

**WG 1 Relationships with co and self-regulatory bodies**  
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**1. Introduction**

The development and functioning of self-regulatory and co-regulatory bodies is an area of increasing interest to national and European authorities, to academics and to regulatory authorities. From the perspective of both national and European authorities, there is a concern in general that regulation be transparent, fair, and particularly from the perspective of the European Union, that it also should not impede the development and growth of the industry. The European Commission also expresses an interest in the role of co-regulatory systems in the implementation of the new AVMS Directive.<sup>1</sup>

A recent study by the PCLMP<sup>2</sup> concerning self-regulation on the Internet, noted an increasing trend in delegation of regulation by authorities and RAs to self and co-regulatory bodies, with higher levels of supervision being retained by the authorities. Some examples of this are apparent in the analysis below. They also noted that self-regulation, particularly in relation to new media platforms, is better than no regulation, although problems of transparency can lead to a lack of credibility in the regime and this needs to be addressed.

Most recently, the Hans Bredow Institute and the European Media Law Institute (both German) completed an analysis of co-regulatory developments in the media sector for the European Commission.<sup>3</sup> They describe co-regulation as a "modern form of Government" whereby: "regulation within a given society can be described as being positioned in the triangle of state, economy and civil society". The analysis looks at co-regulatory regimes, their impact, and their assessment by stakeholders. The authors make several recommendations for the successful implementation of co-regulatory systems which include: allowing for "co-regulatory systems to implement European directives"; the importance of "distinguishing clearly between co-regulation and self-regulation": they suggest that the areas of "protection of minors, and advertising content are suitable fields for co-regulatory measures". Furthermore they stress the need for an "evaluation of systems" and that aspects that restrict the functioning of co-regulatory systems include: "insufficient incentives for the industry to participate", and "systems that are designed in a way that favours traditional actors and leaves competitors out".

The focus of this working Group is on the relationships between Regulatory Authorities and co and self-regulatory organisations/systems. From the responses to the questionnaire<sup>4</sup>, as outlined below, it appears that cooperation with self-regulatory bodies

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<sup>1</sup> See in particular: Co-Regulation and the Audiovisual Media Services Directive (AVD) paper available on the EPRA website.

<sup>2</sup> Programme in Comparative Media Law and Policy (2004) **Self-Regulation of Digital Media Converging on the Internet: Industry Codes of Conduct in Sectoral Analysis**. Oxford, 30 April 2004. Available under: <http://pcmlp.socleg.ox.ac.uk/text/IAPCODEfinal.pdf>

<sup>3</sup> Hans Bredow Institute/ EMR (2006): **Final Report. Study on Co-Regulation Measures in the Media Sector**. Study for the European Commission, Directorate Information Society and Media. Unit A1 Audiovisual and Media Policies. Tender DG EAC 03/04

Contract No.: 2004-5091/001-001 DAVBST. Available on the EPRA website.

<sup>4</sup> Many thanks to the EPRA Members for their response, and also to responses to follow-up questions. Unfortunately there has not been time to fully integrate the (very!) late responses into this paper. That will be done after the meeting. In the meantime, any extra information, or any corrections that you wish to address can be sent to the author who will happily include them in the update. My apologies if I have falsely interpreted or accidentally omitted any relevant information. Send comments to [info@deirdrekevin.com](mailto:info@deirdrekevin.com).

(hereafter SRBs) and co-regulatory bodies (hereafter CRBs) ranges from none, to information exchange, to consultation on policy, to formal agreements concerning decision-making, to the development of co-regulatory approaches, and even moral and intellectual support in the development of SRBs.

This paper first looks at the status of cooperation across each media sector, and then addresses cooperation in relation to particular policy areas such as protection of minors and advertising. Problems with, and obstacles to, cooperation, and also the issue of overruling of decisions of SRBs and CRBs are then examined. Future developments and potential changes to the current status are then outlined. This also includes the opinions of certain RAs regarding the best way to develop cooperation. The conclusion draws together the main findings and common trends in RA cooperation with these bodies, and particularly the development of co-regulatory initiatives. Table 1 gives an overview of the SRBs and CRBs in existence in the various EPRA member countries.

