”

Both the above-cited case law and the Oreja Report highlight that **ensuring media pluralism** cannot simply be left up to the market. In European democracies the **state** has traditionally played an **active role** (mainly a constitutional obligation) in preserving media plurality and a lively public sphere, which is realised through diverse measures.

This **European tradition** is expressed by the *European Court of Human Rights (ECtHR)* in several judgements. In the case of *Informationsverein Lentia and Others v. Austria*<sup>12</sup> the ECtHR outlined that:

*“The Court has frequently stressed the fundamental role of freedom of expression in a democratic society, in particular where, through the press, it serves to impart information and ideas of general interest, which the public is moreover entitled to receive [...] Such an undertaking cannot be successfully accomplished unless it is grounded in the principle of pluralism, of which the State is the **ultimate guarantor**. This observation is especially valid in relation to **audio-visual media**, whose programmes are often broadcast very widely.”*

This standpoint was also assured in *Centro Europa case*<sup>13</sup> where the ECtHR noted: “[...] in such a sensitive sector as the audio-visual media, in addition to its negative duty of non-interference the State has a **positive obligation** to put in place an appropriate legislative and administrative framework to guarantee effective pluralism.”<sup>14</sup>

<sup>9</sup> Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership.

<sup>10</sup> CM/Rec(2018)1 Preamble Point 1.

<sup>11</sup> Oreja, Marcelino. (1998) The Digital Age: European Audiovisual Policy. Report from the High Level Group on Audiovisual Policy. October 26, 1998.

<sup>12</sup> *Informationsverein Lentia and Others v. Austria* (Application nos. 13914/88., 15041/89., 15717/89., 15779/89., 17207/90., Series A no. 276-A., Judgement 24 November 1993.) § 38.

<sup>13</sup> *Centro Europa 7 S.r.l. and Di Stefano v. Italy* (Application no. 38433/09.)

<sup>14</sup> *Ibid* § 134.

This positive obligation of European states to promote media pluralism is also reflected in the role and mission of National Regulatory Authorities (NRAs), a responsibility which was enshrined in European legislation at both EU<sup>15</sup> and CoE<sup>16</sup> levels.

The other notable element of the *Informationsverein Lentia* case at the ECtHR is that this positive proactive role of the state in the field of media pluralism is connected to those **types of media** (according to the cited case: audio-visual media) which have a certain **impact** on political opinion forming and on participation in democratic processes.

The latter observation of the ECtHR is relevant in the current digital and convergent **multimedia** environment where we observe the proliferation of new media services. This raises the question of how such a rich media environment impacts the democratic process. The contemporary media environment's 'communicative abundance' means "*almost infinite choice and an unparalleled pluralization of voices that have access to the public sphere*"<sup>17</sup> on the one hand which could be positive for public debates. On the other hand, this causes difficulties in **identifying** those media activities which could be relevant for democratic public discourse; "to devise appropriate methodologies and an effective process for monitoring media pluralism"<sup>18</sup> and to find suitable measures that can be applied to maintain media plurality.

<sup>15</sup> See AVMS directive Recital (94) which stipulates that the chosen instruments (e.g. competent independent regulatory bodies) of Member States implementing the directive "should contribute to the promotion of media pluralism."

<sup>16</sup> See Recommendation No. R (99) 1 of the Committee of Ministers to member states on measures to promote media pluralism which says that NRAs "pay particular attention to the promotion of media pluralism in the discharge of their mission"

<sup>17</sup> Keane, J. (1999). Public Life in the Era of Communicative Abundance. *Canadian Journal of Communication*, 24, 165–78.

<sup>18</sup> Marie McGonagle: How to ensure and assess Media Pluralism and Diversity of Media Content ' Monitoring Media Pluralism – an exercise in futility?' Background paper 41st EPRA meeting Berne, 14-15 May 2015 Plenary session 2., p 2.



## 2. WHAT IS MEDIA PLURALITY?

## 2.1 Concepts on media plurality

Searching for a working definition of media pluralism (the three terms ‘media pluralism’, ‘media plurality’, and ‘media diversity’ are often used interchangeably) for this report, one can come to diverse results.

There is no great difference in the approach between institutional sources (policy documents), but there is an emphasis on the dimensions of the concept of media plurality which best fit into their main mission.

There are approaches which emphasise the **result** of media plurality when defining it, stating *“Media pluralism is **achieved** when there is a multiplicity of autonomous and independent media at the national, regional and local levels, ensuring a variety of media content reflecting different political and cultural views. In the Commission’s opinion (Note: Venice Commission), internal pluralism must be achieved in each media sector at the same time: it would not be acceptable, for example, if pluralism were guaranteed in the print media sector, but not in the television one. Plurality of the media does not only mean, in the Commission’s view, the existence of a plurality of actors and outlets, it also means the existence of a wide range of media, that is to say different kinds of media.”*<sup>19</sup>

Other policy papers focus on the **practical side** of media pluralism and concentrate on the measures which can help in achieving media pluralism, stating *“Media pluralism is a concept that goes far beyond media ownership. It embraces many aspects, ranging from, for example, merger control rules to content requirements in broadcasting licensing systems, the establishment of editorial freedoms, the independence and status of public service broadcasters, the professional situation of journalists, the relationship between media and political actors, etc. It encompasses all **measures** that ensure citizens’ access to a variety of information sources and voices, allowing them to form opinions without the undue influence of one dominant opinion forming power.”*<sup>20</sup> This measure-centred approach is based on the result of the work of the EC which concluded in its working document that *“Media pluralism is a concept that embraces a number of aspects, such as diversity of ownership, variety in the sources of information and in the range of contents available in the different Member States. Ensuring Media pluralism, in our (note: the European Commission’s) understanding, implies all measures that ensure citizens’ access to a variety of information sources, opinion, voices etc. in order to form their opinion without the undue influence of one dominant opinion forming power.”*<sup>21</sup>

<sup>19</sup> Venice Commission Opinion Italian Laws (June 2005) Note: Venice Commission (European Commission for Democracy through Law) is the Council of Europe’s advisory body on constitutional matters.

<sup>20</sup> EU Media Futures Forum, Final Report – September 2012, ‘Report for European Commission Vice-President Neelie Kroes

<sup>21</sup> Media pluralism in the Member States of the European Union, Commission Staff Working Document SEC(2007) 32 Brussels, 16 January 2007

There are documents by experts<sup>22</sup> **unifying** the results of the different concepts of media pluralism: *“Definitions of “media pluralism” do vary in the emphasis that they place on particular aspects of the term, but they all include certain key elements. Media pluralism is related to (1) diversity, variety and plurality of media supply; (2) the public sphere, the general public or the audience; it is (3) provided by free, independent and autonomous media sources, and (4) results in both access and a choice of opinions and representations which reflect the citizens of the State in question (Klimkiewicz 2005; Doyle 2002; Ofcom 2012)”*.<sup>23</sup>

## ***2.2 Broad working definition***

According to the scope and purpose of the subgroup on Internal and External Media Plurality (hereinafter “plurality subgroup”), the best solution is to adopt a **broad working definition** of media pluralism which does not exclude the above-mentioned concepts on media pluralism and also respects the differences in regulatory traditions of the members of the plurality subgroup.

Such a broad and embracing definition is offered by a CoE policy document<sup>24</sup> which is widely accepted and broadly used at the EU level.<sup>25</sup>

According to this descriptive definition, focusing on the content of the concept of media pluralism, media plurality is *“a wide range of social, political and cultural values, opinions, information and interests to find expression through the media”*<sup>26</sup>

This definition reflects the broad nature of content that can contribute to media pluralism. In practice, however, there is a greater focus on news and current affairs content and, in this context, on more influential media outlets at a local, national and international level. This approach is reflected in the primary and secondary research conducted for this report.

<sup>22</sup> Such as K.U.Leuven – ICRI et al (2009): Independent Study on Indicators for Media Pluralism in the Member States –Towards a Risk-Based Approach Prepared for the European Commission Directorate-General Information Society and Media SMART 007A 2007-0002.

<sup>23</sup> European Union Competencies in Respect of Media Pluralism and Media Freedom, CMPF, 2013

<sup>24</sup> Secretariat memorandum prepared by the Directorate of Human Rights Report on media concentrations and pluralism in Europe (revised version) MM-CM (97) 6, Strasbourg, 20 January 1997. See also Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership.

<sup>25</sup> See e.g. Independent Study on Indicators for Media Pluralism in the Member States–Towards a Risk-Based Approach op. cit.

<sup>26</sup> Secretariat memorandum prepared by the Directorate of Human Rights Report on media concentrations and pluralism in Europe (revised version) MM-CM (97) 6, Strasbourg, 20 January 1997.

### 2.3 Dimensions of media plurality – internal and external pluralism

Historically, two **dimensions** of media plurality have developed: “*internal in nature, with a wide range of social, political and cultural values, opinions, information and interests finding expression within one media organisation, or external in nature, through a number of such organisations, each expressing a particular point of view.*”<sup>27</sup>

The concept of internal pluralism (content dimension) in Europe **percolated** from the universal service obligation of public service broadcasting in the audiovisual media field. The content requirements<sup>28</sup> of Public Service Broadcasters (e.g. objectivity, impartiality, balanced coverage, factuality, veracity in news coverage) became general requirements which were incorporated in the European media law. Following from the above definition “*internal pluralism refers to pluralism within a particular media organisation.*”<sup>29</sup> so the requirements of internal pluralism can be examined/measured within a single media outlet.<sup>30</sup>

The concept of external pluralism (structural dimension) first **appeared** in the European press market following World War II<sup>31</sup>. Owing to the liberalisation in the 80s, this was later extended to the broadcasting market following the end of the monopoly of public service broadcasting. The general acceptance of the principle of pluralism resulted in media-specific, ex ante regulatory interventions against media concentrations. “*External pluralism refers to the media landscape as a whole,*”<sup>32</sup>; the requirements of external pluralism can be measured across the whole media sector or in its specific segment.<sup>32</sup>

Public service media (PSM) has a special position in the two above-mentioned dimensions of media plurality. The basic remit of PSM varies between European countries but “*the preservation of pluralism and diversity are [...] universally accepted and applied as fundamental values and justifications for the position of public service broadcasters.*”<sup>33</sup> Therefore PSMs “*are expected to provide pluralistic programming both within their services and as a distinct sector that contributes to the overall media system.*” PSM is often cited as it realises “*sectoral pluralism.*”<sup>34</sup>

<sup>27</sup> Ibid

<sup>28</sup> Naturally these content requirements are not uniform in Europe. They vary according to the accessibility or scarcity of resources that media use, the impact certain mass media can have on public.

<sup>29</sup> Final Report of the High Level Group on Media Freedom and Pluralism January 21 2013.

<sup>30</sup> Independent Study on Indicators for Media Pluralism in the Member States –Towards a Risk-Based Approach, Prepared for COM, 2009

<sup>31</sup> Cavallin, J. (1998). European Concentration Policies and Regulations on Media Concentration. International Journal of Communications Law and Policy, Issue 1.

<sup>32</sup> Independent Study on Indicators for Media Pluralism in the Member States –Towards a Risk-Based Approach, Prepared for COM, 2009

<sup>33</sup> KARPPINEN, Kari: Rethinking Media Pluralism. Fordham University Press, New York, 2013. 99.

<sup>34</sup> Ibid.

### 2.4 Measures ensuring media plurality

The broad working definition of media plurality ensures that no measure will be excluded that may support media pluralism in the ERGA member states and to apply *“all measures that ensure citizens’ access to a variety of information sources, opinion, voices etc. in order to form their opinion without the undue influence of one dominant opinion forming power.”*<sup>35</sup>

There are two types of regulatory measures:

- Regulatory tools which are generally considered to **support internal plurality** include: the prescription of general and specific content requirements in special genres or programming by law or among licensing conditions; media content supporting schemes; quota regulation.
- Regulatory tools which are generally **classifiable as supporting external plurality** include the rules on media concentration, what they must carry and must offer.

In some cases, the concept of “sufficiency” is also considered in this context, in terms of answering *“how much plurality is adequate or sufficient for democratic purposes.”*<sup>36</sup> Sufficiency can also sometimes fall to media regulatory authorities to define or measure but, as the UK’s communication regulator Ofcom pointed out in its policy document, *“it is unrealistic to seek an absolute statutory definition of sufficiency, as the market is dynamic and notions of sufficiency change.”*<sup>37</sup> The European Media Pluralism Monitor<sup>38</sup> (MPM) follows a risk-based approach, using different indicators to help identify potential risk areas in the field of media pluralism “so that they can be further monitored or dealt with by national authorities”<sup>39</sup>.

These questions of sufficiency also need to be examined from a number of different perspectives: locally, nationally and internationally. Smartphones have given citizens in many countries immediate access to a range of international news outlets, thereby contributing to the increased plurality at this level. However, this has contributed to the challenges facing local and national news providers in smaller countries, therein raising an additional dimension to sufficiency: affordable sufficiency. Each of these issues will be considered by ERGA in the next stage of its work on this topic.

<sup>35</sup> Media pluralism in the Member States of the European Union – Commission Staff Working Document Brussels, 16 January 2007 SEC(2007) 32.

<sup>36</sup> GIBBONS, Thomas: What is ‘Sufficient’ Plurality? In: Steven Barnett, Judith Townend (eds.): Media power and plurality : From hyperlocal to high-level policy. Palgrave Macmillan, 2015.

<sup>37</sup> Ofcom, Measuring media plurality: Ofcom’s advice to the Secretary of State for Culture, Olympics, Media and Sport 6 June 2012 and 5 October 2012, 2-3.

<sup>38</sup> See Media Pluralism Monitor <http://cmpf.eu.eu/media-pluralism-monitor/>

<sup>39</sup> Marie McGonagle: How to ensure and assess Media Pluralism and Diversity of Media Content ‘ How to en Media Pluralism – an exercise in futility?’ Background paper 41st EPRA meeting Berne, 14-15 May 2015 Plenary session 2., 15.

Despite the distinction between the two dimensions of media plurality, there is a common understanding that the two dimensions have to be seen **together**<sup>40</sup> as they complete and contribute to one another. As exemplified by the Venice Commission: “[i]n the context of external pluralism, restrictions on media ownership can preserve diverse ownership and contribute to diversity in output as long as consolidation or sharing of editorial content between owners of rival products is discouraged.”<sup>41</sup>

### *2.5 Setting the scope of the internal plurality for the report*

Due to the large scope of media pluralism, the **current report focuses** on the theme of internal plurality, within the following aspects: regulation of media content such as news or current affairs programmes through the general measures available to the regulators (e.g. objectivity, impartiality, accuracy, veracity, transparency) and regulation of media coverage of elections (e.g. moratoria, political advertising, balance of the broadcast).

To maintain focus, the measures in the area of **social** (e.g. rules on social inclusiveness such as access for women, minorities and people with disabilities) and **cultural pluralism** (e.g. financial support for programming, PSBs, programming quotas) **are not specifically covered** by this report.<sup>42</sup>

The main aim of this report is to gather input on **all of the measures (available or under elaboration) and corresponding practice** on internal pluralism in the respective countries of SG1, not only those within the purview of the NRAs.

Although the focus of the report is on the currently available measures or possible future developments, the report might also provide **brief information on the relevant past measures** if deemed relevant to providing a context or important information (for example case studies).

The broad working definition of media pluralism covers all **types of media** (press, broadcasting, on-demand and online services), but the report’s focus in the different chapters depends on the current measures in place or being discussed as **indicated by NRAs in the gathered input**.

Regarding the scope of the coverage of online services in the report, the aim is to cover the **most important and influential services** with an influence in the respective countries.

<sup>40</sup> Media pluralism in the Member States of the European Union, Commission Staff Working Document SEC(2007) 32 Brussels, 16 January 2007

<sup>41</sup> Venice Commission Opinion Italian Laws (June 2005) 45. point.

<sup>42</sup> 2018 ERGA Subgroup 1 on Internal and External Plurality: Questionnaire on the internal plurality measures of NRAs in the changing media environment.





### 3. OVERVIEW AND APPLICATION OF THE TOOLS CURRENTLY AVAILABLE

This chapter summarises the responses of ERGA members to questions regarding different categories of measures available in the area of internal plurality. These measures have been divided into two basic categories, namely 1) general measures and 2) measures taken during election periods. This is further split into other sub-categories as reflected in this chapter. The questions were not only aimed at the description of the rules in place but also at their actual application (including division of competencies, monitoring, evaluation, methodology used, interesting cases, etc.) to provide a complex understanding of their implementation.

In addition, it is important to note that these questions were asked to ERGA members to set out not only their own responsibilities, but also the wider landscape of self-regulation and ethical journalistic standards in their countries which are relevant to the principles that underpin internal plurality (accuracy, impartiality, etc.). This means that, in the thematic overview provided in this chapter, there are references to standards applied through statutory regulation, those formally upheld by press councils, and those that are applied in principle by any professional journalists, irrespective of the medium in which they operate.

Our findings indicate that the responsibilities of ERGA Members (i.e. statutory regulatory bodies responsible for applying a legal framework) vary significantly. In some cases, NRAs have a level of involvement in the development of voluntary codes, whereas others have a very clear delineation between statutory regulation for broadcasting and self-regulatory approaches for the press (including online).

We have tried to indicate throughout where the NRAs' responsibilities start and end, but readers should be aware that not all areas covered in this chapter fall to ERGA Members to enforce.

### *3.1 General tools (i.e. outside of an election period)*

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#### *3.1.1 General measures*

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##### *3.1.1.1 Introduction*

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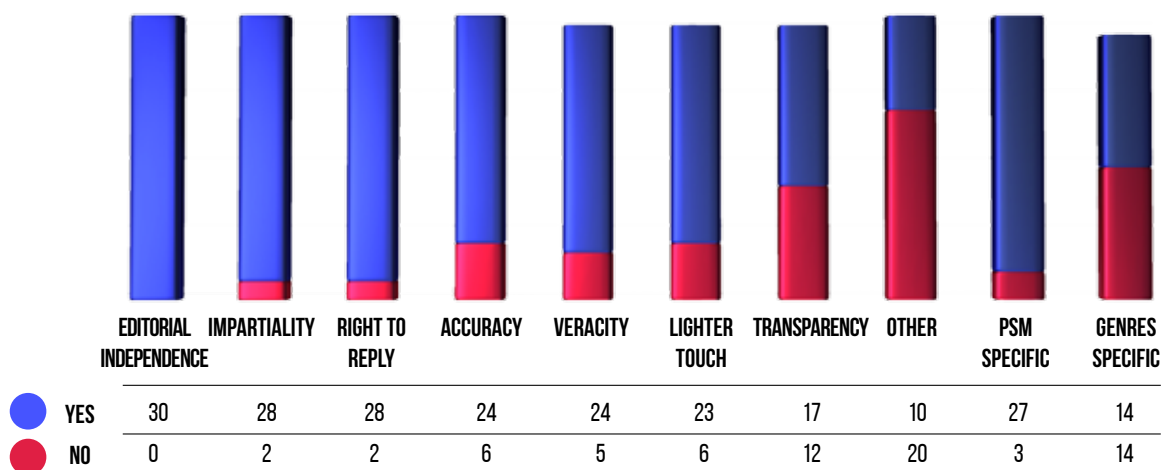
In addition to rules specifically aimed at regulating media (commercial broadcaster, PSM, electronic media) in the respective member states, some NRAs have linked to the basis of constitutional legal framework (AT, EE, IT, NO, SK, ES, MK, PT, HU, PL, etc.). Constitutional legal framework refers in all cases to the right to the freedom of expression/speech. It is crucial to state that NRAs are aware that all aspects of media plurality are bound by constitutional and fundamental rights. The provisions' level of detail differs in a range from the mere guarantee of an aspect of media plurality to a very detailed description of measures to guarantee this aspect.

Other rules concerning media plurality can be found in sub-legal framework set by professional organisations (i.e. journalistic organisations), broadcasting and media organisations themselves or by national regulators and supervisory bodies and applied by broadcasters. The provisions set in the sub-legal framework mainly show more detailed requirements for aspects of media plurality and are more closely related to a specific kind of news coverage (i.e. political news). Some NRAs refer to Press Law also applying to broadcasters and electronic media (PL, IE, DK, NO) or to norms that were set in cooperation with press institutions/councils (AT). Broadcasting stations and media entities work on the basis of "Media Codes" or "Codes of journalistic ethics" established internally or by internal bodies (CZ, PL, RO). On that level, there is also a lot of cooperation with the NRAs. In IE, for instance, just one online provider has signed up to the Press Council Code. In Austria, they have an editorial agreement between PSB and the representative body of journalistic staff. Competence here lies not with KommAustria but with the Arbitration Tribunal, a self-regulatory tool of the journalistic staff. BG is currently conducting negotiations with an aim to stimulate self-regulatory approaches in its country. EL indicated that Greek broadcasters have not developed self-regulatory initiatives, although provisions for self-regulatory schemes are foreseen.

### 3.1.1.2 Basic analysis of the categories

In most of the analysed categories, all NRAs have measures specifically aimed at protecting these aspects of internal media plurality. Solely relating to transparency, 13 NRAs have responded as not having specific measures. Some NRAs have not indicated any measures for the media plurality categories neither of accuracy, veracity nor transparency (HU, LU, SI, BE). HU for instance points out that the original version of HU's media law contained provisions for diverse, current, factual and objective information. According to negotiations with and the view of the CoE, these adjectives used in the statutory text regarding the requirement of balanced coverage make the interpretation of the obligation rather complicated, so the CoE suggested use of the word 'balanced' alone. HU's legislator accepted this suggestion as it is also reflected in the Hungarian judicial case-law. Since the meaning of the term "balanced" is a general category that includes all the above-mentioned factors, the amendment in relevant Hungarian Media law does not narrow the scope of the act, but only simplifies the task of legal interpretation. SI alone has indicated measures for the category of editorial independence. It is striking that only six NRAs have specific measures on disinformation (PT, FR, IT, LT, MT, RO) in their countries. Some NRAs, however, pointed out that other measures on media plurality cover disinformation indirectly, but effectively (CZ, HU, IE, SK, UK) (=> see ch. 4.2 „Specific challenges of ‘disinformation’”).

#### Overview of general measures outside of an election period



Half the NRAs responded that existing measures of media plurality in their countries apply only to specific genres of programmes. They mainly indicated news, political and current affairs programmes as specific genres as well as programmes broadcast by PSM. Few NRAs have explicitly indicated that the provisions are broad and do not target a special kind of programme (FR, SI). The UK straddles both these approaches, with stricter accuracy measures applied to specific genres of programmes such as news and looser measures around material deception applied to factual information in all other genres. PT stated in its answer that, with a view to their reference role of cohesion, the aspects of media plurality should play a role in “*diversified programmes and services available in several kinds of platforms and for all segments of the population*”. HU’s authority even has the position that balanced coverage cannot be limited to specific genres with a link to the constitutionality of balanced coverage.

### 3.1.1.3 Individual categories

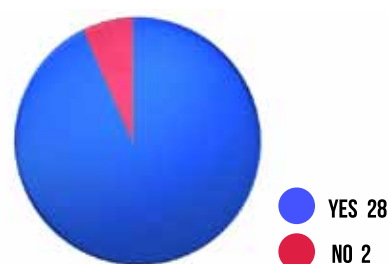
#### *Editorial independence*

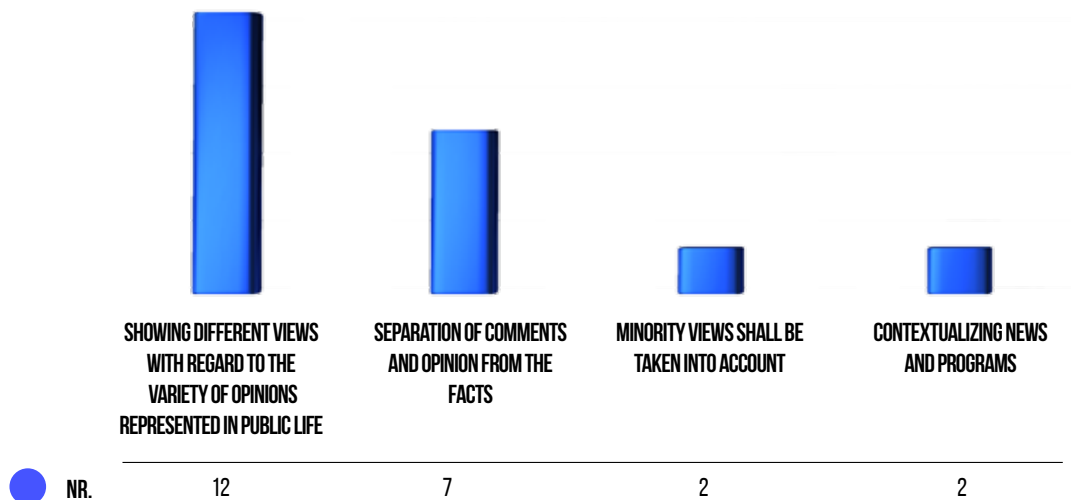
All NRAs responded to having measures in relation to the category editorial independence (e.g. commercial, political and owner interests should have no influence over editorial content). SI points out, however, that the Mass Media Act prescribes the independence of editors and journalists yet is not subject to regulatory supervision in SI. Still, AKOS has some role in the control of editorial independence in terms of rules from AVMSD on sponsorship and product placement. Stated provisions name different entities from which the editors/broadcasters shall be independent, i.e. from the government, from political, economic, social groups, etc. In many cases general provisions of editorial independence become more explicit in the context of norms aiming to regulate commercial communication, advertising and sponsorship and their separation from editorial content (CZ, DE, FI, HR, HU, IT, NL, NO, PL, RS, SE, SI, SK, UK).



#### *Impartiality / objectivity*

In addition to *editorial independence*, the criterion *impartiality/objectivity* (e.g. balanced reporting, where information must not favour one side and all parties involved should be able to present their opinion) is that whose safeguard is best covered by media law throughout the member states. Only FI and SI have reported not having measures in that regard. Synonyms like *neutrality and pluralism* occur for this category in legislative texts. In Austria, for example, a diverse jurisprudence has been formed over the last years on the definition of *objectivity*. Some NRAs have pointed out that *impartiality/objectivity* are especially required by law in relation to news, political and current affairs programmes (AT, CY, CZ, HU (linear media services), IT, MT, RO, SK, UK). In their answers NRAs have given hints to indicators for defining *impartiality/objectivity*, which are crucial for application. In some cases, the lack of a clear definition has led to issues in application or in unclear cases being brought to court (==> see below part 3.1.2.2 “Application of the measures”). Such indicators are respecting the formulation of different opinions, or showing different views with regard to the variety of opinions represented in public life (AT, DE, EL, FR, IT, LT, LU, MK, PT, RO, SK, UK). Some NRAs point out that minority views shall also be taken into account (DE, IT). Further indicators are the separation of comments and opinion from fact (ES (PSM), HR, AT, DE, LV, PT, RS) and contextualising news and programs (ES, FR).



