HANS-BREDOW-INSTITUT
für Medienforschung an der Universität Hamburg

EMR

Interim Report
Study on Co-Regulatory Measures in the Media Sector

Study for the European Commission, Directorate Information Society
Unit A1 Audiovisual and Media Policies, Digital Rights,
Task Force on Coordination of Media Affairs

Tender DG EAC 03/04

Contract No.: 2004-5091/001-001 DAVBST

Hamburg, 19 May 2005

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1. INTRODUCTION

The purpose of this report is twofold. Firstly, it describes the state of knowledge gained so far in the study on co-regulation in the media in Europe. In line with the working plan, this knowledge focuses on

- the definition of systems to be examined further in order to identify co-regulation
- methods for assessing co-regulation concepts and instruments
- the regulatory systems in place in the media sector within the EU member states.

Secondly, the report indicates how work is progressing and what steps will follow next.

2. DEFINED SCOPE OF SYSTEMS TO BE EXAMINED FURTHER

2.1. Theoretical Framework

The existing studies are either purely empirical or follow different theoretical tracks which cannot be recapitulated here in depth. However, the debate on co-regulation stems from the different analyses on the changing role of the state in regulating modern societies. That traditional forms of regulation are becoming less and less effective is attributed mainly to the following factors:

- Traditional regulation, such as "command-and-control regulation", ignores the interests of the objects (companies) it regulates**,** and this may generate resistance rather than co-operation; depending on their resources these objects (companies) may be capable of asserting counter-strategies or else may evade regulation.[1]
- Furthermore, the regulating state displays a knowledge gap and this gap is growing.[2] The idea behind the welfare state, which is to improve the public good as far as possible, is doomed to failure in increasingly complex, rapidly changing societies where knowledge is dissociated.[3] The model, therefore, cannot be an omniscient state, but rather a state able to make use of the knowledge held by different actors. This means that co-operation with the objects of regulation, which possess supreme knowledge of the field in question, is essential.

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1 Cf. Renate Mayntz, "Regulative Politik in der Krise?", Sozialer Wandel in Westeuropa. Verhandlungen des 19. Deutschen Soziologentages, Joachim Matthes, (ed.), Berlin: 1979, p. 55+.

2 Jörg Ukrow, Die Selbstkontrolle im Medienbereich in Europa, München, Berlin: 2000, p. 10+.

3 Karl-Heinz Ladeur, "Coping with Uncertainty: Ecological Risks and the Proceduralization of Environmental law", *Environmental Law and Ecological Responsibility*, Gunther Teubner, Lindsay Farmer and Declan Murphy, (eds.), West Sussex: 1994, p. 301+.

- The above-mentioned knowledge gap poses an even greater danger to the regulatory state in view of the fact that, in modern societies, information has become the most important “finite resource”, and in effect may also become an important “regulatory resource”. However, in contrast to the resource “power”, information is not at the privileged disposal of the state.
- However, there are not only knowledge gaps but also gaps of understanding that cannot be overcome. According to “system theory”, regulation is often an attempt to intervene in autonomous social systems which follow their own internal operating codes. The economy, the legal system, education, science and other spheres are seen as autonomous systems of this kind. It is impossible for the political system to control the operations of those systems directly.[4] This means that indirect forms of regulation have to be used (and have been used already).
- Moreover, traditional regulation does not seem to stimulate creative activities effectively. Initiatives, innovation and commitment cannot be imposed by law.[5] Given that modern regulation has to rely on co-operation with the objects of regulation to achieve its objectives, this is becoming another significant factor.
- Traditional regulation tends to operate on an item-by-item basis only, and not in a process-orientated manner, which would be desirable for complex regulatory tasks. If the state wants to influence the outcome of a process, it has to act before a trajectory has been laid out (“preventive state”).[6]
- Finally, another obstacle facing traditional regulation is globalisation. It enhances the potential for international “forum shopping” to evade whatever national regulations are in force (see above). This trend is seen as a major reason for the failure of traditional state regulation. In addition, there is another regulatory hindrance imposed by globalisation: while the economic system tends primarily to lock into multinational or even global structures, legal regulation still derives mainly from national states. Structures of global non-governmental law are now emerging which national states have to take into account.[7]

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4 It is, therefore, impossible for the political system to control the operations of these systems directly. Renate Mayntz and Fritz W. Scharpf (eds.), *Gesellschaftliche Selbstregelung und politische Steuerung*, Frankfurt am Main <et al.>: 1995.

5 Renate Mayntz, "Politische Steuerung: Anmerkungen zu einem theoretischen Paradigma", *Jahrbuch zur Staats- und Verwaltungswissenschaft*, Vol. 1., Thomas Ellwein/Joachim Jens Hesse/Renate Mayntz and Fritz W. Scharpf, (eds.), Baden-Baden: 1987, p. 98.

6 Gunnar-Folke Schuppert, "Das Konzept der regulierten Selbstregulierung als Bestandteil einer als Regelungswissenschaft verstandenen Rechtswissenschaft", *Die Verwaltung*, special issue "Regulierte Selbstregulierung" 2001, Beiheft 4: 201+.

7 Cf. Gunther Teubner, "The King's Many Bodies: The Self-Deconstruction of Law's Hierarchy", *Law and Society Review* 31, 1997: 763+.

There are several changes in regulation by means of which states react to the limitations mentioned above, such as:

- from regulating completely to partial state regulation
- from state sanctioning to social sanctions
- from unidirectional to co-operative rulemaking and implementation
- from enforcement to convincing strategies.[8]

Most of these regulatory developments entail co-operation between state and non-state actors. Generally speaking, there are three theoretical approaches to this phenomenon: a macro, a "meso" and a micro perspective. In the legal and socio-political line of debate, macro approaches have been predominant, making use of system theory as a mode of attack. The "meso" perspective focuses on institutional settings in modern societies. Finally, studies which are centred on specific actors and their (potential) behaviour can be described as adopting the micro approach. Models for further debate which have been especially influential will be outlined below.[9]

Participants in the legal and socio-political line of discussion share the basic view that the increasing complexity in some areas of society and the pace of change are the main reasons why regulatory interventions are more and more ineffective, while indirect forms of regulation may, under certain circumstances, be more successful. Depending on the underlying theoretical suppositions, various concepts emerge from this. *Teubner*[10] has developed a concept of "reflexive law" (*reflexives Recht*), concluding that the state must formulate its regulatory programmes in such a way that it is understood within autonomously operating social systems. *Teubner* utilises *Nonet* and *Selznick's* concept of "Responsive Law"[11] – which was also influential in the economic approaches discussed below – as well as *Luhmann's* design of social systems.

Some discern a "retreat of law to the meta-level of procedural programming" *(Rückzug des Rechts auf die Meta-Ebene prozeduraler Programmierung*).[12] If it is assumed that law can no longer intervene in autonomous social systems directly, it will be confined to indirect regulation of social self-regulation. This paves the way for a state whose role is to regulate

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8 Gunnar-Folke Schuppert, "Das Konzept der regulierten Selbstregulierung als Bestandteil einer als Regelungswissenschaft verstandenen Rechtswissenschaft", *Die Verwaltung*, special issue "Regulierte Selbstregulierung" 2001, Beiheft 4: 201+.

9 For a more detailed description and references see Wolfgang Schulz/Thorsten Held, Regulated Self-Regulation as a Form of Modern Government, Eastleigh: 2004, p. 12+.

10 See generally, Gunther Teubner, *Law as an Autopoietic System*, Oxford: 1993; G. Bechmann, "Reflexive Law: A New Theory Paradigm for Legal Science?", *European Yearbook in the Sociology of Law, State, Law, and Economy as Autopoietic System*, Gunther Teubner and A. Febbrago, (eds.), Milan: 1991- 1992.

11 Philipp Nonet and Philip Selznick, Law and Society in Transition, New York: 1978, p. 78+.

12 Klaus Eder, "Prozedurale Rationalität", *Zeitschrift für Rechtssoziologie* (ZfRSoz) Vol. 7 (1986), p. 1+.

social procedures, i.e. stipulate legal requirements for private negotiations. The proclamation of a shift towards more procedural forms of regulation is based on these arguments.[13]

Finally, in view of the problems arising from knowledge management in the information society the state is perceived as assuming the role of supervisor, assisting private organisations in their learning processes.[14]

However, apart from isolated examples and case studies, these theoretical approaches have – as far as we know – not led to a set of criteria enabling the regulator to assess the effectiveness of instruments which combine state and non-state regulation. Nevertheless, some of these theoretical findings can be validated as relevant background information.

To describe new forms of collaborative regulation – following the "meso" approach – the term "governance", already used to identify the structure of global regulation, has entered the general debate on regulation.[15] This approach is based on the assumption that the role and structure of the state are fundamentally transformed in a changing society. Governance is seen as a process of interaction between different social and political actors, and growing interdependencies between the two groups, as modern societies become ever more complex, dynamic and diverse.[16] Although – or even because? – the term still lacks precise contours[17] it has became a buzzword around which debates about new forms of regulation revolve. In this respect, the studies we have analysed, and also our own study, can be seen as research into governance.

Approaches derived from the idea of "responsive regulation", focusing on individual actors (micro approach), are more distinctly tangible. Like the above-mentioned theoretical concepts, these approaches envisage a "third way" which adopts the middle ground between, on the one hand, resigned or liberal non-regulation and, on the other, a clinging to traditional forms of state regulation.[18] Based on empirical findings and observations from game theory, some studies have shown that state regulation is by no means more effective simply because sanctions are stricter and severer. The probability of sanctions being imposed is also important for the effectiveness of regulation. Sanctions which are too severe might not be imposed by the regulator in order to avoid unwelcome side effects (e.g. job losses). When choosing an appropriate regulatory concept and suitable tools one has to ask which form sanctions should take and how discretionary they should be (to stick with this example) in the

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13 Karl-Heinz Ladeur, "Proceduralisation and its Use in a Post-Modern Legal Policy", *Governance in the European Union*, De Schutter et al. (eds.), Luxembourg: Office for Official Publications of the European Communities: 2001, pp. 53-69.

14 Helmut Willke, Supervision des Staates, Frankfurt am Main: 1997.

15 James N. Rosenau: "Governance, Order and Change in World Politics", *Governance without government: order and change in world politics*, James N Rosenau, Ernst-Otto Czempiel (eds.), Cambridge: 2001, p. 1-29.

16 Jan Kooiman, Governing as Governance, Sage 2003.

17 Renate Mayntz: Governance Theory als fortentwickelte Steuerungstheorie? MFIfG Working Paper. Köln: 2004.

18 See Ian Ayres and John Braithwaite, Responsive Regulation, Oxford: 1992, p. 17.

light of general conditions in the field of activity concerned (structure of the sector, regulatory traditions, cultural factors etc.). From this perspective regulation is like a "game" played between the regulatory body and the institution to be regulated. However, it might be part of the regulatory strategy to involve third parties (for instance public interest groups) in order to prevent the regulator being captured by the regulated organisation.[19] Empirical studies build on this and show – by way of example – that price regulation in telecommunications can have adverse effects since it can provoke antagonistic lobby strategies.[20]

This concept leads to a "pyramid of enforcement strategies" having "command regulation with non-discriminatory punishment" at the top and pure "self-regulation" at the bottom. For each objective one has to work out which strategy is the most effective one for the regulating state.[21]

In terms of the interaction between state and non-state control, this theoretical concept gave rise to the idea of "enforced self-regulation". This suggests that single companies (it is not a collective approach, which is based on industry associations) are motivated to work out codes of conduct specifying legal requirements and to set up mechanisms for independent control in the organisation itself. The task of the governmental regulator is by and large restricted to the control of this control.[22]

This theoretical background serves two purposes: first, it can enhance understanding of the context surrounding the studies we have analysed, and second, knowledge of regulation and the social fields in which regulation seeks to cause effects is necessary in order to judge the impact of regulation. We shall, therefore, come back to these approaches at the appropriate stage.

2.2. Purpose of the Definition

The aim of this chapter is to arrive at a working definition. A consistent set of criteria has to be found that defines the scope of examination. The breadth of this definition is especially important as it predetermines which concepts applied in different member states will be addressed by case studies and which will not. A definition that is too broad, embracing every form of regulation that aims to influence the market (which can be seen as a system of self-regulation since in an ideal market there is a balance of supply and demand), would not draw any distinction between traditional and new forms of regulation, whereas a definition that is too narrow would exclude relevant concepts. There is no value in terminology as such. However, it is necessary to define boundaries for pure self-regulation and traditional state regulation in order to identify the spectrum of regulatory systems to be covered by this study.

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19 See e.g. Ian Ayres and John Braithwaite, Responsive Regulation, Oxford: 1992, p. 38+.

20 Tomaso Duso, Lobbying and Regulation in a Political Economy: Evidence from the US Cellular Industry, Berlin: 2001.

21 See Ian Ayre and John Braithwaite, Responsive Regulation, Oxford: 1992, p. 38+.

22 On this concept see: ibid., p. 101+.

The aim of this study directs us to the scope of an adequate working definition. It is to explore the potential and limits of co-regulatory models within the EU member states and at European level as innovative keys to better government for the enforcement of public goals in the media sector. This implies a focus on:

- the member state or EU perspective
- the achievement of public goals
- regulation rather than sporadic intervention
- the real division of labour between non-state and state actors
- to some degree sustainable and formalised non-state settings and sustainable and formalised links between non-state regulation and state regulation that could serve as role models for other fields.

As a first step, we explored how studies already conducted have dealt with the problem of defining co-regulation. This includes studies which analyse co-regulation explicitly. However, it would have been neither feasible nor fruitful to include all studies touching upon collaboration between non-state and state actors in regulation. We have focused on studies examining regulation in the media sector, as long as these studies do not just deal with pure self-regulation or pure state regulation. Other studies were taken into account where their results seemed beneficial.