## **2. Press**

Although regulatory authorities have no role in the regulation of the press, there are many who cooperate with self-regulatory bodies such as Press Councils. In several countries the Press Council is involved in issues of journalism ethics regarding both publishing and broadcasting: Luxembourg, Norway, Finland (Council for Mass Media (CMM)), Lithuania (Ethics Commission of Journalists and Publishers), the Netherlands, Estonia (with two separate organisations), Montenegro, and Romania (two organisations).

For example, in Luxembourg, cooperation occurs where there is a complaint concerning programme content where both the CNP and the Press Council are required to give a statement. Also they have cooperated on a study on the Luxembourg media landscape, including journalism codes of conduct. The Bosnian authority (CRA), while having no role in the regulation of the press was instrumental in the establishment of the Press Council. They note a good cooperation with this body: in exchange of information; referral of complaints; and co-organisation of seminars for media professionals in BiH. With the development of the journalists self-regulatory body, the Broadcasting Agency in Montenegro provided input for the drafting of their Statutes. They also provided guidelines for the preparation of the Rules for referendum campaign coverage.

The Romanian Audiovisual Council informs both the Romanian Press Club and the Centre for Independent Journalism on issues regarding: regulatory decisions adopted by the Council; the results of studies and research on audiovisual content; monitoring political pluralism in radio and television programmes; bad journalistic practices, which cannot be sanctioned by the Council but might be debated by the members of these two organisations from the point of view of the journalism ethical code. The Radio and Television Commission of Lithuania cooperates with the Press Ethics commission as far as it is needed to evaluate certain broadcast material relevant to their competence, and relationships between the two are described as strong and solid.

In Denmark there is no formal cooperation with the Press Council. There exists an informal agreement to inform each other about cases of interest to the other authority and an informal agreement that the Radio And Television Board does not use the term press ethics in its licences, nor make decisions concerning press ethics. Some discussion arose about a year ago about the competences of the Board contra the competences of the Press Council, which led to the above-mentioned informal agreement. The opinion (of the Board and the secretariat) is that the Press Council protects the individual, the Radio and Television Board protects the common interest of the society

Even where the press council does not monitor journalism ethics in all media, there are examples of cooperation and sharing of information. In Israel, the CCSB consults the Press Council in public hearings: on issues such as product placement, ownership restrictions, and other amendments applied to broadcasting regulations. When the Malta Authority wished to draw up guidelines on News and Current Affairs, it established a committee, several members of which were representatives of the Malta Institute of Journalists. The Malta Authority also sponsors a category in the Institute's Journalism awards: that of radio script-writing.

In the case of the Catalan Audiovisual Council there is no formal cooperation with the Catalonia Information Council, however there is an agreement involving the Catalonia High Court of Justice, the Catalan School of Journalists, the Catalan Information Council and the CAC, the purpose of which is to establish a better relationship between the Justice Administration and the media. The Catalan Audiovisual Council has a representative of the Catalonia Information Council in its membership.

As yet, no Press Council has been established in the following jurisdictions: Belgium Walloon, Ireland, and the Czech Republic.

### **3. Public Service Broadcasting**

In certain jurisdictions the Broadcasting Regulatory Authority plays no role in the regulation of Public Service Broadcasting: Germany, Finland, Ireland.<sup>5</sup>

The Danish public service broadcaster, DR, is described as being in some ways self regulatory; the main role of the Danish Board being to comment on the annual public service reports, although it also carries out much research and consultation regarding public service broadcasting and its development.

Certain RAs only have competence regarding PSB, for example the Estonian Broadcasting Council is the independent governing body of public service. Aside from this example, in relation to PSB, the author also considers the governing bodies, trustees of PSB organisations to be SRBs. In several other states there exists no body within public service responsible for content but rather just an administrative body: Romania, Slovakia.

In Macedonia, the existence of a governing body within PSB is very recent: the Council of the MRT. Hence, the RA is responsible for content on PSB while the new Council is now responsible for programming. As yet there has not been the opportunity for any cooperation.

In the UK, Ofcom is responsible for the regulation of most aspects of the content of domestic public service radio (i.e. the domestic radio services of the BBC), save for accuracy and impartiality, which are the province of the BBC Board of Governors (to be replaced by the BBC Trust). There is some liaison but no real cooperation as division of responsibilities is clearly delineated. In the Czech Republic there exists some policy consultation for example in relation to protection of minors, but on an ad-hoc basis. In Malta, where matters of policy affect programme content and its regulation, the Authority communicates its position on such matters to the Chief Executive of PBS and its Board of Directors and to the Minister responsible for public broadcasting whenever the need arises.