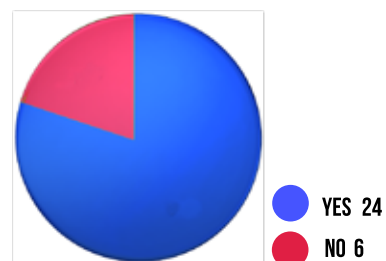
*Selected indicators used for defining impartiality/objectivity*

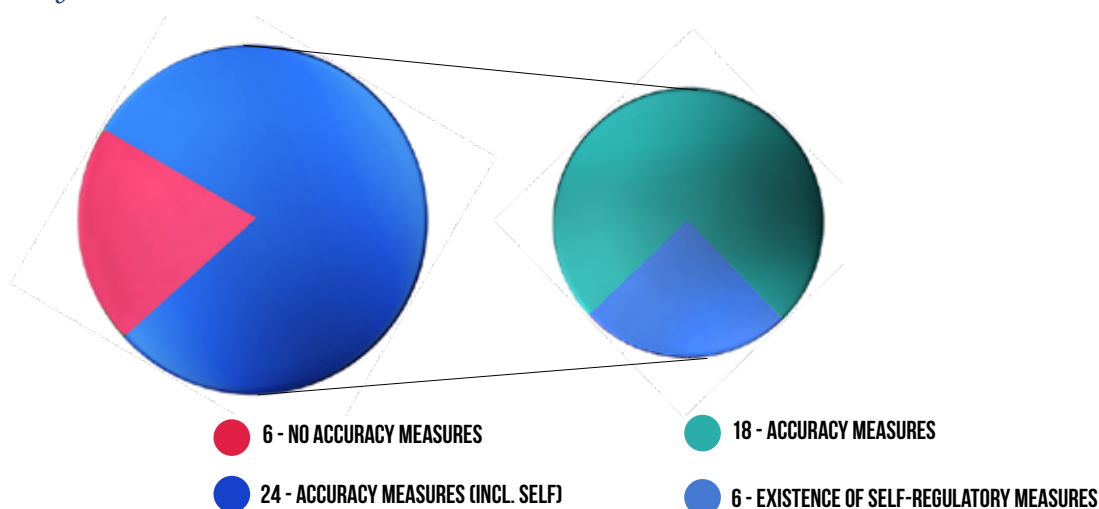
Since the right of reply may be linked primarily to the criterion of impartiality and objectivity, NRA's answers regarding the legal basis for concerned persons in the member states is outlined herein. Almost all NRAs have referred to measures available to concerned persons (except NL and HU). A great number of NRAs also mentioned the right of reply as a means of rectifying inaccurate news coverage in the field of accuracy [see also under accuracy].

**Accuracy**

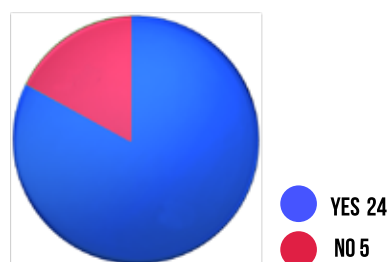
Most NRAs have reported having measures in terms of *accuracy* (e.g. facts must be presented according to reality) in their legal framework (except CZ, HU, LU, SI, BE, FI). CZ points out, however, that given provisions have implicitly embedded obligations of providing accurate, factually correct and complete information. SK reports that accuracy is considered the most important aspect of quality in any journalistic work

even without legal provision referring to accuracy as an individual duty, with its application falling under the term *objectivity*. MK only holds those for PSB. In LV the Latvian parliament only recently accepted amendments for the Electronic Mass Media Law including the term accuracy. Thereafter, facts and events are reflected not only honestly and objectively, but also accurately. Some member states refer to self-regulatory measures for this category of media plurality – mostly in the form of Codes for Press/Journalists (BE, FI, NL, NO, PT, UK). Synonymous terms used for *accurate* include *rigorous* (ES), *correct* (HR), *complete* (IT, RS, EL, RS) and *factual* (in the former Hungarian legislation and existing case-law (==> see *ch. 3.1.1.2 Basic analysis of the categories*). Some indicators defining accuracy mentioned by NRAs are very closely linked to *transparency* i.e. the clear division between opinions/commentaries and facts (MT, AT, HR, PT, UK) and proof of sources [see also under *transparency*]. Concerning specific genres, UK, for example, reported that there is a requirement that factual information in other programmes does not materially mislead in addition to the requirement for news programmes to be duly accurate.



*Accuracy measures in ERGA member states**Veracity*

Even if most NRAs (exceptions: HU, LU, SI) have named measures relating to *veracity* (e.g. presented information must be truthful) only exceptionally are the provisions specific. Some NRAs have indicated aspects of *veracity* that can only be deduced indirectly from the legal framework. CZ, for example, mentions that it can be argued that factual *accuracy* is required to meet the legal obligation of providing objectivity and balanced information. As most of the NRAs have linked their answer for *veracity* to the provisions covering other aspects of media plurality, especially *accuracy*, one can state that the aspects of *accuracy* and *veracity* appear not to be precisely distinguishable from each other. Synonymous terms used in this context are *realistically* (HR), *truthfully* (HR, ES, AT, DE, PL, RS, IT: “truthful presentation”), *honestly* (LV), *true* (EL) and *fair* (LT). In line with the category *veracity* some NRAs have mentioned the requirement of verification of news sources (DE, PL, PT). As in most categories, specific measures are also laid down in a sub-legal framework for *veracity*. The IMPRESS Code in UK, for example, demands that publishers take reasonable steps to ensure that journalists do not fabricate sources. The Slovak Act on Broadcasting does not specify provisions relating to *veracity*. According to SK’s answer, this is firstly because the verification of the information by the CBR would be a very complicated process and secondly because the act specifically details a correction mechanism for untruthful information in which case the resolution of any disputes is entrusted to general courts. SK also referred to a finding of the Constitutional Court of the Slovak Republic that the right to receive information also includes unreliable information or that representing a particular world view as a democratic element of free society and means to empower the critical thinking and the will to find and adopt other views on the subject.<sup>43</sup>

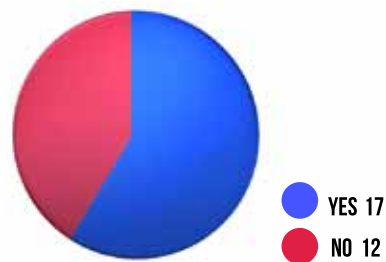


<sup>43</sup> Ruling of the Constitutional Court of the Slovak Republic II. ÚS 307/2014

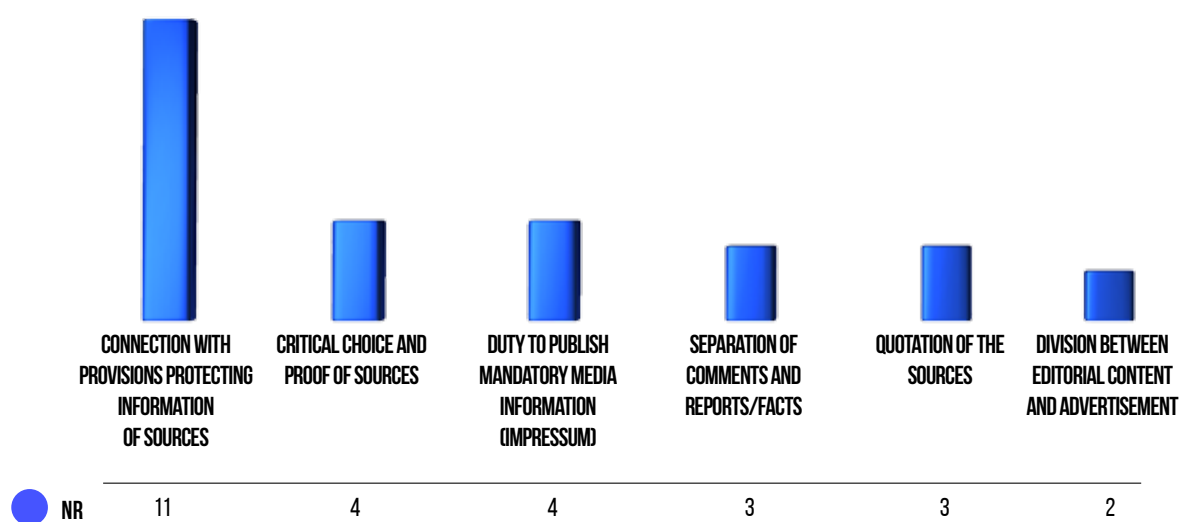


### Transparency

In about half the member states there exist legal requirements concerning measures for safeguarding *transparency* (e.g. it must be clear who the source of the information is). CZ and SK add that, despite the absence of a legal definition of *transparency*, being transparent in dealing with sources is part of journalistic standards and is connected to the concepts of being objective and balanced in informing the public. Several NRAs additionally point to self-regulatory measures in codes of press ethics and standards that concern requirements of *transparency* (i.e. BE, CY, IT, NO, NL, PL, PT, UK (IMPRESS, IPSO)). Following EE's media law it is not compulsory to clearly distinguish the sources of information but there is a right of the author of the work to claim for such recognition according to its Copyright. Among other indicators mentioned regarding *transparency* are: quotation of the sources (IT, HR, PT), critical choice and proof of sources (NO, DE, PL, PT), transparency on personal interests of reporters and presenters (UK, RS), clear separation of comments and reports/facts (DE, PT, UK) as well as transparency on the obvious division between editorial content and advertisement (PT, UK). *Transparency* of the broadcasters/providers and the duty to publish mandatory media information is also mentioned in the form of an impressum (CZ, RS, UK, RS). Again, an exact definition of *transparency* has its limits; for example, the demarcation of *accuracy* and *veracity* is sometimes hard to define. Numerous NRAs emphasise that this category of media plurality must be necessarily regarded in connection with provisions protecting information of sources with regard to *transparency* (CZ, FI, EE, EL, HR, IT, LT, MK, NO, UK, PT). However, IT (according to the Deontological code of the duties for journalists) and PT specify that *transparency* includes noting such circumstances in the event that the sources ask to remain confidential.



### Selected indicators used for defining transparency



### 3.1.1.4 Specific measures for PSM

Only IE, RO and CY lack specific additional measures for public media services when it comes to issues of media pluralism. The other NRAs have pointed out that public service broadcasters in their countries have more detailed provisions to adhere to, especially concerning news and current affairs programmes. This is mostly ascribed to the specific function that is allocated to PSM in the member states and their public service remit. In the legal acts containing specific obligations for PSM it is often outlined that the aim of the public service is to enable the members of society to build their substantive and free opinion by representing all points of views in all areas of life of the respective country and beyond. For that reason the obligation of balanced coverage is at the heart of media pluralism obligations for PSM in most member states. The criteria of *independence*, *veracity*, *accuracy* and *transparency* too are specified in the respective statutes. However SI and HU have pointed out that the provisions regarding PSM serve more as a general guidance than a basis for official procedural cases. AT quoted that there is extensive case law on internal media plurality relating to PSM.



The image in society that the PSM programmes shall provide applies to balanced coverage of voices and views in general but also to balanced coverage of the political parties. FR, for example, has indicated that free air time is annually allocated under CSA's (FR) supervision on public service channels to political parties sitting in the parliament and trade unions. In addition to the legal framework of media law, a great number of NRAs have also indicated additional codes and internal guidelines for the broadcasters that contain even more specific requirements of media plurality (CZ, DE, HR, HU, FI, NL, NO, UK). Furthermore, in IT, the specific application of the principles for PSB contained in media law is drafted by a parliamentary commission. The ORF Act states that an editorial agreement has to be concluded between the PSB and a representative body of journalistic staff in order to comply with journalistic diligence. In this case, a self-regulation tool of the journalistic staff is competent.

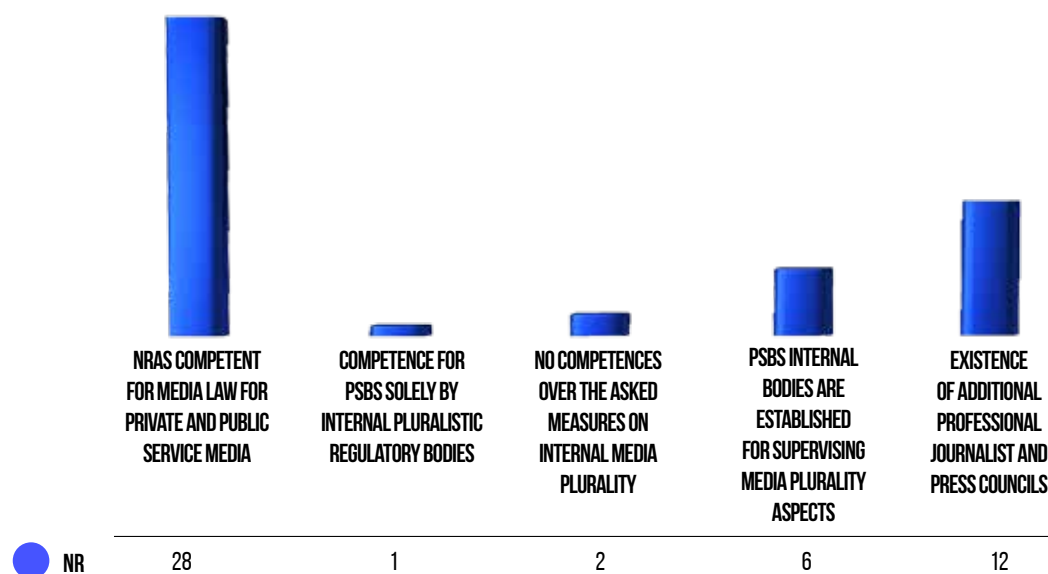
### 3.1.2 NRAs competencies and application issues

#### 3.1.2.1 Competences and basic principles

##### *NRA's competencies*

NRAs are competent in monitoring compliance according to provisions in the respective applicable media law, mostly for both private and public service media (exception: DE where State Media Authorities are competent for commercial broadcasters and the internal pluralistic regulatory bodies for PSB). FI and SI, however, claim to have no competences over the requested measures on internal media plurality measures. With regard to PSB, additional internal bodies have been established for supervising media plurality aspects in a number of member states (CZ, EE, ES, FI, LT, SK). In UK, Ofcom enforces the content standards set out in the Broadcasting Code in relation to BBC public service linear TV and radio content, and BBC public service on demand programmes services<sup>44</sup>. Ofcom and the BBC have also entered into an arrangement<sup>45</sup> in relation to BBC Online material (such as web pages containing text and related content). Under this arrangement, Ofcom has no enforcement powers in relation to BBC Online material but is required to consider and give an opinion as to whether the BBC has observed the relevant BBC Editorial Guidelines in relation to such material. Professional journalist and press Councils often have additional responsibilities concerning self-regulation (BE, EE, FI, HR, IE, IT, LU, NO, PL, PT, RS, SE).

##### *NRA competencies*



● NR

<sup>44</sup> All other public service on demand programmes services have to comply with the relevant statutory rules ([https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0022/54922/rules\\_and\\_guidance.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0022/54922/rules_and_guidance.pdf))

<sup>45</sup> [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0021/101892/bbc-online-arrangement.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0021/101892/bbc-online-arrangement.pdf)

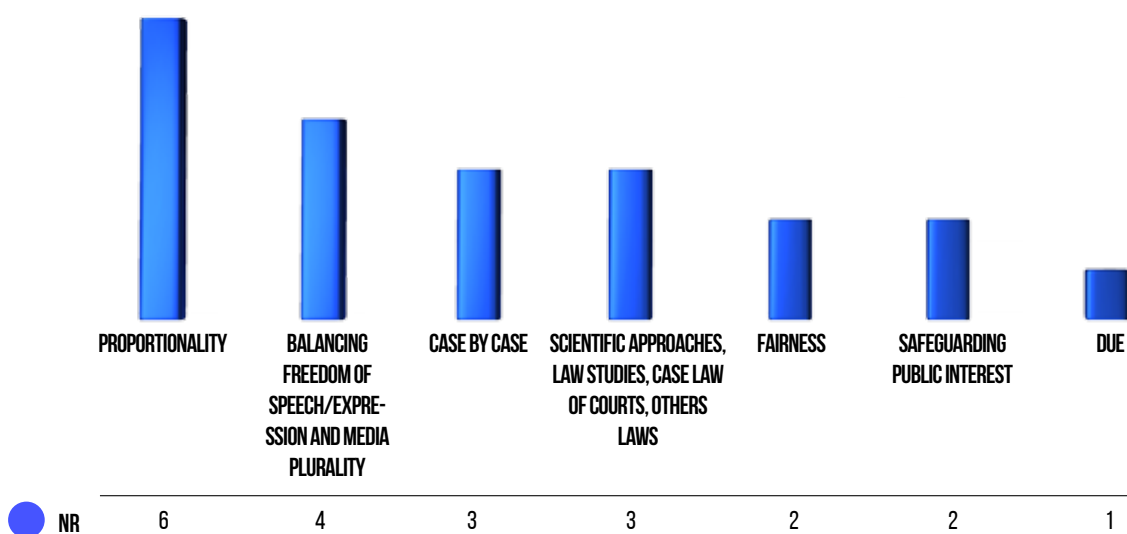
In the scope of these competencies, NRAs have amongst others responsibilities for licensing private radio and television stations, managing broadcasting frequencies, monitoring compliance with advertising regulations, media content, and the media landscape as a whole. In some member states, there is a clear division of competencies in the supervision of plurality requirements in election and non-election periods. Alternatively, or in addition to this, other (state) bodies can have an additional role (==> see section 3.2 "Tools during election period").

Some NRAs have raised the point that their authority is not the last instance for some questions of media plurality, but that these may be appealed in the judicial system (FR, IT, MK, SK).

### ***Basic principles***

Only 18 of 31 NRAs replied to the question regarding the basic principles they apply in practice in the area of media plurality. In the most part, those who did respond referred to the principle of "proportionality" (CZ, ES, NL, SI, RS, UK). FR and IT have furthermore indicated the principle of "fairness", IT stressing that "similar situations must be treated in a similar way" in current affairs programmes. UK names "due" as an important qualification for the media plurality concepts of accuracy and impartiality, meaning adequate or appropriate to the subject and nature of the program. Some also added the principle of "safeguarding public interest" (SI, SK). PT, SK, SI and UK have explicitly pointed to "balancing freedom of speech/expression and media plurality" as a decisive overall principle. Few NRAs observe that the question of which basic principles are to be applied, must be performed in a case by case basis (HR, PT, SK). Regarding relevant sources/orientation point to extracting basic principles and methodologies, NRAs and others have named scientific approaches of media, administrative and offence law studies (CZ), case law of courts (CZ, EL) and others laws (LT).

### ***Basic principles applied in the area of internal media plurality***



### *3.1.2.2 Application of the measures*

#### *Application of the measures*

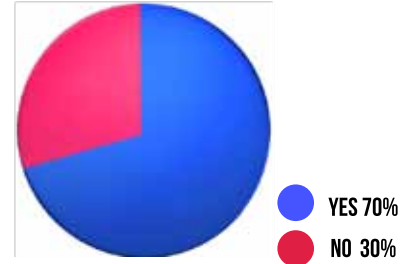
In the practice of application, NRAs have to monitor fulfilment of the requirements of media plurality based on collected data or in the wake of complaints. Most NRAs had not encountered any issues with applying the existing measures in their countries. Those who had, mainly raised the problem of lacking definitions and clear criteria for defining the categories of media plurality (e.g. CZ, PL, SK). CZ even reports that Czech professionals have claimed it to be an unachievable ideal to find clear definitions for objective and balanced informing. SK says that even court decisions are unclear in that regard. IT also gave an interesting example of a court decision: AGCOM (IT) had ordered RAI to balance information in two current affairs programs based, above all, on quantitative criteria. The court in this case challenged the authority on the absence of a “qualitative” evaluation. As a result, AGCOM has elaborated qualitative criteria to take account of this. A court decision in EL stated that observance of the principle of media pluralism in the coverage of party activities (in non-election periods) should not only be based on mathematical criteria of their parliamentary power but also within the framework defined by the journalistic freedom enshrined in the constitution.

#### *Evaluation of effectiveness and impact on the measures in place*

About three-quarters of NRAs do not currently work with a system of evaluation of effectiveness and impact on the measures in place. Those who do, however, refer to the analyses mentioned above concerning programme monitoring and the evaluation of the development laid down therein over time. However, these analyses describe the situation rather than assess the effectiveness of the regulations. IT and BE point to the development of the number of complaints and sanctions for evaluation effectiveness and impact. Only IE has claimed to review its policies and procedures every 3 to 5 years involving stakeholder input.

***NRA's role in measurement***

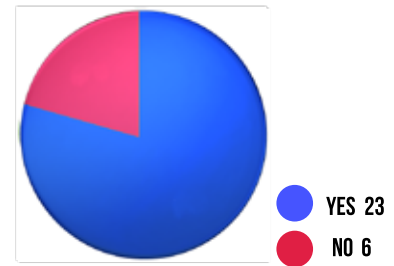
For functioning monitory systems, NRAs require a good evidence base. 70 % of NRAs have indicated that they have a role in the measurement and analysis of internal media plurality in their countries. Some NRAs have mentioned measurement and analysis as a means of proving requirements in the licensing process; others refer to the measurement and analysis of media plurality as part of their general task of surveying the fulfilment of programme obligations and their programme monitoring tasks. Some NRAs generate internally and externally issued surveys based on these analyses regularly (HU and IT: monthly, EL: every three months, LT: every two years, IE and CY: every three years, UK: ad hoc). IT claimed that external monitoring centres perform 24-hour monitoring of Italian TV and radio programming for 15 national TV stations and 15 radio stations. The recorded programs are archived in a dynamic database according to AGCOM monitoring criteria. While AGCOM monitors the programs as such, Ofcom conducts regular research about viewers' understanding of and support for the existing internal plurality rules. For some NRAs, this regular measurement is only required in terms of PSB programs (BG, ES, NO: annual report).

**Types of measurement activities by NRAs**

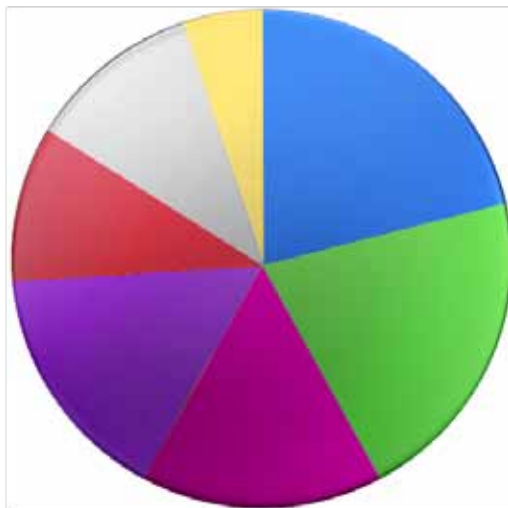
proving requirements in the licensing process
surveying the fulfilment of program obligations
internally and externally issued regular surveys
research

### *Lighter-touch approaches*

Only six NRAs responded to not using other lighter-touch approaches (e.g. research, self-regulatory measures, guidelines developed by the regulator, negotiations or similar) for complementing hard regulation on media plurality (AT, CY, ES, HU, MT, RS)<sup>46</sup>. When asked for lighter-touch approaches, NRAs have indicated the following: Workshops/classes/discussions with media professionals/stakeholders (MK, BG, PL, UK) or regular contact and information on requirements of media pluralities (FR, IT, UK) and information about decisions taken (PT, SK, UK), mediation (PT) and approving guidelines for broadcasters (IT, FR). MK and UK answered in regard to lighter-touch approaches that they use by means of publicly naming and shaming breachers. A number of NRAs indicated systematic analysis/research and public presentation of results as lighter-touch approaches (PT, LT, PL, SK).



### *Types of light-touch approaches used by NRAs*



<sup>46</sup> In Sweden it is the Swedish Press Ombudsman and the Swedish Press Council, which is a self-regulatory body independent from the Swedish Press and Broadcasting Authority, that handles complaints on editorial content of newspapers, magazines and these companies' websites.

### *Summary conclusions*

- in terms of general rules, all NRAs have some concrete measures aimed at protecting these aspects of internal media plurality. Of course, not all categories of measures are available in all countries. It seems, however, that these measures are widespread in every assessed category, ranging from those available to almost all NRAs (editorial independence, impartiality and right to reply), to those available to most of the NRAs (accuracy, veracity and light touch approaches) and finally concluding with widespread measures in the area of transparency
- applying the requirements on media plurality measures requires weighing against other rights such as the constitutional right of freedom of speech, the protection of sources, and not least with the media plurality category of editorial independence
- rather general requirements are often specified in a sub-legal framework, self-regulatory approaches and media codes (often set by Press and Journalist Councils)
- in some cases, detailed categories of media plurality could be considered covered by umbrella terms (i.e. balanced coverage) and have no explicit occurrence in media law provisions - detailed categories of media plurality are expected to be “naturally” part of journalistic (ethical) standards



*Number of cases in the area of internal plurality connected to the measures outside of election periods*

Number of cases in 2017 non-election periods* (CPS: Complaints; OC: Opened cases; BR: breaches/infractions, SCT: sanctions)		Categories of reply
<i>NRAs that indicated to have had no cases in 2017: AT, EE, EL, ES, IE, LU, SI</i>		
BE	CPS: 2 OC: 0 BR: 0	Populist, demagogic approach in some debates; party not invited to the debates of the PSB
CY	3	Issues of internal plurality and impartiality
CZ	CPS: 400 (19 requests for explanation, 9 warnings, 3 SCT)	Objective and balanced information
FR	10	
HR	16 (16 cases were considered but without sanctions)	Objectivity/impartiality = 7 cases Accuracy/Veracity = 9 cases
HU	74 cases of internal plurality 8 more closed proceedings at second instance by passing a decision	Upholding and affirming the request (thereby establishing the fact of violation) → Office: 0; Media Council: 3 Dismissing the request on its merits → Office: 6; Media Council: 45 Dismissing the request without substantive assessment of its merits → Office: 3; Media Council: 1 Terminating the procedure → Office: 2; Media Council: 14
IE	The BAI considered 79 complaints in relation to fairness objectivity and impartiality in news and current affairs. Less than 5% of the complaints received in 2017 were upheld.	
IT	OC: 6 (closed without sanctions)	
LT	OC: 4	All regarding information not to be published (incitement to hatred)
MT	12	
PL	from 10/2016 to 4/2018: CPS: 298 (regarding news programmes) CPS: 654 regarding current affairs programmes	among others: manipulation of facts, unreliability in presenting information, lack of objectivity, unauthorized commentary, omission of important information, hate speech, unconfirmed information.
PT	CPS: 10 (4 received in 2017; 6 before 2017) CPS still under analysis: 3	Complaints analysed in 2017: 10 - Dismissal/Not in breach: 10
RO	21 summons 25 fines	Breaches of provisions regarding ensuring the correct information and pluralism
SK	CPS: 111 OC: 16 (Article 16 (3) b (objectivity and impartiality) + 4 (Article 16 (3) a universality of inform. and plurality of opin.) BR: 9 (all of them BR of the Article 16 (3) b objectivity and impartiality)	
UK	Ofcom cases: approximately 2,329 complaints, of which 32 were taken forward for investigations. 4 of the investigations are still in progress. The other investigations resulted in: 20 'in breach', 2 'not in breach', and 5 'not in breach with guidance' decisions (Ofcom wrote to the broadcaster to give guidance). There was also 1 investigation for which we did not record a breach, but discussed the issues raised by the investigation in a meeting with the Licensee.  Impress cases: 6 (Please note that IMPRESS is a recently established press regulator, which, at the time of the 2017 election, had just started to handle complaints. For this reason the figures are generally quite low) (Information provided to Ofcom by Impress).	Ofcom cases: 148 complaints under Sections Nine and Ten of the Code (commercial references) that could potentially correlate to, for example, the category in this survey of 'transparency'. 201 complaints relating to Fairness and Privacy, some of which would correlate with the category on this survey 'Concerned persons' 549 complaints relating to Rule 2.2 (material misleadingness) 1,431 complaints relating to due impartiality  Impress cases: 4 related to accuracy, 1 related to privacy and 1 was a claim for defamation. (Information provided to Ofcom by Impress). IPSO CASES: Clause 1 (Accuracy) – 10,417 Clause 13 (Financial journalism) – 213 N.B. The number of complaints identified above is all complaints made to IPSO in 2017 under Clause 1 (Accuracy) or Clause 13 (Financial Journalism) of the Editors' Code of Practice. IPSO does not record the theme of the complaint, so it is not possible to identify how many of these complaints relate to concerns about the coverage of elections. In addition, complainants may make a complaint under more than one Clause of Code. (Information provided to Ofcom by IPSO.)

