

## Public service and public interest content in the digital age: the role of regulators

Comparative Background document<sup>1</sup>

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Dr. Samuel Studer (OFCOM-CH)

### 1. Introduction and background

The issue of regulation of public service media has featured prominently on the agenda of many meetings ever since the establishment of the EPRA network<sup>2</sup>. Over time, the debates have covered a wide range of issues, encompassing governance and financing aspects, not to forget the role played by regulators in assessing PSM performance.

Recent sessions have focused on the profound challenges faced by PSM in the digital age. Public service media are operating in media landscapes characterised by increasing connectivity, individualisation of content, new consumption patterns, and greater global competition faced by historical national operators. These disruptive elements are impacting PSM's remit, missions and scope of activities and also raise many regulatory questions. In large parts of Europe, public service media (PSM) are being confronted with the fact that they need to do more to justify their existence.

Against this background, [EPRA's Work Programme for 2018](#) included an annual theme on "Public service and public interest content in the digital age".

The objective of the spring plenary session which took place on 24 May 2018 in Luxembourg was to bring together a selection of key stakeholders to report on their perception of current challenges in the provision, distribution and delivery of public service and public interest content. The background document EPRA/2018/02 "Public Service and public interest in the digital age"<sup>3</sup> which was produced on that occasion listed several of the current challenges and problems facing PSM in Europe. In the course of the plenary session, the following points were discussed:

- **Organisation of the production of public value and the relationship between PSM and private commercial media:** a question discussed with increasing frequency is whether commercial media can provide some or all public services just as well as (and perhaps on a better value-for-money basis and/or without the reliance on public funding) PSM organisations. Experience with such strategies in New Zealand and the USA has shown that these high expectations were largely unfulfilled.
- **Audience accessibility:** PSM are still very popular in many European countries and often reach a large audience. In many countries, it is also a remit of PSM to produce and distribute attractive offerings for the entire population, some of which would not otherwise be available to audiences on a commercial basis. Fulfilling this remit has become more difficult

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<sup>1</sup> Disclaimer: this document has been produced for an internal meeting by EPRA, an informal network of 53 regulatory authorities in the field of audiovisual media services. It is not a fully comprehensive overview of the issues, neither does it represent the views nor the official position of EPRA or of any member within the EPRA network.

<sup>2</sup> Notably in Ljubljana (2002), Naples (2003), Prague (2007), Dublin (2008), Belgrade (2010), Kraków (2013), Berne and Nuremberg (2015) and Luxembourg (2018).

<sup>3</sup> EPRA Background Document by Samuel Studer, OFCOM (CH), for the Plenary Session 1: "Public service and public interest content in the digital age: taking stock of stakeholders' views" <https://www.epra.org/attachments/luxembourg-plenary-1-public-service-and-public-interest-content-in-the-digital-age-background-document>

for PSM, due to growing social and political fragmentation, which correlates with an ever-expanding offering of target group-specific media formats. At the same time, it is increasingly the case that PSM content is not being "found", especially by the target group of young people.

- **Funding of PSM organisations and content:** the funding of PSM is also coming under pressure in various countries. The question therefore arises as to how the long-term funding of PSM can be secured and which funding models lend themselves to this. More and more countries are replacing the traditional licence fee with a general household fee or funding PSM from the national budget. In the case of the latter model, there is a risk of increasing dependence on political players: if, for example, national parliaments can set the PSM budget, they can potentially try to control it.
- **Production of high-quality content:** the erosion of the funding base of PSM can also have a negative impact on one of their core competences: producing and broadcasting high-quality national, regional and local content. In digitised media landscapes, PSM are facing fiercer competition from global competitors, especially GAFAN (Google, Apple, Facebook, Amazon, Netflix). Increased cooperation between different PSM organisations and between PSM organisations and national private media was mentioned as a means of countering the international "giants".

The second plenary session, which took place on 11 October 2018 in Bratislava<sup>4</sup>, focused on EPRA members' perception of the challenges facing PSM in the digital age and on the role that broadcasting regulators play in the supervision of PSM. On that occasion, four presentations by regulators from authorities vested with wide-ranging competences in the supervision of public service media provided an opportunity to highlight the particular regulatory challenges that public broadcasters currently face in their respective countries and to report on how regulation can facilitate PSM through transparency and accountability mechanisms, both in respect of the remit of PSM and in their use of public funding and other economic resources<sup>5</sup>.

The purpose of this comparative background paper is to provide an overview of:

- how EPRA members view the public service concept and remit of PSM and their perception of the challenges that PSM face
- the challenges facing the regulatory authorities in relation to PSM, and
- the powers that the regulatory authorities have in respect of PSM in general and the current challenges in particular.

This paper is based on the answers to a questionnaire circulated by the EPRA Secretariat. A total of 32 responses<sup>6</sup> were received from the following regulatory authorities, for which we are extremely grateful:

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<sup>4</sup> Introductory Document EPRA/2018/09 by Samuel Studer, OFCOM (CH) for Session 1: "Public service and public interest content in the digital age: the role of regulators" on 11 October 2018 in Bratislava

<https://www.epra.org/attachments/bratislava-plenary-1-public-service-and-public-interest-content-in-the-digital-age-the-role-of-regulators-introductory-document>

<sup>5</sup> For more details, see the Minutes of the meeting in Bratislava (EPRA members' only):

<https://www.epra.org/attachments/bratislava-minutes>

<sup>6</sup> You can consult the full list of responses to the questionnaire at the following link: <https://www.epra.org/surveys/public-service-and-public-interest-content-in-the-digital-age-the-role-of-regulators> (EPRA members' only).

KommAustria (“AT”), the Communication Regulatory Agency of Bosnia and Herzegovina (“BA”), the Conseil supérieur de l’audiovisuel of the French speaking Community of Belgium (“BE-CSA”), the Flemish Regulatory Authority for the Media (“BE-VRM”), the Council for Electronic Media of Bulgaria (“BG”), the Swiss Federal Office of Communications (“CH”), the Council for Radio and TV Broadcasting of the Czech Republic (“CZ”), the Directors’ Conference of the State Media Authorities of Germany (“DE”), the Radio and Television Board of Denmark (“DK”), the Technical Regulatory Authority of Estonia (“EE”), the Catalan Audiovisual Council (“ES-CAC”), the National Authority for Markets and Competition of Spain (“ES-CNMC”), the French Conseil supérieur de l’audiovisuel (“FR”), the British Office of Communications, Ofcom (“GB”), the Georgian National Communications Commission (“GE”), the National Council for Radio and Television of Greece (“GR”), the Agency for Electronic Media of the Republic of Croatia (“HR”), the Broadcasting Authority of Ireland (“IE”), the Icelandic Media Commission (“IS”), the Radio and Television Commission of Lithuania (“LT”), the National Electronic Mass Media Council of Latvia (“LV”), the Agency for Audio and Audiovisual Media Services of Macedonia (“MK”), the Dutch Commissariaat voor de Media (“NL”), the Norwegian Media Authority (“NO”), the Polish National Broadcasting Council (“PL”), the Regulatory Authority for the Media of Portugal (“PT”), the National Audiovisual Council of Romania (“RO”), the Regulatory Authority of Electronic Media of Serbia (“RS”), the Swedish Press and Broadcasting Authority (“SE”), the Agency for Communication Networks and Services of the Republic of Slovenia (“SI”), the Council for Broadcasting and Retransmission of the Slovak Republic (“SK”) and the National Council of TV and Radio Broadcasting of Ukraine (“UA”).