2.3. Definitions in Existing Studies

The **"White Paper on European Governance"** published by the European Commission deals with possible reforms in governance. In this context, it mentions the term co-regulation several times as an example of better, faster regulation.

In the Commission's view, "co-regulation combines binding legislative and regulatory action with measures taken by the actors most concerned".[23] It recognises that the shape of these and the combination of "legal and non-legal instruments" will vary from one sector to another.[24]

The White Paper's approach to achieving improvements in regulation focuses in particular on a mix of policy instruments. Following some explicit discussion of co-regulation, it puts the case for "combining formal rules with other non-binding tools such as […] self-regulation within a commonly agreed framework".[25]

Improving regulation was the specific concern of the **"Final Report of the Mandelkern Group on Better Regulation",** delivered by a panel of consultants appointed by the European Council with a view to implementing conclusions of the Lisbon summit in 2000.

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23 European Commission, European Governance – a White Paper, COM(2001)428 final, available at http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001_0428en01.pdf, p. 21.

24 Ibid.

25 Ibid., p. 20.

In considering "co-regulation" as an alternative regulatory format, that report also highlights the combination of public authority objectives with responsibilities undertaken by private actors.[26] It discusses two particular co-regulation strategies[27] that can be summarised as "initial approach" and "bottom to top".[28] Common to both, however, is a certain leeway for mandatory rules with varying degrees of detail, while the private actors contribute to legislation either as original rule-makers ("initial approach") or on a cooperative basis ("cooperative approach"). Nevertheless, the *Mandelkern Group* does acknowledge the state's option to "penalise companies' failure to honour their commitments without giving regulatory force to those commitments".[29] Finally, the importance of guarantees is stressed in order to safeguard the public interest by means of supervisory mechanisms.[30]

Another consequence of the Lisbon summit was a communication from the Commission in 2002 in the form of an action plan for "**Simplifying and improving the regulatory environment**".

One aim to be achieved in the context of "impact assessment" was a more appropriate choice of regulatory instruments, one of them being co-regulation. The Commission's understanding of co-regulation here is essentially based around an act of legislation serving as a "framework".[31] In this respect, co-regulation may serve as a way of confining legislation to essential aspects. Also, the need for statutory action distinguishes it from self-regulation, which is based solely on voluntary codes etc. established by non-state actors in order to regulate and organise themselves.[32]

European Commissioner *Marcelino Orjea* delivered his views on self-regulation, regulated self-regulation and co-regulation in a speech at the "**Seminar on Self-Regulation in the Media"** in Saarbrücken (Germany).[33]

Regulated self-regulation, to use the terminology of the Birmingham Audiovisual Conference, is characterised as "self-regulation that fits in with a legal framework or has a basis laid down in law".

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26 Mandelkern Group on Better Regulation, Final Report, 13 November 2001, available at http://csl.gov.pt/docs/groupfinal.pdf, p. 15+.

27 Ibid., p. 17.

28 See also the summary by Carmen Palzer, "Co-Regulation of the Media in Europe: European Provisions for the Establishment of Co-Regulation Frameworks", *IRIS plus* 6/2002, p. 3.

29 Mandelkern Group on Better Regulation, op.cit., p. 16.

30 Ibid.

31 European Commission, Action plan "Simplifying and improving the regulatory environment", COM(2002) 278 final, available at http://europa.eu.int/eur-lex/en/com/cnc/2002/com2002_0278en01.pdf, pp. 11+.

32 Ibid., p. 10.

33 Marcelino Oreja, Speech at the Seminar on Self-Regulation in the Media, Saarbrücken, 19-21 April 1999, available at http://europa.eu.int/comm/avpolicy/legis/key_doc/saarbruck_en.htm.

The concept of self-regulation applied by *Oreja* is based on agreements about behavioural rules between the actors and any third parties concerned. As he points out, it cannot be defined simply as a lack of regulation.

Oreja's definition of "co-regulation" attaches major importance to the idea of a partnership between private and public sectors. Compared with "regulated self-regulation", where state and private operators handle different stages in the rule-making and monitoring process, with notable differences in the degree of detail, co-regulation in his view seems to imply more joint activity between public and private actors.

"Co-Regulation of the Media in Europe: European Provisions for the Establishment of Co-Regulation Frameworks" by *Carmen Palzer* of the Institute of European Media Law (EMR, Saarbrücken, Germany), is published by the European Audiovisual Observatory in its supplement IRIS plus, issue 6/2002.

In her general definition of co-regulation, the author describes a system with "elements of self-regulation as well as [...] traditional public authority regulation".[34]

The key feature of self-regulation in this context – especially in contrast to self-monitoring – is seen to be the self-elaboration of binding regulations. This task may also be performed by self-regulatory organisations, although there is a suggestion that even third parties such as consumers might be involved in the rule-making.[35]

Public authority regulations form the basis for co-regulation, which aims at achieving public goals. This framework is monitored by the state as intensively as the goals to be reached require.[36]

A follow-up to that article, **"Co-Regulation of the Media in Europe: The Potential for Practice of an Intangible Idea"** by *Tarlach McGonagle* of the Institute for Information Law (IViR, University of Amsterdam, The Netherlands) is published in IRIS plus, issue 10/2002.

After referring to other attempts at definitions[37] and the general "definitional dilemma", *McGonagle* reduces "co-regulation" to the common denominator of "'lighter' forms of regulation than the traditional State-dominated regulatory prototype".[38] It thus becomes clear that non-state regulatory elements are also involved.

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34 Carmen Palzer, "Co-Regulation of the Media in Europe: European Provisions for the Establishment of Co-Regulation Frameworks", *IRIS plus* 6/2002, p. 2.

35 Ibid.

36 Ibid.

37 Especially Carmen Palzer, op.cit., and Wolfgang Schulz and Thorsten Held, Regulated Self-Regulation as a Form of Modern Government – Interim Report for a study commissioned by the German Federal Commissioner for Cultural and Media Affairs, Hamburg: 2001 (see also the final report: Wolfgang Schulz and Thorsten Held, Regulated Self-Regulation as a Form of Modern Government, Eastleigh: 2004).

38 Tarlach McGonagle, "Co-Regulation of the Media in Europe: The Potential for Practice of an Intangible Idea", *IRIS plus* 10/2002, p. 2.

Discussing concrete forms of state involvement, the author mentions constant review and appeals against decisions made by the co-regulatory body. The author proposes that these mechanisms be established through legislation and reviewed by the courts.[39] However, *McGonagle* strongly emphasises cooperation between professionals and public authorities in the field of rule-making and enforcement so as to benefit from emerging synergies.[40]

"Selbstregulierung und Selbstorganisation" is the final report on a study conducted by IPMZ (Institute for Journalism and Media Research, Zurich, Switzerland) for the Swiss Federal Bureau of Communication (BAKOM).

As in the earlier IPMZ study **"Rundfunkregulierung – Leitbilder, Modelle und Erfahrungen im internationalen Bereich"**[41], the starting point for the definition of co-regulation here is an arrangement about rules between private and public actors.[42]

In **"Selbstregulierung und Selbstorganisation",** *Puppis et al.* develop their definition on the basis of non-state regulation, as they assume co-regulation to be a special type of self-regulation.

Emphasising the broad range of definitions, the authors argue that the basis for any self-regulation is a trinity of rule setting, enforcement and the imposition of sanctions[43], which must all be carried out by a private actor[44]. As a hallmark, the rules must originate from within the group to whom they are addressed.[45] The rules may contain material obligations as well as procedural regulations.[46] Distinguishing between different levels of compulsoriness, the authors extend their definition of self-regulation to "gentlemen's agreements" that are not legally binding.[47] Especially in the area of broadcasting, self-regulation is seen as a sensible complement to state regulation.[48]

The above-mentioned tasks of setting up and enforcing rules and imposing sanctions for violations may also be conducted in public-private cooperation.[49] Every co-regulatory system, however, has to be based on statutory rules.[50] The main objective of public interference is to prevent self-regulatory actors from focussing entirely on their own self-interest[51], given that

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39 Ibid., p. 3.

40 Ibid., pp. 3+.

41 Otfried Jarren et al, Rundfunkregulierung – Leitbilder, Modelle und Erfahrungen im internationalen Bereich, Opladen et al.: 2002, p. 107.

42 Manuel Puppis et al., Selbstregulierung und Selbstorganisation, unpublished final report, 2004, p. 10.

43 Ibid., p. 54.

44 Ibid., p. 55.

45 Ibid.

46 Ibid.

47 Ibid., p. 56.

48 Ibid., p. 57.

49 Ibid., p. 61.

50 Ibid.

51 Ibid., p. 62.

the state is compelled to uphold the public interest. Another form of state interference may be the threat of legislation in order to stimulate self-regulation[52], but this is not considered to be true co-regulation.[53] Finally, *Puppis et al.* formulate different types of interference which do apply to co-regulation, notably obliging industry to self-regulate and stipulating rules about the content of regulation, its procedure and structure.[54] The issue of public restraint[55] from regulation arises particularly in the field of broadcasting, where it is not possible to influence the content of broadcasting, save for certain absolutely fundamental rules. Some room must, therefore be left for (free) self-regulation.[56]

"Self-Regulation of Digital Media Converging on the Internet" is the final report of a study (IAPCODE) conducted by the researchers of PCMLP (Programme in Comparative Media Law & Policy at Oxford University, Great Britain) for the European Commission.

Its general definition highlights the character of co-regulation as a combination form, which is neither pure self-regulation nor command-and-control regulation, but rather based on stakeholders' ongoing dialogue.[57]

The authors refer to *Hyuyse* and *Parmentier* who distinguish between the following state/self-regulatory relationships:

- subcontracting, where the state limits its involvement to setting formal conditions for rule making, but leaving it up to parties to shape the content
- concerted action, where the state not only sets the formal, but also the substantive conditions for rule making by one or more parties
- incorporation, where existing but non-official norms become part of the legislative order by insertion into statutes.[58]

The PCMLP researchers add:

- "pure" self-regulation, whereby industry sets standards and polices them merely to increase product trust with consumers.

They come to the following conclusion: "If part of the calculation of industry bodies involves awareness that the state might do something or be compelled to do something should they fail to take responsibility for self-regulation, then we can say that there is at least co-regulatory oversight. Previous analyses of self-regulation have tended to focus on the codified aspects of

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52 Labelled "coerced self-regulation" by Julia Black, "Constitutionalising Self-Regulation", *The Modern Law Review*: 1996, p. 27.

53 Manuel Puppis et al., op.cit., p. 62.

54 Ibid., p. 63.

55 The question of public restraint is discussed in general terms in Otfried Jarren et al, op.cit., p. 93.

56 Manuel Puppis et al., op.cit., p. 65.

57 PCMLP, Self-Regulation of Digital Media Converging on the Internet: Industry Codes of Conduct in Sectoral Analysis, 2004, available at http://www.selfregulation.info/iapcoda/0405-iapcode-final.pdf, p. 9.

58 Ibid, p. 11, referring to Hyuyse and Parmentier (1990), p. 260.

co-regulatory oversight and audit and neglected the analysis of these less formal – but not less important – calculations on the part of self-regulating organisations."[59]

Nevertheless, the authors still draw a distinction between such "less formal" instruments of regulation and truly codified co-regulation.[60] Especially in the media context, they recommend that the state should "play an active role in certifying schema […], above and beyond any self-regulatory design requirements".[61] In their view, this is particularly important wherever the safeguarding of fundamental rights is in question.[62] After all, they do not limit the scope of co-regulation in too narrow a way, but underline that its exact meaning may vary from one context to another.[63]

Also from PCMLP, *Danilo A. Leonardi's* report on **"Self-regulation and the broadcast media: availability of mechanisms for self-regulation in the broadcasting sector in countries of the EU"** summarises findings in the field of the "heavily regulated sector"[64] of broadcasting.

In his conclusions, *Leonardi* suggests a form of self-regulation that – without using the term co-regulation – comes close to elements already found in other definitions: the industry is to be given autonomy to formulate detailed rules, whilst statutory guidelines form a framework. After all, the "backstop powers" remain with the public regulator.[65]

"Co-Regulation in European Media and Internet Sectors" by *Christopher T. Marsden* of PCMLP is an article in the context of the afore-mentioned IAPCODE study which "outlines the main findings and research questions answered and explored by the report"[66]. It was published in the January issue of the German media law journal Multimedia und Recht (MMR).

Marsden's article concentrates throughout – unlike most other reports by PCMLP that basically only use the expression "self-regulation" – on the term "co-regulation". Co-regulation in this sense is – similarly to the definition of the IAPCODE final report – distinguished from command-and-control regulation as well as from "'pure' self-regulation as

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59 Ibid., p. 11.

60 Ibid., p. 11+.

61 Ibid., p. 12.

62 Ibid.

63 Ibid. Also citing Wolfgang Schulz and Thorsten Held, Regulated Self-Regulation as a Form of Modern Government, Eastleigh: 2004, pp. 7, 14 for examples of different meanings.

64 Danilo A. Leonardi, Self-regulation and the broadcast media: availability of mechanisms for self-regulation in the broadcasting sector in countries of the EU, 30 April 2004, available at http://www.selfregulation.info/iapcoda/0405-broadcast-report-dl.pdf, p. 2.

65 Ibid., p. 9.

66 Christopher T. Marsden, "Co-Regulation in European Media and Internet Sectors", *MMR*: 2005, p. 3.

observed in industry-led standard setting".[67] The concept is a middle way between over-harsh government intervention and exclusive self-regulation by industry.[68]

The author also emphasises the importance of interaction between general legislation and a self-regulatory body.[69] This interaction corresponds to the joint responsibilities of market actors and the state in a co-regulatory system.[70]

"Selbst- und Ko-Regulierung im Mediamatik-Sektor – Alternative Regulierungsformen zwischen Staat und Markt" is a study conducted by the Austrian Academy of Sciences (ÖAW, Vienna, Austria).