In Catalonia, The CAC created the TV Viewers and Radio Listeners Forum (for both public and private broadcasting). The meetings of the working groups are held in the CAC headquarters. Strictly speaking, the Forum does not constitute self-regulation but it is close to this approach. It aims to become a reference framework for the exchange of knowledge and ideas and to meet demands from civil society in this sector. The Forum is organised into working groups to look more closely into specific subjects and prepare documents that can promote the quality of the content and good use of the broadcast media.

Even where there is no competence for PSB, there can exist some cooperation. An example is the Israel CCSB who has some cooperation with the "First Authority", i.e. the Public Service Governing Body: as there is no regulation regarding a list of events the CCSB has developed a policy on this and consulted with the First Authority in the process; concerning local news, the CCSB is developing a policy for cable companies and consulting with the PSB on this matter. This cooperation works both ways: two years ago

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<sup>5</sup> A draft Bill on broadcasting is currently in the process of public consultation in Ireland. It proposes to create a Broadcasting Authority of Ireland with the BCI as its core. The Bill proposes the inclusion of PSB in the BAI remit.

a new committee was assigned to examine the PSB channels as part of a process of reform and CCSB representatives were invited by the committee to express their opinion on certain issues regarding the PSB.

In the Ukraine, there is no Public Broadcasting System but there are State, Municipal (Communal) and private companies. The State Committee for Television and Radio Broadcasting is the governmental body providing state policy in the fields of information and publishing, the state language policy, and the protection of social morality. The Committee coordinates the activities of state media, including the National TV Company of Ukraine, the National Radio Company of Ukraine, and regional state TV and radio companies).

(See also the thematic sections on advertising and protection of minors).

### **3. Private Broadcasting**

As almost all EPRA members license, and monitor the content of, private broadcasters, there is little shared competence with self or co regulatory bodies. Exceptions of course concern certain themes: advertising and protection of minors, both of which are dealt with in separate sections of this paper below.

In Catalonia, as mentioned above, the CAC created a TV Viewers and Radio Listeners Forum which is relevant to both public and private broadcasting.

Many RAs, in response to these questions, mentioned associations of private broadcasters in this context, although it is unclear to what extent they can be considered as SRBs as opposed to lobby groups for the industry. At least in their descriptions no clear example of self-regulation was apparent.

(See also the thematic sections on advertising and protection of minors).

### **4. Advertising**

In the majority of EPRA member countries there exist self-regulatory bodies in the advertising sector, with exceptions such as Latvia and Denmark. Several RAs explain that there is no cooperation with these bodies due to different rules and procedures.

For others cooperation is minor, for example communication with regard to pending court cases (Czech Republic). In France the BVP gives an ex ante examination of the advertisements whereas the CSA monitors ex post the television advertising contents and ensure that they comply with the advertising rules. The Radio and Television Commission of Lithuania cooperates with the Advertising Bureau as far as necessary to evaluate certain broadcast material relevant to their competence.

There are some examples of cross representation in governing bodies (of SRBs in advertising, and RAs). In the French speaking Belgian community the Advertising self-regulatory Body is represented in the *Collège d'avis du CSA*, which is the co-regulation body, whose members are chosen by the government and whose secretariat is managed by the CSA. In Ireland the BCI is represented on the complaints committee of the Advertising Standards Authority, the self-regulatory body that covers all advertising. It is also formally represented on an alcohol monitoring body that looks specifically at alcohol advertising. In Romania the Association for Audiovisual Communications (ARCA) participates in an advisory body of the NCA in dealing with issues related to audiovisual policy and to the drafting of specific secondary legislation (see more below). A member of the National Television and Radio Broadcasting Council of Ukraine is included in the Advertising Council.

Where no self-regulatory bodies exist in advertising, the role of supervision may also be shared with a public body. For example in Latvia, cooperation with this body (Centre for Protection of Consumer Rights) involves a written agreement on information exchange and mutual assistance.

An interesting development is the establishment of an SRB specifically for advertising online: the Interactive Advertising Bureau of Belgium (IAB Belgium), who aims to

develop the sector online and also to represent the interest of members in relation to regional national and European authorities.