## **2. Introduction to the survey results and research**

The results of the survey reveal some shared features and challenges across Europe. Firstly, there is a broad consensus that the concept of PSM retains its validity and the tasks of the PSM organisations have not fundamentally changed in the digital age.

Secondly, in some areas, common themes and challenges could be identified across different jurisdictions, such as reach and financing of PSM, maintaining or improving the quality of content and retaining or improving political and financial independence. Nevertheless, the competencies of EPRA members’ authorities with regard to the regulation of PSM can be very diverse and the challenges faced by PSM can also be quite country-specific.

In presenting the results, care was taken to work out the commonalities and, at the same time, present the diversity correctly. For a finer granularity, please refer to the individual responses to the questionnaire.

But before providing an analysis of the responses to the three main sections of the survey, it is important to start with an introduction on the great diversity of regulatory authorities in Europe. One common point for European countries is that they have conferred the regulation of broadcasting on independent regulatory authorities. However, great differences can be found in the scope of their respective remit, powers and structure. With regard to the supervision of PSM, three main clusters of countries can be identified:

- Countries where the broadcasting regulator has no competence for the regulation or supervision of PSM: one out of 32 (DE);
- Countries where the broadcasting regulator is competent for the supervision of the legal provisions applicable to all players including PSM, but is not in charge of assessing PSM performance: 14 out of 32 (BA, BG, CZ, EE, GE, GR, HR, LT, MK, RO, RS, SI, SK, UA);

- Countries where the broadcasting regulator has wide-ranging powers with regard to PSM and may play some role in the assessment of PSM performance: 17 out of 32 (AT, BE-CSA, BE-VRM, CH, DK, ES-CAC, ES-CNMC, FR, GB, IE, IS, LV, NL<sup>7</sup>, NO, PL, PT, SE).

This broad distinction should be kept in mind when reading the analysis of responses given to the three sections of the survey.

### 3. The perspective of regulators on public service concept, tasks of PSM and challenges

The aim of the first set of questions was firstly to answer the question as to whether PSM need to be "rethought" in the digital age, or whether the challenge lies primarily in adapting the existing organisations to digital conditions. Secondly, EPRA members were asked their view on the biggest challenges facing PSM. The answers could provide information about potential areas of action for independent regulatory authorities, provided they have the appropriate powers.

#### 3.1. Validity of the public service concept and (social) tasks of PSM in the digital age

The "ideal" set of characteristics of public service media as an institution includes (acc. to Blumler 1992 and Barendt 1995, cf. also Burri 2015: 4-11<sup>8</sup>) a "comprehensive task":

- PSM must not only inform or educate, but also entertain.
- "Generalised mandate": the mission of PSM is expressed in the form of general functions, such as "to educate", "to inform" and "to entertain", and not in the form of specific broadcasts with specific content.
- Quality features of the programme, such as "diversity, pluralism and objectivity" of content.
- Non-commercial configuration and (partial) funding through a fee or taxation – PSM must provide a service for the community and not operate for profit. They are (ideally and typically) funded wholly or mainly by fees or taxes.
- "Universal service" (geographically and socially) – another task of PSM is to provide their programmes to the population in remote areas, and they should offer content for all different social groups.
- Contribution to "national identity and culture".
- Independence from state and commercial interests – PSM should fulfil their mission in the service of the public and not in the service of particular political or economic interests.

EPRA members believe that this traditional concept of PSM, and thus the requirements placed on the respective providers, is still generally valid and important. No regulatory authority stated that the concept is outdated or that fundamental changes are necessary.

A number of regulatory authorities also identified individual tasks of PSM that they consider to be particularly important:

In this respect, 18 EPRA members mentioned (in some cases several) *quality features*, item (c) above: (AT, BA, BG, CH, DK, ES-CNMC, FR, GB, GE, IS, LV, MK, NL, NO, RO, SE, SI, SK). In some countries, PSM

<sup>7</sup> Note that in the Netherlands, the CvdM does not assess the PSM performance; the Dutch PSM assesses its own performance and reports on it to the regulator.

<sup>8</sup> Barendt, E. (1995): *Broadcasting Law: A Comparative Survey*. Oxford: Clarendon Press; Blumler, J. (1992): *Television and the Public Interest: Vulnerable Values in Western European Broadcasting*. London: Sage; Burri, M. (2015): *Public Service Broadcasting 3.0. Legal design for the digital present*. London, New York: Routledge.

are generally required to provide "high-quality content" (BG, CH, DK, FR, GB, IS, LV, MK, NO, RO, RS, SE, SI). Sometimes, specific quality features are required: for example, the content should be diverse and pluralistic in opinion (BA, BG, CH, DK, ES-CNMC, FR, GB, IS, LV, MK, NO, SE) and/or objective (AT, BA, DK, ES-CNMC, GE, LV, RO). There was less frequent mention of the following quality requirements of public service content: responsible, innovative, relevant, distinct, produced in-house.

15 regulatory authorities stated that aspects of the *comprehensive mandate*, i.e. inform, educate, entertain; item (a) above, held equal, if not more, legitimacy in a digital environment (CH, CZ, ES-CNMC, FR, GB, GE, IE, IS, LV, PT, RO, SE, SI, SK, UA). Here, the main focus was on maintaining or expanding the provision of diverse and trustworthy news and factual content (CH, CZ, ES-CNMC, GB, GE, IE, IS, LV, PT, RO, SI, SK, UA). The educational mandate was mentioned less often (CH, FR, GB, GE, IE, SE, SI) and entertainment was rarely mentioned as a core public service element. The Irish BAI made the following statement in response to the question about the relevance of the entertainment mandate of PSM: "*It may be the case that PSM provision of entertainment is less of a concern, given the market content providers in that area (...).*"

14 regulatory authorities identified the *contribution of PSM to national and cultural identity*, item (f) above, as a core task (BA, CH, DK, ES-CNMC, FR, GB, GE, GR, IE, IS, LV, NO, SK, UA). PSM should make a "contribution to democracy" (BA, DK, GR, IE, IS, LV, NO) "national culture" (CH, ES-CNMC, IS, LV, NO, SK) and cohesion (CH, ES-CNMC, FR, GE, GR, UA). Mention was also made of the expectation that PSM should "contribute to the maintenance of language" (CH, LV, NO) and to "national identity"(CH, IS, NO).

12 NRAs identified the *provision of a universal service* (content for the whole of society/all population groups and geographical accessibility for the whole population; item (e) above as a core task (BA, CH, DK, ES-CNMC, GB, GE, HR, IE, IS, LV, MK, SK). In this context, the regulatory authorities felt it was essential that PSM provide a comprehensive range of content (BA, CH, DK, GB, HR) for many different population groups (ES-CNMC, GB, GE, IE, MK). Less frequent mention was made of technical coverage of the whole population (GB, IS, SK). The National Electronic Mass Media Council of Latvia also sees the provision of services to the foreign population as a core task of PSM: "*Due to mobility and historical reasons, PSM is also developed as local content producer to the world – our diaspora that is quite enough, "the fifth region" of Latvia lives abroad temporarily or permanently.*" The Norwegian NMA emphasises that the value of the PSM's remit with regard to "*reaching all audiences, reflecting different identities, catering for different groups in society and cover narrow genres is as relevant as ever*" against the background of an increased use of individualized media services, the use of algorithms and an increased polarization in society.

The French CSA considers that PSM should "*be exemplary on societal issues such as promoting social cohesion, equality between men and women, improving the representation of the diversity of our society on-air and media education. These issues must be part of the priority areas for the development of PSM*".