*Detailed overview of general measures outside of an election period*

(The table is for illustration and basic overview only. For a more precise and comprehensive overview of the measures please consult the text of this chapter)

COUNTRY	MEASURES SPECIFICALLY AIMED AT PROTECTING EDITORIAL INDEPENDENCE OF THE MEDIA	MEASURES IN THE AREA OF IMPARTIALITY/PARITY OF ACCESS TO MEDIA AND OBJECTIVITY.	MEASURES IN THE AREA OF ACCURACY	MEASURES IN THE AREA OF VERACITY	MEASURES IN THE AREA OF TRANSPARENCY	SPECIFIC MEASURES IN PLACE ON THE REGULATORY LEVEL IN RELATION TO INTERNAL MEDIA PLURALITY AIMED AT TACKLING THE PROBLEM OF DISINFORMATION	MEASURES AVAILABLE TO THE CONCERNED PERSONS	OTHER AVAILABLE MEASURES IN THE AREA OF INTERNAL PLURALITY	LIGHTER-TOUCH APPROACHES.	MORE SPECIFIC MEASURES FOR PUBLIC SERVICE MEDIA	APPLICATION OF THE RULES IN THE PREVIOUS CATEGORIES APPLYING ONLY TO SPECIFIC GENRES OF PROGRAMMES
AT	x	x	x	x			x			x	
BE	x	x					x		x	x	x
BG	x	x	x	x			x		x	x	
CY	x	x	x	x			x				x
CZ	x	x		x			x		x	x	x
DE	x	x	x	x	x		x		x	x	
DK <sup>47</sup>										x	
EE	x	x	x	x			x	x	x	x	x
EL	x	x	x	x	x		x	x	x	x	
ES	x	x	x	x	x		x			x	x
FI	x						x		x	x	
FR	x	x	x	x	x	x	x	x	x	x	
HR	x	x	x	x	x		x		x	x	
HU	x	x						x		x	x
IE	x	x	x	x	x		x		x		
IT	x	x	x	x	x	x	x		x	x	x
LT	x	x	x	x	x	x	x	x	x	x	
LU	x	x					x	x	x	x	
LV	x	x	x	x			x		x	x	x
MK	x	x	x	x			x	x	x	x	
MT	x	x	x	x	x	x	x			x	x
NL	x	x	x	x	x						
NO	x	x	x	x	x		x		x	x	
PL	x	x	x	x	x		x		x	x	
PT	x	x	x	x	x	x	x	x	x	x	x
RO	x	x	x		x	x	x	x	x		
RS	x	x	x	x	x		x			x	x
SE	x	x	x	x			x		x	x	
SI	x						x		x	x	x
SK	x	x	x	x	x		x		x	x	x
UK	x	x	x	x	x		x	x	x	x	x
	30	28	24	24	17	6	28	10	23	27	14

<sup>47</sup> Denmark noted that there are general rules on i.e. fairness and impartiality in the Danish Radio and Television regulation, but The Danish Radio and Television Board has limited competences with regard to these, thus answering the questionnaire in detail was not possible. In relation to many of the issues it is instead the Press Council, who would be the competent authority.

### *3.2 Tools during the election period*

#### *3.2.1 Introduction*

The evolution of the media landscape, the role played by the internet, and the evolution of digital technology, in particular, have certainly contributed to ensuring more effective participation of all political actors in the debate. While this has been achieved by providing more information channels, there remains a fundamental need to ensure effective protection of pluralism on the various media in electoral campaigns.

Recent research on media consumption, also illustrated in chapter 4, shows that the demand for information is satisfied by different means. While television is still the principle method of obtaining information on the political situation in many countries, digital platforms and, in particular, the major social networks, have assumed a leading role as means of access to the information used by citizens to form an opinion in view of the vote. In the Digital News Report 2018<sup>48</sup>, carried out by the Reuters Institute for the Study of Journalism, it emerged that television remains the most widely used source of news in a lot of European countries such as France, Germany, Italy, Bulgaria and Croatia. It was also found that viewership in some cases continues to fall year on year in favour of Internet and online media (including social media); in some countries in fact, according to the research, television consumption is equal to that of online media and in some cases its use has been superseded by them as in Spain and Greece.

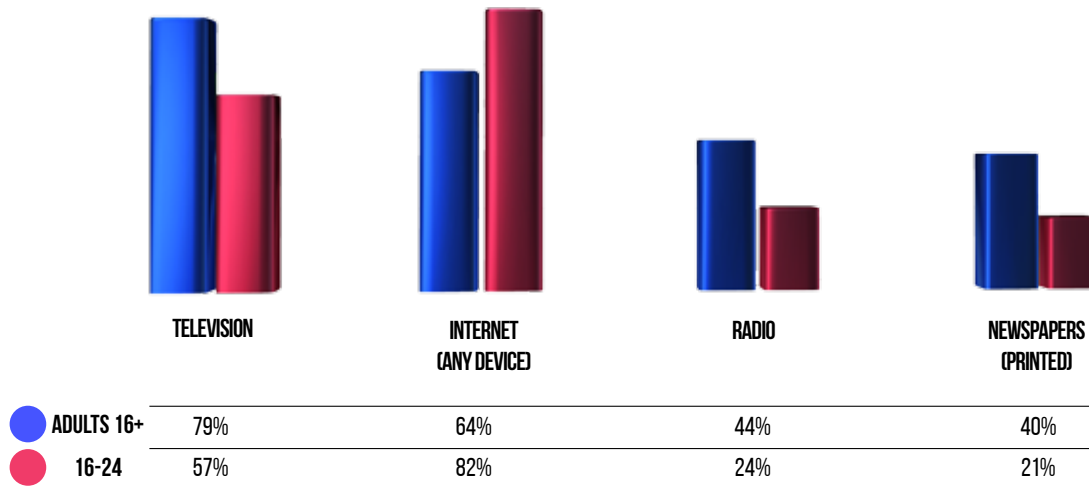
Similarly, in the “*News consumption in the UK - 2018*” study, carried out by Ofcom, and the “*Report on the consumption of information*” carried out by AGCOM, it emerged that television is widely used as a source of information, especially during electoral campaigns in the UK and Italy. TV is currently the most-used platform for news by UK adults (79 %)<sup>49</sup>, followed by the internet (64 %), radio (44 %) and newspapers (40 %). However, the internet is the most popular platform among people aged 16-24 years (82 %) and ethnic minority groups (73 %). According to AGCOM research<sup>50</sup>, about 70 % of the Italian population use the TV to inform themselves every day while 42% use the Internet. Television is indicated as the preferred means to form political-electoral choices by 50 % of Italians with the right to vote, followed by the Internet, favoured by 34 % of Italians.

<sup>48</sup> Digital News Report 2018- Reuters Institute for the Study of Journalism

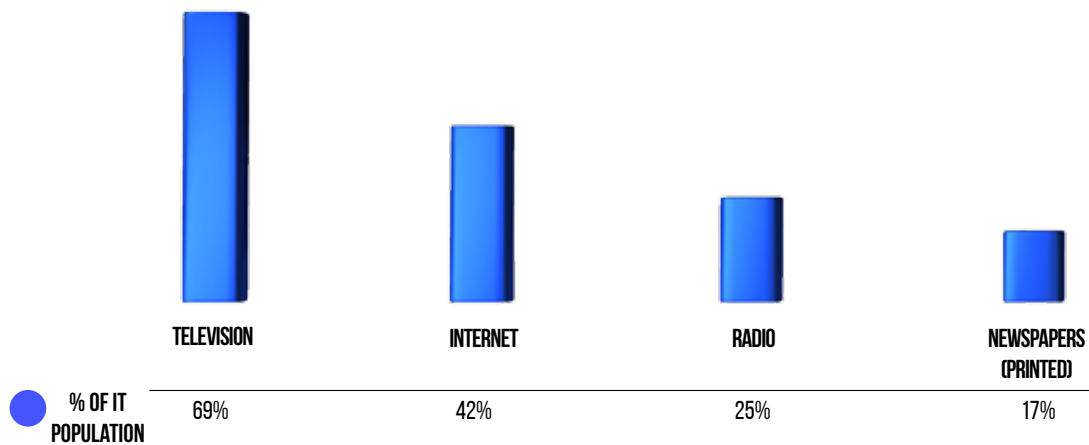
<sup>49</sup> News consumption in the UK: 2018 - OFCOM 2018;

<sup>50</sup> Report on the consumption of information - AGCOM, 2018;

*Use of main platforms for news 2018 - by demographic group in UK (OFCOM)*



*Use of media for news IT (2017) (AGCOM)*



For this reason, and considering their potential influence, broadcast media have been subject to detailed and rigorous regulation during election periods. This has been in order to ensure the efficacy of protection of pluralism for all the “political representatives” participating in the political-institutional debate and must, therefore, provide access to the media in order to let the public know their positions. The fundamental principle underlying almost all legislation of all the countries involved is that every political representative has to be ensured equal treatment by broadcasters. In fact, almost all have specific regulations for the electoral campaign aimed at traditional broadcasters, albeit without the same legal weight in many cases. Only five NRAs (AT, FI, NL, SE, RS) declare that there is no specific legislation for electoral periods in their countries.

Most countries (22)<sup>51</sup> further provide specific rules for the public service. This guarantees strict compliance with the principles established to protect the pluralism of information, due to the performance of the public service mission.

Regulation of political advertising and the transmission of polls are subject to scrutiny in most countries. In particular, political advertising (including paid), is forbidden in some countries, in others it is permitted according to some rules. Also, diffusion of polls is allowed with the exception of the last phase of the electoral campaign, when it is forbidden, even if the period of the prohibition changes; in fact, different rules are foreseen for the “moratorium”.

Considering the growing relevance of the internet and, in particular, of social networks as a means of information used for influencing the political debate, two NRAs, the French CSA and the Italian AGCOM, have considered it urgent to start a course of intervention of moral persuasion and light-touch regulation to tackle the issue of disinformation on digital platforms.

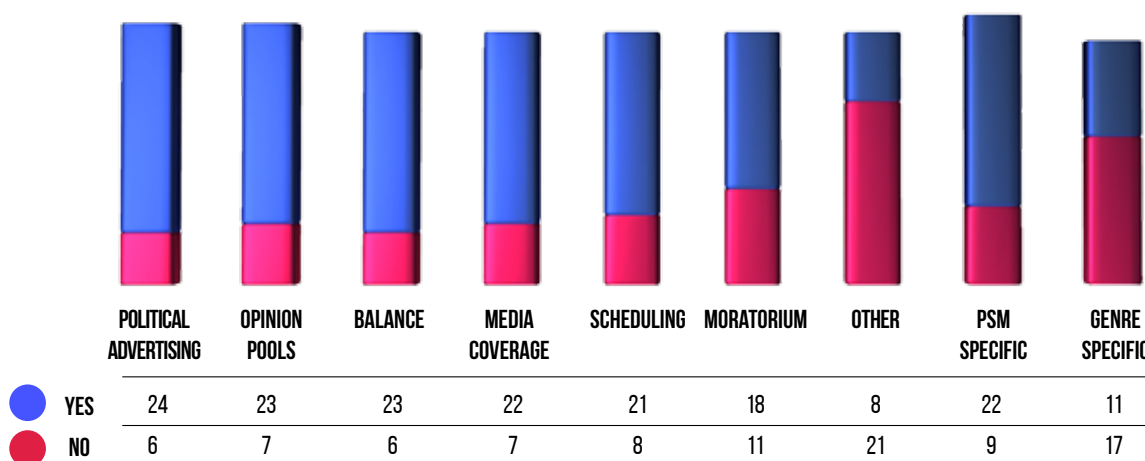
A final observation should be made on what is considered an electoral period. The definition of electoral period or of the period in which the broadcasting time can be dedicated to the elections is often related to the different time scales in the regulatory provisions of the respective countries. For example, Czech public service broadcasters (Czech Television and Czech Radio) must allocate broadcasting time to all registered political parties for free during elections to national and European parliament over a period of 16 days pre-election until 48 hours prior to polls opening. In the Slovak Republic, the Act on the election campaign sets the allowed period for the broadcasting of the political advertisement for selected types of elections (Elections to the National Council of the Slovak Republic, the European Parliament and the President of the Slovak Republic). This period starts on the 21st day before the election and ends 48 hours before the election day. In Portugal, the election period covers electoral pre-campaign and campaign time. The pre-campaign starts on the day the election date is defined, and the paper is officially published. That must occur at least 60 days (President of the Portuguese Republic, National, Regional and European Parliaments) or 80 days (Local elections) before the election day. The pre-campaign stops when the campaign period begins, that is to say, in the 12<sup>th</sup> (Local elections and referendum) or 14<sup>th</sup> day (President of the Republic, National and Regional Parliament) before the election day and stops at the 24<sup>th</sup> hour of the second day prior to the election day.

<sup>51</sup> Except Austria, Belgium, Cyprus, Czech Republic, Ireland, Luxembourg, Malta, Romania, Sweden.

### 3.2.2 Measures during electoral periods

As mentioned before, almost all NRAs stated that their countries have specific regulations for electoral campaigns. Five NRAs (**AT, FI NL, SE, RS**) declare that there are no specific provisions for electoral campaigns in their countries.

#### Overview of internal plurality measures during elections in ERGA countries



In **Austria**, for public service media, only a voluntary ban on offline political advertising is in place.

In **Finland**, the public service (YLE) follows its own self-regulation called the “Ethical Guidelines” for the production of programmes and contents. These guidelines include a specific section for pre-election programmes and presentation of candidates.

Furthermore, in almost all countries (22), there are specific law measures for Public service media; On the contrary in AT, BE, CY, CZ, IE, LU, MT, RO, SE, RS, they are not present.

It also needs to be stressed that in some countries NRAs have the role of drafting the rules for the electoral campaigns under law provisions, in other cases, state laws are in force or different subjects are involved in drafting the rules.

Eight countries (BE, FR, IT GR, PL, RO, UK, MT) fall in the first category as the NRAs have tasks of drafting the rules and, in some occasions, to the control of their respect, also thanks to a monitoring activity of programming like in the case of France and Italy (measurements of programme contents like speaking times of political representatives).

In **Belgium**, the rules are adopted in a coregulatory process and become mandatory when adopted by the government. They apply to both private and public services. They are periodically evaluated.

In particular, in **France** under article 16 of the law of September 30, 1986, (Law on freedom of communication) the CSA's charges include guaranteeing pluralism during election periods. In deliberation 2011-1 of January 4, 2011, French CSA set forth specific rules for this purpose

applicable to the treatment of election news, and, in particular, to political figures' access to the air. For each election campaign, CSA issues a further recommendation setting forth additional specific rules to be applied by broadcasting media, in particular in their treatment of election news.

In **Italy** political pluralism is regulated by the law<sup>52</sup> of 22 February 2000, n. 28, the so-called *par condicio* law, that provides rules to guarantee that every political representative has to be ensured an equal treatment by broadcasters and has to be given a balanced access to information programs (news and current affairs) and to the so-called “political communication programs”. Specific application rules of the principles of the law N. 28/2000 are drafted by the AGCOM (for commercial broadcasters) and by Parliamentary Commission for general address and supervision of radio and television services (for Public Broadcasting service) for each electoral period. The acts of Agcom also contain rules for political opinion polls, institutional communication and political messages on the press and for sanctionary procedures for both public and commercial broadcasters.

In **Greece** according to article 45 of Presidential Decree n. 26/2012, all measures concerning presentation of political messages during the election period by electronic media are decided by ministerial decision after opinion of the National Council of Radio and Television and the Multiparty Electoral Commission. Because of the extremely short deadlines, rules are in practice prepared by the Electoral Commission and the NRA gives only its formal opinion.

In **Poland**, the regulations on broadcasting media during the election periods are contained in different law texts and several regulations and special communications issued by KRRiT (NRA - National Broadcasting Council). A National Electoral Commission, instead, examines electoral complaints concerning the content.

In **Romania**, according to the Audiovisual Law the Council is authorized “*to issue with a view to the application of the provisions from this Law, regulatory normative decisions in order to accomplish its attributions as expressly stipulated in this Law and mainly in regard to: (...)rules and principles for unfolding election campaigns and those for referendum, in audiovisual services within the frame and for the application of the electoral legislation*”. Furthermore, the Council issues decisions and controls the abidance of the law.

In **UK** OFCOM regulates TV, radio and ‘TV-like’ on demand services. The OFCOM Broadcasting Code applies to all TV and radio broadcasters content and BBC public service on-demand programme services; all non - BBC public service on-demand services also have to comply with Ofcom’s VOD rules. The Code contains rules for the coverage of elections and referendums. In addition, Ofcom Code sets out rules derived from special impartiality requirements other legislation relating to broadcasting on elections and referendums like the Representation of the People Act 1983.

<sup>52</sup> “Provisions for equal access to the media during election campaigns and referendums and for political communication”.

In **Malta**, a specific Directive is issued by the Broadcasting Authority during electoral periods.

In other 15 countries, (HU, EE, ES, DE, LT, LV, PT, SK, CH, NO, MK, BG, CY, RS, SI) instead, the rules are essentially constituted by national laws and their fulfilment is not monitored only by NRAs but also or only by different other bodies.

In **Hungary** in the election campaign period the requirement of respect of the principle stipulating equal opportunities for candidates and nominating organizations, as contained in Article 2 of the Electoral Procedure, is of competence of a National Election Commission that shall proceed at first instance in the election-related matters when the objection is related to a national media. These principles are applied for (printed and online) press products as well, similarly to linear media service providers. This election period regulation and procedure does not touch upon the Hungarian NRA's (NMHH's) general power in the field of balanced coverage concerning linear media services.

In **Estonia** the "Media Services Act" provide rules about the political balance during active election campaigning. Furthermore there are three Acts that contain rules for the prohibition of political outdoor advertising during municipal elections, European Parliament election and Estonian Parliament elections. The fulfilment of these elections acts is monitored by National Electoral Committee and by Police. NRA is responsible only for measures stated in Media Services Act. Internal plurality of PSB is instead monitored by Public Broadcasting Council, who is accountable to Estonian Parliament. The specific rules for reflecting elections in the programme services of Public Broadcasting shall be approved by the Public Broadcasting Council, all general legal requirements apply to PSB as well.

In **Spain** during the election period the Representation of the People Institutional Act 5/1985, of June 19 has set up an independent administrative machinery, aimed at ensuring transparency and objectivity in electoral procedures and observance of the principle of equality. The supervision of obligations related to pluralism are divided according to whether they are part of the electoral period or not. In the election period, the Central Electoral Board is the one in charge of its supervision. Only outside the election period and at state level, NRA (CNMC - Comisión nacional de los mercados y la competencia) is responsible for ensuring and monitoring compliance with the obligations related to pluralism. Besides, the PSB Law sets the creation of the so-called "Information Councils". These councils are the internal bodies in charge of ensuring the objectivity and veracity of the news.

In **Germany** there is a special regime in Germany for balanced coverage in times of elections. In this regard, in general, Art. 5 para 1-3 of the Federal Law on Political Parties (Parteiengesetz) applies which provides for the principle of equality between all parties. The State Media Authorities (DLM) are responsible only for commercial broadcasters; internal pluralistic bodies instead for PSB. The German Media Authorities issued a (legally non-binding) paper giving detailed legal guidance on the rules for political advertising in times of elections.



In **Lithuania** each election procedure must follow specific laws on elections that contain the rules for broadcasting programmes before and during the election period. The Central Electoral Commission (CEC) is a permanent supreme state institution, which organises and conducts elections. The body responsible for the Lithuanian PSB is its Council. The Radio and television Commission is an independent body accountable to the Parliament which regulates and controls activities of broadcasters of radio and/or television programmes and providers of on-demand audiovisual media services.

In **Latvia** during electoral periods “Pre-election Campaign law” declares different measures. Also the “Guidelines for Electronic Mass Media law enforcement” specify measures for news, informative documentary and discussion broadcasts, especially in the pre-election period. NRA is responsible for these measures.

In **Portugal** media coverage during election periods and electoral propaganda using commercial media is ruled by the Law No. 72-A/2015, 23rd of July 2015. The law applies to all media under Portuguese jurisdiction (TV, radio, print press and online media), apart from political publications (biased by nature). There is a cooperation between the NRA (ERC-Entidade Reguladora Para a Comunicação Social) and CNE – National Electoral Commission. The law establishes that all candidates that feel biased by the journalistic coverage during election periods may complaint to CNE. After receiving the complaint CNE has 48 hours to analyse it and report the decision to ERC. Afterward, ERC deliberates taking into account the Law and all the media sector rules.

In **Slovak Republic** the regulation for electoral campaigns is included in the Act of Broadcasting and Retransmission (no 308/2000) that establishes basic duties of a broadcaster and a provider of an on-demand audiovisual media service and in a special *Act no. 181/2014 on election campaign*. CBR (Council for Broadcasting and Retransmission) is the competent body responsible for all the broadcasters licensed in the Slovak Republic but there is also a specific body in Slovakia responsible solely for PSB (the RTVS Council). Anyone can submit a complaint about a breach of the act to the CBR. If a complaint contains facts indicating a violation of the act, the Council shall begin administrative proceedings in the matter. Provided that there has been a breach of the objectivity and impartiality rules, the CBR issues a decision and specifies a sanction.

In **Croatia** provisions concerning the topic of elections are provided in Election Law for the Croatian Parliament and in the rules on the Procedures of Electronic Media with national concession adopted by Croatian Parliament. The State Election Commission is responsible for the rules on the Procedures of Electronic Media. Additionally broadcasters with national concession are obliged to bring the internal act in which will organize the place, the time and the way they will run the programs.

In **Norway** there are specific rules about political advertising (prohibited on television) and political polls (Electoral act). In addition there are specific measures only for the public service broadcaster NRK (NRK's public service remit). The Norwegian Media Authority (NMA) supervises the fulfilment of these rules.

In **FYROM** the rules for the broadcaster's coverage of the elections are stipulated in detail in the Electoral code. The Broadcasters, electronic media (internet portals) that decided to cover the elections are obligated to do that in a fair, balanced and unbiased manner in their overall program, giving the candidates equal conditions for access news, special informative programs, free political presentation and paid political advertising. The Agency is competent for all the measures from the Electoral Code. Furthermore, there are very detailed measures for the news that, during the election campaign, the Public Broadcasting Service is required to provide equitable access.

In **Bulgaria** thematic media content monitoring of the elections is always carried in compliance with Radio and Television Act, as well as the Election Code.

In **Cyprus** the Radio and Television Broadcasters Law of 1998 to 2018 provides rules for licensed television or radio broadcasters to treat equally and without discrimination, especially during a pre-election period, the legislative and executive powers, the political parties, the Presidential candidates, the Members of Parliament.

In the **Republic of Serbia** law on Electronic Media provide that each media service provider is obligated to respect the prohibition of political advertising outside of the pre-election campaign, and during the pre-election campaign to provide registered political parties, coalitions and candidates with representation without discrimination. For print media the responsible body is Ministry of Culture and Information. There is also a self-regulatory body - Press Council. For electronic media the responsible body is the Regulatory authority for electronic media. For PBS the responsibility is divided between the Ministry of Culture and Information (supervision of the Law on Public Media Services) and the Regulatory authority for electronic media (supervision of the Law on Electronic Media).

In **Slovenia** in case of election coverage, the rules are prescribed in Elections and Referendum Campaign Act (ERCA), with the exception of rules for Public Service Broadcaster, where ERCA refers to the special Act. Political propaganda is in general prohibited by special Radiotelevizija Slovenija Act (Article 10), with the exception of election coverage.

In the **Netherlands**, instead, the way and the duration that politicians appear in general radio and TV programmes are not strictly regulated. The same goes for the broadcast of rallies, pre-election meetings or polls prior to the elections. This is considered a matter of editorial choice by the broadcasters and the CvdM (Commissariaat voor de Media), has no legal task to interfere with or monitor these programmes. In the Netherlands political parties are legally entitled to have a certain amount of broadcasting time on TV. Following section 6.1 of the Dutch Media Act 2008, the authority, the CvdM, allocates broadcasting time to political parties

in general and during election periods.

In the **Czech Republic** the same rules apply during the election period as though the year. Nevertheless, PSB's (CT and CRo), within the self-regulatory activity, create their own internal rules for the election period. There is also a specific regulation related to the election spots of political parties.

To notice the case of **Luxembourg** where CLT-Ufa as a commercial broadcaster offers two programmes in the national language (Lëtzebuergesch) for the local population: RTL Radio Lëtzebuerg and RTL Télé Lëtzebuerg. They both have to provide public service obligations as defined in their specification book. As the only PSB in Luxembourg, radio 100,7 fulfils the same mission. The allotted ad time and the choice of the topics for the debates are the result of a prior negotiation between representatives of the parties, the broadcasters and the government's information and press office SIP.

### *3.2.3 The extent, scheduling and the balance of the programmes*

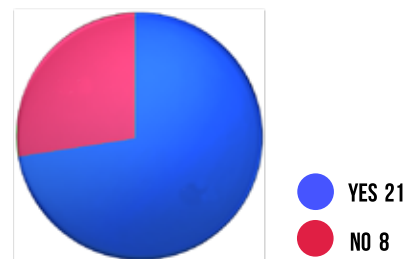
Five NRAs (AT, FI, NO, SE and DK) declare the absence of specific measures regarding the extent and scheduling and at the same time the balance of programming.

In **Luxembourg**, if there are no legal measures, the details on the extent and scheduling of political advertisements and the debates among party representatives are part of a discussion leading to an agreement between the political parties, the media outlets, and the information and press office of the government.

There is also a general requirement for fairness in **Ireland**. The basis for this is to be determined by the broadcasters and subject to review primarily on the basis of complaints received by the regulator. Broadcasters tend to opt for a stop-watch approach if this is not a regulatory requirement.