### ***Examples of closer cooperation in the regulation of Advertising***

The Second Authority in Israel has a cooperation agreement with the Advertisers Association of Israel and the Israeli Advertising Agencies Association (signed in September 2006). Together they are developing a new Ethics Code in the framework of a unique public Ethics Committee established by the Second Authority and including also representatives of the Advertisers. The Second Authority will grant an "Ethical Label" to every Advertiser who will adopt the Ethics Code, commit to fulfil its instructions and participate in a guidance course carried out by the Second Authority. An Advertiser who holds the "Ethical Label" obtains an exemption from the procedure of receiving a pre-ruling from the Second Authority regarding certain types of advertisements.

The Romanian Audiovisual Council has signed a Protocol with the Romanian Advertising Council (NGO), in keeping with which the Council is entitled to ask the RAC's opinion regarding certain advertising practices used in advertising spots or advertising campaigns, broadcast in audiovisual programs. The RAC's opinion is not binding for the Audiovisual Council. The Romanian Audiovisual Council has also signed a Protocol with the Romanian Association for Audiovisual Communications (ARCA) (SRB) allowing broadcasters to express their points of view on a law infringement before the Council decides to apply sanctions.

### ***Examples of co-regulation in the advertising industry***

In the UK a co-regulation agreement has been established between Ofcom and the ASA (Advertising Standards Association). Within the ASA the Broadcast Committee of Advertising Practice (BCAP) of the ASA is responsible for making the rules on advertising (the Code), while a limited company owned by the ASA – ASA(B) Limited – is responsible for enforcing the rules. The operations of these bodies are funded by a levy on industry. BCAP consists of representatives from broadcasters, advertising agencies, direct marketing and other media bodies. The ASA(B) (the implementation body) is operated independently from the advertising industry, and does not have any specific organisations represented on its managing body. Ofcom cooperates with the BCAP on matters of interest, including the development of the advertising code to take account of issues of concern, such as the advertising of alcohol, and the advertising of food to children. Ofcom retains the right to impose rule changes on BCAP, but thus far has confined itself to informal advice on policy. Ofcom's approval for rule changes is required and Ofcom receives a quarterly report from ASA (B).

## **6. Protection of Minors**

There are several examples of organisations that deal with the issue of protection of minors across all media platforms. In some cases these are Public Bodies such as the Inspector of Journalist Ethics in Lithuania.

In the Netherlands there exists a hotline: the Internet Hotline against Child Pornography (Internet Meldpunt Kinderporno) founded in 1995, was the first of its kind in Europe. The hotline is run by an independent private foundation and an example of self-regulation. The CvdM has no cooperation with this foundation.

There is also the Dutch organisation for classification of audiovisual and music products, NICAM, with the famous system of symbols *Kijkwijzer*. A covenant has been signed between NICAM and the Commissariaat, regulating arrangements between the two regarding complaints. The covenant details to what extent both authorities deal with complaints and how they should inform each other. In a supplement to the covenant it is stated which data regarding the internal quality control of the system by NICAM should be submitted yearly to the Commissariaat. So far NICAM and CvdM have not agreed on this. Recently the Commissariaat has also been given the task of carrying out a so-called "meta supervision" of the NICAM. This means each year NICAM will have to report to the Commissariaat on how it will safeguard the quality of the classification system. Also NICAM should demonstrate to the Commissariaat to what extent the classifications are reliable, valid, stable, consistent and precise. Further arrangements regarding this

monitoring by the Commissariaat have been laid down in a supplement to a covenant between both parties.

In the case of Germany, a particular regime, described as “a regime of regulated self-Regulation (co-regulation)” has been in operation in relation to commercial television and the Internet since 2003. The Commission for the Protection of Minors (KJM) oversees the principle aims of co-regulation and certifies self-regulatory organisations such as the FSF (a self-regulatory body for commercial television), and the FSM (a self-regulatory body for multi-media). The link to the RAs is strong: Six regulators appoint the members of KJM, and six regulators appoint deputy members. The KJM deals with issues concerning the protection of human dignity and the protection of minors on behalf of the regulators who then execute its decisions *vis-à-vis* the commercial television broadcasters. Regarding the protection of human dignity and the protection of minors, the Commission for the protection of minors (KJM) is required under the Interstate Treaty for the protection of human dignity and the protection of minors in the media (JMStV) to consult with the PSBs concerning the directives it develops in this respect.