Lastly, nine EPRA members stressed the importance of independence from the state and commercial interests (item (f) above: BG, CZ, FR, GE, GR, NL, NO, RS, SK).

### **3.2. Major challenges for PSM as identified by EPRA members**

As shown in Section 3.1, regulatory authorities clearly stated that the requirements placed on their respective PSM providers are more relevant than ever in the digital age. The core task is therefore to provide regulatory support to PSM organisations in adapting to the changed conditions in a digitised environment.

28 regulatory authorities (AT, BA, BE-CSA, BG, CH, CZ, DK, EE, ES-CAC, ES-CNMC, FR, GB, GR, HR, IE, IS, LT, LV, MK, NL, NO, PL, PT, RO, RS, SE, SK, UA) commented on what they see as the biggest challenges for PSM today or in the near future:

- **Reaching audiences and competition for attention**

The most frequently mentioned challenges relate directly to **audiences** (AT, BE-CSA, BG, CH, EE, ES-CAC, ES-CNMC, FR, GB, GE, GR, HR, IE, IS, LT, LV, MK, NL, PL, PT, RO).

16 regulatory authorities saw the maintenance or expansion of the **reach of PSM content** as an urgent challenge for PSM organisations (AT, BE-CSA, EE, ES-CAC, ES-CNMC, FR, GE, GR, HR, IE, IS, LT, LV, NL, PT, RO). Six mentioned that PSM find it difficult to reach the younger target group (BE-CSA, ES-CNMC, FR, HR, IS, NL) and six mentioned that PSM would (also) have to find an answer to digitisation in terms of audience relevance (AT, BE-CSA, FR, IE, LV, PT).

One reason for the low or declining reach of PSM content is the **increased competition** from private providers – both national and international content providers. Seven regulatory authorities pointed out that PSM are generally facing increased competition for attention (CH, EE, ES-CAC, FR, IE, LV, NL). Four regulatory authorities see foreign competition as the main and increasing challenge in terms of competition for share of reach (EE, ES-CAC, FR, IE). Some countries also pointed out that (domestic) commercial providers were trying to build up political pressure with the aim of restraining the PSM, as in the case of Iceland: "*The private media considers the PSM to be too big in a small market. There is a lot of pressure to reduce the size of the PSM and narrow its public service remit.*"

Looking beyond reach figures, various regulatory authorities point out challenges in the relationship with audiences. Four regulatory authorities believe that the PSM must regain or strengthen the **trust of audiences** or do better at justifying its existence (BE-CSA, CH, MK, NL). It was also pointed out that PSM organisations should consider their role with respect to the increasing **fragmentation** of society (CH, NL).

- **Funding**

Eleven EPRA members saw major challenges for PSM organisations in the area of funding (BA, BE-CSA, DK, ES-CAC, GB, IE, LV, NL, NO, PL, SK). About half saw the challenge as a more general and prospective one in ensuring stable funding. The other half mentioned budget cuts or stated that budgets were already too low.

- **Quality of content**

Seven EPRA members saw challenges in maintaining or strengthening the quality of content (BG, CH, ES-CNMC, FR, HR, NL, PT). In this context, three regulatory authorities specifically mentioned strengthening "distinctiveness" as a task (CH, FR, NL). The requirement to be more innovative was also mentioned by the Swiss respondent.

- **Independence**

Six EPRA members identified challenges in terms of independence (BA, BG, CZ, MK, NL, RS) referring both to political influence, or attempts to exert such influence, and financial dependencies. The Council for Radio and TV Broadcasting of the Czech Republic, for example, reported that: "*PSM in the*

*Czech Republic currently face significant political pressures", while the Dutch regulatory authority wondered: "How to keep PSM independent of political and commercial influences?"*.

- **Distribution**

Issues around distributing PSM content were mentioned less often as a challenge (NL, PL, UA). For two respondents, the focus was on issues relating to digital distribution networks (PL, UA); one EPRA member (NL) mentioned the findability of PSM content on the Internet as a particular challenge.

#### **4. Regulatory challenges**

From the perspective of EPRA members, PSM face numerous different challenges in the digital age (Section 3.2). Accordingly, the question arises as to what challenges the regulatory authorities themselves face in relation to the regulation and supervision of PSM. The regulatory authorities were asked about challenges they are currently facing, or have faced in the recent past, under a number of headings.

##### **4.1. Regulatory challenges regarding the financing of PSM**

17 regulatory authorities indicated that they are, or have recently been, dealing with issues relating to funding PSM. Seven regulatory authorities reported that **budget cuts** are being/have been discussed, and six countries have taken a decision to this effect (CH, DK, ES-CAC, GR, NL, PT). As a rule, however, such decisions are taken by the relevant ministries and not by the regulatory authorities. In Iceland, discussions of this sort did not lead to budget cuts. Three regulatory authorities reported a (chronic) underfunding of the PSM (FR, PL, UA). In Ireland, recommendations of the regulatory authority for public funding increases for PSM have been repeatedly rejected.

Another topic discussed in various countries concerns **advertising bans or a reduction in the amount of advertising time**. Spain banned PSM from advertising in 2010; Latvia has adopted a regulation to this effect which is planned to be implemented in 2021. Bosnia and Herzegovina, after discussion, have waived a restriction on the amount of advertising time, while France took decisions to this effect in 2012 and 2015. ES-CAC also indicated that a "reduction of advertising income" was being discussed. In Georgia, the PSM provider's advertising and sponsorship opportunities have been severely restricted.

Other challenges relating to funding issues are highly country-specific. In the UK, funding discussions concern the "commercially funded, publicly owned corporation, Channel 4 Corporation (C4C)", with a view to finding a balance between "maximising delivery of the Channel 4 service and licence obligations, and its wider public service remit, with its appeal to viewers and advertisers, on which its services rely for the majority of revenue".

Six regulatory authorities indicated that there have been no recent or current debates in their countries about funding the public service and that PSM funding does not generally pose a challenge for them (BE-CSA, BG, CZ, EE, HR, NO).

In Norway, however, the funding *model* for the public service broadcaster has been up for debate during the last years and has been reviewed by an expert group. On Friday 29 March 2019, the government proposed to abandon the traditional licence fee in favour of state budget financing, the level of financing is proposed to be upheld.

Eight regulatory authorities indicated that they have no competence regarding the issue of PSM funding or did not provide an answer (AT, BE-VRM, DE, LT, MK, RO, SE, SK).

## 4.2. Regulatory challenges regarding decline in audience reach

11 regulatory authorities identified low and/or falling reach as a problem of the PSM (CH, ES-CAC, FR, HR, IE, IS, LV, NL, NO, PL, SE). This applies in particular to the target group of young people (CH, ES-CAC, FR, HR, IS, LV, NL, NO, PL, SE). Another concern in the Netherlands is that ethnic minorities are not reached well enough either. While reaching younger audiences appear to be a common challenge in Europe, regulatory authorities are generally not competent to provide concrete answers to such challenges.

The Catalan Audiovisual Council has held discussions about **measures to generally strengthen reach**. In its "White Paper on Broadcasting in Catalonia", presented by the CAC to the Parliament in January 2017, it proposed three measures: a) to boost the production of high quality broadcasting fiction, especially series and audiovisual content aimed at strategic audiences; b) to strengthen channels and content aimed at strategic audiences: children, youth and young adults; and c) to promote projects aimed at large audiences and projects of cultural interest in the cultural market and abroad.