In **Portugal**, there are no specific rules regarding the extent and scheduling of TV and Radio programmes during the election period. The only stipulation is that of balance, as the law maintains the right of every candidate/candidature to access and to be represented in the media. Media should, therefore, provide the opportunity to a pluralistic public discourse about political issues. The right not to be discriminated against on grounds of political ideas and this position is also part of Portuguese law. Debates in the media for the period of election campaigns must reflect the current composition of the political body of the forthcoming elections. In the interest of editorial freedom, however, other candidates/candidatures may be considered.

Scheduling



Balance



The remaining 24 NRAs speak, instead, about rules that must guarantee the pluralism, impartiality and equal opportunity. In particular, 11 NRAs report on measures regarding the scheduling of electoral programmes, referring the quantity of times that, according to the rules, broadcasters must offer to political competitors (**CZ** in the case of public service broadcasters, **HR, NL, SK, MK for public service, HU for political advertisement, UK, IT, GR, ES, CY**); 5 NRAs report on measures related to the “broadcasting time” of programmes to give political representatives the chance to reach the audience with the same impact (**BE, DE, UK, MK for public service, Hungary for political advertisement in public service media**).

7 NRAs (**ES, FR, IT, MT, LT, UK, NL**) refer to the role that NRAs or specific commissions have in the organisation of the coverage of electoral campaigns. In **Spain**, the governing bodies of the publicly-owned media must submit their plans for coverage of the election campaign to the competent Electoral Boards. In **France**, free air time is allocated to candidates or political parties on public service channels under the supervision of the CSA. In **Italy**, free air time (political messages and political communication programming) is offered to political representatives on public service channels under Parliamentary Commission supervision and on national private channels under the supervision of AGCOM. In **Lithuania**, the Central Electoral Commission allocates time for programmes on the principle of equality. In **Malta**, the Broadcasting Authority organises a scheme of political broadcasts which is agreed with the political parties. In **the UK**, under Ofcom Rules on Party Political and Referendum Broadcasts, certain broadcasters must offer short broadcast slots to: political parties during elections (Party Election Broadcasts – “PEBs”) and outside elections (Party Political Broadcasts); and designated organisations during referendums (Referendum Campaign Broadcasts). In the **Netherlands**, each political party has an average of 10 minutes on the radio every 2 weeks and 3 minutes on TV every 1.5 weeks. During election time, the Authority allocates extra broadcasting time: 20 minutes (2 times 10 minutes) for radio and 18 minutes (6 times 3 minutes) for TV.

Regarding the measures in place to guarantee the balance of programmes, some NRAs declare that rules are applied for equality (equal times for all the political parties) and for proportionality (times calculated, for example, on the basis of the results obtained by each political formation in the last equivalent election or considering if the party is able to field candidates in a certain number of electoral constituencies, or on the basis of other criteria). This is done to ensure that political competitors are offered parity of treatment and equal opportunity.

The rule of **equality** is applied in 12 countries: in the **Czech Republic**, for the specific programmes of the public service offered to political parties (*the allocated broadcasting time by PBS for campaign spots of political parties will be distributed equally*)<sup>53</sup>; in **Estonia** (*if a television and radio service provider supplies transmission time for a party or a political movement to introduce its positions, the other party or political movement shall be granted, upon written request, an equal opportunity to speak*); in **France** during presidential campaigns (*under the principle of equality, candidates and their supporters must be granted equal speaking and*

air time); in **Italy** (times are shared for political messages and for political communication programs from the date of presentation of candidates to the end of the campaign during both election and referendum campaigns according to the principle of the equal opportunity); in **Lithuania** (for discussions of candidates over the radio and on television with the aim of presenting election programmes in compliance with the principle of equality and according to the procedure laid down by the Central Electoral Commission); in **Latvia** (if media has given a time for one party, media is obligated to give time for others as well, if desired); in the **FYROM** (for presidential and mayoral elections); in the **Netherlands**; in **Poland** (in the national election); in **Slovenia** (Publicly owned media (by ERCA) have to provide equal conditions for advertising and provide for equality of candidates, although parliamentary and non-parliamentary parties can be separated); in the **Slovak Republic** (the broadcasting time must be split so that none of the candidates is disadvantaged); in the **UK** (Due weight must be given to designated organisations in coverage during the referendum period. Broadcasters must also consider giving appropriate coverage to other permitted participants with significant views and perspectives... If a candidate takes part in an item about his/her particular constituency, or electoral area, broadcasters must offer the opportunity to take part in such items to all candidates within the constituency or electoral area representing parties with previous significant electoral support or where there is evidence of significant current support. This also applies to independent candidates).

The rule of **proportionality** is applied in 11 countries: in **Belgium** (each party of the same representability level must have the same speaking time); in **Cyprus** (the amount of time attributed to each of the above is calculated according to each party's representation in the Parliament or the party's presence in the society); in **Greece** (for the application of this principle one must take account of the political position of political parties (e. g. representation in Greek or European Parliament) or of new parties with no representation but fielding several candidates across the country); in **Spain** (the duration of the information dedicated to each political formation will be adjusted proportionally to the results obtained in the last equivalent elections); in **France** (under the principle of fairness, radio stations and television channels must grant candidates or political parties and their supporters speaking or air time, taking into account how representative they are, and whether or not they are effectively involved in the campaign); in the **FYROM** (for the election of Members of Parliament and of Members of the Municipal Councils); in **Poland** (for regional and local elections); in **Portugal** (media debates must reflect the current composition of the political body of the forthcoming elections for the period of election campaigns, although, based on editorial freedom, other candidates/candidatures may be considered); in **Romania** (all parties are required to apply for broadcasting time no later than 40 days before the election, which is proportionally calculated based on the number of candidate lists); in the **UK** (in determining the appropriate

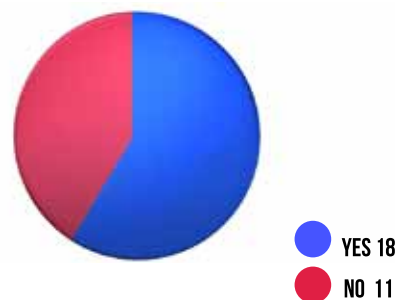
<sup>53</sup> "The principles of objectivity and balance are complied with in news, political and current affairs programme units and that, in particular, no one-sided advantage is, within the broadcast schedule as a whole, given to any political party or movement, or to their views, or the views of any groups of the public, taking account of their real position within the political and social life."

level of coverage to be given to parties and independent candidates, broadcasters must take account of evidence of past electoral support and/or current support); in **Italy** (for political communication programmes in the first phase of the electoral campaign, running from the date of fixing the elections day to the date of presentation of candidates, spaces are shared in a partly equal and partly proportional way among political parties present in the contested assemblies, and between the political parties not present in those assemblies but present in the European or Italian Parliament. in the current affairs programs also if the representation of the various political positions in the programs belonging to the information area is not regulated, unlike political communication, by the criterion of mathematically equal distribution of the spaces in current affairs programmes, but must always comply with the criterion of equal treatment. This means, according to the consolidated orientation of the authority, that similar situations must be treated in a similar way).

### 3.2.4 Moratoria

Rules about moratoria, that is the periods during which political campaign activity is stopped on broadcast media, are not present in all the countries involved. In seven cases, in fact, NRAs declare that there are no rules about moratoria in their countries (**AT, FI, HU, LU, NL, NO, and SE**).

In **Hungary**, in particular, the new Election Procedures Act introduced in 2013 abolished the institution of campaign silence; however, pursuant to Electoral Procedure, political advertisements are not to be published on the day of the election.



Others NRAs, instead, have rules to guarantee the “electoral silence period”, a short period of time preceding the elections to allow voters to make an electoral choice in a calm and peaceful climate without pressure. The dissemination of any electoral messages during this period is prohibited.

10 NRAs declare, in fact, that rules about moratoria apply to the day of voting, until closing of the polling stations and the day before, as happens in **BE, FR, IT, GR, LV, PL, PT, MK, SI, DE** when any political propaganda and opinion polls may not be broadcast.

In other cases the moratorium begins 48 hours before the day of voting (**RS, CZ, SK and RO**<sup>54</sup>) or from 2 pm of the day before voting (**IE**). In **Estonia**, only active campaigning is prohibited on election day. In addition, political outdoor advertising is prohibited as of the last day of candidate registration.

In certain cases, the period of moratorium is not specified but NRAs state that “No electoral propaganda may be disseminated nor can any electoral campaign event be held once the campaign is legally finished as in the case of **ES, or HR**. Under Ofcom Rules in **UK**, discussion

<sup>54</sup> In Romania 48 hours before the day of voting and until the end of the vote is banned for the audiovisual media services providers to broadcast opinion polls, televoting or surveys on the street, electoral spots, inviting or presenting of electoral competitors in radio and television programmes, as well as comments on the conduct of the electoral campaign and electoral competitors.

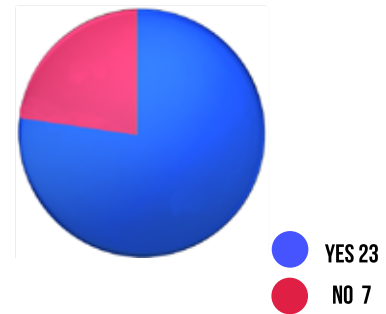
and analysis of election and referendum issues must finish when the poll opens.

Different times are provided in **Cyprus** (55 hours before voting political advertisement are prohibited) and **Lithuania** (*Campaigning, regardless of its methods, forms and measures, shall be prohibited during 30 hours before the beginning of an election and on polling day until the end of voting. In Lithuania, furthermore, during the period when election campaigning is prohibited and in the course of early voting, no visual and audio election campaign material (except those produced by the Central Electoral Commission) may be displayed in a polling station or within 50 meters of a building in which a polling station is situated*).

Specific rules are also provided for opinion polls and political advertising by different countries.

### 3.2.5 Opinion polls

Seven NRAs have declared that there are no rules about political opinion polls in their countries (**AT, EE, FI, HU, LV, NL,** and **SE**); in the case of Austria, however, the Austrian media does not publish polls 24 hours before an election though there are no rules in practice. In **Hungary**, instead, only publication of the results of exit-poll surveys are prohibited by the Electoral Procedure. These results can only be published after voting has been closed.



The prohibition period regarding dissemination of political opinion polls is different in these countries. Only 17 of the NRAs that responded regarding the rules indicated the period of moratorium.

Some NRAs have declared that there are very long prohibition periods: fifteen days before elections in the case of **Italy** and 14 days for the **Slovak Republic** (*this time is shortened to a period of 7 days' before election day and on the day of the elections until the end of the voting for the second round of a presidential election*). Conversely, some have a very short period: 24 hours for **Poland** (*24 hours before the beginning of vote until the end of the voting process*) and **Slovenia** (*the last 24 hours prior to (the start of) election day*), the day preceding the election and the day of the election for **France** and **Belgium** (*Saturday and Sunday until the closing of all polling stations*), or only the day of the election for **Latvia, Norway** (*the Electoral Act prohibits the publication of election results and forecasts made on the basis of polls carried out on the day or the days of the election, until 21 o'clock on the election day*) and the **UK**<sup>55</sup>. Between these values there is a wide range of prohibition periods: 7 days prior the elections is provided in **Cyprus**, 5 days in **Spain, Luxembourg**, and the **FYROM** (*results of the opinion polls carried out on the day of voting must not be announced before 19:00*), 3 days for

<sup>55</sup> Under Ofcom Rule 6.5, broadcasters may not publish the results of any opinion poll on polling day itself until the election or referendum poll closes. For European Parliamentary elections, this applies until all polls throughout the European Union have closed. s.

the **Czech Republic**, **Greece** (*during election day until 19:00 and the day before*), **Romania** (*48 hours prior to election day*), and **Portugal** (*the disclosure of political polls and the estimation of the voting results are forbidden during election day and the previous day*). In the case of **Malta**, the prohibition to broadcast the results of any polls goes from the Monday immediately preceding polling day until the close of the polling booths.

**The Republic of Serbia** says that media service providers cannot publish the results of a public opinion survey on the announced elections in the prime time of a news bulletin (e.g. news headlines, news of the day etc.).

13 NRAs have described rules regarding the production and dissemination of the results of political opinion polls; in particular **BE, ES, HR, IT, LV, MK, PT, RO, RS**, and **SI** indicate that media must provide information about polls like survey methodology and the technical characteristics of the poll so that the audience shall be provided with sufficient information, in order for a reasonable voter to assess the reliability of the survey results.

**Germany** recalls Art. 10 of the Interstate Broadcasting Treaty stating that *“reports on opinion polls conducted by broadcasters must expressly indicate whether they are representative.”*

In the case of **Cyprus**, the companies conducting a poll must, prior to its publication, submit information about the polls to the authority, as a memorandum on the methodology and sampling used for the poll; in this case the information is protected as absolutely confidential information and is under the safe keeping of the chairman of the authority.

**Luxembourg’s** NRA, instead, highlights the fact that the definition of a political poll in the provisions is not clear and that it falls to ALIA (LU) to define meaning in case of a complaint. If a poll is considered political, a document containing several specifications regarding the methodology of data collection for the poll have to be provided to ALIA (LU) to be published on its website. If the media publishing the poll does not observe the legal requirements, it can be fined.

#### **Italian case of application about measures on political opinion polls**

Decision n.118/18/CONS: During the last campaign for political elections, the Italian NRA (AGCOM) sanctioned an electronic edition of a journal for an article in which elements recurred, such as the names of the competitors of an alleged illegal horse race and the result attributed to the winners. There were serious, precise and concordant presumptive elements that the reference was rather to a survey of a political electoral nature, widespread in the fifteen days before the vote. AGCOM ordered the company to remove the content in dispute and to publish a message on the homepage of the site indicating the violation of law n. 28/2000 for three consecutive days before the end of the campaign with the same characteristics of the disputed article, as they had circumvented the ban on publication of the polls in the fifteen days prior to the vote with the article published on February 21, 2018.



### 3.2.6 Political advertising

**6 NRAs (EE, FI, FR, LU, MT, and NL)** have declared that there are no measures for political advertising in their countries. In particular, the French NRA highlights that political advertisement is prohibited (by article 14 of the Law of September 30, 1986); it is also prohibited in Italy, Spain<sup>56</sup>, the UK and the Czech Republic.

Political advertising is also prohibited in **Croatia** (*advertising of political parties, coalitions and independent members of representative bodies is prohibited, save during the time of electoral promotion in accordance with a separate act*).

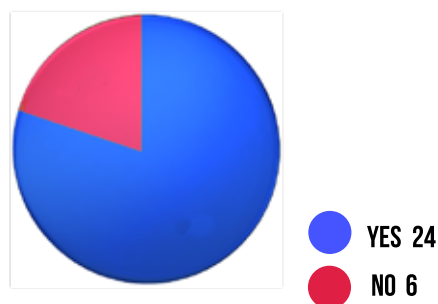
Political advertising is prohibited during electoral periods in **6 countries: Austria**, where a ban on offline political advertising applies to public service media;

**Belgium**, where political advertising and sponsoring are forbidden during the electoral period until the election day (3 months); **Ireland** (Prohibited by law linear broadcast radio and TV); **Malta; Norway** (*where advertising for the denominational/ethical life views and political messages is prohibited on television, although the prohibition does not apply to radio or audiovisual on demand services*); and **Sweden** (*there may be no messages broadcast at the request of a third party which are aimed at gaining support for political or religious opinions or opinions regarding labour market issues in broadcasts subject to conditions of impartiality*)<sup>57</sup>.

In **Portugal**, *“political propaganda using commercial advertising media is prohibited during the entire electoral period” but “Political parties and trade union organizations, professional and representative of economic activities, as well as other social organizations of national scope, are entitled, according to their relevance and representativeness and according to objective criteria to be defined by law, to have access for political propaganda in the public service of radio and television”*.

In **Spain, Ireland, the Czech Republic, Italy** and **the UK**, parties are given airtime, free of charge, which is not classified as advertising. In the **Czech Republic**, political parties must broadcast their campaign spots on PBS. In **Italy**, these slots are called “political messages” containing *“the motivated illustration of a political programme or opinions and that can last from one to three minutes for the television broadcasters and from thirty to ninety seconds for the radio broadcasters”* (art.3 of law 28/2000). They are planned and produced by the political subjects. Local broadcasters, instead, can transmit and the press can publish paid political messages according to rules provided by the law. Paid political advertisements can also be broadcast in 10 other countries: **CY, DE, LT, LV, MK, PL, SR, RO, RS, and SI**.

In **Cyprus**, the broadcasting of a political advertisement is allowed, if some conditions are met



<sup>56</sup> In Spain, it is prohibited to broadcast any kind of commercial communication which is political in nature.

<sup>57</sup> The Swedish rule regarding advertisements applies all year round and is therefore not specific to election periods.

such as the use of an optical and acoustic warning in order to clearly distinguish it as a paid political advertisement from other programmes and other advertisements.

In **Germany**, political parties participating in elections to the German Parliament or European Parliament shall, subject to reimbursement of costs, be granted appropriate broadcasting time by commercial broadcasters<sup>58</sup>. The German Media Authorities issued a (legally non-binding) paper giving detailed legal guidance on the rules for political advertising in times of elections.

In **Lithuania**, during a political campaign, public information producers or disseminators may only broadcast political advertising at the rates and under the conditions which are equal to all political campaign participants and which are submitted to the Central Electoral Commission.

In **Latvia**, the electronic mass media shall send to the National Electronic Mass Media Council the price lists of the pre-election campaign broadcasting time at least 150 days before the election day, including estimated deductions and criteria of application of deductions, for the entire pre-election period. The National Electronic Mass Media Council shall publish the aforementioned information on the website thereof without delay.

In the **FYROM**, time is allocated for an additional 18 minutes<sup>58</sup> per clock hour for paid political advertising but the PSB is not obliged to air it in entirety, while paid political advertising is allowed in Poland in both PSM and commercial media, and under the same conditions to all electoral committees.

In the **Slovak Republic**, broadcasters must ensure that they are clearly marked and separated from other programmes and other parts of the programme service at the beginning and end of the broadcast of a political advertisement by broadcasting a notice stating that it is paid.

In **Romania**, advertising spots of 20 to 30 seconds that urge the electorate to vote for a candidate or a list of candidates may only be broadcast within electoral programming. Broadcasting paid advertisements is prohibited during the two days before an election. Private broadcasters must notify the NAC of their involvement in the campaign and to submit the list of electoral programmes they will produce and broadcast, as well as the time frames for broadcasting the respective programmes. The fares per programme and per unit time of each private radio and television channel will be made public and will be the same for all electoral competitors. During the electoral campaign, electoral candidates have access only to electoral programmes and electoral debates broadcast by public radio and television channels, as well as private broadcasters involved in the electoral campaign (previously notified to the NAC). Also, the introduction of electoral spots in non-electoral programmes is forbidden. Electoral competitors are not allowed to buy broadcasting time (in addition to the electoral programmes already scheduled by broadcasters) in order to broadcast electoral spots or electoral programmes.

In the **Republic of Serbia**, the announcement and checkout of the block of political advertising

<sup>58</sup> In FYROM there were recently changes in the Electoral Code and this additional time was reduced to 9 minutes.

messages must contain a textual notification in a television programme, or an audible notice in a radio programme, based on which it can be clearly identified as political advertising (for example, election marketing, political advertising).

In **Slovenia**, all election advertising messages must include the name of the financier.

In **Greece** and in **Hungary**, however, political advertising in audiovisual media services is free of charge.

### *3.2.7 Disinformation on digital platforms*

In the laws of almost all countries and in the acts of different NRAs, it is possible to find calls for broadcasters to cover electoral campaigns following the principle of honesty, pluralism, impartiality and objectivity of information, and to avoid inaccurate, misleading or fictitious news or comments. Specific rules are provided in Poland, for example, where, on dissemination of untrue information in election campaign materials, the candidate or electoral representative of the committee concerned has the right to submit an application to the district court.

Considering the growing relevance of the internet and, in particular, of social networks as a source of information used for the construction of political consensus, the French CSA and Italian AGCOM, have considered it urgent to start a route of intervention of moral suasion and light-touch regulation to tackle the issue of disinformation on digital platforms, as described also in chapter 4.

In view of a better understanding of social media's implemented measures to counteract fake news, the CSA has held hearings with the digital world's major players (Facebook, Twitter, Google) from December 2017 to March 2018 that agreed to cooperate. Furthermore, a bill of 21 March 2018 provides, inter alia, an amendment to the law of 30 September 1986 on the freedom of communication aimed at strengthening the powers of the CSA; for example, it provides that, during a particular period of the election, the CSA could order the suspension of the broadcast of a service until the end of the vote if it finds that the service, under a licence, and controlled by a foreign state (within the meaning of Article 41-3 of the law of 1986) or under the influence of that state, undermines the fundamental interests of the nation or participates in an attempt to destabilise its institutions, in particular through the dissemination of fake news. The bill also stipulates a duty for the platforms to cooperate with the public authorities responsible for combating fake news. In addition, the CSA could develop exchanges with digital platforms in the fight against fake news. Discussions have already been initiated, as mentioned previously, with some of these platforms.

On 16 November 2017, the Italian Authority established a "Technical table to guarantee pluralism and correct information on digital platforms to guarantee pluralism and fairness on digital platforms" in passing resolution n.423/17/CONS. It aims to promote self-regulation of platforms and the exchange of best practices for the use of digital platforms, discerning and

contrasting online misinformation phenomena. The table started the first operational phase in consideration of the beginning of the campaign for the political elections of 4 March 2018. In particular, the latest technical table, 1 February 2018, approved the “Guidelines for equal access to online platforms during the election campaign for political elections” that constitute the first self-regulatory intervention promoted by the authority within the technical table. In particular, taking into account the institutional tasks that the law gives authorities in the matter of electoral parity, the general principles applicable to all media, including digital platforms, have been identified. There have also been identified procedures that allow the authority to report illegal content on the online platforms.

### *Summary conclusions*

- Almost all countries have specific regulations for electoral campaigns.
- In some countries, NRAs have the role of drafting the rules for the electoral campaigns under legal provisions.
- Most countries (21)<sup>59</sup> furthermore provide specific rules for the public service.
- Political advertising, also paid, is forbidden in some countries, in others it is allowed subject to certain rules. Also the diffusion of polling data is allowed with the exception of the last phase of the electoral campaign, when it is forbidden, even if the period of prohibition changes.
- Different rules are foreseen on the “moratorium” but they are not present in all countries involved.

<sup>59</sup> Except Austria, Belgium, Cyprus, the Czech Republic, Ireland, Luxembourg, Malta, Romania, and Sweden. Denmark noted that in the Radio and Television Broadcast act (chapter 3) regulation regarding public service can be found. Here it is i.e. stated that the Danish population must be offered a wide range of programs and services, including news, information, education, arts and entertainment. Quality, versatility and diversity must be pursued. During programming, it is of crucial importance to secure the freedom of information and freedom of speech. This must be done based on fairness and impartiality. The public service provider must ensure that the population has access to significant social information and debate. Special attention must also be paid to the Danish language and Danish culture.

### Number of cases in the area of internal plurality connected to the measures of election periods

Number of cases in election periods (2017 or, when not possible, in previous periods)		Categories of reply
<i>NRAs that indicated to have had no cases in 2017: BG, EE, ES, HR, IE, LU, SI</i>		
AT	Complaints: 1, The complaint was dismissed on formal grounds	
BE	Complaints: 6, Opened case: 1	All complaints concerned the absence of "small parties" in the electoral debates and some other mediatic campaign coverage means. For this reason, the new electoral rules (adopted in January 2018) insist more on the importance of giving speech and informing the public about new and small parties.
CY	Complaints: 1	There has been one complaint but it did not proceed to a case against the station.
CZ	Complaints: 40 (6 requests for explanation, 1 warning, 2 sanctions)	
DE	No numbers available in the questionnaire	
DK	No numbers available	
EL	14 decisions (before 2017) concerning the bailout referendum of July 2015	In most decisions, NCRT decided that there was non-proportional presentation of "no" positions by nation-wide channels
FI	No numbers available	
FR	27 cases	
HU	unofficial data, 60 cases	approximately 34 out of the 60 cases involve problems of internal plurality.
IE	The last general election was in 2016 and the BAI considered 5 complaints in relation to coverage during the election period.	BAI considered 5 complaints in relation to coverage during the election period.
IT	20 cases (2017 administrative elections)	
LT	There were none.	Only an opinion of RTCL regarding the breach of requirements applied to advertising was provided to the Central Electoral Commission but no legal cases were initiated.
LV	No numbers available	
MK	No numbers available	
MT	9	(These were 9 complaints based on cases of balanced fair reporting and in some instances the way a report was covered during the electoral campaign) • There were other cases where the Broadcasting Authority issued charges against stations due to airing political advertising. These do not fall under complaints but under charges issued by the Broadcasting Authority.
NO	No numbers available	
NL	Not applicable	
PL	67 statements from electoral committees, deputies and 470 individual protests by mail (during the 2015 presidential election) ***** 8 complaints concerning public service media (mainly public television) during the 2015 Parliament election)	The allegations concerned unequal treatment of candidates, violation of journalistic reliability, bias of journalists. Complaints concerned several programmes in public media ***** The allegations primarily concerned the failure to balance access to public media programmes
PT	(Local elections taking place on 1 October 2017) Requests for clarification about elections and media coverage or polls: 36 cases Complaints: 84 cases - Analysed: 71 - Still under analysis/waiting for decision: 13	Complaints analysed: 71 - Dismissal/Not in breach: 63 - In breach: 8 (2 being about non-compliance of polling organisations; and 6 breaches of standards of accuracy and pluralism/non-discrimination in journalistic/informative contents)
RO	Election campaign for partial Local elections (on 11 June and 5 November 2017): 2 summonses. Election campaign for Parliamentary elections, December 2016: 8 summonses. Election campaign for Local elections, June 2016: 18 summonses and 5 fines. Political advertising (2016): 8 summonses.	
RS	No numbers available	
SE	Not applicable	
SK	Complaints 4 (merged into 2 cases) Opened cases 1 Infractions 1 Cases initiated upon control tasks of the Council –2 Infractions 1	(candidate was disadvantaged 2; information in favour of one candidate 2)
UK	Ofcom cases: 681 of which 6 were taken forward for investigation and found 'in breach'. There was one further investigation launched which we later decided not to pursue. IMPRESS: 7 cases	Ofcom: Not available  Impress: all 7 cases related to accuracy. (Information provided to Ofcom by Impress).