In Italy, the AGCOM has developed three co-regulatory regimes for the protection of minors: on television, on the Internet, and on mobile telephony. These have been developed in cooperation with the state who provides resources for the administration of the projects. In the case of online media content providers participation is voluntary and it allows a provider to display a sign certifying affiliation to the Code on protection of minors. With regard to the Code for Television, broadcasters have the option to sign up to the code, or as the code has additionally been incorporated in law, they automatically have obligations under the law. Local TV stations sign the code to gain access to public subsidies while national TV stations are placed “under moral pressure” to join.<sup>6</sup> It is not clear how the industry has been involved in the development of this process.<sup>7</sup>

## **7. Internet**

Internet Service Providers Associations have been established, many of whom incorporate issues of self-regulation, in the majority of countries. Exceptions include: Macedonia and Bosnia and Herzegovina.

In Belgium (questionnaire response CSA) there exist two separate SRBs for the Internet the ISPA Belgium, and also the Interactive Advertising Bureau of Belgium IAB Belgium, who (as already explained) aim to develop the sector online and also to represent the interest of members in relation to regional national and European authorities. To date there is no cooperation between these two organisations and the RA.

In the Netherlands there are two hotlines: the Internet Hotline Against Child Pornography mentioned above; and a Hotline regarding Discrimination on the Internet (Meldpunt Discriminatie Internet or MDI) which aims to counteract expressions of discrimination, mainly in the Dutch part of the Internet, concerning; religion, race, sexual preference, gender, skin colour and/or age, and to, if necessary, take action. The CvdM does not cooperate with these, but *does* with the NICAM, as outlined above under section six regarding protection of minors.

The Ofcom liaises with the Internet Watch Foundation partly to enable Ofcom to monitor trends in new web-based content services, but has no role in developing or advising on policy, as it has no statutory responsibilities for web-based content that does not constitute broadcasting.

In many countries there is no formal cooperation with the Internet SRBs, although they are beginning to come together in the organisation of public discussions regarding Internet regulation (Latvia, Belgium CSA).

### **Co-regulatory trends in online regulation**

The Norwegian cooperation with government and industry led to the setting up of a national self-regulatory board for Internet content in 2001 together with industry

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<sup>6</sup> Hans Bredow/EMR (2004)

<sup>7</sup> We can await some feedback from the AGCOM to be included in the update to the paper.

stakeholders. The SAFT project is run by the Norwegian Media Authority (although described as self-regulatory it is by definition more co-regulatory). The bodies represented in this include Synovate MMI and ICT Norway (320 members within the IT-industry). The Norwegian Media Authority also cooperates in this area with Regulatory/Advisory bodies in four countries (Denmark, Sweden, Iceland and Ireland) and others.

In Germany the regulators are in charge of controlling contents on the Internet regarding the protection of human dignity and the protection of minors. The latter is carried out via the KJM as explained above under (section six on the protection of minors). Here they have certified the FSM (Freiwillige Selbstkontrolle Multimedia: self-control organisation of multimedia service providers).

Also explained above is the nature of the agreement between the CvdM and NICAM in relation to the classification system for protection of minors.

## **8. Mobile Telephony**

In the majority of countries there is, as yet, no role for the RAs in the regulation of broadcasting via mobile telephony, although many anticipate developments on this front (see below under future developments).

An exception is KommAustria, responsible for content regulation of broadcast over mobiles as far as DVB-H or DMB standards are used. In this area terrestrial frequencies are used, which are internationally dedicated to broadcast use. UMTS mobiles on the other hand are using frequencies dedicated to telecommunications (telephony purposes) and therefore are under the regulation of the Telecom Control Commission. According to the Austrian Constitutional Act for Broadcast (BVG Rundfunk), content transmission via UMTS mobiles is not currently assumed to be broadcasting.

Ofcom liaises with the MBG, the Mobile Broadband Group (MBG), which is a self-regulatory body set up by mobile telephony providers and operates a Code of Practice on content provided on an on-demand basis, but Ofcom does not have a role in developing or advising on policy. Ofcom has an interest in understanding how the industry deals with content issues, and so maintains contact with the MBG on these and other issues, but does not have any statutory powers in this area. MBG members include the main mobile telephone service providers - Vodafone, O2, Orange, T-Mobile, Three and Virgin.