For their definition of co-regulation the authors consider the whole range of regulation, which they describe as a form of market intervention to influence industry behaviour in order to achieve public goals.[71] Co-regulation itself is regarded as a special, "alternative" category of regulation.[72]

However, it shares that category with the concepts of self-regulation in a broad or narrow sense. Thus, self- and co-regulation are defined as "collective, intentional constraints of behaviour" that are situated between market and state regulation, whilst the differentiation is achieved by analysing the intensity of the respective state involvement.[73]

The authors see the main difference in statutory regulatory resources as a vital part of any co-regulatory system, while self-regulation lacks any explicit guidelines set by the state.[74] Self-regulation in a narrow sense, where no state influence whatsoever occurs,[75] can, therefore, be classified as true non-state regulation. In a broader sense, self-regulation could also involve the state setting incentives or influencing the self-regulatory system in another way.[76] Finally, co-regulatory institutions are not a part of the government. Still, they do have a unilateral basis in law and there is a strong public involvement, e.g. by public supervision or by setting objectives or structural guidelines.[77]

The idea of a framework type model is also developed in the booklet **"EASA – Guide to Self-Regulation"** published by the European Advertising Standards Alliance (EASA).

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67 Ibid., p. 4.

68 Ibid.

69 Ibid.

70 Ibid., p. 5.

71 Michael Latzer et al., Selbst- und Ko-Regulierung im Mediamatik-Sektor – Alternative Regulierungsformen zwischen Staat und Markt, Wiesbaden: 2002, p. 31.

72 Ibid., Table 2 on p. 41.

73 Ibid., Box 3 on p. 43.

74 Ibid., p. 46.

75 Ibid., p. 47.

76 Ibid., op.cit., p. 46.

77 Ibid.

Without explicitly using the term "co-regulation", the authors still avail themselves of the picture of "law and self-regulation complement[ing] each other like the frame and strings of a tennis racquet".[78] In their view, a self-regulatory system consists of "rules or principles of best practice" that are applied by organisations that are purposely and entirely set up by the industry.[79] Another important element is the voluntary nature of this process[80] and the independence of the self-regulatory organisation from the government and specific interest groups.[81] Finally, the organisation must have options for enforcement of its decisions in order to ensure credible regulation.[82]

Analysing the relationship between self-regulation and (statutory) law, EASA proposes splitting competences and tasks on one hand but acknowledges the advantages of interplay on the other. Whilst broad principles and safeguarding rules are laid down in statute law, self-regulatory action should govern the details of (e.g. advertising) content.[83] It also recognises that the threat of legislative intervention might further the readiness to effectively self-regulate an industry.[84]

"The economic efficiency of self-regulation" by *Nicklas Lundblad* and *Anna Kiefer*, IT researchers at the University of Goteborg, Sweden, is a conference paper from the 17th Annual BILETA Conference at the Free University of Amsterdam (Netherlands).

They do not offer an original definition of co-regulation so much as empirically feature the general concept of self-regulation. The concept they confer is quite broad, including non-enforceable rules, codes of conduct and labelling flanked by accountability and enforceability, a simple black-list and "self-regulation" through market powers in a "perfect market situation".[85] The authors explicitly renounce a definition of self-regulation that postulates the existence of intentionally created codes and/or particular organisations.

Comparing self-regulation systems with regulation by legislation, they acknowledge the special effects of interplay between the two systems, e.g. when there is "the possibility of a governmental process", which they see as "more of a co-regulatory attempt".[86]

In their study **"Regulated Self-regulation as a Form of Modern Government"**, produced for the German federal government, *Wolfgang Schulz* and *Thorsten Held* use the term

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78 EASA, EASA Guide to Self-Regulation, 1999, available at http://www.easa-alliance.org/publications/en/easa_guide.html, p 9.

79 Ibid., pp. 7, 10.

80 Ibid.

81 Ibid., p. 10.

82 Ibid., p. 11.

83 Ibid., op.cit., p. 8.

84 Ibid., pp. 21+; however, in its Guide, EASA proposes not to let the situation develop this way by establishing an effective system earlier on.

85 Nicklas Lundblad and Anna Kiefer, The economic efficiency of self-regulation, 2002, available at http://www.bileta.ac.uk/02papers/lundblad.html, Introduction.

86 Ibid.., "Self-regulatory initiative in Sweden: SWEDMA".

"regulated self-regulation" to describe new forms of regulation including non-state regulation as well as state regulation. They define regulated self-regulation as "self-regulation that fits in a framework set by the state to achieve the respective regulatory objectives".[87]

"Regulierte Selbstregulierung im Dualen System" by *Andreas Finckh* is concerned with the German system of package waste disposal.

Although not dealing with media regulation itself, this work delivers insights into the broad range of applicability for "regulated self-regulation". *Finckh* refers to this regulatory system as an interdigitation of mandatory regulations with elements of indirect control.[88]

So-called indirect control is based on the state regulating not in the "direct" command-and-control mode, but leaving different options for action to the addressees.[89] By formulating e.g. rules of process or organisation or by announcing economic incentives, the state is able to abstain from *directly* influencing (environmental) decisions by law.[90] However, due to the nature of solving ecological problems, the author deems a total restraint in the sense of non-state regulation inadequate.[91]

As a general definition for "regulated self-regulation" the author offers the following: intentionally formulating constraints, processes and target values for non-state actors.[92]

"Die Aufgaben des öffentlichen Rundfunks – Wege zu einem Funktionsauftrag" by *Martin Bullinger* of the University of Freiburg im Breisgau (Germany) is a study compiled for the Bertelsmann Foundation (Gütersloh, Germany) within the framework of the project "Communications Order 2000". Although this study only covers public broadcasters it should nevertheless be mentioned because it refers explicitly to cooperative self-regulation.

In addressing the specific remit of public service broadcasting, he advocates a combined solution with an elaborate, yet flexible statutory framework and self-regulation by the broadcasting institutions.[93] As one possible procedure for concretisation, the author suggests a model of "cooperative self-regulation", where different actors such as a public authority, the general public and possibly others participate in the self-regulating body's rule-making process (in this case the public service broadcasting actors).[94]

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87 Wolfgang Schulz/Thorsten Held, Regulated Self-Regulation as a Form of Modern Government, Eastleigh: 2004, p. 8.

88 Andreas Finckh, Regulierte Selbstregulierung und das Duale System, Baden-Baden: 1998, p. 45.

89 Ibid., p. 42.

90 Ibid., p. 43.

91 Ibid., p. 36.

92 Ibid., p. 48.

93 Martin Bullinger, Die Aufgaben des öffentlichen Rundfunks – Wege zu einem Funktionsauftrag, 1998, available at www.ko2010.de/deutsch/download/rundfunk.pdf, p. 95.

94 Ibid.

Bullinger ultimately adopts a "double strategy" for this special field of regulation: a statutory framework must exist, laying down fundamental descriptions,[95] but possibly also containing "reserve rules" that take effect if self-regulation should display deficiencies[96]. On the other hand, there may be room for complementary autonomous or cooperative self-regulation that – in this case and in the author's opinion – should also have its basis in statutory law.[97]

2.4. Towards a Working Definition

Although there are various – implicit and explicit – approaches to defining co-regulation and although there are terms with overlapping meaning that have to be taken into account, there is one basic assumption that all definitions have in common: co-regulation consists of a state and a non-state component to regulation.

Furthermore, our analysis of existing studies reveals various dimensions of the state and non-state components of co-regulation. For the non-state part:

- What is meant by regulation? (Influencing decisions or also pure consultation)
- Does the industry regulate itself?
- How much must the non-state component be formalised to call it co-regulation? (Just organisations, rules or processes or also informal agreements and case-by-case decisions)
- Other criteria

As for the state component of regulation, which establishes the link with the non-state component, these studies raise the following questions:

- What are the goals? (Public policy goals, individual interests)
- How much formalisation must there be on the state side? (Legal basis for the non-state regulatory system or also informal agreements between state and non-state bodies)
- What scope do non-state actors have for decision? (Can it be called co-regulation if the state can overrule any decision taken by non-state regulation?)
- Does co-regulation imply any state influence on non-state regulation? (e.g. the state using regulatory resources to influence the non-state regulatory system or does the state incorporate codes set by industry without influencing the regulatory process within the non-state regulatory system)
- Other criteria

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95 Ibid., p. 103.

96 Ibid., p. 105.

97 Ibid., pp. 105+.

The studies partly give different answers to these questions and these are summarised in the following tables. After that we will discuss these answers and elaborate our approach for the field studies to come.

CRITERIA/STUDIES	White Paper	Mandelkern	Action Plan	Palzer IRIS plus 6/2002	McGonagle IRISplus 10/2002	Ukrow	Puppis et al.	PCMLP: IAPCODE
NON-STATE COMPONENT (SELF-REGULATION)								
What is meant by regulation (within "self-regulation")? (influencing decisions or also pure consultation)								
Does the industry regulate itself?	measures taken by the actors most concerned	responsibility of the actors	non-state actors regulating and organising themselves	market players draw up their own regulations and are responsible for compliance		industry determines its own rules	origin of rules lies with addressees	industry sets and polices its own standards
How much formalisation is there for the non-state component? (just organisations, rules or processes or also informal agreements, case-by-case-decisions)	non-binding tool	rule-making as an example	agreements, codes, rules	organisations, own binding rules			binding character of rules not necessary	
Other criteria			voluntary	voluntary		not enforceable by state		aim: pure self-interest
LINK BETWEEN THE NON-STATE AND THE STATE COMPONENT								
What are the goals? (public policy goals, individual interests)				public authority objectives			prevention of focus on self-interest	implicitly public goals as opposed to self-reg.
How much formalisation is there for the state component? (legal basis for the non-state regulatory system or also just informal agreements between state and non-state bodies)	binding legislative	mandatory rules	legislative act, binding and formal	public authority regulations	system is to be set up by legislation	statutory regulations and/or just pleas by public authorities	basis in statutory rules	not clear; also threat of legislation = "co-regulatory oversight"
Scope of decision for the non-state actors? (e.g. the state leaves discretionary			non-state actors remain part of rule-		not clear, "constant review and appeals" may imply		public restraint is essential and room	rather not

power to a non-state-regulatory system)			making process		full control by state		for self-reg.	
Does co-regulation imply any state influence on non-state regulation? (e.g. the state using regulatory resources to influence the non-state regulatory system or incorporation of codes set by the industry without influencing the regulatory process within the non-state regulatory system)	regulatory action	"initial approach": state simply incorporates self-regulation rules into law "penalising w/out regulatory force"		incorporation of self-regulation system is possible	cooperation between state and private sector on rule-making and enforcement		state can create rules for procedure, structure and content of regulation	basis = ongoing dialogue, but state should play active role in certifying schema
Other criteria		supervisory mechanisms as safeguard					threat of legislation ≠ co-reg.	

CRITERIA/STUDIES	Leonardi	Marsden	Latzer et al.	EASA-Guide	Lundblad/Kiefer	Finckh	Oreja	Schulz/Held
NON-STATE COMPONENT (SELF-REGULATION)								
What is meant by regulation (within "self-regulation")? (influencing decisions or also pure consultation)			market intervention to influence market actors' behaviour				"fix and monitor the rules of the game"	
Does the industry regulate itself?		industry-led	intentional behaviour constraints	system set up entirely by the industry			agreements amongst operators themselves	
How much formalisation is there for the non-state component? (just organisations, rules or processes or also informal agreements, case-by-case-decisions)		acknowledgment of self-regulatory bodies		organisations that set up rules and enforce them	informal concepts possible as well as "perfect market situation"		usually codes of conduct	intentional/ explicit self-regulation: different players agree to observe rules regarding their activities
Other criteria			only informal state involvement	voluntary				distinguish implicit and explicit self-reg. and organisational and extra-organisational self-reg.
LINK BETWEEN THE NON-STATE AND THE STATE COMPONENT								
What are the goals? (public policy goals, individual interests)			public policy (even with self-regulation)				public policy	
How much formalisation is there for the state component? (legal basis for the non-state regulatory system or also just informal agreements between state and non-state bodies)	statutory guidelines as framework	general legislation is basis for co-regulation	statutory rules necessary	statute law not so much a basis as complementary		"safety net" in statutory law	basis in law or legal framework	self-reg. that fits in a framework set by the state to achieve the respective regulatory

								objectives
Scope of decision for the non-state actors? (e.g. the state leaves discretionary power to a non-state-regulatory system)	not clear; however, autonomy in rule-making is guaranteed					"independence of social dynamics is respected"	reg. self-reg. implies monitoring of details by private actors	
Does co-regulation imply any state influence on non-state regulation? (e.g. the state using regulatory resources to influence the non-state regulatory system or incorporation of codes set by the industry without influencing the regulatory process within the non-state regulatory system)		interaction between state and industry and joint responsibility for rule-making	state regulatory resources such as guidelines, objectives, supervision are a vital part of co-regulation	setting of broad principles by statute law	possibility of governmental process	economic incentives sufficient	inter-link with regulation	
Other criteria							co-reg. implies public-private partnership	

2.5. Criteria for Determining which Types of Regulation Are Covered by the Study

Co-regulation means combining non-state regulation and state regulation in such a way that a non-state regulatory system links up with state regulation.

At this stage, a working definition has to be found in order to judge which systems will be examined further. The inclusion of systems for further examination does not say anything about the effectiveness of these systems. What requirements must be fulfilled to comply with European law and to establish valid instruments to transpose the obligations from directives will be analysed at a later stage of this study.