*Detailed overview of measures during the election period*

(The table is for illustration and basic overview only. For a more precise and comprehensive overview of the measure please consult the text of this chapter)

COUNTRY	SPECIFIC MEASURES REGARDING MEDIA COVERAGE DURING THE ELECTION PERIOD	MEASURES REGARDING THE MORATORIUM	MEASURES REGARDING THE TRANSMISSION OF POLITICAL OPINION POLLS	MEASURES REGARDING THE EXTENT AND SCHEDULING OF PROGRAMMES	MEASURES REGARDING THE BALANCE OF PROGRAMMES	MEASURES FOR (PAID) POLITICAL ADVERTISING	MEASURES IN PLACE ON THE REGULATORY LEVEL TO TACKLE THE ISSUE OF DISINFORMATION	OTHER MEASURES IN THE AREA OF ELECTIONS	MORE SPECIFIC MEASURES FOR PUBLIC SERVICE MEDIA	APPLICATION OF THE GIVEN MEASURES FOR ONLY SPECIFIC GENRES OF PROGRAMMES
AT						X		X		X
BE	X	X	X	X	X	X		X		
BG	X		X	X	X	X			X	
CY	X	X	X	X	X	X				
CZ			X	X	X	X				X
DE	X	X	X	X	X	X		X	X	X
DK <sup>60</sup>						X			X	
EE	X	X		X	X		X		X	
EL	X	X	X	X	X	X			X	
ES	X	X	X	X	X				X	
FI									X	
FR	X	X	X	X	X		X	X	X	
HR		X	X	X	X	X			X	
HU	X					X			X	
IE			X		X	X				X
IT	X		X	X		X			X	X
LT	X	X		X	X	X	X	X	X	X
LU	X		X	X	X					
LV	X	X	X		X	X			X	X
MK	X	X	X		X	X			X	X
MT	X	X	X	X	X		X	X		
NL				X					X	
NO	X		X			X			X	
PL	X	X	X	X	X	X			X	
PT	X	X	X	X	X	X			X	X
RO	X	X	X	X	X	X				
RS	X	X	X		X	X			X	
SE <sup>61</sup>						X				
SI		X	X	X	X	X		X	X	
SK	X	X	X	X	X	X			X	X
UK	X		X	X	X	X		X	X	X
	22	18	23	21	23	24	4	8	22	11

<sup>60</sup> Denmark noted that there are general rules on i.e. fairness and impartiality in the Danish Radio and Television regulation, but The Danish Radio and Television Board has limited competences with regard to these, thus answering the questionnaire in detail was not possible. In relation to many of the issues it is instead the Press Council, who would be the competent authority.

<sup>61</sup> The Swedish rule regarding political advertising applies all year round and therefore is not specifically only during election periods.

*“We cannot see the phenomenon of mis- and dis-information in isolation, but must consider its impact amid the new-media ecosystem. This ecosystem is dominated by increasingly partisan radio, television and social media; exaggerated emotional articulations of the world; quick delivery via algorithmically derived feeds on smartphones and audiences that skim headlines to cope with the floods of information before them<sup>62</sup>.”*

## **Introduction**

While the dramatic picture drawn in the report for the CoE cited above might describe a worst-case scenario, it emphasises the link between a fast and constantly changing media landscape and the emerging risks of disinformation. Evolutions in the media ecosystem have always existed, but their rate is particularly important in the recent internet age. Both new and familiar risks to healthy democratic discourse have been brought to the fore by recent events. There are therefore good reasons to take stock of the current media landscape and to examine its implications for media plurality to the best of our ability.

The evolutions we are witnessing can have a positive impact on the fundamental right of freedom of expression. However, they have also brought to light some emerging threats the dissemination of disinformation among them. The latter is not an easy concept to address, with national and international experience showing that even defining the notion of disinformation is an arduous and delicate task. Nonetheless, it is impossible to deny the growing importance of this phenomenon and its impact on the democratic debate and the decision-making process.

Based on responses and evidence gathered from ERGA members, this chapter considers the growing importance of the internet, including the development of new devices and services to access media, in the way that people consume news and information; and in the way that traditional media has adapted to the digital era. It then goes on to reflect on the challenges this new media ecosystem poses to stakeholders and policymakers, including in relation to the unprecedented significance of disinformation. On this basis, it encourages the member states and NRAs to take a holistic approach to these challenges: one that protects this new ecosystem while finding solutions to the dissemination of disinformation in an efficient and evidence-based way, acknowledging that regulation needs to constantly adapt to a fast-changing environment.

To present the views of NRAs on the aforesaid challenges in a clear and intelligible way, the present chapter is divided into two sections. The first summarises the changes NRAs have noted in the media landscape and what they believe might be the impact on the currently available measures. The second is a focus on the specific challenges of disinformation and how some international institutions, governments and regulators are already proposing to address these challenges.

<sup>62</sup> Information Disorder: Toward an interdisciplinary framework for research and policy making”, Wardle, Derakhshan, 2017., p 14.



### *4.1 The changing media landscape and its impact on the measures currently available*

This first section sets out, from the perspective of ERGA members, the major changes to the media environment which have the potential to disrupt their efforts to ensure internal plurality. It places these changes into the wider debate about media plurality and disinformation in academic and public policy forums, so that we may begin to consider which components are essential to assess the health of a media landscape and help policymakers to ensure that any regulatory intervention is finely targeted at specific identified harms.

This task is particularly challenging as the landscape continues to shift; indeed, at faster and faster rates with new technology for the production, distribution, consumption and impact of media exponentially expanding the potential for ever newer technology. Cultural practices and consumer behaviour rush to meet these developments, to reinterpret and master them, and the ways in which people communicate with each other and with society at large change. It would be short-sighted to presume that the changes that have so far occurred represent a new, fixed media landscape for ‘the digital age’. Instead, we can expect a change in the medium- to long-term in ways we cannot yet conceive.

Even our language struggles to keep pace with the change. Categories once employed to organise this landscape are increasingly perceived as inadequate. A case in point: we refer now to ‘content’, and the ‘creatives’ that work in the collection of industries which produce content, when old distinctions between film, television programming and short films no longer serve. This new understanding of media and its matching vocabulary is in the process of being formalised and incorporated into public policy. For instance, the new AVMS Directive no longer defines ‘programming’ by referring to television, and now specifically includes ‘content irrespective of length’. These new terms are more flexible and better suited to a media landscape which has yet to coalesce into fixed categories or distinct trends.

In this context, ERGA members were asked to:

- identify the major changes to the media environment that have the potential to disrupt the measures they have available for ensuring internal media plurality;
- provide details of any discussions in their countries about a need to modify existing measures to meet these changes; and
- discuss whether there is a sufficient evidence base to assess the need for regulatory intervention to tackle disinformation.

In addition, members were asked to suggest additional external sources of information and analysis on topics related to plurality (including but not limited to internal plurality).

Of the 25 ERGA members that responded to these questions, 18 reported changes in the media landscape while 9 did not comment. As only a few of the 25 provided detailed answers to the questions, we have supplemented our summary of these responses in this section with other relevant sources. In particular, several NRAs also referred to the Reuters Digital News Report 2018<sup>63</sup>, and so the report's main findings have been included here. Moreover, we also reference other relevant research and literature that was gathered by members of ERGA as part of their contribution to this work.

In this section, we summarise the full responses by theme, indicating where these themes refer to the Reuters report and other literature. While this section of the report describes changes to the media environment, changes specifically relating to mis- and dis-information or 'fake news' are discussed in detail in Section 4.2.

#### ***4.1.1 Changes to the media landscape with a potential to influence measures for internal plurality***

##### ***a) Changes in production and distribution***

###### *i) The internet reduces barriers to entry into the market for news producers*

Several NRAs commented on the benefits that the internet has brought to external media plurality and freedom of expression by massively reducing the costs of producing and distributing news (as well as other types of content). The removal of these barriers for entry into the news market has led to an abundance of newspaper-like services available to citizens online, which sidestep the costs associated with traditional printed press (e.g. HuffPost and The Independent) and have also enabled hyperlocal news websites which cater to the interests and needs of rural towns and villages which would otherwise be left without.

###### *ii) Rise of 'unmediated' or 'raw' news*

The internet has also enabled the production and distribution of news content which is not the work of paid journalists under editorial oversight. A glance at the current online news offering includes, for instance, eye-witness accounts posted to Twitter and live-streaming of events as they unfold, distributed by digital platforms designed for this functionality (e.g. periscope, Facebook Live). This content can now be distributed to and accessed by anyone with an open connection to the internet. Politicians too are making use of these channels to communicate directly with citizens (for example President Trump who, at the time of writing, has over 50 million followers on Twitter).

<sup>63</sup> Reuters Institute Digital News Report 2018.

That is not to say that editorial oversight and professional journalism no longer play a role: their continuing significance was mentioned in several of the NRA responses. Norway, for instance, referred to their draft Media Liability Act which will extend to online news services under editorial control the existing liability regime which currently applies to printed press and broadcasting with the aim of incentivising responsible editorial control based on professional standards and ethics. Moreover, as mentioned in section 3.1.1.1, laws for the regulation of the press also apply to some electronic media in some countries. For example, in Portugal, where the major piece of legislation regulating the printed press includes newspapers' online offerings within its scope.

### ***b) Changes in consumption***

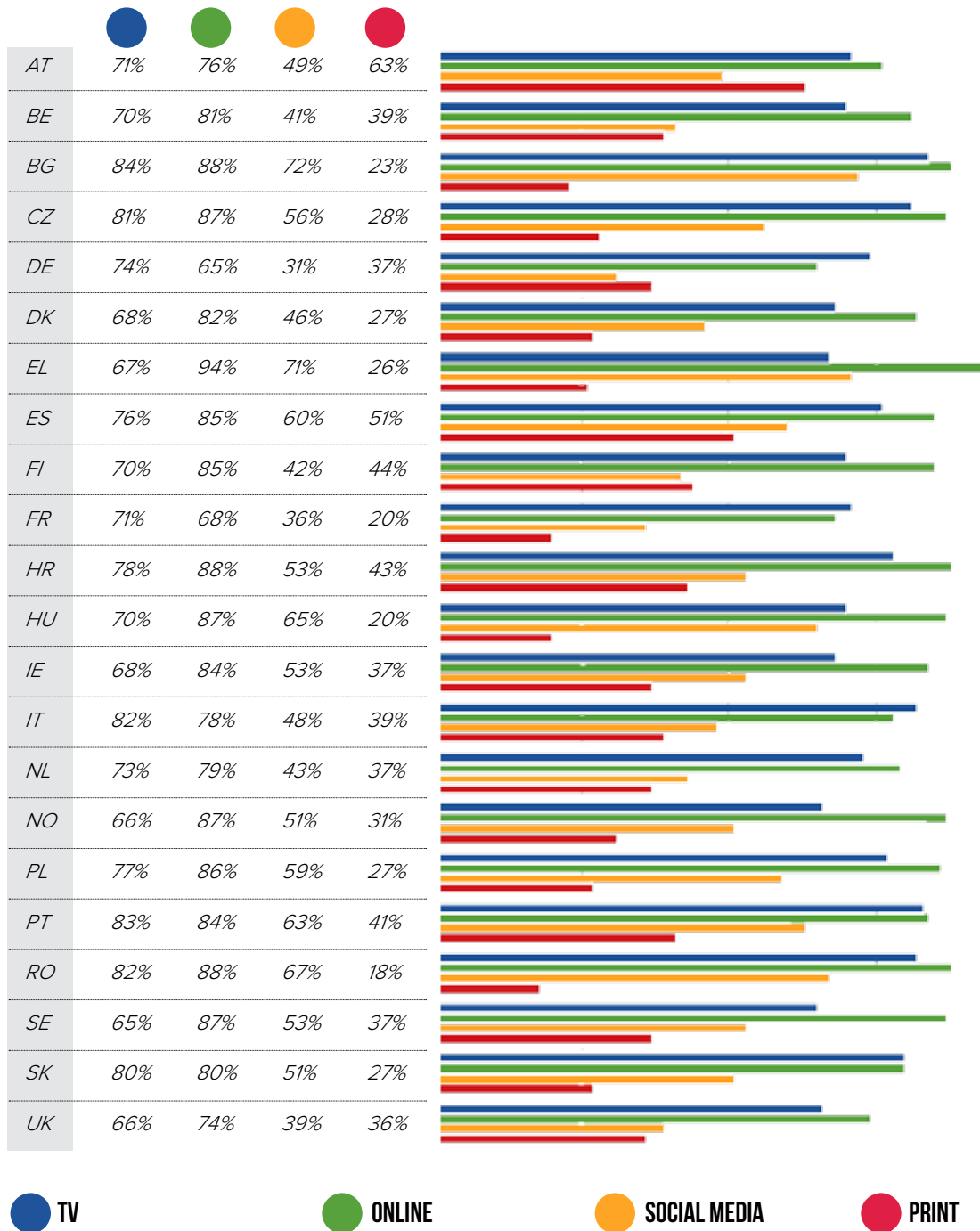
#### *i) Consumption of news online varies by country*

The increase in the supply of news online and in the significance of the internet in society has led to an increase in demand for online news. Moreover, though some NRAs reported that conventional media (here meaning TV and print) remain the primary means for accessing news for their citizens<sup>65</sup>, other countries are reporting that online news is now overtaking TV as the primary source of news for its citizens (e.g. the UK, NO<sup>66</sup>).

<sup>65</sup> For instance, Hungary reported that time spent online is comparable to time spent listening to the radio (122 min to 100 min). Hungary consider a shift towards online consumption of news is 'inevitable in the long run'.

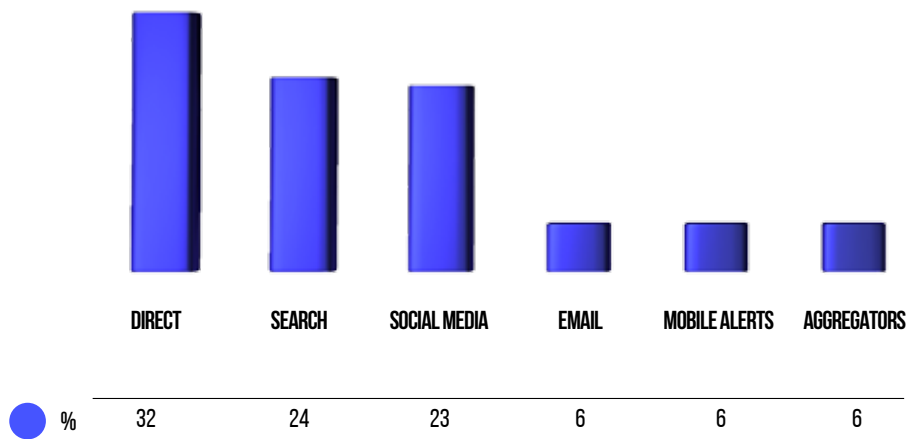
<sup>66</sup> Reuters Institute Digital News Report 2018.

Means of accessing news (Reuters Digital News Report 2018)



The Reuters Digital News Report gives us an idea of just how mixed the picture is for online news: 65% of people surveyed who accessed news online did so indirectly, via an intermediary as opposed to going directly to news websites or applications. When this figure is broken down into specific means of accessing news, it varies widely by country. For example, most people in Belgium who access news online do so via email and newsletters while in Poland, Italy and the Czech Republic, most people use search engines. In other countries, newspapers and traditional broadcasters enjoy a strong online presence and brand, and remain the most popular means of accessing news online: this is true for instance in the Nordic states which have the highest proportion of people accessing their online news directly through established news services.

### *Main way to come across news (Reuters Digital News Report 2018)*



#### *ii) New devices used to access media*

The news is increasingly viewed on smartphones. The Reuters report found that 62% of people surveyed said they use their smartphone to read the news weekly, only just behind the laptop/computer for accessing news at 64%. In some countries, smartphones have overtaken laptops as the primary means of accessing news online (e.g. UK, Norway). According to the Reuters report, these trends are significant because “shorter audience attention spans and smaller mobile screens are affecting the type of news content produced”<sup>67</sup>. News services are increasingly optimised to the hardware of mobile devices, and visually rich formats such as Instagram, Snapchat and Flipboard offer users more engaging and accessible content. In particular, the organisation of news is shifting towards arrangement in ‘feeds’ or ‘streams’ which users can swipe or scroll through. Indeed, ‘news feeds’ have become the default user interface across most ways of accessing news articles on smartphones<sup>68</sup>. News content in

<sup>67</sup> Reuters Institute Digital News Report 2018, p.28.

<sup>68</sup> Scrolling news: The changing face of online news consumption, Revealing Reality, 2018., p 22. [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0022/115915/Scrolling-News.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0022/115915/Scrolling-News.pdf)

these feeds is frequently mixed in with entertainment content, social content and advertising without users necessarily distinguishing between these.

The implications of this are profound: an in-depth qualitative study published this year by Ofcom documented that people increasingly consume news passively<sup>69</sup>. Participants in the study struggled to answer questions about the news that they had just read, and struggled to distinguish between advertising, social content, entertainment and news. The study also found that many participants prioritised quantity of news over depth of understanding and discussed being acutely aware of feeling left behind in the 24/7 news cycle.

*iii) Massive fragmentation of content discovery*

AGCOM (Italy) and the NMA (Norway), in their responses, commented on how the methods that viewers use to find news and information have changed and multiplied. Where previously viewers could choose from accessing two or three different editorially controlled media sources, they can now access information in a wider variety of ways and through non-editorial intermediaries and aggregators.

Some NRAs pointed to academic sources that generally describe how internet content providers can sidestep the economic limitations of analogue media (scarcity of spectrum, high costs of newspaper publishing) but can then encounter a new potential challenge: how can they connect users who are now exposed to an almost infinite amount of available content to the content the users want to view?<sup>70</sup>. This challenge has been met by new gatekeepers (who are sometimes themselves also content producers) carving out spaces to facilitate content discovery:

- News aggregators, e.g. Google News, Yahoo News, Apple News
- More actively curated news aggregators, e.g. Drudge Report
- Social media, e.g. Facebook, Twitter
- Traditional news providers' websites, e.g. BBC News, The Guardian
- Blogs

These services can be accessed by new channels:

- Email services/newsletters, e.g. Politico's Brussels Playbook
- Podcasts
- Voice-activated speakers, e.g. Alexa, Siri
- Mobile news alerts

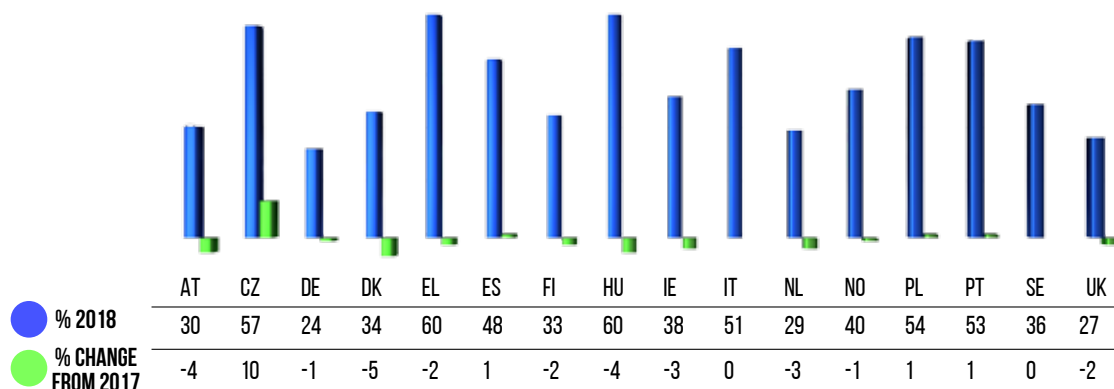
This list is not exhaustive, and trends in the popularity of each type of gatekeeper continue

<sup>69</sup> Reuters Digital News Report 2017, p 16.

<sup>70</sup> Valcke, Peggy. 'A European Risk Barometer for Media Pluralism', Journal of Information Policy, p 187

to change. Over the last seven years, the Reuters report has documented growth in the use of social media for news. In 2018, this trend was reversed for the first time in the report's history, apparently caused by a decline in people's use of Facebook, the most widely used social network for news in almost every country. This decline was experienced in many ERGA Member States, including (but not limited to) Germany, the UK, Ireland, Finland and Hungary. Again, however, the picture is mixed: in the Czech Republic, the proportion of people that reported to have used Facebook as a source of news in the previous week increased by 10%, with Poland and Spain also having seen an increase from 2017.

### *Facebook as source of news last week 2017/2018 (Reuters Digital News Report 2018)*



The Reuters report found that the use of voice-search technology such as Amazon Echo and Google Home grew rapidly, more than doubling in Germany and the UK since 2017, creating new opportunities for audio news search. This year, they also documented a rise in the use of messaging applications like WhatsApp for sharing news.<sup>71</sup>

#### *iv) The role of platforms*

In their response, AGCOM referred to their analysis of data collected on news consumption which shows that, in Italy, the consumption of information aimed at creating political opinions passes primarily through digital sources governed by algorithms (28 %), rather than through the websites of newspapers or other online information sites (8 %).

The wider literature provides context for this statistic. News content outside an edited space must be arranged in a particular order for the user to navigate. In the absence of editorial curation, content is arranged by a combination of algorithms and personalisation, sometimes controlled by users but, more often not, with methods hidden from the user. Algorithms that make full use of user metadata in the selection of content might take account of this when generating a news feed: a user's past indications of preferences (e.g. Facebook 'likes'), the

<sup>71</sup> Reuters Institute Digital News Report 2018.

user's IP address to find stories relating to their location, commercial agreements to promote certain pieces of content, and preferences of other users which are deemed to have similar profiles.

Additionally, online platforms will frequently allow the user to personalise the selection of content by overriding the default algorithms. The Netherlands noted in their response particular concern over the potential for this feature to lead to the rise of 'filter bubbles' online, in which users' news feeds are filtered to create a news environment that only includes stories that are of a particular perspective, effectively stripping it of internal plurality. At the extreme end of personalised content, individuals could see completely different news stories on the same platform<sup>72</sup>.

This is achieved by a combination of user behaviour, as they express preferences for a specific type of content, a tendency to select friends within a social media network who share similar perspectives, and algorithmic promotion of news that generates positive user engagement. The Netherlands stated its intention to monitor this phenomenon in the future.

However, despite valid concerns about the theoretical risks of extreme personalisation of content in the form of echo chambers and filter bubbles, research from the 2017 report from the Reuters Institute shows that instead of restricting media plurality, algorithms are exposing most users to a greater range of online sources. Users of search engines, social media and aggregation services are "significantly more likely to see sources they would not normally use".<sup>73</sup> The same report, however, found that people tend to 'follow' the politicians they agree with on social media and avoid those they do not. This suggests that following politicians on social media may be contributing to greater polarisation<sup>74</sup>.

The Norwegian response observed that some news services will mix content which has been reviewed by an editor with content that is user-generated, with the potential to mislead viewers about the origin of a piece of content. In Norway, the new draft act relating to editorial independence and liability of editor-controlled journalistic media (Media Liability Act) proposes to impose certain duties of care on the editor in the handling of user-generated content. It proposes that the editor should ensure that user-generated content is clearly separated from editorial content, that the editor should flag user-generated content that is not pre-edited and make clear what rules apply to user-generated forums. It is further proposed that the editor should organise a system for flagging illegal content as well as providing information on how to complain for those who have had user-generated content removed. According to policymakers, these rules will support the press and the role of editorial media as facilitators for public debate and also contribute to a sound climate for debate and to reduce the occurrence of illegal expressions. It is not recommended to implement enforcement or sanctions to these rules.

<sup>72</sup> Scrolling news: The changing face of online news consumption, Revealing Reality, 2018., p 38. [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0022/115915/Scrolling-News.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0022/115915/Scrolling-News.pdf)

<sup>73</sup> Reuters Digital News Report 2017, p 16.

<sup>74</sup> Ibid., 17.



*v) The relationship between platforms and consumers*

Social media networks are driven by the sharing of content with emotional resonance<sup>75</sup>. When this cultural practice corresponds with algorithmically generated selections of content, content can go viral: a piece of content being shared by users will be noticed by algorithms and exponentially propelled into prominence across social networks. The Slovak response made specific reference to this viral sharing of content as having the potential to disrupt internal plurality measures.

The UK (Ofcom) noted the challenges that viral sharing of content presents to internal plurality during election periods. They referred to a recent report by the British Electoral Commission which warned that, as content can be distributed and given prominence by factors beyond the content-creator's control, it is easy for political campaigns to circumvent the spirit of campaign spending rules by sharing messages for free, potentially reaching wide audiences<sup>76</sup>.

These threats are amplified on social media by the fact that the route of content discovery is increasingly guided by endorsements and recommendations by trusted friends, and any piece of information is far less likely to be challenged by most users<sup>77</sup>.

*vi) News consumption in an unregulated space*

This shift towards the consumption of news online (referring mostly to the news accessed through online platforms, like social media) represents a shift in the consumption of news from a regulated space into what is largely an unregulated space. This was the most frequently cited change to the media landscape by NRAs. In its response, Germany observed that online news sources are able to influence public opinion yet may not be subject to any of the measures for internal plurality which apply to broadcast or print media, and in some cases are also not covered by election communications rules. Self-regulation and professional standards might be applied in some cases, but changing viewing habits increasingly take viewers away from regulated media for which there are long-standing viewer expectations for accuracy and impartiality. The effectiveness of such internal plurality measures might not be sufficient to ensure healthy public discourse. This could be the case if the media to which the regulation applies is no longer the main source of information for viewers, but also if standards appear to be applied arbitrarily to one type of media and not another. Trust in those very standards and in the regulated media could then be eroded.

The shift to news consumption in an unregulated space is particularly problematic when coupled with low rates of media literacy which would leave citizens ill-equipped for the critical assessment of news sources. Ofcom noted that many British adults lack a critical understanding of online content, for instance struggling to identify advertisements on the Google search engine despite these being marked as such. Furthermore, there is evidence

<sup>75</sup> Information Disorder: Toward an interdisciplinary framework for research and policy making", Wardle, Derakhshan, 2017, p 13.

<sup>76</sup><https://www.electoralcommission.org.uk/find-information-by-subject/political-parties-campaigning-and-donations/digital-campaigning/1-the-rise-of-digital-campaigning>

<sup>77</sup> Information Disorder: Toward an interdisciplinary framework for research and policy making", Wardle, Derakhshan, 2017, p 12

of a discrepancy between viewers' expectations for online content and the reality: Ofcom's Media Literacy research found that 3 in 10 British adults think YouTube is already regulated in the same manner as television<sup>78</sup>.

### *c) Changes in the marketplace*

#### *i) Amplification of news published online by traditional news media*

The FYROM commented on the relationship between online and traditional news media providers and the capacity for mutual amplification of messages. The regulator referred to past instances when mis- and dis-information published by online news services was picked up and retransmitted as 'news' by traditional news providers.

ERGA members cited a number of resources that discuss this relationship and the risks it poses to healthy democratic discourse. When this amplifying mechanism is used on mis- and dis-information, broadcasters can inadvertently give credibility to 'fake news' items, and massively extend their reach from what may have initially been a niche website online, to a mass television audience<sup>79</sup>. Once retransmitted, messages can take on lives of their own as they are referenced and re-referenced as part of the 24-hour news cycle, becoming very difficult to dispel. Wardle and Derakhshan point out that even attempts at debunking can inadvertently amplify disinformation<sup>80</sup>.

The risks of this amplifying mechanism are exacerbated by the particular way people engage with false news stories: recent research published by Vosoughi, Roy and Aral shows that false information spreads significantly "farther, faster, deeper and more broadly than the truth", and that these effects were more pronounced for false political news than for other types<sup>81</sup>.

#### *ii) Online challenges to conventional media financing*

Several NRAs commented on the challenges that online news poses to traditional business models supporting quality news and current affairs programming.

With news items from non-traditional news sources available in abundance and free at the point of access, there is competitive pressure for traditional news providers to follow suit, even as revenues from print media have fallen across Europe. However, attempts by traditional news providers to monetise their online content have met with mixed success. The Reuters report notes that, while digital advertising is a critical source of revenue, "most publishers recognise that this will not be enough, on its own, to support high-quality journalism. Across the industry, we see a new push to persuade consumers to pay directly for online news through subscription, membership, donations or per-article payments"<sup>82</sup>.