In the Netherlands, in 2005 the NICAM *Kijkwijzer* system was extended to include content for mobile phones. As soon as a mobile phone user searches for pornographic images or text, a *Kijkwijzer* icon pops up with a recommended age restriction. For the moment *Kijkwijzer* only applies to sexually explicit content, but there are plans to extend the application to other types of sensitive material. NICAM has signed a contract with mobile operators KPN Mobile, Orange, Telfort, T-Mobile and Vodafone. These five operators introduced the *Kijkwijzer* system on 1 April 2005.

On July 29<sup>th</sup> 2005, the Spanish government approved the Royal decree 944/2005, hence approving the National Technical Plan of DTT. Two weeks ago, the Official Gazette published the Royal Decree 920/2006, among whose legal provisions, the text includes the planning of a digital multiplex channel for the broadcasting of mobile DTT. In theory the CAC has competences in the regulation of the TV mobile contents but it will depend upon the coverage of the multiplex channel: if it is nation-wide coverage, the CAC cannot exercise its regulation roles.

### ***Examples of co-regulation in broadcasting via mobile telephony***

In Germany, similar to the Internet, the RAs play an important role in regulation. Contents downloaded onto mobile phones from the Internet are subject to the control of the regulators and the KJM as far as the protection of human dignity and the protection of minors is concerned. Under its remit, the KJM assesses, advises on, and approves technical protection systems and also advises on codes of conduct developed by the self-regulator (FSM) or its members.

## **9. Differing opinions, overruling and problems in cooperation**

On the whole it was stressed that self and co-regulatory bodies, in terms of power, still need to abide by the same statutory codes of the industry as those monitored by authorities. These bodies do not have the same power as most RAs. For example in Lithuania the Radio and Television Commission can overrule the decision of the Lithuanian Advertising Bureau, because the Law on Provision of Information to the Public (PIP) gives it the competence to evaluate the infringements of advertising rules. In the Isle of Man, although the Trustees of the PBS set positive programme requirements independently, the Commission can ultimately overrule the Trustees if there were a dispute as to the appropriateness of content carried by, for example Manx Radio. In the Czech Republic the RA can overrule the decisions of SRBs in serious cases, e.g. violation in media, discrimination, protection of minors etc.

The German response notes occasional differing assessments of the FSF (SRB) and KJM (CRB) respectively concerning the scheduling of certain formats, e.g., "I want a famous face" (a series on beauty surgery) or "Popetown", (a cartoon serial on the Catholic church) where the KJM in both cases advocated later scheduling than that decided by the FSF.

In the French case problems are very rare. For example in 2004 there were 14 CSA decisions related to advertising out of the 14000 advertisements examined by the BVP. It is possible to overrule in these rare cases in which the CSA decides after an ex post control that an advertisement which had been submitted to the BVP does not comply with the rules and has to be modified or suspended.

In the area of press ethics (as most RAs do not regulate journalism ethics), a complainant has the possibility to have decisions reviewed in court. Additionally, in some cases, upon judgments of self-regulatory agencies, parties are free to file a complaint with the regulator (Belgium Flanders).

As noted above, many RAs have signed agreements, protocols or MOUs with self-regulatory bodies, which ensure a cooperative rather than conflictual approach to decision-making. This has occurred more specifically in advertising (UK, Romania, Israel). In the case of Ofcom, the function of regulating advertising content has been delegated to the ASA. Ofcom retains the power to intervene in any case, but has agreed a Memorandum of Understanding with the ASA in which it states that it only expects to do so in exceptional circumstances.

The process of cooperation between the Israeli Second Authority and the organisations representing advertisers involves the development of an advertising ethics code. The General Manager of the Second Authority is authorised to revoke the "Ethical Label" from an advertiser who violates the Cooperation Agreement (e.g. when two commercials produced by this advertiser contradict the Ethics Code).

Several RAs also involve SRBs in the development of codes relevant to these organisations (the Malta example of news and current affairs, and the Israel example of inviting representatives to public hearings on policy changes), a process that surely enhances the implementation of codes.

No particular problematic or controversial cases emerged from the responses to the questionnaires. One general comment pointed to the fact that problems can arise in any cooperation between regulation (which is independent and defends general interest) and self-regulation (which is not independent and defends interest of their members) (Belgium Walloon).