Eight countries have discussed and/or agreed **measures to strengthen reach with their young audience**, with a focus on establishing or expanding channels and programmes for a young target group (CH, ES-CAC, FR, HR, IS, LV, NO, PL). As an example in France, the Government announced that France 4, a public TV channel targeting the young audience, had failed to reach its target audience and will be broadcast only digitally from now on. In return, PSM will invest a total amount of 150 M€ in digital content dedicated to young people and create a new digital platform for the young audience, with content mostly dedicated or adapted to mobile consumption: innovative content, short programs, comedies, music, web series, immersive documentaries, interactive writing...

## 4.3. Regulatory challenges regarding the assessment of the performance of PSM

17 regulatory authorities claim to have competence to assess PSM performance (AT, BE-CSA, BE-VRM, CH, DK, ES-CAC, ES-CNMC, FR, GB, IE, IS, LV, NL, NO, PL, PT, SE). 11 of these stated that they are generally involved in assessing compliance with the performance mandate (BE-CSA, BE-VRM, ES-CAC, ES-CNMC, FR, GB, IE, IS, LV, PT, SE).

As an example, the measurement of PSM performance is high on the agenda of OFCOM in Switzerland and constitutes the main pillar for regulatory decisions. Independent research institutions are mandated to conclude reports to better assess regulatory challenges.

In Ireland, the BAI is required to carry out annual and Five-Year Reviews of PSM performance – which covers areas relating to reach/share, quality programming/efficiencies in the use of public funding. In addition, the BAI has also conducted a PSM-focused audience tracker survey over the past three years, which covers performance around trust/impartiality/independence/innovation and wider aspects of audience perception.

Several regulatory authorities monitor the implementation of provisions related to programme content (BE-CSA, CH, DK, ES-CAC, LV, NO, PL, SE).

For example, BE-CSA checks "the number of shows, their length etc." Various regulatory authorities also monitor programme quality (AT, GB, IE, LV, NO) programme impartiality/objectivity (AT, GB, LV, PL, SE) and independence (AT, NL, NO, PL). In addition, a few of them collect audience data (CH, IE) data on programme reach (IE) and the level of innovation in programmes (NO).

A number of regulatory authorities provided information about how data are collected. The most frequently mentioned data source was reports from PSM organisations (DK, IE, IS, LV, NO, SE) see



also Section 5.4 Reporting obligations). Less frequently, the authority itself – sometimes in addition – collects data (IE, PL) or awards contracts to external research teams (CH, DK, LV) to undertake such work.

Several regulatory authorities also mentioned the deliverables resulting from these checks, i.e. reports (BE-VRM, ES-CAC, ES-CNMC, FR, GB, SE), some of which are supplemented by recommendations from the authorities (ES-CNMC, GB).

15 regulatory authorities, predominantly from central and eastern Europe, indicated that they have no competence regarding the assessment or measurement of performance of PSM (BA, BG, CZ, EE, GE, GR, HR, LT, MK, RO, RS, SI, SK, UA).

#### **4.4. Regulatory challenges regarding "distinctiveness"**

From the answers to the survey, it seems that generally regulatory authorities do not have a formal role in *defining* the 'distinctiveness' of PSM.

The notion of “distinctiveness” appears notably as an explicit part of the PSM remit in Switzerland, United Kingdom and Ireland. In Ireland, the Annual and Five-Year reviews conducted by the BAI cover five wide thematic areas, one being “High Quality and Distinctive” content. In the UK, the BBC Charter and Agreement places requirements on Ofcom to secure the provision by the BBC of “distinctive output and services”. The Swiss Federal government has stated in 2016 that it is expecting from the main Swiss PSM SRG SSR more distinctiveness in its editorial services in comparison to the services of commercial media, mainly if it regards entertainment shows.

The Dutch NRA reported that they consider the *ex-ante* public value test performed by the PSM as a contribution to distinctiveness. The CvdM only has an advisory role to the Minister in the process.

Regulatory authorities were also asked about their concept or understanding of distinctiveness. The responses (from CH, GB, IE, LV, NL, NO, PT, UA) show that a wide range of characteristics are associated with distinctiveness. However, only the attribute of "high quality" was mentioned by more than two regulatory authorities (CH, GB, IE, PT). The following attributes were each mentioned twice: "diversity of content", "comprehensive offering", "independence", "contribution to national identity", "diversity of audience reached", "high degree of innovation" and "high degree of in-house productions". For the Irish BAI, in essence, it is the “*combined ability of PSM to provide universal and niche content that informs their distinctiveness*”.

These findings are largely consistent with the view expressed by several EPRA members that the rigorous implementation of the wide range of traditional PSM tasks leads per se to distinctiveness.

#### **4.5. Regulatory challenges regarding the independence of PSM**

15 regulatory authorities reported that they are currently facing or have recently faced challenges regarding PSM independence (BA, CH, ES-CAC, ES-CNMC, GR, IE, IS, LT, LV, MK, NL, NO, SE, SK, UA). The responses suggest three areas in which PSM independence was endangered or strengthened: political independence, financial independence and organisational issues.

##### *Political Independence*

Four regulatory authorities provided information about the *political independence* of the PSM. In Bosnia and Herzegovina, political influence has been observed in the editorial policy of one PSM provider which was consistently “*one-sided, biased and partial*”. The main regulatory challenge for the regulator was to prove the intent of the broadcaster to pursue such editorial policy that would allow the interests of one particular party to prevail, while at the same time avoiding the

interference with the broadcaster's editorial freedom. For this reason, the CRA decided to *"analyse the programme over extended periods of time, +in order to prove the continuity and editorial commitment to continuously favour one political option and its views"*.

The political independence of the PSM provider in Switzerland was the subject of political discussions on two occasions. In one case, *"several Swiss members of Parliament proposed to examine the possibility to transfer the competency to award the licence to main PSM SRG SSR from the Swiss government to the Swiss Parliament. In a corresponding report by OFCOM, it has been stated that such transfer would create larger risks for the independence of SRG SSR as it would become dependent on varying parliamentary majorities and SRG SSR could finally become a 'politicised' media company. The competency to award the licence has to stay with the Swiss government, as it is a large coalition government, which until now has been fairly stable for a long period of time and is therefore better suited to guarantee the independence of the PSM"*. In the other case: *"some members of the Parliament have also asked the government to abolish the non-profit aim of SRG SSR in the broadcasting legislation and to convert SRG SSR to a semi-public company"*.

In Ukraine in 2017, one political faction tried to replace one "representative of the Supervisory Board of UA: PBC" with another.

Conversely, in France, a law was passed in 2016 (Law No. 2016-1524 of 14 November 2016) with the aim to *"strengthen freedom, independence and pluralism of the media and to transfer new responsibilities to the regulatory authority"*.

### *Financial Independence*

The *financial independence* of PSM organisations has also been addressed (IE, IS, LT, LV, MK, NL, NO, SE).

For example, there have been repeated discussions in Ireland and Iceland about the problem of the PSM's financial dependence on political decisions. In Latvia, the PSM will have to withdraw from the advertising market from 2021. The regulatory authority believes this will make the PSM more dependent on state funding. In Lithuania, too, there were challenges relating to financial independence: *"Even though the law provides the fixed state budget financing of the LRT, there were attempts from the Seimas (Parliament) to investigate certain financial dealings of the LRT."*

In several countries, the replacement of the household-based fee by new models has raised concerns that such changes could increase the PSM's dependence on political players. In the Netherlands, the Dutch licence fee system was replaced by a tax-based mechanism in 2000. In North Macedonia, the licence fee was abolished in 2017 and replaced by funding from the State budget. In Sweden, the Government has proposed that the current household based licence fee be replaced by a public service fee payable by everyone who is 18 or above and has a taxable earned income. In conjunction with this proposal, the Government has presented four proposals aimed at strengthening the independence of PSM. In Norway, the independence of PSM from the State is a relevant issue in the on-going deliberations concerning the future funding model for NRK. Different models are up for consideration, and the expert group that reviewed alternative funding models, advised against State budget financing due to concerns about the independence from political influence.