<sup>78</sup> Adult media use and attitudes report 2018. [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0011/113222/Adults-Media-Use-and-Attitudes-Report-2018.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0011/113222/Adults-Media-Use-and-Attitudes-Report-2018.pdf)

<sup>79</sup> Information Disorder: "Toward an interdisciplinary framework for research and policy making", Wardle, Derakhshan, 2017, p 25, Note: here it is important to stress that what has been examined in the study was already controversial (flagged) content, so the generally acceptable, non-controversial content was not included in the scope of the study.

<sup>80</sup> Ibid., p 19

<sup>81</sup> 'The spread of true and false news online', Vosoughi, Roy and Aral. Science, 09 March 2018, Vol. 359, Issue 6380, p 1146-1151.

<sup>82</sup> Reuters Institute Digital News Report 2018, p 23.

There is additional pressure on news publishers to make their content available via the various gatekeepers where consumers are discovering new content. However, content disaggregation comes at a cost for traditional news publishers: it places the focus on the news story rather than on the source<sup>83</sup> and risks the viewer attributing the news story to the gatekeeper rather than the news provider<sup>84</sup>.

Respondents noted or pointed to sources that described these developments as challenges to the long-term sustainability of traditional ways of news production, which require many highly-trained staff and resources to produce credible and high-quality journalism. Indeed, more than just the sustainability of traditional news providers, these could threaten the journalistic profession as a whole by rendering the professional ethics of journalism (impartiality, accuracy, intellectual honesty) which some might perceive to be an expensive luxury. This risk has been identified by regulators and some have reported initiatives taking place to address it such as the Cairncross Review into how to support the sustainability of high-quality journalism in the UK, and the aforementioned draft Media Liability Act in Norway to extend the existing liability regime, which currently applies to printed press and broadcasting, to online news services under editorial control.

#### ***d) Trust and public perceptions***

##### *i) Changes to media landscape undermining levels of public trust in news*

Several NRAs observed a decline in public trust in news, a trend substantiated by the Edelman Trust Barometer, which has documented that trust in the news media, and indeed many other institutions, has been in decline for many years<sup>85</sup>.

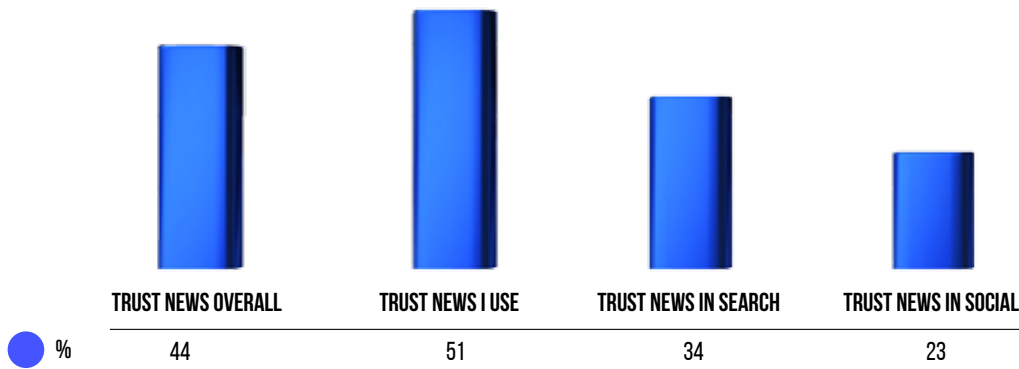
The Reuters report, however, found that this trend was not followed in the year 2018, and, for the first time since its inception, it reported a relatively stable picture of public trust in the news. Of those surveyed, 44% said they trusted the news overall, while 51% trusted the news services they use. Levels of trust were significantly lower for news online, with 34% saying they trusted the news they had discovered through online search engines, and just 23% trusted the news they found on social media. The Reuters report found that Finland and Portugal scored the highest levels of public trust in news, with 62% of respondents in each saying that they trusted most news most of the time. By contrast, levels of trust in the news in Hungary and Greece were among the lowest of surveyed countries, with 29% and 26%, respectively.

<sup>83</sup> Messing, S., & Westwood, S. J. (2014). Selective exposure in the age of social media: Endorsements trump partisan source affiliation when selecting news online. *Communication Research*, 41 (8), 1042-1063

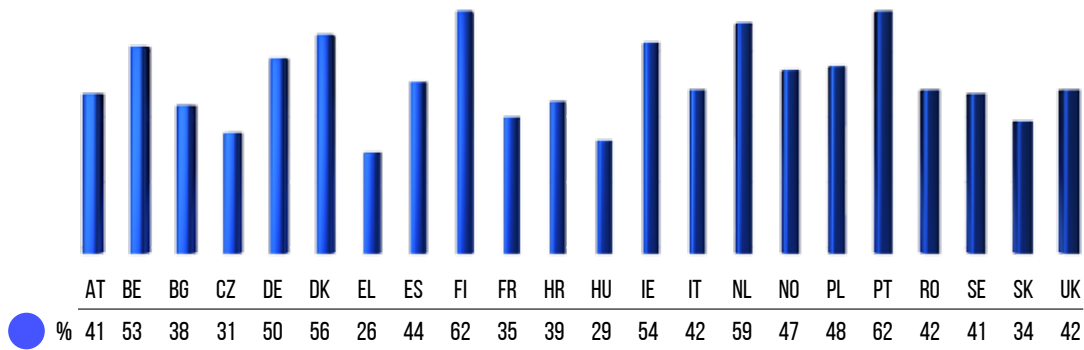
<sup>84</sup> Reuters Institute Digital News Report 2017, p16.

<sup>85</sup> <https://www.edelman.com/trust-barometer>

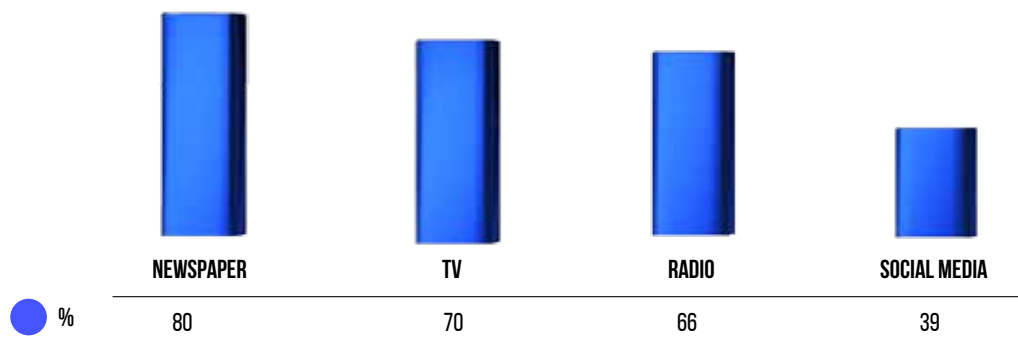
*Trust in news media (Reuters Digital News Report 2018)*



*Trust in news overall (Reuters Digital News Report 2018)*



It is also interesting to reflect on different levels of trust in different media. For example, these broad trends are supported by the latest figures published by Ofcom, which reported public trust in UK news services at 80% for newspapers, 70% for TV, 63% for radio, and 39% in social media.

*Trust in UK news services News Consumption in the UK: 2018 (Ofcom)*

Similarly, the Special Eurobarometer of 2016 found that, of all media, radio was considered the most reliable<sup>86</sup>. Despite the decline in trust over previous years taken as a whole, the same poll showed that a slight majority of Europeans consider that their national media provide trustworthy news. This research was further developed by the European Broadcasting Union in a report that found correlations between strong public service media and healthy democratic indicators<sup>87</sup>.

In its response, Ofcom pointed out that, where trust in broadcasters and traditional news providers is high, internal plurality measures were functioning effectively. Ofcom's research also shows that the BBC, the UK's main public service broadcaster, continues to be the most frequently used source for news in the UK<sup>88</sup>.

What is notable from the Reuters and Eurobarometer findings is the difference in levels of trust in traditional media in different countries.

*ii) Polarised political discourse*

Several NRAs commented on the potential for the collective changes in the media landscape described above to polarise political discourse. The Czech regulator noted a perceived increase in demand by citizens for more partisan news coverage, and a willingness from news providers to supply it.

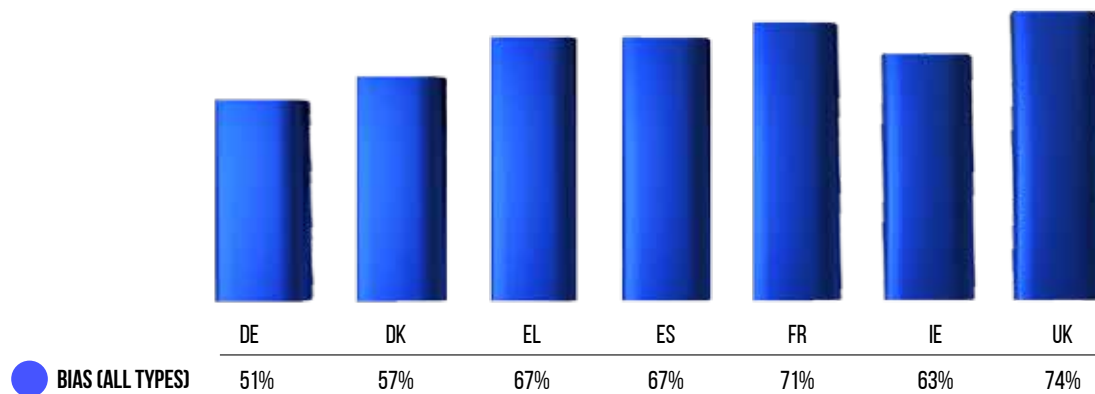
This theme is substantiated by the 2017 Reuters report on perceived bias in the news media. The report documented that concern about bias in the media is strongest in the UK (74%) and lowest in Denmark (57%) and Germany (51%)<sup>89</sup>.

<sup>86</sup> Special Eurobarometer 452: Media pluralism and democracy.

<sup>87</sup> <https://www.ebu.ch/news/2016/08/ebu-research-shows-strong-public-service-media-contributes-to-a-healthy-democracy>

<sup>88</sup> Ofcom News Consumption Report 2018

<sup>89</sup> Digital News Project 2017, 'Bias, Bullshit and Lies: Audience perspectives on low trust in the media', p 18-25 <https://agency.reuters.com/content/dam/openweb/documents/pdf/news-agency/report/nic-newman-and-richard-fletcher-bias-bullshit-and-lies-report.pdf>

*Perceived bias in the news media (Reuters Digital News Report 2017)*

The potential harm to healthy democratic discourse posed by the aforementioned changes is not limited to the proliferation of false information. Recently, more attention is being given to the effects of online media on the tone of the collective public discourse. The journalist John Harris, writing for the UK newspaper, *The Guardian*, points out how traditional media have adopted some of the idiosyncrasies of online behaviour and discourse, mirroring its ‘nasty’ and unempathetic tone<sup>90</sup>. To bolster ratings, popular genre-blending morning programmes will invite polemical and outspoken figures from the fringes of public discourse hoping to draw them into vitriolic exchanges. Particularly remarkable exchanges might experience a second life as a viral clip online. These could have the effect of undermining faith in democratic discourse and even of inadvertently giving exposure and credibility to fringe or niche political orientations.

<sup>90</sup> Harris, John. ‘In this grim age of Trump and Brexit, online fury is a dead end for the left’, *The Guardian*, 23/07/2018. <https://www.theguardian.com/commentisfree/2018/jul/23/online-fury-the-left-social-media-dead-end-progressives-trump-brexit>

### *4.1.2 Reflections on emerging challenges*

#### *a) Need for more research*

Most respondents (18 out of 23) agreed that there is insufficient research and evidence about consumer behaviour online and the issues of mis- and dis-information to be able to assess the need for regulatory intervention. Several NRAs stated their intention to conduct more research in these areas themselves in response to debates taking place in their countries about the scope for regulation in online media. In Norway, the NMA is developing a monitoring scheme for media diversity and plurality which will look at source diversity, content diversity and diversity of exposure.

#### *b) Political debates taking place in ERGA Member States*

ERGA members were asked if there have been calls or discussions in their countries on the need to modify measures for media plurality in response to the changes in the media environment. Of the 23 members who answered the question, 17 affirmed that there were ongoing debates in public policy forums.

The Czech Republic reported both calls for stricter media regulation and also calls for the removal of internal plurality measures.

In Germany, the assessment of journalistic due diligence of non-linear audiovisual media service providers is not currently within the remit of State Media Authorities, and have therefore written to the legislature asking for an extension of their competencies.

The FYROM regulator has proposed an amendment to the Electoral Code which would abolish the special rules in place for the division of newscasts on PSB. In their opinion, these are too restrictive and undemocratic, as they prevent independent candidates from receiving fair coverage. In its place, they proposed that the PSB "return to the principles of proportionality and equality". The proposal included a reduction in total time for paid political advertisements as well.

The Luxembourgish NRA ALIA mentioned that with the exception of legal provisions for limiting media coverage of political polls and general requirements on journalistic coverage of political campaigns, they do not have the full suite of measures for ensuring internal plurality that are available to most ERGA members. They have therefore consulted with stakeholders as a first step in compiling a comprehensive set of recommendations for parliament and government to be included in a new media law as part of the transposition process of the new version of the AVMSD.

In France, the vibrant debate has focused specifically on how best to manage dis- and mis-information, and we therefore set this out in detail in section 4.2 below; proposals in this area have already also been made in Poland and Italy, see also 4.2 below.

Finally, in terms of public opinion on media regulation, the Reuters report this year showed that 60% of respondents from Europe were in favour of government intervention to stop 'fake news'<sup>91</sup>.

<sup>91</sup> Reuters Institute Digital News Report 2018, p 20.

### *4.1.3 Placing internal plurality considerations in the context of wider debates*

The changes described above are arguably difficult to separate from wider debates about their potential impact on internal plurality and democratic discourse: responses from NRAs and the wider literature demonstrate the difficulty in separating internal and external factors in understanding the threats and solutions for plurality, and we will doubtlessly return to these themes in the next stage of ERGA's work. In the meantime, we mention some of these wider contextual issues here, as they were raised by NRAs and where we identified as key themes from external resources.

#### *a) Other observations made by NRAs*

Other observations were made by NRAs that did not strictly relate to internal media plurality. These observations included:

- Increasing activity in mergers and acquisitions to form media companies with a global scale. A striking example of this is in Poland, where 80% of the press is owned by 2 foreign entities.
- Slovakia commented on new initiatives and organisations arising in response to the aforementioned changes to the media landscape. They mentioned, in particular, the NGO project [www.konspiratori.sk](http://www.konspiratori.sk) which helps companies prevent their advertising appearing on disinformation or conspiracy websites. They also mentioned the fact-checking initiatives taken by news media organisations aimed at debunking popular untruths or pieces of disinformation. Norway noted a similar initiative, Faktisk.no, which is an independent fact-checker for public discourse in Norway. The organisation is a joint venture funded by the public service broadcaster NRK, commercial TV broadcasters, and print media companies.

#### *b) Filter bubbles and echo chambers*

As mentioned earlier, the abundance of media online is made navigable by a set of filtering mechanisms which direct users to the content they want to see. In the extreme, algorithmic selection and personalisation in the provision of news and commentary to viewers risks creating 'filter bubbles'. According to the report written by Wardle and Derakhshan for the Council of Europe, this phenomenon has the potential to "worsen [political and public] polarisation by allowing us to live in our own online echo chambers and leaving us with only opinions that validate, rather than challenge our own ideas". The research around filter bubbles and echo chambers is mixed, and as mentioned previously, the 2018 Reuters Report found that algorithms are actually exposing most users to a greater range of online sources<sup>92</sup>. In response to growing concerns about filter bubbles, programs now exist to enable the comparison of news coverage of events by sources on different sides of the political spectrum (e.g. Rbutr) and to compare the news feeds of 'friends' on social media according to their political affiliation (e.g. PolitEcho). The phenomenon of 'filter bubbles' (or 'echo chambers') is the subject of much academic and public debate, and it might be interesting for ERGA to continue to monitor and research this phenomenon in the future.

<sup>92</sup> Reuters Digital News Report 2017, p 16.



### *c) Blurring of lines dividing news, commentary and entertainment*

13 ERGA members noted that their internal plurality frameworks distinguish between news, commentary, and other types of programming. These frameworks effectively create two tiers of requirements. In the UK, for example, the Ofcom Broadcasting Code requires that news be “presented with due impartiality and reported with due accuracy”, while non-news programming covering matters relating to “political or industrial controversy” or matters relating to “current public policy” is required to be only “duly” impartial (factual content outside of news must not ‘materially mislead’ audiences; but this is a very high test)<sup>93</sup>.

This distinction reflects an acknowledged need to strike a balance between ensuring that the news is accurate and of high quality, with the freedom to express different opinions. It could, however, be argued that its success depends strongly on a basic common understanding about this distinction in the first place. In this context, the way that news is presented to the public in online media is relevant. As was mentioned earlier in this section, digital ‘news feeds’ gather stories from current affairs, lifestyle columnists, advertisements, and entertainment news, and present them as a single stream for users to navigate through. This is not dissimilar to a long-established trend in traditional media: television programmes offering a magazine-style assortment of items, switching seamlessly between celebrity interviews, health and beauty advice, current affairs and political interviews. But, as noted previously, the online space has the potential to amplify and exaggerate any effects we have learned to navigate off-line.

If these distinctions decrease in their significance to viewers, the conventions which establish them might be undermined, and the distinctions themselves eventually rendered obsolete. In such a scenario, it may be necessary for NRAs to rethink their internal plurality frameworks. Research into viewer attitudes and expectations is central to any policy changes in this area.

<sup>93</sup> [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0005/100103/broadcast-code-april-2017.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0005/100103/broadcast-code-april-2017.pdf)

### *Summary conclusions*

Most NRAs agree that there is insufficient evidence to properly assess the need for regulatory intervention to secure internal plurality against changes to the media landscape. Nevertheless, as we will see in the second part of this chapter, proposals are already being made. Insofar as proposed interventions might involve the wider application of the current internal plurality framework analysed in this report, the trends in the media landscape described above could offer some helpful direction. In summary, input from NRAs on this topic suggests that:

- The internet reduces barriers to entry into the market for news, thus leading to an abundance of news services available to citizens online
- Most people accessing news online do so through ‘side doors’ instead of going directly to news websites or applications, but these ‘side doors’ vary by country
- The news is increasingly viewed on smartphones in the form of ‘news feeds’, with subsequent changes in audience behaviour and in the type of news being provided
- Content discovery online is fragmented, and numerous ways exist for viewers to find news and information
- In the absence of editorial curation, the news is now arranged in ‘news feeds’ through a combination of algorithms and personalisation by users
- For most users of social media, the route of content discovery is guided by endorsements and recommendations by friends, and news items discovered in this way are less likely to be challenged
- News content which particularly resonates with members of a social network can go ‘viral’, propelling it into prominence
- Consumption of news online occurs in a largely unregulated space and, depending on a number of external factors not considered here in detail, could risk undermining the policy objective of internal plurality as an aid to democratic public discourse.

## 4.2 The “specific challenges of ‘disinformation’”

Having considered the changing media ecosystem and the general challenges it poses for policymakers and regulators in the first section of this chapter, we now turn to the specific question of the challenges of disinformation. This is not an easy task, as there is no commonly shared definition of this phenomenon despite its growing importance. Should we talk about fake news, false information or disinformation? The report will retain the latter notion, as it is that used by both the European Commission and in the questionnaire submitted to the members of ERGA. Despite this, many national stakeholders and institutions use the widespread expression of “fake news”.

The aim of this section is not to define disinformation. It is rather to look at this phenomenon from the perspective of NRAs and to highlight the initiatives in place or planned in this matter. Nonetheless, it is worth noting that some definitions exist and can allow the reader to better frame the topic.

In the communication of the European Commission<sup>94</sup> entitled “Tackling online disinformation: a European Approach” published in April 2018, “disinformation” is “*understood as verifiably false or misleading information that is created, presented and disseminated for economic gain or to intentionally deceive the public, and may cause public harm*”<sup>95</sup>.

The Council of Europe prefers to talk about “*information pollution*” and identifies three types of information disorders: Misinformation (“*when false information is shared, but no harm is meant*”), disinformation (“*when false information is knowingly shared to cause harm*”) and malinformation (“*when genuine information is shared to cause harm, often by moving information designed to stay private into the public sphere*”)<sup>96</sup>.

No matter the definition used, it is indisputable that the issue of disinformation is taking a more prominent place in the public discourse. The answers to the questionnaire from ERGA subgroup 1 highlight the current approach of national regulatory authorities to this situation and question the necessity of changes in the various regulatory landscapes.

<sup>94</sup> Communication from the European Commission “Tackling online disinformation: a European Approach”, 26.4.2018, COM(2018) 236 final

<sup>95</sup> Pages.3-4

<sup>96</sup> “Information disorder: Toward an interdisciplinary framework for research and policy making”, Council of Europe Report DGI(2017)09, September 27, 2017

### *4.2.1 Focus on the current situation*

Disinformation is a developing issue which partly depends on the stakeholders' behaviour. Although this phenomenon is still emerging, some regulators and member states expound initiatives in place to tackle the problem.

#### *4.2.1.1 The possible impact of broadcasters and the importance of acting in good faith*

In addition to the first section of this chapter on the changing media landscape, it should be noted that a common understanding that underpins the internal plurality regime is that the parties involved in the media cycle act in good faith, insofar as they aspire to honour the requirements of content and programmes. This assumption might be challenged, even in the traditional regulated space. The requirements placed on broadcasters for ensuring internal plurality are effective when broadcasters agree with the policy objectives they are in aid of.

When programmes fail to comply, enforcement in the first instance tends to be corrective, assuming that a mistake was made in good faith and indicating to the broadcaster how they can avoid making it again in the future. The FYROM regulator made this point in their response to the questionnaire, stating that accuracy, objectivity and impartiality are essentially professional ethics and thus matters for self-regulation, for which regulation by NRAs can only function as a backstop. This creates the potential for this process to be undermined by broadcasters acting in bad faith; that is, broadcasters who would intentionally spread dis-information. A hypothetical broadcaster acting to undermine internal plurality rules could do so by exploiting fragilities in the regulatory framework, possibly by taking advantage of the increasingly blurred lines between commentary and news. This point has been implicitly recognised by new legislative proposals in France, which would give the CSA powers to strip licences (and reject applications for new licences) from foreign-controlled broadcasters which undermine the Republic and its institutions, notably by broadcasting false information.

It is difficult in theory to distinguish between a broadcaster that breached internal plurality rules inadvertently from a broadcaster who did so intentionally. It would be even more difficult to prove in practice, based on the evidence, and would likely require the subjective judgement of policymakers. The threshold of evidence ought to be the highest, as any mistake would be at the cost of the democratic right to freedom of expression.

#### *4.2.1.2 The evolution of the phenomenon of disinformation*

As has been expounded earlier in the report, there are some clear signs of significant changes in the media environment that disrupt the currently available measures of internal plurality. Although only 10 regulators have identified changes that relate to disinformation, it is possible to put forward some common findings.

The phenomenon of disinformation is not new. Nonetheless, the development of new technology and actors has had a significant impact on it, as discussed in detail in the first part of this chapter<sup>97</sup>. It is easier to communicate, to exchange with others and, therefore, to disseminate disinformation. Some changes are frequently mentioned in the public debate:

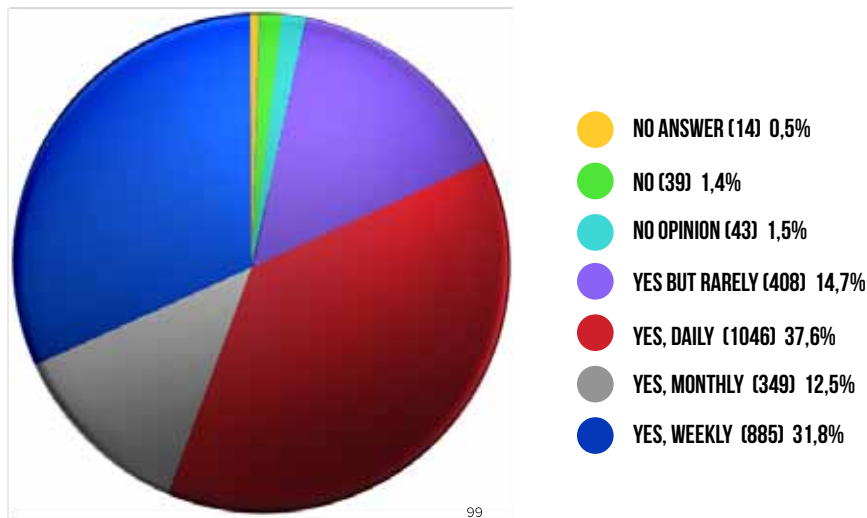
- The existence of easy and non-expensive ways of creation and distribution of content;
- The growth of social media and the possibility of a more viral spread of content;
- The development of news content creation outside the traditional media that hitherto acted as gatekeeper;
- An out-of-date regulatory landscape in this matter;
- The lack of transparency, especially on the internet (content can be published and distributed anonymously, the regulator might not know the provider of some electronic publications, etc.);
- The impact of state actors and individuals on the dissemination of the news;

Some of the changes are not specific to the online world. For instance, the regulator of the Czech Republic (RRTV) mentioned the existence of a nationwide broadcaster that has decided to offer the viewers allegedly “alternative information”, but which in practice promotes the interests of some political entities.

In other words, disinformation seems to be omnipresent in the current world. In November 2017, the European Commission launched a public consultation on this phenomenon<sup>98</sup>. The commission revealed the key findings of the consultation on 26 April 2018. One of the striking conclusions was that more than 95% of the respondents to the online questionnaire for citizens had already come across fake news:

<sup>97</sup> See section 4.1

<sup>98</sup> <https://ec.europa.eu/digital-single-market/en/news/synopsis-report-public-consultation-fake-news-and-online-disinformation>

*Have you ever come across fake news?*

Some regulators also highlight the changes in the decision-making process. The role of social media and disinformation during the elections is undeniable, as demonstrated by the last American presidential election. It would, however, be false to state that this phenomenon does not exist in Europe. For instance, in its answer to the survey, the French regulator (CSA) mentions the issues of disinformation encountered during the last presidential election, especially through the “MacronLeaks”<sup>100</sup> case. Ofcom also refers to a report of the UK Electoral Commission stating that serious allegations of misinformation, misuse of personal data, and overseas interference have raised concerns that democracy may be under threat from “an explosion in the use of digital tools in political campaigning”. While recognising the positive value of online communication for participation and the importance of not undermining free speech, the report recognises “the worries of many, the atmosphere of mistrust which is being created, and the urgent need for action to tackle this”<sup>101</sup>. It should be noted that the report relates to areas of campaigning not subject to regulation by Ofcom.

All these changes have pushed some NRAs and the member states to act in order to counter the growing phenomenon of disinformation.