In response to the dimensions drawn from existing studies, we opted to pursue the following tracks, bearing in mind the rationale for the working definition in this study. For the purposes of this research, the non-state component of the regulatory systems we intend to examine further includes:

- the creation of specific organisations, rules or processes
- to influence decisions by persons or, in the case of organisations, decisions by or within such entities
- as long as this is performed – at least partly – by or within the organisations or parts of society whose members are addressees of the (non-state) regulation

We refrain from calling the non-state component "self-regulation" since this term commonly describes systems based solely on industry's self-responsibility. Some would even argue that the strength of self-regulation lies in the absence of state interference.

In the systems we will examine further, the link between a non-state regulatory system and state regulation meets the following criteria:

- The system is established to achieve public policy goals targeted at social processes.
- There is a legal basis for the non-state regulatory system (however, the use of non-state regulation need not necessarily be mentioned in laws).
- The state leaves discretionary power to a non-state regulatory system.
- The state uses regulatory resources to influence the non-state regulatory system (power, money, public awareness etc.).

Non-state regulatory system		
Criteria	**Cases excluded by this criterion**	**Explanation**
The creation of organisations, rules or processes	Informal agreements, case-by-case decisions	This study focuses on potentially innovative forms of regulation; therefore, there should be a sustainable and formal setting.
To influence decisions by persons or, in the case of organisations, decisions by or within such entities	Pure consultation	The non-state component should at least in a nutshell be regulation in itself; otherwise it would be practically impossible to single out pure knowledge exchange.
As long as this is performed by or within the organisations or parts of society that are addressees of the regulation	Measures by third parties (e.g. NGOs)	The range of possible subjects of non-state action has to be limited to make the definition workable.

Link between the non-state-regulatory system and state regulation		
Criteria	**Cases excluded by this criterion**	**Explanation**
The system is established to achieve public policy goals	Measures to meet individual interests	The fields for potential implementation of co-regulation in the media are restricted to public policy goals (protection of minors or similar), so research can also focus on those forms of regulation.
There is a legal basis for the non-state regulatory system	Informal agreements without any legal criteria to judge the functioning of non-state regulation	If there were no limits on the link to non-state regulation all forms of interaction would come to the fore.
The state/EU leaves discretionary power to a non-state regulatory system	Traditional regulation	Innovative forms can only be found if there is real “division of labour” between non-state and state actors; pure execution of state/EU-set rules does not promise innovation.
The state uses regulatory resources to influence the non-state regulatory system	Incorporation of codes set by the industry without influencing the regulatory process within the non-state-regulatory system	Innovative forms can only be found if there is real “division of labour” between non-state and state actors; pure incorporation of non-state rules does not promise innovation.

3. CRITERIA FOR ASSESSING EFFICIENCY AND IMPACT OF REGULATORY SYSTEMS

3.1. General Considerations

An impact assessment must be conducted in order to come up with well founded suggestions about where and how regulatory systems might be of advantage.

The conducting of Regulatory Impact Assessments (RIA) has become a means to promote better regulation in several OECD countries[98] and at European level[99]. Both new forms of regulation, notably for the environment, health and safety, and the deregulation of industrial sectors have evoked an increasing need to know more about the consequences of planned changes in regulation.[100] Therefore, one could be led to assume that there are generally accepted methods to measure the real world impacts of regulation. However, the impact assessment as such is only part of the RIA tool, and academic debate focuses rather more on the effect the implementation of RIA has on the regulatory process than on the methodology used to measure the impact itself. Hence, for the objective we wish to achieve RIA is not as constructive as anticipated. A paper edited by the European policy centre acknowledges that analytical methods, e.g. on the evaluation of the impact of regulation on innovation or SMEs, are "not well developed"[101].

Consequently, this study will – in line with governmental RIA and academic field research – make use of approaches from the economic analysis of law, political economy and criminology to develop criteria to measure the impact of co-regulatory concepts and instruments.[102]

It has to be stressed that impact analysis tends to see regulation as a mechanical, unidirectional process, a supposition which is rather antiquated.[103] However, in order to measure impact one has to "freeze" the process and focus on a chain of cause and effect. Nevertheless, the oversimplification within such an approach has to be kept in mind.

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98 Organisation for Economic Co-Operation and Development (OECD), *Regulatory Impact Analysis – Best Practices in OECD Countries*, Paris: 1997.

99 The European Policy Centre, Regulatory Impact Analysis: Improving the Quality of EU Regulatory Activity, Brussels: 2001.

100 Peter Newman (ed.), The New Palgrave Dictionary of Economics and Law – Volume 3, London: 1998, pp. 276+.

101 The European Policy Centre, Regulatory Impact Analysis: Improving the Quality of EU Regulatory Activity, Brussels: 2001, p. 9.

102 Work is in progress; so far approaches from criminology have not been analysed.

103 See Ian Ayres/John Braithwaite, Responsive Regulation, Oxford: 1992.

3.2. Methodology

3.2.1. Basic Approaches

Different basic approaches are used to measure the effectiveness and efficiency of regulation. These include (to name but a few)[104]:

(1) Cost effectiveness
(2) Cost assessment
(3) Benefit assessment
(4) Benefit-cost analysis
(5) Risk assessment

(1) - (3) just focus on one side of the possible effects and are, therefore, only recommended if the task is merely to single out unacceptable options. If the analysis needs to be more comprehensive, the task is too complex for such approaches. Benefit-cost analysis is seen as the most comprehensive method.[105] The risk assessment focuses on just one policy effect: the risks that can be reduced. As the reduction of risks can be a benefit, this analysis may be seen as a special case of the benefit-cost analysis.

However, these basic approaches do not account for the specific knowledge that one needs to prepare the yardsticks to measure impact and answer significant questions such as:

- What will be assumed as a benefit, what as a cost?
- How to weigh costs and benefits?
- What is the relevant time scale to measure benefits and costs?
- How to deal with multiplicity of objectives and risks?
- What is the baseline?
- Shall a best, worst or most likely case scenario be chosen?

Since sufficient answers cannot be found on this level of abstraction we will try to gain some knowledge from impact analyses that have already been done.[106]

3.2.2. Approaches in Existing Impact Analyses

3.2.2.1. Empirical Studies

Assessing regulatory impact can be comparatively easy if it is focused on a specific objective which can be measured numerically. To take an example, the hypothesis that the US 1984 Cable Act benefited the industry can be assessed by analysing the share prices of cable

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104 Organisation for Economic Co-operation and Development (OECD), *Regulatory Impact Analysis – Best Practices in OECD Countries*, Paris: 1997, pp. 180+.

105 Ibid, p. 180.

106 The following text shows the result of just a preliminary survey of the studies already done and will be completed before conducting the impact assessment.

companies assuming that they reflect the investor's anticipation of profits.[107] Other examples are the distribution of access to electricity in developing countries[108] or the service prices and number of self-employed craftsmen when it comes to different concepts of trade regulation[109] or production and price of different products in relation to the rate of taxes on fertilisers.[110]

Where the specific target value is not as obvious it has to be worked out before evaluating the regulation. Clear indicators which are measurable have to be defined for the purpose of evaluation. Indicators which can be found in case studies have been the level of service quality in telecommunications[111] to measure side effects of telecom regulation, and the delay in market entry of chemical products to assess the impact of regulation on innovation.[112] However, this process of defining indicators is in itself an assessment of benefits and depends on political appreciations.[113]

While effects on the economy can be judged by well-established indicators like productivity indices, the achievement of social goals is more challenging. Even where indicators exist, like in protection of labour or chemical risks, the comparison is limited or not feasible at all.[114]

Where there is a clear indicator or when such an indicator can be constructed, it is possible to evaluate even complex regulatory arrangements. Yet several case studies are simply limited to measuring the indicator before and after the change of regulation.[115] However, this procedure obviously does not take into account that intervening variables could account for changes of

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107 Anne M. Hoag, "Measuring Regulatory Effects with Stock Market Evidence: Cable Stocks and the Cable Communications Policy Act of 1984", *Journal of Media Economics* 2002: pp. 259+.

108 Antonio Bojanic/Michael Krakowski, Regulation of the Electricity Industry in Bolivia: Its Impact on Access to the Poor, Prices and Quality, Hamburg: 2003.

109 Wilma Pohl, Regulierung des Handwerks – eine ökonomische Analyse, Wiesbaden: 1995, p. 128+ and passim.

110 Heinrich Becker, Reduzierung des Düngemitteleinsatzes – Ökonomische und ökologische Bewertung von Maßnahmen zur Reduzierung des Düngemitteleinsatzes – Eine quantitative Analyse für Regionen der Europäischen Gemeinschaft, Münster: 1992.

111 The definition of service quality in Telecommunication by Noel D. Uri can serve as an example (Noel D. Uri, "The Impact of Incentive Regulation on Service Quality in Telecommunications in the United States", *Journal of Media Economics* 2003: pp. 265+.). His indicator consists of (1) average interval for installation, (2) percentage of installation commitments met, (3) total trouble reports and (4) average repair interval. The article analyses the service quality during a time period in which the FCC implanted a new price cap of interstate access service. It draws the conclusion that a decline in service quality has been an unintended consequence of the regulatory change. Bent Lüngen uses consumer prices as an indicator for regulatory success in regulating mobile communications in Eastern Europe, cf. Bent Lüngen, Mobilkommunikation in Osteuropa –Die Gestaltung der Regulierungsrahmen und deren Auswirkungen auf die Entwicklung der Mobilkommunikation in Transformationsländern – eine empirische Analyse aus Sicht der Neuen Politischen Ökonomie, Frankfurt am Main: 1996.

112 Manfred Fleischer, Regulierungswettbewerb und Innovation in der chemischen Industrie, Berlin: 2001.

113 For criteria to do so cf. S. Ramamoorthy/E. Baddaloo, Evaluation of environmental data for regulatory and impact assessment, Amsterdam: 1991, pp. 446+.

114 Ibid.

115 Ibid.

the indicator's development.[116] It is not in every case methodologically feasible to extract the regulatory element within the bundle of causes.[117]

At least for some fields of regulation there are elaborated economic approaches to analyse costs and benefits.[118] However, mostly quantification is not feasible when it comes to specific regulatory arrangements and so those methods are considered too complex to be applied.[119]

Very seldom does one find approaches, among studies of this kind, which consider the reaction to regulation as a possible cause for regulatory measures and, therefore, see regulation as a circular process rather than a one-way street. *Duso* was able to show in a comparative study that price regulation in the US cellular industry led to lobby activity which succeeded in countervailing the regulatory objective and that as a result state regulation did not ultimately have a significant impact.[120] Such empirical designs respond to new theoretical understandings of regulation.[121]

Apart from the evaluation of indicators, expert interviews or interviews with actors[122] are considered appropriate means to judge the outcome of regulation.[123]

3.2.2.2. Rational Choice Approaches

The behaviour of the objects of regulation and third parties is included in non-empirical approaches more often than in studies using indicators. This non-empirical type of study is based on a rational-choice approach. The relevant actors are identified and plausible assumptions are made about their individual behaviour and interaction in view of the stimulus the regulation evokes. The intention in doing this is to come up with a kind of prediction about effects in the respective field.

This kind of approach needs both an analytical model of the regulation in place and the intended change and of the social field in which the regulation is designed to cause changes.

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116 Some studies on the effect of deregulation just measure indicators before and after deregulation without adequately considering other possible causes, cf. Friedrich Schneider/Markus F. Hofreiter, Privatisierung und Deregulierung öffentlicher Unternehmen in westeuropäischen Ländern – Erste Erfahrungen und Analysen, Wien: 1990.

117 For the field of labour market policy cf. Brigitta Rabe, Wirkungen aktiver Arbeitsmarktpolitik. Evaluierungsergebnisse für Deutschland, Schweden, Dänemark und die Niederlande, Berlin: 2000.

118 Arrow et al, Benefit-Cost Analysis in Environmental, Health and Safety Regulation: A Statement of principals. Washington: 1996.

119 Manfred Fleischer, Regulierungswettbewerb und Innovation in der chemischen Industrie, Berlin: 2001, p. 17.

120 Tomaso Duso, Lobbying and Regulation in a Political Economy: Evidence from the US Cellular Industry, Berlin: 2001.

121 Cf. See Ian Ayres/John Braithwaite, Responsive Regulation, Oxford: 1992.

122 For the latter see Thomas Wein, Wirkungen der Deregulierung im deutschen Versicherungsmarkt – Eine Zwischenbilanz, Karlsruhe: 2001, pp. 191+.

123 See below 3.3.

Since empirical research is limited for methodical reasons, some studies are restricted to analytical – non-empirical – approaches, or both methods are combined.[124]

3.2.2.3. Economic Theory

Economic theory can help to identify the distribution of benefits and costs. Developed approaches can be seen, to take an example, with regard to the behaviour of price-regulated companies.[125]

A study on German Copy Right Law serves as a model. Based on economic theory, the analysis of the effects of § 32 German Copyright Law (Urhebergesetz) shows not only that the assumptions of the lawmakers are wrong, but also that the redistribution of income is likely to produce inefficiencies. This study also identifies the costs and benefits for different regulatory approaches to interactive product placement in television and draws the conclusion that transparency rules are best as they support the regulatory objective and produce the best result from a welfare economy point of view.[126]

3.3. Learning From Existing Impact Analyses in the Field of Co-Regulation in the Media

In the studies on co-regulation analysed so far, there is no empirical approach using numerical indicators. Instead, studies use interviews with experts and/or actors to verify hypotheses derived from analytical methods.