### *Organisational Issues*

Lastly, several EPRA members reported challenges to independence relating to appointments to senior positions in *PSM organisations* (CH, ES-CAC, ES-CNMC, GR, IS, SK). In CH, ES-CAC, ES-CNMC, GR, IS and SK, discussions have taken place or are ongoing about the competence of political bodies to appoint senior managers in PSM organisations.

#### **4.6. Regulatory challenges regarding the relationship between commercial media providers and PSM and commercial media carrying out PSM functions**

Several countries not only entrust public service remits to public (or state) PSM organisations, but also require (sometimes specific) private media to take on public service tasks (e.g. in CH, DK, LV, NO). Some of these services are also compensated financially. In Switzerland, for example, several private regional broadcasters will receive 6% of the revenue from the household fee from 2019. In Latvia, some funding is earmarked for commercial media to fulfil the public service remit. In Denmark, two private radio stations currently have public service obligations. In Germany, there is an on-going public debate on whether commercial media service providers can be granted with some sort of public remit, and whether also commercial content can have the quality of public value.

Such systems can present challenges, for example in terms of the tasks that public and private broadcasters will each have to perform and the level of funding that will be made available to the public and private sectors respectively.

With regard to the relationship between commercial providers and PSM, ten EPRA members reported regulatory challenges (AT, CH, DE, EE, FR, IE, LV, NL, NO, PL). In most cases the respective challenges are strongly influenced by the specific factors in individual countries and are very difficult to generalise. Nevertheless, funding (AT, CH, FR, IE) and remit (AT, CH, DE, LV, NL) can be identified as key issues. As regards *funding*, disagreement mainly concerns advertising regulations (AT, CH, FR, IE), whereas in terms of disagreement over remit, the debates are wide-ranging and country-specific. Ireland reports a high profile dispute<sup>9</sup> on State Aid and regulation of PSM involving a formal complaint made by commercial radio broadcaster Newstalk to the European Commission in 2014. The complaint, which stemmed from a dispute between PSM and Newstalk relating to carriage of advertising, was ultimately rejected by the Commission and involved extensive submissions from the BAI.

In Norway, the Ministry of Culture asked the NMA to evaluate how NRK contributes to media diversity. NMA's report<sup>10</sup>, published in April 2018, looked at content and exposure diversity, willingness to pay, and provided empirical competition analysis. It concluded that NRK contributed positively to media diversity: NRK's online news and current affairs have a positive impact on the overall offer and NRK's content is distinctive. The analysis confirmed that commercial players were in a difficult phase but also that NRK's competition was not the main cause of the struggle. Weakening NRK would weaken diversity but not make commercial broadcasters more competitive.

In the Netherlands, the Dutch CvdM has developed extensive policy guidelines to enable PSM to cooperate with cultural and educational companies and form public-private partnerships.

22 regulators indicated that they have not faced or are not currently facing challenges regarding the relationship between private media and PSM – at least not in terms of private media demanding a slice of the public service remit for themselves.

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<sup>9</sup> [http://ec.europa.eu/competition/state\\_aid/cases/254086/254086\\_1921800\\_301\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/254086/254086_1921800_301_2.pdf)

<sup>10</sup> For additional information about the report of the NMA, see the presentation of Mari Velsand at the EPRA meeting in Bratislava: <https://www.epra.org/attachments/bratislava-plenary-1-public-service-and-public-interest-content-in-the-digital-age-presentation-by-mari-velsand-nma-no>

## 4.7. Regulatory challenges regarding cooperation models

### 4.7.1. Cooperation between PSM organisations

Three regulatory authorities (BE-CSA, CH, FR) reported the existence of cooperation between different PSM providers. The examples mentioned were TV 5 Monde (French-language broadcaster, CA, CH, BE, FR) and 3 Sat (German-language broadcaster, AT, CH, DE). In France, a news channel was founded in 2016 with franceinfo, which is a cooperation between all French PSM providers.

In addition to such examples of cooperation, three other projects were mentioned that are currently in the planning stage. In Poland, a system is being established to allow all public broadcasters to exchange audiovisual material. The establishment of a common content platform is being planned in Latvia, as well as the creation of a common cultural platform between France Télévisions and Radio France in France.

### 4.7.2. Cooperation between PSM and commercial media providers

17 regulatory authorities reported examples of cooperation between PSM and commercial providers (BE-CSA, BE-VRM, CH, DE, DK, EE, ES-CAC, ES-CNMC, FR, GB, IE, LV, NL, NO, SE, SI, UA).

Most of the examples of cooperation concern content (BE-CSA, CH, DE, DK, EE, ES-CAC, NO, SI). The form and content of such cooperation is very different, spanning the exchange of images (BE-CSA), cooperation in the field of sports rights (NO, SI) and children's programmes (DK), a joint fact-checking organisation 'Faktisk.no'(NO) and a joint network whose activities include investigative journalism (DE).ES-CAC and SE reported cooperation in production, NO in innovation, sharing of expertise and events, and IE in listener research. In EE, PSM as well as private providers were involved in the opening of the "Estonian Broadcasting Museum".

Last but not least, there seems to be a trend in several European countries where commercial and public broadcasters are joining forces by setting up **joint video platforms** to combat the increasing power of global players such as Netflix and Amazon (BE-VRM, ES-CNMC, FR, GB, NL).

In Belgium Flanders, PSM and commercial media are making their programmes available on a common online video platform called 'Stievie'. 'NLZiet' is the joint online video platform of NPO and the two main commercial networks RTL and Talpa/SBS in the Netherlands. In France, TF1, M6 and France Televisions have jointly announced the creation of a digital platform named 'SALTO' with a view to compete with Netflix by offering a wide offer of contents.

In Spain, the most important commercial free-to-air broadcasters and the PSM recently announced the launch of a common service using HbbTV technology in order to complement linear services in a non-linear context.

In the UK, in 2016, BBC Worldwide and ITV partnered to bring a new SVOD service called 'Britbox' to the US. 'Freeview Play' also offers TV on demand from BBC iPlayer, the ITV Hub, All 4, Demand 5 and UKTV Play, alongside linear channels. In June 2018, the BBC, ITV, Channel 4 and Arqiva agreed to invest £125m over five year to develop Freeview into a "fully hybrid platform".

## 5. Regulatory competences

Section 4 described the challenges that regulators are currently facing in the context of regulating PSM. When dealing with these challenges from a regulatory perspective, it is important to bear in mind that the relevant competences of the regulatory authorities are limited, although there are

significant country-specific differences. Section 5 summarises the responses to various questions about the competences of the regulatory authorities.

### 5.1. Competent institution

According to Puppis (2010: 109-110)<sup>11</sup>, ministries are important players in media regulation in the broadcasting sector. They support the government in drafting laws and are responsible for developing media policy strategies. As a rule, however, they have no operational functions such as issuing licences or supervising broadcasters. These operational tasks would usually be the responsibility of regulatory authorities, which are structurally separate from the responsible ministry and therefore not part of the administration (cf. *ibid.* 110-114).

The regulation of PSM, as a rule, involves some interplay between three types of organisations: the ministries which play a prominent role, the independent broadcasting regulator and internal supervisory public service bodies. Parliament may also play a role.