As has been noted above, many authorities prevent this through prior agreements. The Ofcom states that it has been able to resolve differing points of view through discussion with those co-regulatory bodies with which it shares competences. Certain problems are mentioned with relation to the nature of media outlets: in Malta concerning radio stations that are owned by political parties. Sometimes there are delays in response, and in the provision of positions relating to advertising issues from SRBs (Romania).

## **10. Future developments**

The main focus concerning the future (in the responses to questionnaires) related to Internet and Mobile Telephony Broadcasting. Many questionnaire responses indicated that future developments in regulatory competence would largely be reliant on the final shape of the EU Directive on Audiovisual Media Services (AVMS), indeed in several cases new media legislation is planned in the near future.

Competences for these areas may develop in Lithuania in accordance with the new edition of the Law on Provision of Information to the Public (01 09 2006). Also in Hungary, a draft amendment to the Act on radio and television broadcasting (1996) is being developed by a preparatory group: the new draft is on electronic media services, i.e. on programme production and its delivery – in whatever form of programme dissemination – to the public. According to the draft of the modified Act, the future regulatory authority would be in charge of content supervision not only radio and television broadcasting. It is also anticipated that the Gibraltar Authority will become competent for all forms of content in the near future. In the draft new Audiovisual Code in Moldova, there was a chapter stipulating the regulation of the Internet, but it was deleted at the advice of the CoE experts. The authority anticipates that when this sector comes under the competence of regulatory authorities in the EU states, national legislation will be amended in that context.

In the Ukraine, on the 1<sup>st</sup> of March 2006 a new edition of the Law "On Television and Radio Broadcasting" came into force. According to this Law the National Council was obliged to harmonise its legal acts in conformity with this Law, including the development of a Licensing regulation, which regulates the licensing procedure for programme service providers. In this context, providers, who want to use local Internet networks and/or networks of mobile communication, are obliged to apply for a license to the Council.

Currently, in Israel, the issue of regulating broadcasting over the Internet is in public consultation. The Office of Communications and the Council for Cable and Satellite broadcasting are examining this issue including the question as to which regulator has the authority to regulate Internet broadcasts. The subject of Internet and mobile broadcasting is being examined by the Ministry of Communications and by the Council.

The Radio and Television Law will change next year in Switzerland. While the institutions will remain the same, broadcasting will be considered neutral of technology, but regulation not applicable to on demand-services. In Catalonia, the upcoming new basic legislation may increase the competences of the CAC in the broadcasting on the Internet or via mobile. In Finland, there is a government proposal that FICORA would grant programme licences for mobile-tv operations, and supervise the mobile-tv operations (at the moment there are only trial operations).

In the Netherlands to date, due to the limitations of legal descriptions of programming etc., audiovisual services offered via Internet or mobile networks are not considered as broadcasting but as telecommunications because they are available on individual demand. One could argue this standpoint in the case of linear (streaming) services and so-called "webcasting"; the question for the CvdM is whether this distinction between Internet and broadcasting can be justified any longer. The authority has, together with the Ministry of Education, Culture and Science, established a working group, which will focus in detail on the subject and will develop proposals for regulation, if necessary. This project group will also have to take into account the revision of European Directive Television without Frontiers (TVWF Directive) which provides a framework for national media regulations. Two main elements in Article 1 (a) of the current Directive define the borderline between "television services" and "information society services". The Dutch CvdM believe that a future TVWF directive and national media regulations should no longer cover only traditional TV but also services that are characterised by the following elements: the service comprises images and or audio; the service is offered on a linear basis and/or in real time the service can be received by many users simultaneously. They suggest a graduated regulatory approach, in which different classifications are

made in relation to the nature of the service, and the exclusion of small private initiatives on the web.

In the UK, there are currently no plans to extend the competence of Ofcom to cover the regulation of the Internet, although this will depend on the eventual form of the Audio Visual Media Services Directive. Ofcom is already the regulatory authority for broadcasting via mobile (as distinct from the provision on-demand of content similar or identical to broadcast content). Ofcom sees co- and self-regulation as options that may well be helpful in dealing with regulatory challenges posed by the rapid development of new services and new delivery platforms.