For their study on self- and co-regulation in the media and telecommunications sector,[127] *Latzer, Just, Saurwein* and *Slominski* of the Austrian Academy of Science (Oesterreichische Akademie der Wissenschaften – OeAW) analysed existing studies, collected data from co-regulatory organisations in the media and telecommunications sector, and carried out interviews and workshops with experts.[128] *Latzer, Just, Saurwein* and *Slominski* point out the difficulties of operationalising and measuring non-financial regulatory tasks. They also stress that evaluation depends on the perspective adopted: while one can evaluate whether regulatory concepts are appropriate to fulfil public policy goals, industry players may judge the success of these regulatory concepts in a different way. Besides other issues, *Latzer, Just,*

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124 For the latter cf. Manfred Fleischer, Regulierungswettbewerb und Innovation in der chemischen Industrie, Berlin: 2001.

125 See a case study by Paola Prioni, Effizienz und Regulierung im schweizerischen öffentlichen Regionalverkehr, Zürich: 1997.

126 Christian Jansen, The German Motion Picture Industry – Regulations and Economic Impact, Berlin: 2002, p. 61+, 90+.

127 Michael Latzer/Natascha Just/Florian Saurwein/Peter Slominski, Selbst- und Ko-Regulierung im Mediamatiksektor, Wiesbaden: 2002.

128 Ibid, p. 102.

Saurwein and *Slominski* asked in their interviews for indicators to evaluate self- and co-regulation.[129] The most-mentioned indicators were:

- Approving and differing decisions of state regulators
- Number of complaints
- Number of members of self- or co-regulatory organisations
- Promptness of decisions
- Constant supervision
- Prices
- Recognition and acceptance
- "Takedowns" by online providers after illegal content has been pointed out to them
- Number of approvals and withdraws of approvals
- Press reactions to decisions
- Feedbacks by the industry and costumers.

The study conducted by *Latzer* et al points, then, to numerical indicators (number of complaints, prices), even though they do not measure them.

By contrast, *Schulz* and *Held* distinguish the levels of "adequacy" and "compliance".[130] To judge adequacy, the written law (acts, guidelines set up by regulatory agencies, codes of conduct set up by self-regulatory organisations) is examined to discover whether it is appropriate and sufficient to fulfil the regulatory tasks. In order to make assumptions about "compliance" the observance of rules enacted would have to be evaluated, an empirical task which they do not perform in their study. Nevertheless, the study does indicate the evaluations that have been made in the countries included in the case studies. In addition, performance appraisals gained from the expert interviews are given in the report.

Jarren, Weber, Donges, Dörr, Künzler and *Puppis* compared broadcasting regulation in different states by analysing documents and interviewing experts.[131] Experts agree on the assumption that there are shortcomings in rule enforcement (lack of sanctions) when it comes to pure self-regulation and that evaluation has to provide results on rule enforcement by means of co-regulation.[132]

The *PCMLP* performed a so-called codes analysis which included a study of Codes of Conducts and background research (expert interviews, historical and archive material and secondary analysis conducted by other researchers).[133] As a result, the *PCMLP* presented 18

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129 Ibid, p. 161+.

130 Wolfgang Schulz/Thorsten Held, Regulated Self-Regulation as a Form of Modern Government, Eastleigh: 2004, p. 10+.

131 Otfried Jarren/Rolf H. Weber/Patrick Donges/Bianka Dörr/Matthias Künzler/Manuel Puppis, Rundfunkregulierung – Leitbilder, Modelle und Erfahrungen im internationalen Vergleich, Zurich: 2002, p. 289+.

132 Ibid, p. 349 and 356.

133 PCMLP, Self-Regulation of Digital Media Converging of the Internet: Industry Codes of Conduct in Sectoral Analysis, Oxford: 2004.

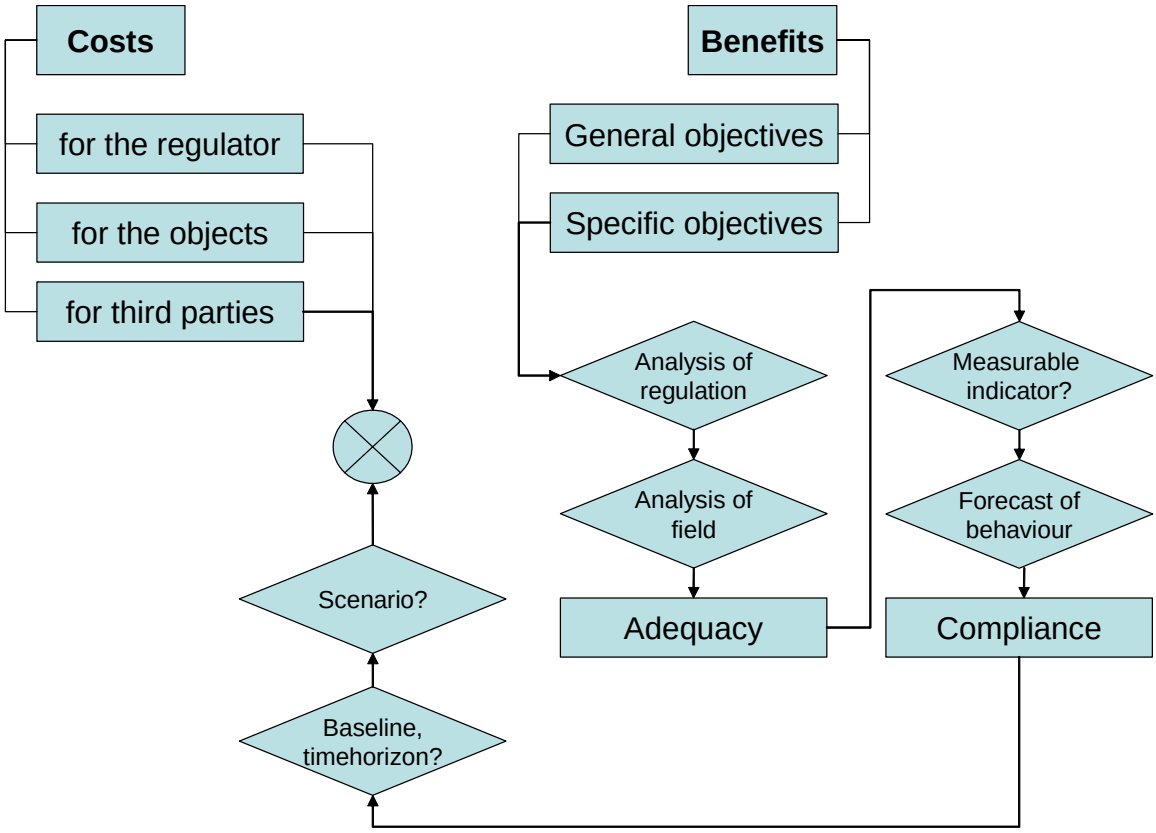
recommendations on media self-regulation, which can specifically help the effective development of media Codes of Conduct.

3.4. Preliminary Conclusions

There is no well-established methodology simply waiting to be adopted. Therefore, we will make use of the knowledge gained from the studies as far as possible and design a pragmatic method to assess the effects of concepts and instruments of co-regulation. Whether a co-regulatory system in place is working efficiently and effectively, and whether such a system should be implemented, can be assessed by a benefit-cost analysis.

To be able to include all relevant aspects, the terms “costs” and “benefits” must be understood in the broadest sense. Costs generally comprise undesirable side effects. What has to be regarded as a benefit and what as a cost, and how to weigh different benefits or costs, depends on the specific objectives the regulator wants to achieve.

To move towards a method for assessing co-regulation, a draft flow chart might be helpful.



When it comes to benefits, the objectives of the regulation compose the yardstick for measuring achievements. There are objectives which might be true for all regulation, such as acceptability, coherence and transparency, some of which are aspects of legal principles (primarily the principle of the rule of law). Specific objectives can be judged by the intention the regulator has and can be elaborated by the standard legal interpretation methods.

Following a suggestion in a study already conducted, the process of assessing the real world impact of regulatory measures can be broken up into an adequacy and a compliance component. The former can be conducted by analysing the regulation as such and the social area where regulation intends to cause effects. Here, the theories mentioned above might be useful to understand the processes and interactions (especially macro and “meso” approaches, see above p. 3). When it comes to projecting compliance with the regulation to be enacted, it will depend on the results of analysis of the social field whether there might be numerical indicators at hand, or to be constructed, and, thus, whether quantitative research seems possible. If this is not the case, economic theory and game theory in particular may help to forecast the behaviour of relevant actors. Finally, evaluation parameters such as the baseline (what will the outcome be if the regulation is not enacted?), the relevant time horizon in which costs and benefits are to be measured, and the scenario (best, worst or most likely case) have to be chosen. Again, benchmarks must be defined according to the specific regulatory objective.

The same goes for the final consideration of costs and benefits.

4. SHORT DESCRIPTIONS OF THE MEDIA SYSTEMS OF ALL MEMBER STATES, AUSTRALIA AND CANADA

4.1. Introduction

Core of the study will be the analysis of regulatory systems in place in all EU member states and three no-EU countries. According to our working plan the case studies are conducted in survey waves. In this interim report the result of the first wave is presented. It provides an overview of the regulatory systems covering the relevant media broadcasting, press, online-services, film and interactive games and protection of minors and human dignity, advertising, quality, ethics, diversity of private media and, as an annex, access and standard setting as objectives.

Within this report the country abstracts are reduced to mere facts (please find the reports in full text as presented by the country experts in appendix 2). As a basis for further action, each country abstract includes a conclusion which indicates fields wherein state and non-state regulation exists. In those fields there is a probable cause to identify co-regulation.

4.2. Abstracts Country Reports of the EU Member States

4.2.1. Austria

Constitution

The Federal Constitutional Act on the Independence of Broadcasting (B.G.Bl. 396/1974)
Article 10 of the European Convention on Human Rights (part of the Austrian federal constitution)
Resolution of the Provisional National Assembly of 30 October1918 on the Abolition of Censorship
§ 31a ORF Act

Relevant legislation

Horizontally Applicable Provisions: Media Act
Penal Code ("Strafgesetzbuch"; Federal Official Journal No. 1974/60)
Act on Pornography ("Pornographiegesetz"; Federal Official Journal No. 1950/97)
General Civil Code ("Allgemeines bürgerliches Gesetzbuch", ABGB; Official Journal of the Monarchy No. 1811/946)
Copyright Act ("Urheberrechtsgesetz"; Federal Official Journal No. 1936/111, last amended by Federal Official Journal I No. 2003/32)
Laws on the Protection of Minors (of each Austrian province)

Broadcasting: The Federal Act on the Austrian Broadcasting Foundation ("ORF-Act"; Federal Official Journal No. 1984/379 [re-publication], last amended by Federal Official Journal I No. 2004/97)
The Federal Act on Private Television ("Privatfernsehgesetz"; Federal Official Journal I No. 2001/84, last amended by Federal Official Journal I No. 2004/169)
The Federal Act on Private Radio ("Privatradiogesetz"; Federal Official Journal I No. 2001/20, last amended by Federal Official Journal I No. 2004/169)

Online-Services/Internet: The E-commerce Act ("E-Commerce-Gesetz", Federal Official Journal I No. 2002/152)

Film: several Codes of the Provinces, e.g. Vienna Law on Cinemas ("Wiener Kinogesetz"; Official Journal of Vienna No. 1955/18, last amended by the Official Journal of Vienna 2004/8)
Trade Code ["Gewerbeordnung"; Federal Official Journal No. 1994/194 (re-published)]

Regulatory Authorities

Broadcasting: Federal Communications Board
RTR-GmbH acts as the operative arm of
Austrian Communications Authority (KommAustria) and
Telecom Control Commission (TKK)

Film: e.g. Vienna Board for Film Assessment (Filmbeirat der Stadt Wien)

Regulation

Advertising: Council for Advertising (Österreichischer Werberat, which is a member of EASA)

Conclusion

Austria has not yet started to discuss combinations of state regulation and non-state regulation for the media market. In view of its tradition in the administration, it seems unlikely that the development in Austria will change considerably.