As mentioned at the outset of this paper, the competences of independent broadcasting regulatory authorities in the field of PSM can broadly be classified in three main clusters:

- The broadcasting regulator has no competence for the regulation or supervision of PSM- The only example, out of the 32 responses to the survey, is Germany. In Germany, PSM is regulated by internal supervisory bodies, the Broadcasting Councils (Rundfunkrat) for the nine regional PSM part of the ARD network and the Television Council (Fernsehrat) for nationwide PSM ZDF;
- The broadcasting regulator is competent for the supervision of the legal provisions applicable to all players including PSM, but is not in charge of assessing PSM performance: 14 out of 32 (BA, BG, CZ, EE, GE, GR, HR, LT, MK, RO, RS, SI, SK, UA); this appears to be the predominant model in central and Europe; internal PSM Programme Councils/supervisory Boards as a rule play a role in the assessment of PSM performance;
- The broadcasting regulator has wide-ranging powers with regard to PSM and may also play some role in the assessment of PSM performance: 17 out of 32 (AT, BE-CSA, BE-VRM, CH, DK, ES-CAC, ES-CNMC, FR, GB, IE, IS, LV, NL<sup>12</sup>, NO, PL, PT, SE).

### 5.2. Main tasks

13 regulatory authorities stated that they are generally responsible for monitoring compliance with the specified PSM tasks (AT, BG, CH, FR, GB, GR, HR, IE, IS, NO, PL, PT, UA), be these tasks laid down (solely) in a law or (additionally) in a management contract, a licence or in other documents. In Denmark, the regulatory authority's competencies vary according to the PSM provider.

The type and extent of monitoring varies from country to country. In some countries, the regulatory authorities carry out their own monitoring; in others, the guidelines (or parts thereof) are measured by other (commissioned) organisations; and in others again, monitoring is based on a report from the PSM provider itself (cf. also Section 5.4).

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<sup>11</sup> Puppis, Manuel (2010): Einführung in die Medienpolitik (Introduction to media policy). Konstanz: UVK Verlagsgesellschaft mbh

<sup>12</sup> Note that in the Netherlands, the CvdM does not assess PSM performance; the Dutch PSM assesses its own performance and reports on it to the regulator.

Based on the responses from the regulatory authorities, it was also possible to identify the following main thematic areas of regulatory responsibility: standard setting, advertising, funding, organisation (e.g. appointment of senior positions in PSM organisations), relationship to/protection of the public and licensing (cf. also Section 5.3 on this last point).

### **Tasks in the area of standard setting**

A few regulatory authorities indicated that they have at least some competence for *setting* programme guidelines or programme standards (GB, IE, PL). However, most regulatory authorities primarily have competence in the area of *monitoring* compliance with programme regulations or commitment (these are, in addition to the 14 regulatory authorities with a general monitoring remit, BA, BE-VRM, BE-CSA, CZ, DK, EE, ES-CAC, ES-CNMC, LT, LV, MK, NL, RO, RS, SE, SI, SK).

Almost 90% of respondents to the questionnaire appear to have competence to monitor compliance with more or less the entire broadcasting remit (regardless of how comprehensively this broadcasting remit is formulated). A few EPRA members, on the other hand, are responsible for monitoring only certain aspects of the broadcasting remit (partly DK, EE, GE, NL, MK). In this case, for example, the proportion of information programmes (EE), compliance with the guidelines for election programmes (GE, MK), in-house production quotas (MK) or quotas for European works (EE, MK, SI) are being monitored.

### **Tasks in the area of advertising regulations**

As with monitoring the remit in terms of standard setting, the regulatory authorities' competence tends to lie primarily in *monitoring* compliance with regulations (in addition to the 14 regulatory authorities with a general monitoring mandate, this concerns: BE-CSA, GE, LT, MK, NL, SI). Only the Irish BAI indicated that it also has competence for *setting* advertising guidelines.

### **Funding of PSM**

As a rule, the regulatory authorities are not responsible for setting the amount of the PSM budget or for setting the amount of the public funding which the PSM should receive. The exception is Poland. However, the regulatory authorities are more usually involved in *monitoring tasks* relating to funding, for example, reviewing budgets and quarterly or annual accounts. It is less often the case that the PSM's finances are reviewed at intervals of several years. Some authorities also have competence vis-à-vis the government with regard to budget setting (e.g. NL). In addition to the 14 regulatory authorities with extensive supervisory competence, four others are entrusted with financial supervision of PSM (LT, LV, NL, RS).

### **Questions about organisation/governance**

Several authorities with competence for PSM organisation/governance (BA, ES-CAC, FR, LV, PT, RS) are involved in the appointment process of certain management positions in PSM organisations. The French CSA for example, appoints the CEOs of France Télévisions, Radio France and France Médias Monde<sup>13</sup>. In Catalonia, *"The Parliament must send to the Catalan Audiovisual Council the list of candidates to be part of the Governing Council of the Catalan Broadcasting Corporation, in a number that can be higher than the existing vacancies. The Catalan Audiovisual Council must issue a report on each of the candidates regarding their capacity and suitability to fill the position and must submit four reports to Parliament, before the appearance and the public examination of the candidates before the corresponding commission."* The other countries in which the regulatory authorities have

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<sup>13</sup> Please note that in the context of an upcoming legal reform this power is being questioned and debated.

specific competence in the appointment process of PSM management positions are BA, LV, PT and RS.

In the Netherlands, it is also the task of the regulatory authority "*to encourage internal governance*". In Serbia the Regulatory Authority of Electronic Media (REM) approves the statutes of the PSM.

### **Protection of audiences**

A number of regulatory authorities stated that one of their main tasks was to be responsible for issues relating to protection of audiences or how PSM interact with civil society (BE-CSA, BE-VRM, DK, EE, IE, LT, MK, PL, RO, SE). These tasks concern first and foremost issues relating to the protection of minors (DK, EE, LT, MK, RO). Four regulatory authorities have a comprehensive role in programme complaints (BE-VRM, IE, PL, SE).

### **5.3. Regulatory role in respect of PSM licensing**

The regulatory authorities do not usually have competence for setting public service tasks (as reported by AT, CZ, DE, EE, ES-CNMC, FR, GE, GR, HR, IS, LT, MK, NO, PL, PT, SE, SK). This naturally applies to those countries that have (exclusively) laid down these tasks in law. Norway is a typical case in this respect: "*The NRK has a right to broadcast laid down by law (in the Broadcasting Act) and does not need a licence to operate. The principles of NRK's public service mandate are decided by the Parliament in a so-called NRK Manifesto (NRK Plakaten).*"

But it is often the case, even in countries that set out (additional) specification of public service tasks in licences or management contracts, that competence to (co-)determine public service tasks does not lie with the regulatory authorities.

The competences of those regulatory authorities that award licences/management contracts (BA, BG, DK, GB, LV, RO, SI) vary widely. They are sometimes limited to specific broadcasters/organisations (e.g. DK, GB). For some countries, their competence is limited to (carrying out) the award, while seven regulatory authorities advise their government, the relevant ministry or other bodies on awarding PSM licences (BE-CSA, BE-VRM, CH, ES-CAC, IE, NL, RS). As an example, in Switzerland: "*OFCOM acts as an "expert body" for the Federal Council and DETEC. That means in particular, that the PSM licenses (incl. the SRG SSR licence) are prepared by OFCOM*". In the Netherlands, every 5 years the CvdM will "*advise the Minister whether new national PSM organisations meet the legal requirements for obtaining airtime and funding as a national PSM*".