<sup>99</sup> P.6 “Synopsis report of the public consultation on fake news and online disinformation”, found here: <https://ec.europa.eu/digital-single-market/en/news/synopsis-report-public-consultation-fake-news-and-online-disinformation>

<sup>100</sup> The hacking of Emmanuel Macron’s campaign staff mails which has led to the dissemination of disinformation

<sup>101</sup> UK Electoral Commission, “Digital campaigning – improving transparency for voters”, June 2018

### *4.2.1.3 Few measures currently in place*

Most national regulatory authorities assert that there is no measure in place on the regulatory level in relation to internal media plurality aimed at tackling the problem of disinformation strictly speaking. Indeed, only 6 regulators declare that there is. In addition, it is interesting to notice that, even for the regulators that have mentioned the existence of specific initiatives in place, the issue of disinformation is currently tackled mainly through other concepts. When facing a case of disinformation, a regulator will more likely use the existing rules related to objectivity, honesty, veracity, accuracy, fairness or rigour of information. These can be effective tools in tackling this phenomenon. That is to say, it would be a mistake to assume that NRAs cannot address the cases of disinformation solely because there is no specific disinformation measure in place in their state. Therefore, even NRAs that have not asserted measures in place to tackle this issue can act in this field through other means. However, the phenomenon of strictly online disinformation is more problematic to tackle, as ERGA members have few or no regulatory tools available in this matter.

Although measures regarding disinformation are currently rare strictly speaking, many regulators are active in the field of media literacy in order to help citizens to shape their critical minds and to build an understanding of the role of the media. For instance, the regulator of Portugal (ERC) conducts literacy sessions at schools empowering youths, including journalism students and those at risk of social exclusion, to critically deconstruct information in the media. In Norway, the Norwegian Media Authority is amongst those who work actively to increase media literacy in the Norwegian population, and the authority collaborates with different stakeholders and conducts different surveys, for instance on fake news. In September 2018 the Norwegian Media Authority launched a new teaching plan for critical media understanding for youths together with the Norwegian Directorate for Education and Training and the fact-checker organisation Faktisk.no. The aim is to increase young people's ability to evaluate sources and information. Media literacy embodies an important and recognised tool to fight the phenomenon of disinformation.

One of the key findings of the questionnaire is that existing legal initiatives are uncommon in the field of disinformation. In fact, only one authority has mentioned a legal disposition prohibiting disinformation: article 19 of the Lithuanian Law on the Provision of Information to the Public states that *"It shall be prohibited to disseminate disinformation and information which is slanderous and offensive to a person or which degrades his honour and dignity"*. Furthermore, on 1 September 2017, the German Bundestag has adopted an act "to improve law enforcement in social networks" also known as the NetzDG. It should be noted that this law is in no way referencing the issue of disinformation, but rather exclusively directed at unlawful content containing hate speech. This is content infringing some provisions of the German criminal code and others aiming at preventing threats against democracy. The text provides for several

obligations related to the presence of unlawful content on “social networks” with more than 2 million registered users in Germany. For instance, once the provider receives a complaint, it shall remove any manifestly unlawful content within 24 hours. It is interesting to highlight that, according to article 1; the act does not apply to journalistically- and editorially-designed services. The NetzDG has been thoroughly discussed, and there have been numerous debates and criticism due to its potentially negative effect on the freedom of expression.

There are more initiatives in place at the regulatory level. Of note are those from the Italian AGCOM: On 16 November 2017, AGCOM established a “*Technical table to guarantee pluralism and correct information on digital platforms to guarantee pluralism and fairness on digital platforms*”<sup>102</sup>. It aims to promote self-regulation of platforms and exchanges of best practices on the use of digital platforms, to discern and to consider the online misinformation phenomenon. The initiative implied the participation of Google, Facebook, representatives of the main press, radio, and television publishing groups, some trade associations, and representatives of the worlds of journalism and advertising. The table started the first operational phase in the context of the beginning of the campaign for the general political elections of 4 March 2018. On 1 February 2018, the technical table approved the “*Guidelines for equal access to online platforms during the election campaign for political elections*” that constitute the first self-regulatory intervention promoted by the authority. The group also approved the establishment of five groups to study and monitor methodologies for the classification and detection of disinformation online. The groups are currently working on the following topics: 1) methodologies for classifying and detecting online disinformation; 2) definition of monitoring systems for economic advertising flows, from national and foreign sources, aimed at financing fake content; 3) fact-checking: organisation, techniques, tools and effects; 4) media and digital literacy; 5) design and implementation of disinformation information campaigns aimed at consumers.

During election periods, seven NRAs stated in their responses that they work in collaboration with the election supervisory authority on the issue of social media and/or disinformation. For instance, during the last presidential election in France (2017), the French CSA warned the French election supervisory authority<sup>103</sup> about what the press has dubbed the “MacronLeaks”<sup>104</sup>. Consequently, the day before the election, the two bodies asked all concerned actors present on the internet and social networks (the media and citizens) not to echo the content of the files hacked until the closing of the polling stations, as it was likely to contain fakes. The aim was to preserve the honesty of the election.

Although only a few regulators declared that there are already measures for tackling the issue of disinformation, there are some recent initiatives in this matter. The question here is whether there is a need for more changes and action to counter disinformation.

<sup>102</sup> Resolution n.423/17/CONS

<sup>103</sup> La Commission nationale de contrôle de la campagne électorale

<sup>104</sup> See above.



### *4.2.2 A prospective vision of the regulation of disinformation*

Disinformation, as we know it today, is still an emerging topic. In this context, it is interesting to note that a majority of regulators consider that there is insufficient evidence to assess the need for regulatory intervention in this field, although projects of initiatives to tackle this phenomenon are multiplying.

#### *4.2.2.1 A lack of evidence to assess the need for a regulatory intervention*

The answers to the questionnaire show that only 5 national regulatory authorities believe that there is enough evidence to assess the need for a binding regulatory intervention to tackle the issue of disinformation.

The majority of NRAs assert that there is a lack of data, evaluation and research in this field. Some admit that there is some research but that it does not represent a sufficiently robust and conclusive evidence base to intervene through the creation of binding rules. Nonetheless, another interesting response is that NRAs state there is currently a general issue of transparency of information and distrust in it.

As previously mentioned, five regulators consider that there is enough evidence to justify possible regulatory intervention. Among them, one has emphasised the difficulty of such intervention, considering the nature of online communication and the amount of information currently available. The issue of disinformation and the collection of data on this phenomenon is a priority for these NRAs. For example, the Polish KRRiT Office is currently working on a broad analysis of the problem of disinformation.

It should be noted that, even though some NRAs do not consider there to be enough evidence, they still agree that there is a need to conduct research on this phenomenon.

In short, even though a majority of NRAs advocate that there is insufficient justification for regulatory measures, there is evidence of a current issue with trust and transparency of information, as detailed in the first section of this chapter<sup>105</sup>. The phenomenon of disinformation, however, begins to be a clear matter of interest for the different NRAs and the member states<sup>106</sup>.

For instance, there are many discussions currently in Poland on the growing problem of disinformation and on the possible solutions to counteract this phenomenon. Although it was not formalised in a legislative bill, there was a proposal to regulate this issue<sup>107</sup>.

<sup>105</sup> See section 4.1.

<sup>106</sup> See section 4.1 on “*changing media landscape and their impact on the currently available measures*”. It reveals that 17 regulators declare there have been calls or discussions in their country on the need to modify the current measures in place in the field of internal pluralism.

<sup>107</sup> The KRRiT Office has announced an initiative called “Round Table of Media” in January 2018. Its aim is to develop a common Editorial Good Practices Code to tackle several issues such as disinformation.

In Italy, there have been debates at the Parliamentary level. In the previous legislature, on 7 February 2017, a proposal of law about fake news was presented to the Senate but has yet to be discussed<sup>108</sup>.

Another example can be found in the United Kingdom. The House of Commons' Culture, Media, Sport and Digital Select Committee has launched an inquiry into fake news and has published an interim report on 29 July 2018<sup>109</sup>. The aim of the inquiry was to establish the boundaries of what fake news is, its impact on the public understanding of the world and on the public's response to traditional journalism, to consider how different social groups use and respond to fake news, and to consider whether changes in the selling and placing of advertising have encouraged the growth of fake news<sup>110</sup>.

The aforementioned interim report's writers note that the legal framework is "no longer fit for purpose", especially in "this rapidly changing digital world"<sup>111</sup>. The lack of transparency seems to be one of the primary issues. In this context, they establish five main recommendations to tackle the issue of disinformation:

- The tech companies should be more liable and responsible (e.g. by creating a new category of responsible actors for tech companies, which are neither "platforms" nor "publishers"...);
- They should financially participate in media literacy and in the functionality of the Information Commissioner's Office<sup>112</sup> (e.g. through the creation of new levies);
- The rules on political advertising should be modified (e.g. by defining "digital campaigning", by banning "micro-targeted political advertising to lookalikes online"<sup>113</sup>);
- The Competition and Market Authority should be able to audit fake accounts online in order to have more information on the commercial communications market on social media;
- "The UK Government should consider establishing a digital Atlantic Charter as a new mechanism to reassure users that their digital rights are guaranteed"<sup>114</sup>.

The previously mentioned list of recommendations is not exhaustive, and the interim report proposes many more.

All these discussions and debates invite us to think about the future and the way the phenomenon of disinformation could be tackled by the NRAs and in the different member states.

<sup>108</sup> Senate of the Republic of Italy, n° 2688, 7 February 2017.

<sup>109</sup> "Disinformation and 'fake news': Interim Report", House of Commons DCMS Committee, 29 July 2018.

<sup>110</sup> For more details, please see <https://www.parliament.uk/business/committees/committees-a-z/commons-select/digital-culture-media-and-sport-committee/inquiries/parliament-2017/fake-news-17-19/>

<sup>111</sup> Page 3 of the report.

<sup>112</sup> The Information Commissioner's Office, also known as ICO, is "The UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals." (ICO's website)

<sup>113</sup> Page 38 of the report.

<sup>114</sup> Page 23.

#### ***4.2.2.2 Ways of changing the current regulatory situation***

A majority of NRAs consider that, if measures are taken in this field, they should be a combination of new ones and extensions of current ones. However, only a few initiatives are planned to tackle disinformation in the different member states and a vast majority of them foster a self-regulatory scheme.

##### ***i) The relevance of new measures to fight disinformation***

When tackling the emerging issue of disinformation, it is important to reflect and consider what type of measures could be efficient in the fight against it.

*Please note: As expounded above, most NRAs believe that there is insufficient evidence to assess the need for regulatory intervention in this field. Nonetheless, as noted in the first part of this chapter, in terms of public opinion on media regulation, the Reuters report this year showed that 60% of respondents from Europe were in favour of government intervention to stop “fake news”<sup>115</sup>.*

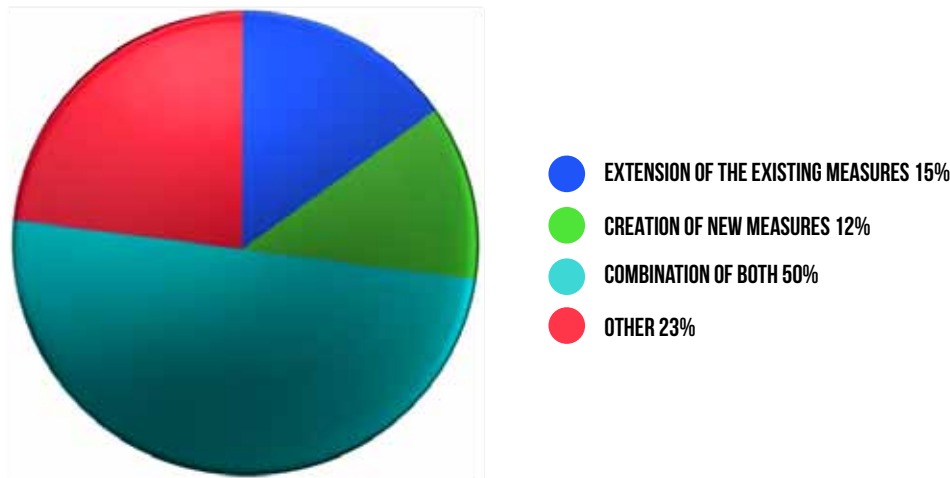
##### ***What might be effective and enforceable for measures in the case of digital media?***

The question of the type of measures that could be enforceable for the digital media might be one of the central points of debates in the different member states during the transposition of the revised AVMSD, noted that the text does not provide harmonised rules on media plurality for these new actors.

Fifty per cent of the responding NRAs consider that a combination of new measures and an extension of existing measures would generally be a good and efficient way to tackle the case of digital media. In other words, a majority of NRAs assert that a mere extension of the existing measures is not sufficient. These are seen as not adapted to the online world, especially when considering some actors such as social networks. Twenty-three per cent of the regulators did not decide whether there should be new measures, or an extension of the current ones, or a combination of both. The main reasons given were that it is still too early to answer this question and that there is a lack of precise data in this matter.

<sup>115</sup> Reuters Institute Digital News Report 2018.

*Answers of the NRAs to the previously mentioned question:*



The replies reflect the fact that we are currently in a fast-changing environment. The difference of rules applying to the online and linear actors is huge, and this issue seems paramount. Linear services often consider the new actors to be creating unfair competition and most of the NRAs in the European Union advocate for a better level playing field between the different kinds of services (especially regarding some aspects of regulation).

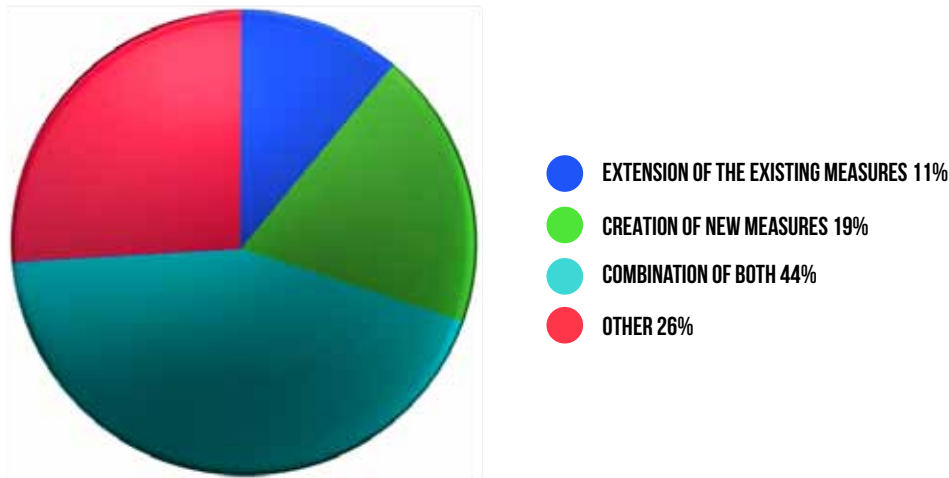
***Specifically, what do you believe the solution could be for the issue of disinformation in the context of internal plurality?***

Once again, a striking outcome of the questionnaire is the fact that almost fifty per cent of the NRAs think that there is a need for a combination of new measures and an extension of existing measures to tackle the issue of disinformation effectively. It appears from the answers that some current measures should be extended (for instance, transparency rules, media literacy initiatives, or honesty and objectivity of the news).

Nineteen per cent of the respondents consider that there should only be a creation of new measures. The main arguments put forward are that there should be specific rules on disinformation applied for all types of media and that this phenomenon should be treated by particular measures considering its unique speed of dissemination in the audience.

Twenty-six per cent of the regulators did not decide whether there should be new measures, or an extension of the current ones, or a combination of both. The main reasons given are that it is still too early to answer this question and that there is a lack of precise data in this matter.

*Answers of the NRAs to the previously mentioned question:*



Here again, the replies seem to indicate that, if changes of regulations occur in this matter, the creation of new rules might be a desired solution. Indeed, sixty-three per cent of the respondents' answers imply the creation of unprecedented measures.

In this context, some actors (NRAs, Member States, the European Union, etc.) are planning to implement specific measures to tackle the issue of disinformation.

### ***ii) Currently planned initiatives to react to this phenomenon***

The purpose of this section is to put forward examples of planned initiatives aimed at tackling the problem of disinformation. The goal is not to be exhaustive but rather to focus on some instances. These can be found at both the national and European levels.

#### ***Planned initiatives at the national level inside the European Union***

Only six NRAs indicate that there are plans to implement specific measures to tackle the issue of disinformation in their member state. Among them, only one declares that there is a legislative proposal currently in discussion strictly for tackling this phenomenon. Self-regulation is often the favoured tool. An example is the recent declaration of Mr Alexander de Croo, Belgium Minister of the digital agenda<sup>116</sup>. After receiving the conclusion of a group of experts on disinformation, the minister has rejected the idea of a legislative proposal and has decided that the fight against this phenomenon implies more self-regulation.

Some previously mentioned factors could explain why respondents to the questionnaire often prefer the "self-regulation solution". First, in a vast majority of states, there is insufficient research or data on disinformation. In addition, a bill on this matter would be a sensitive topic, considering the impact that it could have on the freedom of expression and the rights that flow from it. Moreover, the technical expertise of the stakeholders might also be an argument for the use of self-regulation. In other words, a vast majority of member states are still cautious in this matter.

Examples of planned self-regulatory initiatives have been given already. Indeed, we can recall the aforementioned round tables set by regulators from Italy (AGCOM) and Poland (KRRiT Office).

<sup>116</sup> <http://plus.lesoir.be/168570/article/2018-07-17/faire-de-la-belgique-un-laboratoire-anti-fake-news>

The Croatian regulator (AEM) also organised a series of workshops in the first half of 2018 on freedom of information. It also supports a campaign on media literacy with UNICEF.<sup>117</sup> With regard to the legislative initiative, a legislative proposal is currently being discussed in France. The bill was presented in March 2018<sup>118</sup> and is aimed at fighting fake news, with a strong focus on the election periods. The discussions are still pending in the two chambers of Parliament. The bill intends to establish new tools to better fight the dissemination of fake news during elections. Its purpose is also to increase the transparency of the platforms during the pre-election and election time in order to allow, on the one hand, the public authorities to detect possible destabilisation campaigns by institutions through the dissemination of false information and, on the other hand, help internet users to identify the advertiser of sponsored content. The bill also provides for the possibility of having a short-term judicial decision to stop the dissemination of fake news during the elections.

In practice, the draft law envisages an extension of the powers of the French regulator on several points. For instance, under certain circumstances, the CSA would be able to suspend broadcast of a media source under foreign influence until the end of the election if the service disseminates fake news and if the regulator considers it to undermine the fundamental interests of the nation, or to participate in an attempt to destabilise its institutions. Otherwise, the consequences would be to distort the good procedure of the election.

After the first reading in Parliament, where the discussions involved, i.a., the definition of “fake news” and the need to avoid unjustified infringements on the freedom of expression, a draft law has been adopted by the National Assembly but rejected by the Senate. In September, the Joint Committee (composed of National Assembly and Senate members) failed to reach a compromise. In early October, the National Assembly has adopted the text during the second reading with only small changes. During its second reading, the Senate had rejected the text once again. On November 20, the National Assembly had the final word and has adopted the text. Nonetheless, the law has not been formally passed yet as the Constitutional Council has been seized. This institution will now check whether the law and its different articles respect the French Constitution.

There is also an expectation that the UK Government is going to devise new legislation to address harmful online content, which would cover but not be limited to disinformation. Partly to contribute to the debate on these issues in the UK, in September 2018 Ofcom (UK) published a discussion document examining the area of harmful online content, also including but wider than disinformation<sup>119</sup>. This is not a call for new regulation, but rather draws on the key lessons from the regulation of content standards, for broadcast and on-demand video services, and the insights that these might provide to policy makers into the principles that could underpin any new models for addressing harmful online content (ahead of expected UK government legislative proposals in this area). Ofcom considers that principles from broadcasting regulation could be relevant as policymakers consider issues around online protection, including protection and assurance against harmful content and conduct; upholding freedom of expression; adaptability over time; transparency; enforcement against bad behaviour; and independence of decision-making.

<sup>117</sup> <https://www.e-mediji.hr/en/news/the-first-media-literacy-days-in-croatia/>

<sup>118</sup> <http://www.assemblee-nationale.fr/15/propositions/pion0799.asp>

<sup>119</sup> Addressing harmful online content: A perspective from broadcasting and on-demand standards regulation, OFCOM, 2018, [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0022/120991/Addressing-harmful-online-content.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0022/120991/Addressing-harmful-online-content.pdf)

Alongside the discussion paper, Ofcom also published joint research with the Information Commissioner's Office on people's perception, understanding and experience of online harm<sup>120</sup>. The survey of 1,686 adult internet users found that 79% had concerns about aspects of going online, and 45% had experienced some form of online harm. The study shows that protection of children is a primary concern, and reveals mixed understanding around what types of media are regulated.

Concisely, the planned initiatives at the national level are rare and mostly revolve around self-regulation schemes and disinformation in the political context. The sole example of a legislative proposal designed specifically at tackling disinformation underlines the difficulty of such an exercise.

### ***Planned initiatives at the European level***

Things are progressing on the European level, both in the European Union (EU) and in the context of the Council of Europe (CoE). We summarise these initiatives here, based on additional external sources of information and analysis collected by ERGA members as part of their work in this group.

#### Concerning the EU

On 13 November 2017, the European Commission (EC) published a press release announcing the launch of a public consultation and establishment of a High-Level Expert Group on the issue of fake news<sup>121</sup>.

Using the results of the consultation and the report<sup>122</sup> drafted by the previously mentioned group of experts and published in March 2018<sup>123</sup>, the European Commission has elaborated a strategy to tackle the issue of disinformation. The latter has been presented through the communication of the European Commission of 26 April 2018<sup>124</sup> entitled "*Tackling online disinformation: a European Approach*".

In this seventeen page document, the European Commission puts forward solutions to fight against this phenomenon. It favours, here again, a self-regulatory approach. The action plan of the commission is based on four pillars:

- "Improve transparency regarding the way information is produced or sponsored;
- Diversity of information;
- Credibility of information;
- Inclusive solutions with broad stakeholder involvement."

<sup>120</sup>Internet users' experience of harm online, OFCOM, ICO, 2018 <https://www.ofcom.org.uk/research-and-data/internet-and-on-demand-research/internet-use-and-attitudes/internet-users-experience-of-harm-online>

<sup>121</sup> [http://europa.eu/rapid/press-release\\_IP-17-4481\\_en.htm](http://europa.eu/rapid/press-release_IP-17-4481_en.htm)

<sup>122</sup> "A multi-dimensional approach to disinformation", March 2018.

<sup>123</sup> <https://ec.europa.eu/digital-single-market/en/news/final-report-high-level-expert-group-fake-news-and-online-disinformation>

<sup>124</sup> [http://europa.eu/rapid/press-release\\_IP-18-3370\\_en.htm](http://europa.eu/rapid/press-release_IP-18-3370_en.htm)

Without being exhaustive, and noting that the strategy is focused exclusively on online disinformation, some measures proposed by the Commission are noteworthy: primarily, the creation of a code of practice on disinformation for online platforms and the advertising sector, which is to be drafted by stakeholders gathered in a multi-stakeholder forum on disinformation (Forum). The EC also emphasises the need to improve media literacy and support for quality journalism. In addition, it suggests creating an independent European network of fact-checkers and a “secure European online platform on disinformation to support the network of fact-checkers and relevant academic researchers with cross-border data collection and analysis, as well as access to EU-wide data”.

The first draft of the previously mentioned code of practice on disinformation was published on 17 July 2018<sup>125</sup>. A “Working Group” within Forum (consisting of representatives from the leading platforms and the advertising industry as well as advertisers) drafted this six page document. Forum’s “Sounding Board” (consisting of representatives from the media, civil society and academia) offered advice on the code and will issue an opinion on it. The final version of the code is expected to be published in September 2018 and open for signature by online platform members of the advertising sector and advertisers. The commitments that signatories will undertake are gathered in the draft code. Without entering into detail, the commitments are based on five principles:

- Improving the scrutiny of advertisement placements to demonetise purveyors of disinformation;
- Ensuring transparency of political advertising and issue-based advertising to enable users to identify promoted content;
- Ensuring the integrity of platform services including by identification and closure of fake accounts and addressing the improper use of online bots;
- Empowering consumers to report disinformation and access different news sources, while giving prominence to authoritative content;
- Empowering the research community to monitor the spread of disinformation, this includes by granting access to platforms’ data that are necessary to continuously monitor online disinformation.

In October 2018, the initial signatories presented their individual subscriptions to the code, which identify the policies they will implement to meet the code’s commitment. The platform signatories outlined actions they will take in advance of the 2019 elections to the European Parliament. These include training for political groups, organising awareness-raising events, and the introduction of transparency tools for political advertising.

The European Commission will report on progress made in December 2018, and examine the need for further actions.

<sup>125</sup> <https://ec.europa.eu/digital-single-market/en/news/draft-code-practice-online-disinformation>



### Concerning the CoE

Another noteworthy initiative is one from the Council of Europe.

The most remarkable input of the CoE regarding the topic of disinformation is its report on information disorder published in September 2017<sup>126</sup>. The report gives some terminological specifications on the phenomenon, puts forward elements to understand information disorders, stresses the phases of its dissemination, reveals its causes, and identifies solutions to this issue.

The report shows that “there is an urgent need to understand the most effective formats for sparking curiosity and scepticism amongst audiences about the information they consume and the sources from which that information comes”<sup>127</sup>. In this context, the report presents thirty-five recommendations. These recommendations are for a broad range of actors: governments, technology companies, media organisations and civil society.

For instance, the report recommends that technology companies provide researchers with data related to initiatives aimed at improving the quality of information, or pay attention to audio/visual forms of disinformation. It proposes that governments require more transparency about advertising and invites media organisations to ensure strong ethical standards across all media. It also advocates for better education of the public about the threat of information disorder. The examples are numerous.

Since the issue of this report, the Council of Europe continues to work on this phenomenon. Considering the close links between disinformation on the one hand, and media literacy in the digital era and quality journalism on the other, the CoE keeps addressing this problem through the work of two expert groups. The first is the Committee of Experts on Quality Journalism in the Digital Age<sup>128</sup>. The second is the Committee of Experts on Human Rights Dimensions of automated data processing and different forms of artificial intelligence<sup>129</sup>.

<sup>126</sup> “Information disorder: Toward an interdisciplinary framework for research and policy making”, Council of Europe Report DGI(2017)09, September 27, 2017.