4.2.2. Belgium

Constitution

Freedom of Expression, Art.19
Free Press and Prohibition of Censorship, Art.25

Relevant Legislation

Horizontally Applicable Provisions:
"Code Pénal" (Art.380, 383 and 387, Protection of Minors)
"Loi relative à la Protection de la Jeunesse" (Art.80, Protection of Minors)
"Loi tendant à Réprimer Certains Actes inspirés par le Racisme et la Xénophobie" (Human Dignity)
"Loi tendant à Réprimer la Négation, la Minimisation, la Justification ou l'Approbation du Génocide commis par le Régime National-Socialiste Allemand pendant la Seconde Guerre Mondiale" (Human Dignity)
"Loi tendant à Lutter contre la Discrimination" (Human Dignity)

Broadcasting:
"Décret de la Communauté française sur la Radiodiffusion" (2003)
"Décret de la Communauté française portant statut de la Radio Télévision Belge de la Communauté française" (RTBF)
"Décret de la Communauté française relatif à la protection des mineurs contre les programmes de télévisions susceptibles de nuire à leur épanouissement physique, mental ou moral" (2004)
The Flemish Broadcasting Act 2005
Executive Agreement between the VRT and the Flemish Government 2002-2006

Press:
"Loi relative à la Reconnaissance et à la Protection du Titre de Journaliste Professionnel"

Advertising:
"Loi relative aux Pratiques du Commerce et à la Protection du Consommateur"
"Arrêté Royal concernant la Publicité pour les Denrées Alimentaires"
"Arrêté "Royal relatif à l'Information et à la Publicité concernant les Médicaments à Usage Humain"
"Loi Interdisant la Publicité pour les Produits du Tabac"

Online-Services/Internet:
"Loi sur Certains Aspects Juridiques des Services de la de la Société de l'Information"
Royal Decree dated of 26 November 2001

Film:
Law on the Prohibition of Access of Minors younger than 16 in Film Theatres
Agreement of Co-operation between the Communities, dated of 27 December 1990

Regulatory Authorities

Broadcasting:
"Conseil Supérieur de l´Audiovisuel" (CSA), i.e.
"Collège d´Autorisation et de Contrôle"
"Collège d´Avis"

	Divers Codes and Recommendations of the CSA, concerning i.a. Advertising and Minor Protection "Vlaams Commissariaat voor de Media" (The Flemish Media Authority, VCM) "Vlaamse Kijk- en Luisterraad" (The Flemish Viewing and Listening Council) "Vlaamse Geschillenraad" (The Flemish Council for Disputes on Radio and Television)
Film:	"Commission de Contrôle des Films Cinématographiques"

Regulation

Broadcasting:	The Ethical Code of the News Service of the Vlaamse Radio en Televisieomroep (VRT) VRT Charter of Diversity Basic Principles of the VMMa
Press:	"Raad voor Journalistiek" (The Council for Journalists, RvdJ)
Advertising:	"Jury d'Éthique Publicitaire" (JEP, which is a member of EASA)
Online-Services/Internet:	The Internet Rights Observatory ISPA-code and Protocol 1999

Conclusion

Most parts of the media landscape in Belgium are ruled by state authorities, but there are non-state regulation systems in the press, the advertising and the Internet sector. Actually, three supervising bodies, all with different competencies, are monitoring the application of the Flemish Broadcasting Act : the Flemish Council for Disputes on Radio and Television, the Flemish Viewing and Listening Council on Radio and Television and the Flemish Media Authority. In the Media Policy Note 2004-2009 the Flemish Minister of Media reveals the intention to establish one supervising organisation: The Flemish Regulator for the Media (VRM), integrating in one or another way the existing authorities. The VRM will become the monitoring and supervision organisation with separate specialised "Chambers". In the French Community the supervising authority CSA comprises two different units: the "collège d'autorisation et de contrôle" and the "collège d'avis". As the first one deals with traditional regulation, licensing etc. the latter is composed of 30 members representing the media professionals (televisions, radios, public and private broadcasters, network operators, newspapers, advertisers, copyright holders…) and the four members of the executive board. The members of the Collège d'avis are appointed by the government upon proposal of the professionals. The duty of the Collège d'avis is to give advices to the government about every question regarding the broadcasting sector, with special attention dedicated to human rights and protection of minors, to give advices for every draft of amendment to the Décrets or other regulations, but also to draw up codes in the following matters: advertising and sponsorship, protection of minors, human dignity and political information during electoral campaigns. Therefore a second view on the Belgian media system could be worthwhile.

4.2.3. Cyprus

Constitution

	Freedom of Expression, Art.19 Public Service Broadcasting, Art.171

Relevant Legislation

Broadcasting:	Law No. 7 (I)/1998 on Radio and Television Broadcasting (amended) Law on Cyprus Broadcasting Corporation (ch. 300A amended by Law 96 (I)/2004)

	Several subsequent Regulations
Press:	Press Law No. 145/1989
Film:	Law No 159/1990 on the Protection of the Commercial Exploitation of Cinematographic Works Law No.238/2002 on the Classification/Rating of Cinematographic Works

Regulatory Authorities

Broadcasting:	Cyprus Radio and Television Authority
Press:	Press Council and Press Authority
Film:	Board of Rating of Cinematographic Works

Regulation

Broadcasting/Press:	Commission of Journalistic Ethics inaugurated by the Code on Journalistic Ethics adopted in 1997 by professionals from all media
Press:	Commission on Conduct of Journalists (internal body of the Union of Journalists)

Conclusion

The journalists' code of ethics and a code of advertising and sponsorship are incorporated in the regulations drafted by the regulatory authority with the consent of the respective professional unions. The regulatory authority has the power to issue circulars, instructions and recommendations and to draft regulations. Regulations are presented to the parliament following their approval by the council of ministers. The Cyprus radio and television authority is independent and entrusted with powers i.a. to safeguard the editorial and creative independence of those working in the broadcasting sector and avert any interference with their work; examines cases of breach of law relating to the protection of minors, incitement to hatred, to the provisions on sponsorship, telemarketing and advertisement etc.

In practice, neither the Press Council nor the Press Authority has succeeded to operate properly. A second view could be worthwhile.

4.2.4. Czech Republic

Constitution

	Freedom of Expression Right to Information

Relevant Legislation

Broadcasting:	Act No. 231/2001 Coll. on Radio and Television Broadcasting Act No. 483/1991 Coll. and Act No. 484/1991 Coll. on Czech Television and Radio
Press:	Act No. 46/2000 Coll. on Rights and Obligations in Publishing of Periodical Press
Online-Services/Internet:	Act No. 480/2004 Coll. on some services of the information society (known as "Anti-Spam Law")
Film:	Act No. 273/1993 Coll. "Audiovisual Act"
Advertising:	Act No. 40/1995 on the Regulation of Advertising

Regulatory Authorities

Broadcasting :	Broadcasting Council

	Council of Czech Television (internal supervisory board as well as the) Council of Czech Radio
Press/Film:	Ministry of Culture

Regulation

Press:	Union of Czech Journalists Code of Journalist's Ethics
Online-Services/Internet:	Section on Internet Periodical Publishers [sub-association of the Czech Publisher Association (CPA)] Code of Internet Advertisement's Ethics
Film:	Producers and distributors classify audio-visual works as to their accessibility by the limit of 15 or 18 years (based on Act No.273/1993 "Audiovisual Act")
Advertising:	Council for Advertising (Rada pro reklamu – RPR, which is a member of EASA) Code of Advertising Practice

Conclusion

The non-state regulatory systems are only being introduced in the media as a result of recent European recommendations. A number of ethics codes have been adopted. Their scope of activities remains limited and the professional associations are only gradually developing.

Through the orientation on ASA and the combination of state and private regulatory bodies a second view could be worthwhile. The Broadcasting Council may, in case of a decision about alleged infringements, request (based on Act No. 40/1995) the expert opinion of the professional association in the sphere of advertising. This gives e.g. the Council for Advertising the possibility to intervene and, thus, indirectly enforce the non-state regulation of advertising, adopted in their Code for Advertising.

In July 2003, the Czech Parliament approved a code for the public service broadcaster. The Code also establishes an Ethics Panel of the Czech Television. Its tasks are to protect freedom of opinion and independence and to submit reports on important programming issues to the Council of the Czech Television. Another interesting fact is that the responsibility for observing the rules promulgated by the anti-spam law is designated to the "Office for personal data protection" and to the boards of the regulated professions set up by particular acts (tax consultancy, Chamber of tax advisor, Czech Medical Chamber, legal professions etc.).

4.2.5. Denmark

Constitution

	Freedom of Expression, § 77

Relevant Legislation

Horizontally Applicable Provisions:	Act No 85/1998 on Media Liability Marketing Practices Act Freedom of Information Act Copyright Act
Broadcasting:	Radio and Television Broadcasting Act No 1052 of 17 December 2002 on (as amended by Act No 439 of 10 June 2003) and the e.g. subsequent Executive Order no 194 of 20 March 2003 (on advertisement and minor protection) Consolidated Act No 661/2003 on Competitive Conditions and Consumer Interest in the Telecommunications Market.
Film:	Film Act No 186/1997

Regulatory Authorities

Broadcasting:	Ministry of Culture (administers the Broadcasting and the Copyright Act) Radio and Television Board (an independent body under the Minister of Culture) and locally established Radio and Television Boards
Film:	Danish Film Institute The Media Council for Children and Young Ones
Data Protection:	Danish Data Protection Agency Danish Consumer Ombudsman

Regulation

Press:	Press Council (deals with complaints under the Media Liability Act and guidelines on sound press ethics) The Association of Danish Advertiser (which is a member of EASA, deals with questions, concerning advertisement in all media)
Online-Services/Internet:	Danish e-commerce websites can be provided with a seal if they comply with a set of rules for good practice on the Internet has been established as a self-regulatory measure As regard online content specifically developed for mobile phones, the Telecommunication Industries Association in Denmark has established a "regulatory framework" on a self-regulatory basis.

Conclusion

Non-state regulatory measures are few under the Danish media regulatory framework. Such measures are generally most accepted in relation to online-services. As regards content regulation of online-services, Denmark is reluctant to regulate the content apart from general applicable rules set forth in, inter alia, criminal, copyright and consumer protection status. Online-services shall be able to develop in the free market forces without regulatory restrictions, partly the borderless nature of the Internet, together with the rapid technological speed with which online-services develop, demand international regulatory initiatives rather than national. However, as general rules and regulations that apply to the "physical" services also apply to "virtual" services, a variety of regulatory authorities in Denmark have competence within the field of online-services.

In the press sector, it is interesting to note that the Press Council supervises both the compliance with specific legislation as well as its own guidelines. A second view could be worthwhile.

4.2.6. Estonia

Constitution

	Freedom of Expression, Art.45 Right to Information

Relevant Legislation

Horizontally Applicable Provisions:	Act to Regulate the Dissemination of Works which Contain Pornography or Promote Violence or Cruelty of 16 December 1997 (Protection of Minors) Advertising Act of 11 June 1997 Decree No 69 of the Ministry of Culture, dated of 3 May 2001 Law of Obligations Act, dated of 26 September 2001 The Public Information Act, dated of 15 November 2000
Broadcasting:	Broadcasting Act of 19 May 1994
Online-Services/Internet:	Information Society Services Act of 14 April 2004

Regulatory Authorities

All Media:	Expert Committee on Works
Broadcasting:	Ministry of Culture Broadcasting Council

Regulation

Horizontally Applicable Provisions:	Code of Ethics of the Estonian Press (was introduced in December 1997 by the Estonian Newspaper Association, the Association of Estonian Broadcasters and the Estonian Press Council)
Broadcasting:	Association of the Estonian Broadcasters
Press:	Estonian Press Council
Press/Online-Services:	Press Council of Estonia (Part of Estonian Newspaper Association)

Conclusion

In principle, media regulation in Estonia is based on a traditional command and control approach through state legislation and supervision. The non-state regulatory mechanism of the Estonian media is based on the same Code of Ethics. The two Councils supervising the Code have no enforcement mechanism for their decisions and they do not award damages.

4.2.7. Finland

Constitution

Freedom of Expression and Right of Access to Information

Relevant Legislation

Horizontally Applicable Provisions:	Act on the Exercise of Freedom of Expression in Mass Media (Act No. 460/2003) Act on the Openness of Government Activities (Act No. 621/1999) Communications Market Act (Act No. 393/2003) Act on Communications Administration (Act No. 625/2001) Consumer Protection Act (Act No. 38/1978) Act on Consumer Agency (Act No.1056/1998) Act on the Market Court (Act. No. 1527/2001)
Broadcasting:	Act on the Finnish Broadcasting Company Ltd (Act No. 1380/1993) Act on Television and Radio Operations (Act No. 744/1998) Government Decree on Television and Radio Operations (698/2003) Act on the State Television and Radio Fund (Act No. 745/1998) Radio Act (Act No. 1015 /2001)
Press:	Act on Discretionary Government Transfers (Act No. 688/2001) on which Decree on Press Subsidies (1481/2001) is based
Film:	Act on the Classification of Audiovisual Programmes (Act No. 775/2000) Act on the Finnish Board of Film Classification (Act No. 776/2000) Decree on the Finnish Board of Film Classification (823/2000) Government Decree on the Classification of Audiovisual Programmes (822/2000) Film Promotion Act (Act No. 28/2000) Film Promotion Decree (121/2000)

	Penal Code § 17- 20
Online-Services/Internet:	Domain Name Act (Act No. 228/2003) Act on Provision of Information Society Services (Act No. 458/2002) Act on the Protection of Privacy in Electronic Communications (Act No. 516/2004)

Regulatory authorities

Broadcasting:	Ministry of Transport and Communications (Liikenneministeriö-Trafikministeriet) Finnish Communications Regulatory Authority (Viestintävirasto Kommunikationsverket) Consumer Agency & Ombudsman
Film:	Finnish Board of Film Classification (Valtion elokuvatarkastamo) Finnish Film Foundation (Suomen elokuvasäätiö).

Regulation

All Media:	Council for Mass Media in Finland [including: Finnish Association of Magazines and Periodicals, Finnish Association of Local Periodicals, Finnish Association of Radio and Television Journalists, Finnish Newspapers Association, Union of Journalists in Finland, Finnish Broadcasting Company, MTV Oy Ltd ("MTV3" Finnish Commercial TV), Association of Finnish Broadcasters, Oy Ruutunelonen Ab ("Channel Four" Finnish Commercial TV), Finnish Urban Press Association] Union of Journalists in Finland adopted Guidelines for Good Journalistic Practice Copyright Council
Online-Services/Internet:	Information Society Council

Conclusion

Regarding the complex network of state and non-state regulatory systems, Finland has a strong tradition of informal agreements and practices, instead of strict legal or administrative regulation. This tradition of 'consensus' is particularly clear in the field of media and communication, which is protected by constitutional guarantees of freedom.