With regard to the launch of new services for existing PSM organisations, three regulatory authorities appear to have competence to assess the relevance of such services (BE-CSA, HR and LV) while three have advisory competence (IE, RS, SE). Eight regulatory authorities are also entrusted with carrying out public value tests for new PSM services (AT, BE-CSA, ES-CNMC, IE, IS, NO, PT, SE).

### **5.4. Reporting obligations**

13 regulatory authorities stated that PSM must regularly (usually annually) provide them with comprehensive reports on their remit and, in most cases, on funding issues, too (BE-CSA, BE-VRM, DK, FR, GB, GR, IE, IS, LV, NL, NO, PL, SE).

In several other countries, the regulatory authorities receive reports on specific aspects:

The most frequently mentioned reporting obligations in this context were those concerning programme content (BA, CH, EE, ES-CAC, GE, MK, PT, RO, SI, SK), mostly in specific areas, e.g. reports on quota fulfilment concerning European works (BA, EE, MK, RO, SI), reports on election reporting (BA) or reports on quota fulfilment concerning documentary and feature films (MK, SK).

In several countries, PSM organisations are required to submit financial reports to the regulatory authorities (BA, BG, CH, ES-CAC, ES-CNMC, GE, HR, LT, LV, RS, SI). The frequency of the reports varies between yearly (e.g. CH, RS), half-yearly (e.g. BG) and quarterly (e.g. LT). In SI, the PSM must submit an annual report to the regulatory authority on the revenues from the TV business.

It is less common for there to be reporting obligations concerning strategies and/or new services (AT, BG, LV, NL), audience issues (e.g. protection of minors or accessibility rules; EE, ES-CAC, IE); in GE, the public service provider must also report the results of public hearings and surveys on audience proposals) or organisational issues (CH).

In CZ, PT and UA, there is no specific obligation for PSM organisations to report to the regulatory authorities.

### 5.5. Sanctioning powers

29 regulatory authorities have the power to sanction PSM under certain conditions, if breaches of general legal provisions of the audiovisual law are detected. Only the EPRA members from Greece and Denmark indicated that they do not have such power.

In Denmark: *"the RTB has no sanctioning powers, but can state non-compliance with obligations"*. Previous EPRA comparative research<sup>14</sup> has shown that generally the same range of sanction apply for all broadcasters (public and commercial), with the notable exception of the suspension or revocation of the licences. The granting of broadcasting permits to PSBs being, as a rule, a prerogative of governments, it thus seems logical that RAs do not have any power to withdraw them.

The possible punitive measures are numerous and depend on how serious the breach is.

One type of penalty that is provided in 21 countries is fines (AT, BE-CSM, BE-VRM, BG, CH, GB, GE, EE, ES-CAC, FR, IE, IS, LT, LV, NL, NO, PL, RO, SE, SI, UA).

In Ireland, while the BAI has the power to issue fines should a major breach in standards of content occur, this has taken place on only one occasion during the lifetime of the BAI, where the PSB was issued with a fine of €200k<sup>15</sup>. In Norway, the NMA's sanctioning power is restricted to the commercial PSM and does not apply to NRK.

There was relatively frequent mention of warnings (BE-CSA, BE-VRM, EE, FR, GE, HR, LT, MK, NO, RO, RS, SK, SI, UA). In some cases, the PSM organisation has to publish the regulatory authority's warnings or decisions. The publication of findings, as a rule, is deemed a very effective tool because of the negative publicity.

Various countries have rules whereby the regulatory authority can require or prohibit certain actions (AT, BA, BG, CH, EE, FR, GE, HR, SE), e.g. restoring correct service: *"The organ concerned must without delay create a situation which corresponds to the legal view of the regulatory authority"* (AT). In some cases, it is also within the competence of a regulatory authority to suspend broadcasting altogether or to prohibit the broadcasting of specific programmes (BE-CSA, BE-VRM, BG, GB, FR, RS). More

<sup>14</sup> <https://www.epra.org/attachments/barcelona-2010-plenary2-complaints-sanctions-background-paper>

<sup>15</sup> Mission to Prey – RTÉ, 2012



rarely, regulatory authorities are also authorised to revoke the PSM organisation's licence (BG, GB – though not applicable to the BBC, S4C or Channel 4 -, UA).

In just a few countries, the penalties provided for include inspections, ordering independent investigations, dismissing the PSM organisation's management, reducing airtime, shortening the licence period and changing the content of the licence.

### 5.6. Satisfaction with level and type of regulatory powers

15 regulatory authorities indicated that they are fully satisfied with their regulatory powers (BA, BG, CZ, EE, ES-CAC, ES-CNMC, GE, LT, LV, MK, NL, NO, PT, RO, RS). 11 regulatory authorities (BE-CSA, CH, DK, FR, GB, GR, HR, IE, IS, PL, SE) saw potential for improvement, while the remaining regulatory authorities made no comment.

The additional powers that are desired vary and are country-specific. A wish that was mentioned several times was for more regulatory powers in the digital field (IE, PL, SE). For example, the Swedish regulatory authority sees a *"lack of possibility for the Swedish Broadcasting Commission to review content on the Internet with regards to e.g. privacy, accuracy and due impartiality"*, while the Irish regulatory authority wrote: *"gaps in legislation have resulted in areas (Online/On-Demand) not being sufficiently regulated. It is still uncertain how this will affect the BAI, however the online/on-demand services provided by PSM will need practical regulation going forward – particularly in light of the pending updates to the AVMS Directive."* While the UK regulator Ofcom did not state a desire for additional powers, Ofcom noted that it is currently consulting<sup>16</sup> on the UK prominence regime for public service broadcasters including on potential recommendations for extending prominence to cover online services.

The Irish regulator also regrets *"the significant gaps in powers around funding – where the BAI can only recommend a funding amount to Government (which has historically not been acted upon). Reform in this area is also contingent on reform of licence fee collection and other related mechanisms"*.

In its 2017 annual report, the CSA recently recommended that the forthcoming reform for public media create a licensing regime for public channels inspired by the current licensing procedure of private channels by the CSA. The CSA considers that: *"more room should be given to contractual relationships between public companies and the CSA, in co-ordination with the fundamental missions devolved to the public service by the law and the budgetary framework decided by the legislator"*.

Two regulatory authorities expressed the wish for more sanctioning powers (GR, HR). Croatia's regulatory authority concluded in this regard: *"The part of our jurisdiction regarding control of contract obligations of PSM with Government could be more detailed – the scale of measures (penalties) should be larger and should cover a larger number of cases."*

Two regulatory authorities would wish for additional powers to monitor the PSM remit (DK, HR). RTB (DK), for example, was of the opinion that in the future, it wanted to examine more qualitative aspects of the PSM remit: *"The RTB has been in contact with the Minister of Culture to discuss i.a. the Boards annual review of the PS reports, which mostly consists of revision to the quantitative fulfilment of the obligations in terms of broadcast hours etc. The Board proposed to investigate the*

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<sup>16</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-1/epg-code-prominence-regime>

*praxis and competences of other countries, where qualitative aspects are included by contrast with the Danish model. The Board offered to forego its competence in this regard, if there is a political will for changes of that kind."*

### **5.7. Recent trends in the regulation of PSM**

15 EPRA members reported that there had been no significant changes in the regulation of PSM in recent years (AT, BA, BE-CSA, BE-VRM, CZ, EE, ES-CNMC, GE, HR, IE, LT, MK, PT, RO, SI).