## **11. Overview**

From the responses to the questionnaire, cooperation with self-regulatory bodies and co-regulatory bodies ranges from non-existent, to information exchange, to co-operation regarding pending cases and decisions, to consultation on policy, to formal agreements concerning decision-making, to the development of co-regulatory approaches, and even moral and intellectual support in the development of SRBs.

Distinctions can be made between SRBs and CRBs that are sector specific, and those that are theme specific and have responsibility across all media platforms: for example with regard to the protection of minors in Germany and the Netherlands; and in many jurisdictions regarding the press or journalism ethics SRBs; and also of course most advertising SRBs.

Examples of co-regulation reveal two approaches: RA authorities establishing (and running) co-regulatory regimes as in Germany, Italy and Norway on protection of minors; and RAs developing co-regulatory regimes with existing SRBs as in the UK (advertising) and the Netherlands (protection of minors).

Co-regulation has mainly developed in relation to the Internet as a media platform, and concerning specific themes in relation to protection of minors and advertising. In essence, the main examples of co-regulatory trends in the media sector that emerged from the questionnaire are those that involve RAs.

As the use of new technologies develops, and as RAs await the final shape of the AVMS Directive, it is apparent that both competences, and discussions on the need to extend cooperation with SRBs, and develop CRBs will increase.

Of interest is the fact that the next round of updating media legislation will start very soon. Many Eastern European countries and several EU member states are drafting, discussing or planning to draft media bills, and several are already in place. How these laws will interpret and implement the AVMS Directive, best suit the national structure and needs, and how the authorities choose to implement the regulation whether with or without co-regulatory processes remains to be seen.

Table 1: Overview of Co and Self-regulatory Bodies

Country	Advertising	Press/Journalism Ethics	Protection of minors	Internet	Mobile
Belgium Flanders	JEP (Jury for advertising Ethics) <i>SRB</i>	Raad voor de Journalistiek <i>SRB</i> (Journalism Council)			Ombudsman PB
Belgium Walloon	IAB <i>SRB</i>			ISPA <i>SRB</i> IAB <i>SRB</i>	GOF <i>SRB</i>
Czech Republic	Council for Advertising <i>SRB</i>				
Estonia	Advertising association		Union for Child Welfare		Association of Information Technology and Telecommunications
Finland	Consumer Ombudsman	Council for Mass Media			
France	BVP (Bureau de Vérification de la Publicité)				
Germany	German Advertising Council <i>SRB</i>		Commission for the protection of minors (KJM) <i>CRB</i> FSF <i>SRB</i>	KJM <i>CRB</i> FSF <i>SRB</i> INHOPE <i>SRB</i>	KJM <i>CRB</i> FSM <i>SRB</i>
Hungary	Advertising Association				- Association of Content Providers in Hungary
Ireland	Advertising Standards Authority <i>SRB</i>				
Isle of Man				UK Internet Watch Foundation	
Latvia	Centre for Protection of Consumer Rights <i>PB</i> Competition Council <i>PB</i>			Internet Association <i>SRB</i>	n/a
Lithuania	Lithuanian Advertising Bureau <i>SRB</i>	Ethics Commission <i>SRB</i>	Inspector of Journalist Ethics <i>PB</i>	Inspector of Journalist Ethics <i>PB</i>	
Luxembourg				ISPA <i>SRB</i>	
Malta	N/A				
Moldova		Union of Journalists NGO			
Netherlands	Advertising Code Foundation/ Commission <i>SRB</i>	Press Council Foundation <i>SRB</i>	NICAM <i>CRB</i>		
Norway	Consumer Ombudsman	Press Council <i>SRB</i>		SAFT <i>CRB</i>	
Poland	Advertising Council	Press Council			
Slovakia	Council for Advertising				
Spain Catalonia		Catalonia Information Council		Internet Quality Agency (IQUA).	
Switzerland	Swiss Advertising Commission <i>SRB</i>				
United Kingdom	Advertising Standards Authority <i>SRB</i>	Press Complaints Commission <i>SRB</i>		Internet Watch Foundation	MBG <i>SRB</i>
Ukraine	Advertising Council				

SRB: Self-Regulatory Body  
 CRB: Co-regulatory Body  
 PB: Public body  
 IB: Independent / 3<sup>rd</sup> party  
 NGO: Non-Government Organisation