4.2.8. France

Constitution

	Declaration of the Rights of Men and Citizens from 1789 Preamble of the Constitution from 1946 Freedom of Expression

Relevant Legislation

Horizontally Applicable Provisions:	General Press Act dated of 1881 Law of 16 July 1949 Law of 17 June 1998 Law of 13 July 1990 (against racism) Law of 17 July 1970 (protection of privacy) Code of Intellectual Property dated of 1992

Broadcasting:	Broadcasting Acts of 29 July 1982 and of 30 September 1986 (as amended)
Press:	Law on the "Status of Journalists" of 1935
Online-Services/ Internet:	Law of 6 January 1978 (data protection)
Film:	Executive Order of 23 February 1990 concerning film labelling
Advertising:	Law of 26 July 1993 ("Code de la Consommation") Law "Sapin" of 1993 Law "Evin" of 10 January 1991 Executive Order of 27 March 1992 requires i.a. that advertisements respect truth and human dignity

Regulatory Authorities

Broadcasting/Online-Services:	Conseil Supérieur de l'Audiovisuel (CSA)
Broadcasting (transmission):	Comités techniques radiophoniques (CTR)
Online-Services/Internet:	Autorité de regulation des télécoms (ART) Commission Nationale de l'Informatique et des Libertés (CNIL, mainly for data protection)
Film:	Centre National de la Cinématographie(CNC) Code de l'industrie cinématographique

Regulation

Broadcasting:	Three "Médiateurs" or Ombudsmen
Press:	"Convention collective nationale de travail des journalistes" of November 1976 Press Code of Ethics of 1918 (revised in 1938) different "Charta" for different groups of the print press
Online-Services/Internet:	"Forum des droits sur l'Internet" (including a Net Ombudsman and which is part of the European internet co-regulation network)
Advertising:	Bureau de Vérification de la Publicité (BVP, which is a member of EASA)

Conclusion

The French media system is mostly regulated by state authorities. Basic approaches and existing forms of non-state regulation are not, however, developed further, neither by the state nor by the concerned parties.

4.2.9. Germany

Constitution

Freedom of Expression, Art.5
Freedom of Information, Art.5
Freedom of Mass Media, Art.5

Relevant Legislation

Horizontally Applicable Provisions:	Penal Code ("Strafgesetzbuch", incl. i.a. Protection of Minors, Hate Speech) Act on Unfair Competition, dated of 3 July 2004 ("Gesetz gegen den unlauteren Wettbewerb")
Broadcasting:	Agreement on Broadcasting between the Federal States in United Germany as amended by the eight amendment 08.-15.10.2004

	["Rundfunkstaatsvertrag" (aims among other things at Diversity, Ethics, Advertising, Standards)] Several Codes of the Länder ("Mediengesetz/Rundfunkgesetz", all aim at Diversity, Ethics, Advertising, Standards) Agreement on the protection of human dignity and youth protection regarding broadcasting and telemedia as last amended in 2004 ("Jugendmedienschutzstaatsvertrag") Charter on the Freedom of Access concerning digitalised services, dated of 26 June 2000
Press:	Several Codes of the Länder ("Pressegesetz", all aim at Advertising, Ethics)
Online-Services/Internet:	"Teledienstegesetz" (aims at Advertising) "Mediendienstestaatsvertrag" (aims among other things at Advertising) "Jugendmedienschutzstaatsvertrag" (Protection of Minors)
Film/Interactive Games:	"Jugendschutzgesetz" (Protection of Minors)

Regulatory Authorities

Broadcasting:	State Media Authorities ("Landesmedienanstalten" for Private Broadcasters) "Kommission für Jugendmedienschutz" [(KJM) Protection of Minors]
Press:	"Oberste Jugendbehörden der Länder, Bundesprüfstelle für jugendgefährdende Schriften" (Protection of Minors)
Online-Services/Internet:	"Kommission für Jugendmedienschutz" [(KJM) Protection of Minors]
Film/Interactive Games:	"Bundesprüfstelle für jugendgefährdende Schriften" (Protection of Minors)

Regulation

Advertising:	German Advertising Council ("Deutscher Werberat", which is a member of EASA)
Broadcasting:	"Freiwillige Selbstkontrolle Fernsehen" [(FSF) Protection of Minors]
Press:	German Press Council ("Deutscher Presserat" conc. Ethics, Advertising, Data Protection]
Film/Interactive Games:	"Freiwillige Selbstkontrolle der Filmwirtschaft" [(FSK) Protection of Minors) "Unterhaltungssoftware Selbstkontrolle" [(USK) Protection of Minors]

Conclusion

The German media regulation forms a regulatory patchwork. This mainly derives from the federalist structure of the legal system. There are some fields where state and non-state regulation can be found. This is the case with the protection of minors in the area of broadcasting and online media (the regulation of which has changed recently) and film. When it comes to advertising regulation there are activities from state and non-state actors as well. Due to constitutional reasons, aspects of journalistic quality are primarily subject to non-state regulation; merely for broadcasting some aspects of quality are addressed by state laws as well. Data protection of the press is controlled by a non-state organisation. A closer look on the media system will be worthwhile.

4.2.10. Greece

Constitution

Freedom of Expression, Art.14
Freedom of Information, Art.10 (3)

Relevant Legislation

Broadcasting:	Law 1866 of 1989 and Law 2863 of 2000
	Law 2328 of 1995
	Law 2644/1998
	Presidential Decree 100/2000 (TwF)
Press/Broadcasting:	Presidential Decree 77/2003
	Law 2328 of 1995
Film:	Law 1597 of 1986 and Presidential Decree 113/98

Regulatory authorities

Broadcasting:	Ministry of Press and Mass Media
	National Council for Radio and Television (NCRTV or ESR)
	National Committee of Electronic Means of Communication (EEHME)
	[Assembly of Viewers and Listeners (ASKE)]
Online Services/Internet:	National Telecommunications and Post Commission (EETT)
Film:	Ministry of Culture
	Film Classification Board

Regulation

Broadcasting/Advertising:	Greek Advertising and Communication Code
	Advertising Self-Regulation Council (SEE, which is a member of EASA)
Press/Broadcasting:	Code of Ethics of Greek Journalist
Press:	National federation of the reporters' associations
Online-Services/Internet:	Safenet (initiated by EETT) / Safeline

Conclusion

The NCRTV, in consultation with the national federation of the reporters' associations, advertising agencies, and public and private broadcasters, developed the code of conduct for news and other political programs for journalists working for broadcast media. The code was ratified by a Presidential Decree in March 2003. Law 2863/2000 provides for non-state regulation mechanisms in respect of radio and television services. Under the law, holders of authorisations (both encrypted and unencrypted broadcasting channels) must conclude multi-lateral contracts in which the parties define the rules and ethical principles governing the programmes broadcast. There must be at least two parties to the contract; other radio and television bodies may be invited to sign subsequently. Failure to conclude or sign a contract would constitute a violation of the legislation in force and result in the national council for radio and television (NCRTV) withdrawing or suspending the corresponding authorisation. The ethical rules provided for in the contracts may under no circumstances be contrary to the legislation in force. Regarding these developments a second view on the media system in Greece could be worthwhile.

4.2.11. Hungary

Constitution

Freedom of Expression, § 61 (1)
Freedom of Press, § 61 (2)
Protection of Human Dignity and Privacy, § 54 (1) and § 59 (1)
The Right of Child to Protection and Care needed to his/her proper physical, mental and moral development, § 67 (1)

Relevant Legislation

Broadcasting: Act No I of 1996 on Radio and Television Broadcasting (as amended in 2002)

Press: Act No II of 1986 on the Press complemented by a
Decree of the Council of Ministers on detailed rules concerning the Implementation

Online-Services/Internet: Act No CVIII of 2001 on Certain Legal Aspects of Electronic Commerce Services and Information Society Services

Film*:* Act No II of 2004 on Motion Picture
Decree 14/2004 on Organisation, Acting, etc. of the National Film Office
Decree 24/2004 on - inter alia - labelling of films

Advertising: Act No LVIII of 1997 on Commercial Advertising Activities complemented by Act No XCVI of 2001 aimed at the Protection of the Hungarian Language
Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (Competition Act)
Decree No 64/2003 on Advertising Medicinal Products
Decree No 40/2001: Advertising Cosmetics

Protection of Minors: Decree No 218/1999 on Certain Offences, Sex-related Products, Violence

Regulatory Authorities

Broadcasting/Advertising: National Radio and Television Commission (ORTT)

Online-Services/Internet: National Telecommunications Authority (NHH)

Film: National Film Office (i.a. Rating Committee) working under the supervision of the Ministry of National Cultural Heritage

Advertising: Inspectorate for Consumer Protection (Advertising Act) under the direction of the Minister of Economic Affairs and Transport
Competition Authority (Misleading Ads)

Regulation

Press: Association of Hungarian Journalists
Code of Journalistic Ethics extended to journalists working in print, broadcast and online-media
Committee of Ethics of the Association of Hungarian Journalists

Online-Service/Internet: Hungarian Content Providers' Association (MTE) enacted the Code of Content Provision

Advertising: Hungarian Advertising Association (which is a member of EASA) subordinated bodies: Hungarian Advertising Self Regulatory Board and the Committee of Advertising Ethics have enacted together the Hungarian Code of Advertising Ethics

Conclusion

The Hungarian media regulation is characterised by traditional command and control approach taken by the state and expressed by means of legislation. In case of online-services and advertising the basic laws contain references to existing non-state regulatory mechanisms. These are made in a declaratory manner establishing no formal obligation of state institutions to carry out actual duties related to non-state regulatory bodies and mechanism.

4.2.12. Ireland

Constitution

	Freedom of Expression, Art.40.6.1i
	The Right to Good Name, Art.40.3.1
	The Right to Fair Trial, Art.38
	The Right to Communicate, Art. 40.3.1
	The Right to Privacy, Art. 40.3.1

Relevant Legislation

Horizontally Applicable Provisions:	Prohibition on Incitement to Hatred Act 1989
Broadcasting:	The Broadcasting Authority Act 1960 (as amended in 1976)
	The Radio and Television Act 1988
	The Broadcasting Act 1990
	The Broadcasting Act 2001
	The Communications Regulation Act 2002
	The Defamation Act 1961
Press:	The Data Protection (Amendment) Act 2003
	The Defamation Act 1961
Online-Services:	The Child Trafficking and Pornography Act 1998
Film/Interactive Games:	The Censorship of Films Acts 1923-1992
	The Video Recordings Acts 1989-1992

Regulatory Authorities

Broadcasting:	RTÉ Authority
	The Broadcasting Complaints Commission (BCC)
	The Broadcasting Commission of Ireland (BCI)
	The Competition Authority
Online-Services:	The Commission for Communications Regulation (ComReg)
Film/Interactive Games:	The Film Censor and the Censorship of Films Appeal Board

Regulation:

Advertising:	The Advertising Standards Authority of Ireland (which is a member of EASA)
Press:	Press Council and Press Ombudsman, operating on the basis of a Code of Practice are expected to be formed in the near future
	The National Newspapers of Ireland umbrella group (NNI)
	UK Press Complaints Commission (for British editions of the British media)
	NUJ – the main journalists´ trade union (with own code of conduct)
Online-Services/Internet:	The Internet Service Providers Association of Ireland (with service hotline)
	Internet Advisory Board

	Joint Code of Practice and Ethics
	Regtel (an independent non-profit company)

Conclusion:

Regulation of broadcasting, film and video is provided by statute, which also establishes the regulatory bodies. In the case of the printed press, there is no specific statute. Instead, the general laws apply. Non-state regulation to date has been mainly made in-house but the current Minister for Justice intends bringing in legislation that will give statutory recognition to a press council, which will operate on the basis of a code of practice. Online media are regulated by means of a system of non-state regulation, comprising an industry body and code, an advisory board and hotline. New approaches have been envisaged for content on cellular phones which could threaten the development of children and minors. Such measures would include the registration of 3G mobile phones and regulation in terms of content labelling and filtering. Therefore a closer look could be worthwhile.

4.2.13. Italy

Constitution

	Freedom of Expression, Art.21
	Freedom of Press, Art.21
	Protection of Minors, Art.31
	Requirement that regulation of media sectors must be determined by Parliamentary statutes (riserva di legge)

Relevant Legislation

Horizontally Applicable Provisions:	Law n.112 of 2004 on Protection of Minors and Establishment of a System to Protect Pluralism
Broadcasting:	Law n.223 of 1990
	Law n. 249 of 1997 instituting the Communications Authority (Agcom)
Press:	Law n.47 of 1948 Abolition of any Administrative Requirement for New Press Initiatives
	Law n.249 of 1997 on Registration ("registro degli operatori della comunicazione (ROC)")
	Law n.416 of 1987 General Rules on Press Activities in the Interest of the Public
Film:	Law n. 203 of 1995
	Ministerial Decree of 19 February 2001
Advertising:	Decrees n.50 and n.74 of 1992 Prohibition on Misleading Advertising
	Decree n.425 of 1991 concerning Tobacco and Alcoholic Products
	Decree n.581 of 1993 concerning Sponsorship and Teleshopping
	Regulation of Agcom n.538/01/CSP of 26 July 2001 rules on advertising in television programmes

Regulatory Authorities

Broadcasting/Online-Services/Press:	Communications Regulatory Authority Agcom (regulates telecommunication, audiovisual, online media and the press)
Film:	Ministry of Cultural Affairs

Regulation

Broadcasting:	Surveillance Committee (Self Regulation Code concerning Teleshopping entered into force in 2002)

	Self-Regulatory TV and Children Code of Conduct approved on 29 November 2002
Online-Services/Internet:	Code of Conduct "Internet and Children" of 23 November 2003
Advertising:	Institute for Advertising Self-Regulation (Istituto dell' Autodisciplina pubblicitaria (IAP), which is a member of EASA) Code of Self-Regulation (Codice di autodisciplina pubblicitaria)

Conclusion

Coming from a rather traditional system of state regulation, Italy has recently experienced the establishment of a number of non-state-regulatory initiatives, mainly in the online and advertising sector. It will be advisable to have a closer look at the interaction of such alternative regulatory systems with the state regulation.