<sup>127</sup> [https://www.coe.int/en/web/freedom-expression/information-disorder#{"35128714":0,"35128725":0}](https://www.coe.int/en/web/freedom-expression/information-disorder#{)

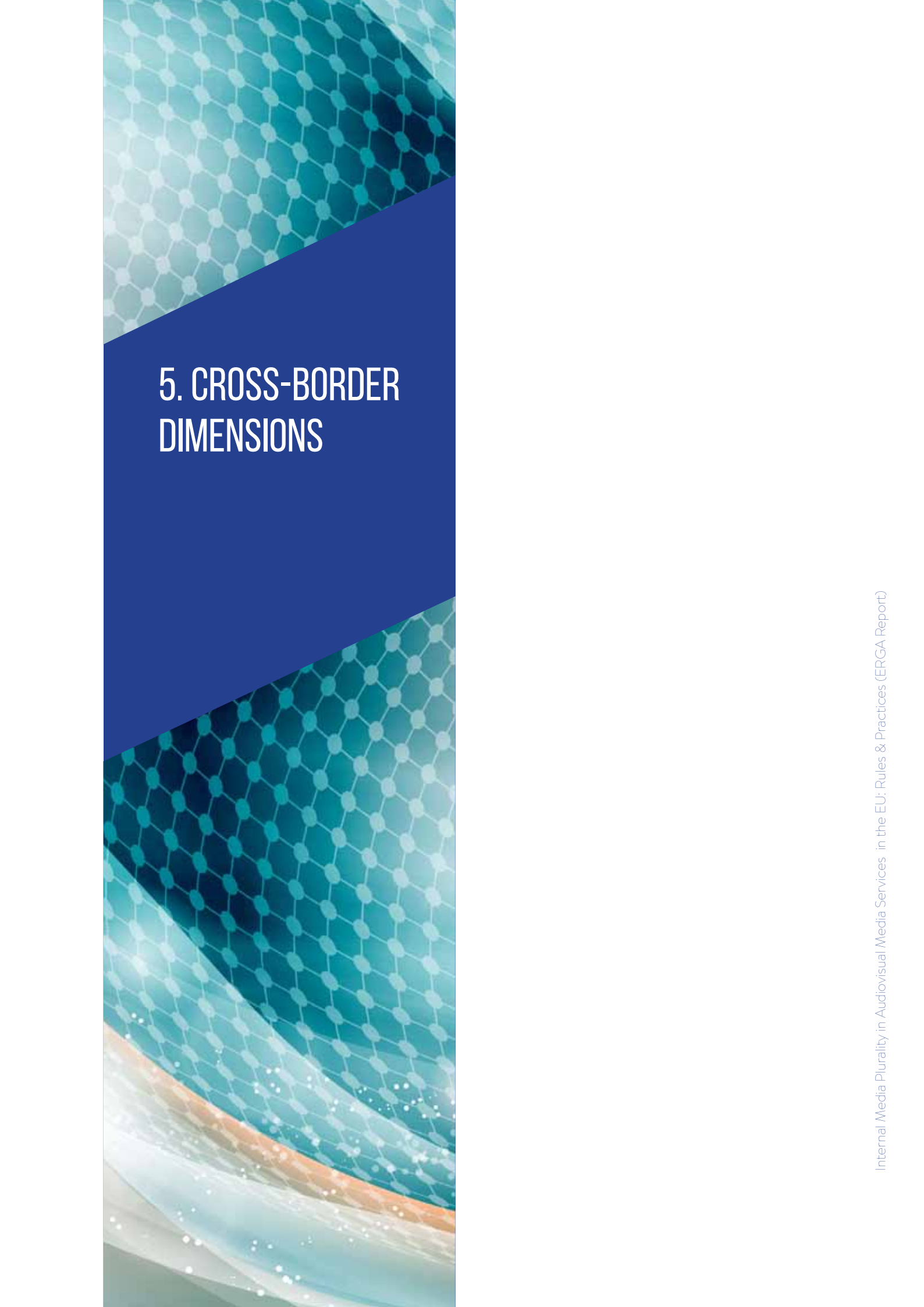
<sup>128</sup> <https://www.coe.int/en/web/freedom-expression/msi-joq>

<sup>129</sup> <https://www.coe.int/en/web/freedom-expression/msi-aut>

### *Summary conclusions*

The growing importance of the phenomenon of disinformation is undeniable. Current concerns stem mostly from the specific ways in which the internet and new technologies profoundly affect the dissemination of information. However, disinformation also exists in the linear and traditional world of media. How to intervene in this field is a sensitive topic, especially considering the rights and principles at stake (such as fundamental rights like the freedom of expression, the freedom of information, among others). Ultimately, the input of NRAs on disinformation convey that:

- Although the majority of NRAs have responded in the questionnaire that they have not identified radical changes relating to disinformation, the regulators and the public are fully aware of this phenomenon. NRAs have recently been increasing research in this field;
- Disinformation can have important consequences in the political field and on the decision-making process;
- Most countries have no measures in place tackling the issue of disinformation per se, and when they exist, almost never through a legislative measure;
- A vast majority of NRAs consider that there is not enough evidence to assess the need for a regulatory intervention in this field;
- However, the number of proposals to tackle the problem of disinformation is growing; The vast majority of Member States and NRAs favour self-regulation to address this issue;
- More and more actors (States, NRAs, stakeholders...) work on this phenomenon and plan initiatives at the national, European and international levels.



## 5. CROSS-BORDER DIMENSIONS

According to the EAO yearbook 2017-18, at the end of 2016, around one third of all television channels and on-demand services established in the EU specifically targeted foreign markets.<sup>130</sup> As there are also other categories of targeting services (i.e. services which are established in one country and targeting this country and others) the cumulative share of cross-border services might be even higher. This fact raises the question of the application of internal media plurality measures in such cases. The availability of the measures and effectiveness of their application could significantly differ based on where a certain service is established and which country it targets. This section's aim is to identify such cases and how to address them through cooperation between regulators and within ERGA.

The content of this section is based on responses from NRAs gathered through a questionnaire with this particular section focussed on the cases of cross-border issues connected to the application of the available measures, a potential need for more cooperation between the NRAs in this area, and the possible added value of ERGA.

In general, most respondents provided little precise data and instead provided responses in a rather general manner.

### ***5.1 Cross-border issues***

Most NRAs (19 members and 2 observers) stated that there are no cross-border issues connected to the application of the available measures, without providing additional explanations. SI explicitly stated that there are no traditional media registered abroad producing relevant content in the context of media plurality. On the other hand, 8 members stated that there are cross-border issues, 6 of which referred to targeting services, one to services targeting other countries (UK) and one to both categories (IT). However, most of these members (EE, IE, IT, PT, SK) provided general descriptions of potential problems (although it seems that, in reality, cross-border issues appear to be of a more exceptional nature in an EU-wide context), based on the country-of-origin principle in relation to traditional audiovisual services (for example applying the national rules during election periods (see chapter 3.2) for relevant audiovisual services from other EU countries). Two members (LT, LV) referred to the same issue, stating that there are actual issues in relation to television channels registered in other EU or non-EU countries. LT referred to issues regarding disinformation and the information/content which should not be broadcast (especially incitement to hatred<sup>131</sup>), while LV referred to the possibility of breaches of due impartiality, due accuracy, undue prominence of views and opinions in the broadcasts of a certain provider, and to the occurrences of controversial facts and one sided opinions in general. UK explained that it is, in fact, dealing with complaints regarding services targeting other countries, the responsibility for which is in its domain (also, complaints are assessed under UK rules). UK also indicated several implications related to the application of the measures in such cases: understanding the context, timeliness of complaints, language barriers and consequent duration of procedures, lack of feedback, and other rules, especially during the election period. They provided the description of one such case (service targeting

<sup>130</sup> European Audiovisual Observatory: Yearbook 2017/2018 Key trends.

<sup>131</sup> Lithuania is also the country which twice successfully concluded derogation procedures under Article 3 of AVMS Directive (see Commission's decisions C(2015) 4609 of 10. 7. 2015 and C(2017) 814 of 17. 2. 2017 based on violations of Article 6 of Directive. However, Article 6 does not explicitly touch upon the issue of media plurality. The decisions are only mentioned in terms of appearance of cross-border issues.

LV). Three NRAs did not provide responses.

Only SK and SI explicitly touched upon the question of video sharing platforms and/or social media under question 1. Both stated that these services could represent an issue in relation to the fact that their providers are not located in their countries. As the nature of the new services has specific characteristics, this topic is covered separately at the end of this section.

The reason for only a small number of states stating that cross-border issues exist is probably multidimensional. On the one hand, based on the members' responses, it could be argued that cross-border services on the EU level mostly fail to represent a significant factor when it comes to violations of internal media plurality rules in any single country. It could be further assumed that this is due to the fact that cross-border services are not (as much as domestic services) oriented towards news or current affairs programmes (which are typically addressed by the internal media plurality tools<sup>132</sup>), especially when it comes to domestic topics which are probably more sensitive and more often addressed by regulators' tools<sup>133</sup>. Of course, these possible explanations are not conclusive and the majority of NRAs clearly indicated that cross-border issues seem to be of a more exceptional nature in the EU-wide context.

This speculation also opens another possible explanation for the absence of cross-border issues, which is that cross-border violations exist but they are successfully dealt with by the national regulators irrespective of the origin of services (the question explicitly refers to application of the tools). If this is the case (it needs to be stated upfront that there were no responses which would confirm this thesis), it brings about further questions, i.e. what kind of tools are applied and how cross-border issues appear. Namely, it is hard to imagine that breaches regarding media plurality (in news and current affairs programmes), which are of fundamental importance, would not also call for the harshest measures, including some type of restriction of the broadcasts (and thus potentially colliding with Article 3, Paragraph 1 of the directive when cross-border services would be in question). Furthermore, SK stated that rules such as those during the election campaigns are still applied on the CoD principle but the services might be located outside of the country applying the rules. This explanation in some way indicates that the country-of-destination principle could be used when applying media plurality rules as this is not coordinated by the directive, in accordance with the limitations set out in the case of the Court of Justice<sup>134</sup>. However, the possibility of restriction of cross-border services due to the breach of media plurality rules (in terms of news and current affairs plurality) is a complex issue which exceeds the scope of this report. It seems from the available data from the questionnaire that cases of cross-border application of some of the internal plurality rules for audiovisual services do not currently occur.

The third possible explanation for why cross-border issues do not appear more often could be the consequence of that these violations are not quite common in general (also at domestic level) or are not identified often.

<sup>132</sup> As explicitly stated in Section 2.4 of this report, the scope of this report is the regulation of media content such as news or current affairs programmes, while social and cultural plurality are not covered.

<sup>133</sup> In addition to this, informative programmes in cross-border services, if and when they appear, probably hold smaller viewing shares than those in domestic services. Also in connection to this, it seems less likely that cross-border services would be oriented towards news and current affairs programmes without having editorial offices established in a single targeted country and thus being (at least to some extent) already subject to the measures of the targeting country.

<sup>134</sup> Although LT member indicated that there is some overlap with another field, i.e. incitement to hatred which is coordinated by Article 6 of AVMSD.

To conclude this subsection, regarding traditional (audiovisual) media and media plurality in terms of news and current affairs, cross-border issues seem to be of a more exceptional nature in an EU-wide context<sup>135</sup>. Where they appear, the cooperation between NRAs (such as that between LV and UK) can offer solutions. The question of VSPs/social media on the other hand seems to be of a different nature.

### *5.2 Cooperation between regulators*

In general, there is already a good deal of cooperation between NRAs (either bilaterally or through various networks like ERGA, EPRA or regional networks). However, most NRAs (21 members and 2 observers) believe that there is a necessity for more cooperation in the area of internal plurality. This view was shared by all but three of the NRAs (they also did not explain their opinions). Three members and one observer provided no opinions regarding the need for more cooperation (one of these members stated that the issue has not yet been addressed and another that the cooperation is a good way to solve cross-border issues and is always a positive way to get information and exchange best practices). Additional explanations regarding the necessity for more cooperation could be divided into three groups. The first group of 5 NRAs provided no additional explanation. The second group stated that there is a need for cooperation in terms of exchange of information and best practices. The third group, which partly overlaps with the second group, stressed the importance of cooperation in cases of solving cross-border issues. The exact number of responses falling into the second and the third group are not provided as some responses are not sufficiently specific (they refer to cooperation as such). In general, it seems that most members recognise the need for some kind of cooperation, even if they do not currently experience cross-border issues. For instance, HU stated that it is indispensable to guaranteeing continuous and close cooperation between the regulatory authorities of the different member states, having the required knowledge of the different media markets and their regulation. UK stated that there is already a good deal of cooperation and that more cooperation is always helpful.

The responses of NRAs in this subsection can be interlinked with the responses from the previous subsection. All members that stated that there are cross-border issues also stated that there is a need for more cooperation. Also, as a majority of member states are not challenged by cross-border issues (relating to audiovisual media services) many may consequently feel it unimportant to stress the need for the cooperation in terms of solving such issues but rather stress the importance of the exchange of information which could be useful when applying the tools themselves. On the other hand, all three members facing actual cross-border issues also accentuated the importance of formal cooperation in cross-border issues, which is also recognised by some other members that do not face such problems.

Two members (SK, NL) specifically mentioned the question of new services (video sharing platforms/social media). Responses of some other members also indicated that this topic could be addressed via cooperation between regulators<sup>136</sup>.

<sup>135</sup> For instance, ERGA's report on territorial jurisdiction does not mention this issue.

<sup>136</sup> See the end of this section.

### 5.3 ERGA's role

Most regulators (22 members and 2 observers) provided their opinions on what the added value of ERGA could be in the area of internal plurality<sup>137</sup>. Most see ERGA as a medium for the exchange of information and best practices (also as a discussion forum on the matter). Some regulators believe that ERGA should have a role in cross-border issues (and similar, such as fact checking processes). ERGA could also represent a discussion channel (with global players) in case of new services. Due to the great diversity of responses and general manner of many of them, exact numbers are not provided for the groups of responses given above.

Several members also pointed out the role of ERGA in relation to new services, whose activities can be of a global nature, where cooperation between the NRAs might be appropriate. In this context, SK suggested that ERGA might be best placed to solve some of the potential issues. At the same time it was suggested by NL that the added value of this platform would lie in sharing information and learning from respective experiences. As suggested, this is also due to the fact that this is a relatively new environment where a trial and error approach can sometimes be used to learn from each other's mistakes. In this context, it was suggested that ERGA cooperation can therefore help the ERC to act in the present but also to be prepared for future challenges by getting closer to a global reality. UK believes that, through ERGA, it could be possible to demonstrate regulators' expertise in this area, ensuring that they are in a position to provide input into policymakers' thinking regarding the best way to secure plurality objectives in the digital age.

As a general conclusion under this question, it needs to be stated again that the matter of internal plurality (in news and current affairs programmes) is not a harmonised field at the EU level. Despite this, it seems to be of vital importance for most of the members, especially in the context of the changing media landscape<sup>138</sup>. This explains why, above others, the need for the exchange of information (including discussion forum and communication channel) and best practices was broadly stressed in members' responses. Even when it comes to traditional audiovisual media, where the existing (general) rules are comparable, some members indicated issues where cooperation could be helpful<sup>139</sup>.

<sup>137</sup> Although the questionnaire provided the option of yes/no answer to question 3, it was actually formulated in descriptive manner. Therefore, no quantitative analysis is provided in these terms.

<sup>138</sup> See (for instance) Section 4.1 of this report.

<sup>139</sup> See Section 3.1.2 (practice of application) of this report

### 5.4 *New services*

Some NRAs touched upon the problem of new services as an existing or potential problem in the aspect of internal media plurality. Interesting, this issue was mostly addressed in the context of ERGA.

From the limited number of responses in this area, it seems that the question of media plurality in new services is already far more pronounced than it ever was in traditional services. In these services, the application does not seem to represent an exceptional challenge<sup>140</sup> as the editorial responsibility is evident and the application of the established tools can concentrate strictly on the content as such.

By their nature, new services bring a completely new set of additional challenges, which are already addressed in other parts of this report<sup>141</sup>. When looking upon them in the light of NRAs' responses from this section, we can identify some main aspects that also have a cross-border dimension:

- There is a pronounced need to gather and share information to achieve an evidence-based approach where mutual findings and observations could be utilised to adjust different national policies;
- New services have an international (global) nature with one possible establishment in one of the EU countries and a need to approach them in a somewhat coordinated manner;
- There are new regulatory challenges emerging in relation to new services which are yet to be addressed and the exchange of experience in this field will be of vital importance.

Thus, these new challenges will require cooperation between regulators for which ERGA could offer a suitable platform, as suggested by some NRAs (SK, NL, UK, PT) (see section 5.3). This is already happening with the introduction of the regulation of video sharing platforms into the revised AVMSD. However, as media plurality is not addressed by these changes, cooperation of some sort will need to go beyond that.

<sup>140</sup> Ibid.

<sup>141</sup> See whole Section 4 of this report.





# CONCLUSIONS AND NEXT STEPS

### *Conclusions and next steps*

The principles and rules of internal plurality are not an end in and of themselves but have value in their function as a means of promoting and securing a healthy democratic public discourse by proxy. The aim is that media which serves the public with a plurality of perspectives with regards to impartiality and accuracy, and from a plurality of sources, will cultivate the sort of public discourse essential to a functioning democracy.

What is meant by ‘healthy democratic public discourse’, however, can vary from society to society and with it the concept of an acceptable level of plurality. Further to this, there are several challenges to measuring internal plurality: it does not exist as a dichotomy, and so a framework to indicate the overall state of plurality is necessary. This, in turn, will involve subjective judgements around evidence.

Despite that, current debates suggest a tendency to extend the existing internal plurality framework in some way to new and online media. Any decisions to do so, however, should be evidence-based and targeted at specific harms, while noting that internal plurality measures are just part of an overall package used by regulators and legislators to ensure a pluralistic and healthy democratic public discourse, alongside wider external media plurality measures and media literacy. It is beyond the scope of this report to propose any detailed extension of such a framework; however, this report does try to provide a clear picture of the currently existing rules and a look at the perspective of the NRAs on the current challenges and possible cross-border approaches, therefore enabling further debate on how to frame such a policy.

In this report, two categories of measures of internal media plurality have been described: general measures, and measures during election periods. Regarding the basis of these rules, some NRAs have linked it to the basis of constitutional legal framework, in addition to other rules specifically aimed at regulating media. A constitutional legal framework in all cases refers to the right to the freedom of expression/speech. It is crucial to state that NRAs are aware that all aspects of media plurality have their bounds set by constitutional and fundamental rights. The report also provides information on non-statutory rules concerning internal media plurality, which are found in a number of EU Member States, including in sub-legal frameworks set up by professional organisations, broadcasting and media organisations themselves or, in some cases, with the involvement of national regulators and supervisory bodies.

For the **general rules**, all NRAs have some measures specifically aiming to protect these aspects of internal media plurality. Of course, not all categories of measures are available in all countries. It appears, however, that these measures are widespread in every category assessed, ranging from those available to almost all NRAs (editorial independence, impartiality and the right to reply), to those available to most NRAs (accuracy, veracity and light touch approaches), and finally concluding with widespread measures in the area of transparency. At the same time, only six NRAs have specific measures on disinformation in their countries; however, some NRAs pointed out that the other measures on media plurality indirectly but effectively cover this.

Most countries have additional measures for internal plurality applied to **public service broadcasters**. There are indications that these additional measures have been effective: public service broadcasters (who are recognised as fully independent), and their websites, tend to have the highest trust scores in the 2018 Reuters Institute survey.<sup>142 143</sup> These statistics reveal the importance of the role that PSBs play in earning the public's trust in news and in acting as a common reference for public discourse. Given this role, the health and impact of the PSB system can be read as an indicator for the condition of internal plurality.

The second category of internal plurality measures were those applied during **election periods**. Because of their potential influence, broadcast media have traditionally been subject to detailed and rigorous regulation during election periods. This was in order to ensure the effectiveness of the pluralism of all the “political representatives” participating in the political-institutional debate who must, therefore, have access to the media in order to let the public know their positions. In fact, almost all countries have specific regulations for the electoral campaign aimed at traditional broadcasters. At the same time, in some countries, NRAs have the role of drafting the rules for the electoral campaigns under their respective legal frameworks.

There are also **some relevant questions** arising from the work on the report:

- Does the relevant NRA have at its disposal a robust and enforceable set of measures (both general and for election periods) for ensuring internal plurality?
- Is the relevant NRA independent in its decisions to take appropriate measures for securing internal plurality?
- How widely consumed is PSB news content in the relevant jurisdiction? Is the PSB generally considered to be editorially independent of government, and trusted?
- What is the public's perception of bias in PSB news coverage?

Also questions regarding further work that might compare and contrast the effects of different approaches to securing plurality:

- What assumptions underpin requirements for objectivity as opposed to impartiality?
- Have different approaches led to manifest differences in media environments?

The **current challenges** faced by NRAs were closely examined. It is clear that most NRAs agree that there is insufficient evidence to properly assess the need for regulatory intervention to secure internal plurality against changes to the media landscape, but a call for a need to conduct more research on these phenomena was clear, despite the fact that proposals are already being made in this regard. Insofar as proposed interventions might involve the wider application of the current internal plurality framework analysed in this report, the trends in the media landscape described above could offer some helpful direction.

<sup>142</sup> Reuters Institute Digital News Report 2018

<sup>143</sup> Ibid., p 44.

The following general trends for the **changing media landscape** have been observed in the report:

- the internet reduces barriers to entry into the market for news, leading to an abundance of news services available to citizens online;
- most people accessing news online do so through ‘side doors’ instead of going directly to news websites or applications;
- the news is increasingly viewed on smartphones in the form of ‘news feeds’;
- content discovery online is fragmented;
- in the absence of editorial curation, the news is now arranged in ‘news feeds’ by a combination of algorithms and personalisation by users;
- for most users of social media, the route of content discovery is guided by endorsements and recommendations by friends, with news items discovered in this way less likely to be challenged;
- news content which particularly resonates with members of a social network can go ‘viral’.

A specific part of the report was also focused on the specific challenges of the phenomenon of **disinformation**. Here, consumption of news online occurring in a largely unregulated space could potentially risk undermining the policy objective of internal plurality as an aid to democratic public discourse. It seems that the growing importance of the phenomenon of disinformation is undeniable. Current concerns stem mostly from the specific ways that the internet and new technologies profoundly affect the dissemination of information. However, disinformation also exists in the linear and traditional world of media. How to intervene in this field is a sensitive topic, especially considering the rights and principles at stake (such as fundamental rights like the freedom of expression and the freedom of information).

In summary, the **responses of NRAs on disinformation convey** that: NRAs have not identified radical changes that relate to disinformation although regulators and the public are fully aware of this phenomenon;

- NRAs have recently been increasing conducting research in this field;
- Disinformation can have important consequences in the political field and on the decision-making process;
- Most countries have no measures in place tackling the issue of disinformation per se, but when they exist, it is almost never through a legislative measure; The vast majority of NRAs are of the opinion that there is not enough evidence to assess the need for regulatory intervention in this field. However, the number of proposals to tackle the problem of disinformation is growing; The vast majority of member states and NRAs favour self-regulation to solve this issue; more and more actors (states, NRAs, stakeholders) work on this phenomenon. There is a recognition that achieving plurality depends on a wide package of measures.
- There are planned initiatives at the national, European and international levels.

The cross-border dimensions of internal plurality were also closely examined. When it comes to traditional (audiovisual) media and media plurality, cross-border issues appear to be of a more exceptional nature in an EU-wide context. And even where they appear, the cooperation between NRAs can offer solutions (in general, there is already a good deal of cooperation between the NRAs). The topic of cross-border cooperation between NRAs has been covered in a general context, beyond the scope of this report, in the report of another ERGA 2018 subgroup on “The extension of the material scope of the AVMSD – Preparing for new tasks for NRAs and ERGA and challenges of law enforcement online”. The question of VSPs/social media, on the other hand, seems to be of a different nature. At the same time, most NRAs believe that there is a need for more cooperation in the area of internal plurality and stressed the added value of ERGA. Most see ERGA as a medium for exchange of information and best practices (also as a discussion forum on the matter). Some regulators believe that ERGA should have a role in cross-border issues. ERGA could also represent a discussion channel (with global players) in the case of new services. As a general conclusion regarding this question, it should be stated again that the matter of internal plurality (in news and current affairs programmes) is not a harmonised field at the EU level, while it seems to be of a vital importance for most of the members, especially in the context of the changing media landscape<sup>144</sup>. This explains why, above others, the need for the exchange of information (including discussion forum and communication channel) and best practices was broadly stressed in members’ responses. Even when it comes to traditional audiovisual media, where the existing (general) rules are comparable, some members indicated issues where cooperation could be helpful.

This report should provide a unique NRA perspective on the discussed topics that was, until now, missing and will hopefully contribute to a wider debate. As has been stressed many times in this report, however, internal media plurality is just one part of the question of media plurality in society. In 2019, therefore, ERGA will continue to explore these topics focusing on the regulatory aspects of external media plurality and possibly the topic of disinformation while, at the same time, attempting to answer some of the questions raised in this report.

<sup>144</sup> See (for instance) Section 4.1 of this report.

**ERGA** – European Regulators Group for Audiovisual Media Services

**EU** – European Union

**CoE** - Council of Europe

**EC** - European Commission

**SG 1** – ERGA Subgroup on Internal and External Plurality

**NRA** – National Regulatory Authorities

**ECtHR** - The European Court of Human Rights

**PSM** - Public service media

**PSB** – Public service broadcaster

**MPM** - The European Media Pluralism Monitor

**AVMSD** - Audiovisual Media Services Directive

### Country codes and NRAs:

**Belgium** (BE): Conseil supérieur de l’audiovisuel (CSA),

**Greece** (EL): National Council for Radio and Television (NCRT),

**Lithuania** (LT): Radio and Television Commission of Lithuania (RTCL),

**Portugal** (PT): Regulatory Authority for the Media (ERC),

**Bulgaria** (BG): Council for Electronic Media (CEM),

**Spain** (ES): National Authority for Markets and Competition (CNMC),

**Luxembourg** (LU): Autorité Luxembourgeoise Indépendante de l’Audiovisuel (ALIA),

**Romania** (RO): National Audiovisual Council (NAC),

**Czech Republic** (CZ): Council for Radio and TV Broadcasting (RRTV),

**France** (FR) : Conseil Supérieur de l’Audiovisuel (CSA),

**Hungary** (HU): Media Council of the National Media and Infocommunications Authority (NMHH),

**Slovenia** (SI): Agency for Communication Networks and Services of the Republic of Slovenia (AKOS),

**Denmark** (DK): Radio and Television Board, c/o Agency for Culture and Palaces,

**Croatia** (HR): Agency for Electronic Media of the Republic of Croatia (AEM),

**Malta** (MT): Malta Broadcasting Authority,

**Slovakia** (SK): Council for Broadcasting and Retransmission of the Slovak Republic (CBR),

**Germany** (DE): Directors Conference of the State Media Authorities (DLM),

**Italy** (IT): Italian communications authority (AGCOM),

**Netherlands** (NL): Commissariaat voor de Media (CvdM),

**Finland** (FI): The Finnish Communications Regulatory Authority (FICORA),

**Estonia** (EE): Technical Regulatory Authority (TRA),

**Cyprus** (CY): Cyprus Radio-Television Authority (CRTA),

**Austria** (AT): Kommunikationsbehörde Austria (KommAustria),

**Sweden** (SE): Swedish Press and Broadcasting Authority (MPRT),

**Ireland** (IE): Broadcasting Authority of Ireland (BAI),

**Latvia** (LV): National Electronic Mass Media Council (NEPLP),

**Poland** (PL): National Broadcasting Council (KRRiT),

**United Kingdom** (UK): Ofcom (Ofcom),

**Norway** (NO): Norwegian Media Authority (NMA),

**Serbia** (RS): Regulatory Authority of Electronic Media (REM),

**FYROM** (MK): Agency for Audio and Audiovisual Media Services,

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