However, no less than 16 regulatory authorities reported recent changes and/or ongoing discussions about changes to the regulation of PSM (BG, CH, DK, ES-CAC, FR, GB, GR, IS, LV, NL, PL, PL, RS, SE, SK, UA). The changes adopted or discussed are wide-ranging in nature and encompass the role of the regulatory authority, the media structure (and the PSM as part of it) or (individual) aspects of the PSM and/or its organisation (e.g. remit, content or governance, etc.).

There have been changes concerning the *role of regulatory authorities* with regard to the supervision of PSM in the course of the past five years in several jurisdictions in Europe (CH, FR, GB, GR, LV, PL, NO). The changes vary in scope and nature.

A major change took place in the UK with the increased role of Ofcom in regulating PSB<sup>17</sup>. Under the Royal Charter and accompanying Agreement, regulation of the BBC passed from the BBC Trust to Ofcom on 3 April 2017. One of Ofcom's central responsibilities is to hold the BBC to account for fulfilling its mission and promoting its public purposes, alongside responsibilities for programme standards and protecting fair and effective competition in the areas in which the BBC operates. Ofcom also has a duty to scrutinise, measure and report on the BBC's performance.

In addition, the Digital Economy Act 2017 introduced new powers for the regulation of PSBs (Channel 3 services, Channel 4 and Channel 5) in a number of areas: children's programming, EPG prominence, accessibility of on-demand programme services and greater powers relating to suspend radio licences for inciting crime and disorder.

In France, the main purpose of the last regulatory reform introduced by the Law of 15 November 2013 was to reinforce the independence of PSM while strengthening the independence of the CSA. Moreover, the law reinstated the power of the CSA to appoint the CEO of the PSM.

The Greek NCRT reports that it was granted additional powers for the regulation of the Greek PSM.

The Norwegian NMA remarks on a trend towards increased independence from the Ministry and extended powers of the NRA with regards to PSM in Norway. The independence of NMA's supervision of PSM was implemented in the Broadcasting Act in 2015. In addition, it is suggested to give the NMA the power of decision in the public value test/*ex ante* procedure for new services that NRK wants to launch. The reasoning for the proposal is to ensure that the assessment is fully based on professional criteria. The proposal is endorsed by the Parliament. So far, the NMA gave its advisory statement to the King in Council, which finally decided whether or not to include the new service in NRK's public service remit.

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<sup>17</sup> For additional insight on Ofcom's new role, see the presentation of Kevin Bakhurst at the EPRA meeting in Bratislava: <https://www.epra.org/attachments/bratislava-plenary-1-public-service-and-public-interest-content-in-the-digital-age-presentation-by-kevin-bakhurst-ofcom-uk>

In Switzerland and Poland there has been some recent reorganisation of powers between the bodies in charge of supervising PSM. In Latvia, this regulatory reorganisation is currently ongoing:

In Latvia, the PSM and the regulator are organically linked, as the regulator is the shareholder of PSM. As there was agreement that the functions should be separated to prevent the risk of conflict of interest, and a lack of credibility with commercial media, the draft "Law on Management of Public Electronic Media" will introduce separated functions, resolve the conflict of interest and build trust and establish a PSM Council<sup>18</sup>.

In Switzerland, a transfer of regulatory competence from OFCOM to the Independent Complaint Authority (ICA) took place in July 2016 with regard to the supervision of "further editorial programming" (i.e. non-linear content such as online content and Teletext bulletins) of the PSM SRG SSR. The reasoning behind this reform was to introduce a clearer separation of the supervision of content-related matters (ICA's the main duty) and the supervision of the financing, structure and remit of PSM (OFCOM's competence).

In addition, a recent draft Swiss Federal Act on Electronic Media aims to establish a new formally independent regulatory body for electronic media, which would take over OFCOMs' regulatory tasks on electronic media services in the future.

In Poland, the National Media Council, which was established in 2016, was granted the competences of appointing and dismissing management bodies of public media. Until that date, these were the tasks of the National Broadcasting Council.

*(Individual) aspects of the PSM and/or its organisation* have been/are being discussed in BG, DK, ES-CAC, FR, UA. In this regard, most of the debate concerns decisions or discussions on the management of PSM organisations. Other decisions concerned PSM content: in Denmark and the Netherlands, the entertainment remit has been reduced. In the Netherlands, the PSM's entire structure was reorganised in 2016.

*Aspects of the media structure and/or the media system* have been/are being discussed in a number of countries (CH, IS, LV, NL, PL, RS, SE and SK). In CH, LV, PL and SK, implementation of new media laws is under discussion. In Serbia, a separate PSM law was discussed in 2014 to replace the existing "Law on Broadcasting".

## **6. Conclusion**

### **6.1. Concept and remit of PSM**

It appears from the responses to the EPRA questionnaire that regulatory authorities still consider the traditional concept of PSM and thus the requirements placed on the relevant providers to be generally valid and important. No regulatory authority stated that the concept was outdated or that fundamental changes were necessary.

This seems to indicate that regulatory authorities see the primary challenge for PSM as the adaptation of existing public service broadcasters to digital conditions.

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<sup>18</sup> For additional information of the ongoing Latvian reform, see the presentation of Aurēlija Ieva Druviete, NEPLP at the EPRA meeting in Bratislava: <https://www.epra.org/attachments/bratislava-plenary-1-public-service-and-public-interest-content-in-the-digital-age-presentation-by-aurelija-ieva-druviete-nepplp-lv>

The respondents have highlighted the particular importance of the production and distribution of high-quality and trusted content.

## **6.2. Challenges in the digital age – for PSM and regulatory authorities**

EPRA members were asked about the biggest challenges they think PSM are facing. The most frequently mentioned challenges were stabilising or expanding reach and ensuring sufficient financial resources to allow them to respond appropriately to changes in the wider media environment. This reflects the stakeholders' view.

If PSM are to be able to continue to perform the many and varied tasks that traditionally fall to them and which, in the opinion of the majority of respondents, should be retained, appropriate measures are required in these areas. In addition, measures are required to allow them to develop appropriate responses to reach audiences and to deliver content in the digital age. If PSM fail to reach their audience, their information and education content, for example, are ineffectual, they cannot contribute to cohesion and therefore, by definition, they cannot cater for all population groups. If PSM do not have adequate financial resources, they will also be unable to produce and reach audiences with the high-quality content required, among other things.

Strengthening or maintaining the independence of PSM organisations remains a challenge. Around half of the respondents provided information to this effect. There was particularly frequent mention of attempts to influence PSM via financial decisions.

## **6.3. Competences of the regulatory authorities**

With the exception of Germany, all respondents to the EPRA questionnaire have some competence to regulate PSM. The supervision of PSM by independent regulatory authorities has become the default model in Europe. An early EPRA comparative paper<sup>19</sup> reveals that in 2002, EPRA members in the UK, Ireland and Cyprus did not have any competence to regulate PSM.

Nevertheless, an important distinction needs to be drawn between the regulatory authorities who are merely competent for the supervision of the legal provisions applicable to all players including PSM (i.e. in the field of advertising, protection of minors, etc.) and the NRAs with wide-ranging powers with regard to PSM and who may play some role in the assessment of PSM performance.

Generally, over recent years, there is a trend towards a reinforcement of the powers of independent regulators with regard to the assessment of PSM performance.

As a rule, however, regulatory authorities do not have competence to set the amount of the PSM's budget, nor can they take measures in terms of strategic direction, editorial decision-making or audience reach. As such, NRAs have only limited possibilities to directly influence developments in these key challenges for PSM.

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<sup>19</sup> <https://www.epra.org/attachments/ljubljana-plenary-1-regulation-of-psb-comparative-research-paper>