4.2.14. Latvia

Constitution

	Freedom of Expression and Prohibition of Censorship, Art.100 Right to Apply to the Governmental Institutions and Local Authorities with the Request for Information, Art.104

Relevant Legislation

Horizontally Applicable Provisions:	State Administration Structure Law Regulations on the Import, Production, Dissemination, Public Communication or Advertising of Erotic or Pornographic Materials (Protection of Minors) Competition Law, dated of 4 October 2001 The Advertising Law, dated of 20 December 1999 (as amended on 22 April 2004) Administrative Offences Code (as amended 2003)
Broadcasting:	The Radio and Television Law (as amended lastly on 16 December 2004)
Press:	Law on the Press and other Mass Media (as amended on 17 April 1997)
Online-Services/Internet:	Law on the Information Society Services Electronic Communications Law, dated of 2004
Film:	Regulations of the Cabinet of Ministers "On the distribution of films"

Regulatory Authorities

Broadcasting:	Ministry of Culture National Radio and Television Council The Directorate for Electronic Communications (under the Ministry of Transport) Commission for the Public Utilities The Inspection of the State Language The Anti-Corruption Bureau
Advertising:	National Radio and Television Council (with respect to the requirements of Radio and Television Law and EU directive "Television without frontiers")

	The Inspection for the Protection of Consumers' Interests
	The Competition Council
Film:	National Film Centre

Regulation

Broadcasting:	Association of the Broadcasters
Press:	Latvian Union of Journalists (with own Code of Ethics)
Advertising:	Latvian Association of Advertising
	Council of Ethics for Advertising

Conclusion

Non-state regulation hardly exists in Latvia – with the exception of the Code of Ethics of the Latvian Union of Journalists, according to the fact that the regulation of the press is ultra-liberal. With respect to other regulatory mechanisms, the National Radio and Television Council together with the Ministry of Culture and the National Film Centre (under the Ministry of Culture) have begun to draft binding Regulations of the Cabinet of Ministers on the classification of films and other audiovisual works, taking into account the practice adopted by other European countries. However, it is not yet clear, what will be the legal status and the composition of the Commission responsible for the classification of the audiovisual content.

4.2.15. Lithuania

Constitution

	Freedom of Expression and Freedom of Information, Art.25
	Protection of Minors, Art.39
	Prohibition of Censorship, Art.44

Relevant legislation

Horizontally Applicable Provisions:	Act No I-1418 on the Provision of Information to the Public
	Law on the Protection of Minors against Detrimental Effect of Public, dated of 10 September 2002
Broadcasting:	The 1989 European Convention on Transfrontier Television which is legally effective for the Republic of Lithuania from 17 February 2000
	Act No VIII-1780 on the National Radio and Television of Lithuania
	Decision of the Lithuanian Radio and Television Commission "On approval of the rules for licensing broadcasting and re-broadcasting activities"
	Regulations of the Lithuanian Radio and Television Commission approved by the Decision of Commission No.67
Online-Services/Internet:	Act No IX-2135 on Electronic Communications
	Resolution of the Government No 290 on Information Prohibited for Disclosing in Computer Networks of Public Use

Regulatory Authorities

Broadcasting:	The Radio and Television Commission of Lithuania
Press:	The Inspector of Journalist Ethics
Online-Services/Internet:	The Communications Regulatory Authority
	Information Society Development Committee under the Government of the Republic of Lithuania

Regulation

Press:	Ethics Commission of Journalists and Publishers The Code of Ethics of Lithuanian Journalists and Publishers

Conclusion

The Lithuanian media sector is regulated by the Law on Provision of Information to the Public. This Law involves the main criteria applied for broadcasting, press and other forms of disseminating information. Interesting non-state regulation can be found in the Ethics Commission, as well as in the existence of the Inspector of Journalists Ethics. Both, the Commission and the Inspector are based on laws. They are responsible for the supervision of certain legal acts and the Code of Ethics of Lithuanian Journalists and Publisher (which applies to all media). The Inspector of Journalist Ethics, while performing his functions, observes the following laws: (1) Law on provision of information to the public; (2) Law on the protection of minors from adverse effect of public information; (3) Law on legal protection of personal data; and (4) Law on advertising as regards the violation of honor and dignity. This system could be worth a closer look.

4.2.16. Luxembourg

Constitution

	Freedom of Speech and Freedom of Press, Art.24

Relevant Legislation

Horizontal Applicable Provision:	Law of 8 June 2004 on Freedom of Expression in the Media Law of 2 August 2002 on the Protection of Persons with Regard to Processing of Personal Data Law of 30 July 2002 on Commercial Practices and Fair Competition (regulates comparative advertisement in all media)
Broadcasting:	Law of 27 July 1991 on Electronic Media Grand-Ducal Decree of 19 June 1992 on the Structure and Functioning of the Public Organisation in Charge of the Socio-cultural Radio Broadcasting Station (100,7) Grand-Ducal Decree of 17 December 1991 governs the Internal Organisation of the Independent Broadcasting Commission
Online-Services/Internet:	Law of 14 August 2000 on Electronic Commerce
Film:	Law of 13 June 1922 on Supervision of Public Movie Theatres Grand-Ducal Decree of 16 June 1922 (as amended by several decrees, the latest of which dates from 18 December 1950)

Regulatory Authorities

All Media:	The Government, through its Prime Minister and Delegated Minister for Communications, assisted by the Media and Communication Service ("Service des Médias et de Communication") in cooperative connection with the Regulator for Telecommunications (ILR, "Institut Luxembourgeois de la Régulation") The Advisory Media Commission (“Commission Consultative des Médias”)
Broadcasting:	Independent Broadcasting Commission ("Commission Indépendante de la Radiodiffusion") National Programme Council (“Conseil National des Programmes”)

Regulation

Broadcasting:	Internal Supervisory Board of CLT-UFA "Conseil de Sages" and the internal Charter for the Journalists of the Luxembourgish speaking radio and television stations of RTL.
Press/Online-Services:	Press Council Code of Conduct “Code de Déontologie de la Presse”
Advertising/Online-Services:	The Commission for Ethics in Advertisement ["Commission Luxembourgeoise pour l’éthique en publicité" (CLEP, which is a member of EASA)] Code of Advertising Practices.

Conclusion

The Luxembourg media landscape regulation is mainly based on the law of 27 July 1991 on electronic media and the law of 8 June 2004 on Freedom of Expression in the Media. The government policy paper on basic orientations for a reform of the legislation on electronic media (as published in March 2002) outlines the intention for the upcoming revision of the existing regulation. A trend may be identified which promotes reducing state regulation and favours non-state regulation in the media sector. Concerning the protection of minors, the Luxembourg government decided (in its session of 7 November 2003) to initiate the elaboration of an amendment to Article 383 of the criminal code for including the repression of violent content in the media in addition to the existing regulation on sexual content. It is foreseen to create a legal basis for sectorial systems of non-state regulation in such fields. Therefore a closer look on the system could be worthwhile.

4.2.17. Malta

Constitution

Freedom of Conscience, of Expression and of Peaceful Assembly and Association; and Respect for Private and Family life, Art.32
Freedom of Expression, anyone resident in Malta is entitled to edit or print a daily or periodical newspaper or journal, Art.41
Prohibition of any Law from making any provision that is discriminatory, Art.45
Regulation of the composition and the functions of the Broadcasting Authority, Art.118-119

Relevant Legislation

Horizontally Applicable Provisions:	Consumer Affairs Act (Chapter 378 of the Laws of Malta) Equality for Men and Women Act (Chapter 456 of the Laws of Malta) Criminal Code (Art.208 and 208A) (Chapter 9 of the Laws of Malta) Distance Selling Regulations LN 186 0f 2001 Distance Selling (Retail Financial Services) Regulations LN 36 of 2005
Broadcasting:	Broadcasting Act (Chapter 350 of the Laws of Malta) Broadcasting Act Regulation LN 245 of 2001: Code for Advertisements, Teleshopping and Sponsorship Broadcasting Act Regulation LN 160 of 2000: Code for the Protection of Minors
Press:	Press Act (Chapter 248 of the Laws of Malta)
Online-Services/Internet:	Electronic Communications (Regulation) Act (Chapter 399 of the Laws of Malta)

	Electronic Commerce Act (Chapter 426 of the Laws of Malta) Malta Communications Authority Act (Chapter 418 of the Laws of Malta)
Film:	Cinema and Stage Regulations SL 10.17 of 1937

Regulatory Authorities

Broadcasting:	Broadcasting Authority
Online-Services/Internet:	Malta Communications Authority
Film:	Board of Film and Stage Classification

Regulation

Press:	The Institute of Maltese Journalists (issued in 1991 a Self-regulatory Code of Journalistic Ethics) Press Ethics Commission of 1999 (with own Rules of Procedure)

Conclusion

The Maltese media regulation is predominantly characterised by a traditional command and control approach taken by the state and expressed by means of legislation. Most provisions can be found in primary and secondary legislation and the Broadcasting Authority issues codes for advertisement, teleshopping and sponsorship or the protection of minors. Non-state-regulation exists in the press sector (especially the self-regulatory code of journalistic ethics).

4.2.18. The Netherlands

Constitution

	Freedom of Information, Art.110 Freedom of Expression, Art.7

Relevant Legislation

Horizontally Applicable Provisions:	The Government Information Act (WOB) dated of 31 December 1991
Broadcasting:	Media Act dated of 1 January 1988 and the subsequent Media Decree

Regulatory Authorities

Broadcasting:	Dutch Media Authority (Commissariaat voor de Media or CvdM) Netherlands Radiocommunications Authority (Agentschap Telecom)
Film:	Dutch Film Fund (Nederlands Fonds voor de Film)
Press:	Press Fund (Bedrijfsfons voor de Pers)

Regulation

Film/Broadcasting:	Netherlands Institute for the Classification of Audiovisual Media (Nederlands Instituut voor de Classificatie van Audiovisuele Media or NICAM)
Press:	Press Council
Advertising:	Advertising Code Foundation (Stichting Reclame Code, which is a member of EASA) Dutch Advertising Code (Nederlands Reclame Code)
Internet:	Internet Hotline Against Child Pornography (Internet meldpunt Kinderporno)

Hotline Discrimination on the Internet (Meldpunt Discriminatie Internet or MDI) both are recognised by the Branch Association of Dutch Internet Service Providers (NLIP)

Conclusion

In the Netherlands most regulation regarding media applies to the broadcasting sector. The CvdM as an autonomous public authority is responsible for licensing and monitoring broadcasters on compliance to media regulation. Most rules are laid down in the Media Act and Media Decree. In case of contraventions the CvdM can impose sanctions. Regarding the content of advertisements the Netherlands opted for non-state regulation.

The Advertising Code Commission, in which representatives of media and advertising organisations participate, monitors compliance to the Dutch Advertising Code which applies to advertisements in all types of media. After assessing an infringement of the code, the Advertising Code Commission can issue recommendations but no financial sanctions. Participation in the Advertising Code Foundation is voluntary, however, broadcasters have to participate if they want to include advertisements in their programmes. In that respect they will be forced to opt for the system.

A similar principle underpins the regulation of audiovisual content which might be (seriously) harmful to minors. If broadcasters do not join the NICAM, set up by the audiovisual sector, they are not allowed to broadcast programmes other than those suitable for children and adolescents less than sixteen years of age. Also, they will fall directly under the supervision of the CvdM. This consequence is a strong stimulation for broadcasters to participate in the NICAM. If members of NICAM do not comply with the rules, serious fines can be imposed. Since the public authority CvdM keeps competences regarding broadcasters which do not participate in NICAM and, furthermore, can intervene if seriously harmful programmes are broadcast, the system can be considered as being of particular interest for the purposes of the present study. The NICAM system also applies to the sectors of video, DVD, games and films, but not to online-games. Further public action in the Dutch film sector is characterised by some funds, of which the Dutch Film Fund, subsidized by the Ministry of Education, Culture and Science, is the biggest. In the sector of written press, the Press Fund can allocate subsidies under certain conditions, laid down in the Media Act. The Press Council, based on a non-state regulation, is competent to give opinions on journalistic practices of individual journalists, also in the field of broadcasting. With regard to press mergers the sector agreed to respect a one-third market share limit as a principle. Furthermore, the CvdM monitors concentration developments and trends and the National Competition Authority can prohibit mergers or agreements if free competition will be disturbed.

In the field of online-services, there is also a non-state regulation of content for hotlines which have been launched by the sector.

Regarding the different systems described above a second view could be worthwhile.

4.2.19. Poland

Constitution

Freedom of the Press, Art.14
Non Discrimination, Art.32
Freedom and Privacy of Communication, Art.49
Prohibition of Censorship and Freedom of Expression, Art.54
The National Broadcasting Council safeguards the Freedom of Speech, the Right to Information as well as Safeguards the Public Interest regarding Broadcasting and Television, Art.213
Members of the National Broadcasting Council
Must not belong to a political party, Art.214

Relevant Legislation

Horizontally Applicable Provisions: The Press Law of 26 January 1984
Civil (Art. 23, 24, 448) and Criminal (Art. 212-214) Codes which determine the rules of journalist/editor liability for libel

Broadcasting: The Broadcasting Act of 29 December 1992

Regulations of the National Broadcasting Council:
- dated of 24 April 2003 concerning procedures related to the presentation of standpoints with regard to crucial public issues by political parties, trade unions and of employers' organizations in public radio and television;
- dated of 21 August 1996 concerning the procedure related to presenting and explaining the policy of the state by supreme national authorities public radio and television;
- dated of 1 September 1998 concerning procedures related to the division of free broadcasting time, preparation, emission, and information about emission time before elections to borough, county, and voivodeship councils;
- dated of 4 February 2000 concerning the fees for granting licences to transmit radio and television programme services;
- dated of 6 July 2000 concerning the principles of advertising and teleshopping in the radio and television programme services and detailed rules regulating the restraints on interruption of fees for granting licences to transmit radio and television programme services;
- dated of 6 July 2000 concerning sponsoring programme items and other broadcasts;
- dated of 6 July 2000 concerning the methods of recording and preserving programme items, advertisements and other broadcasts by broadcasters;
- dated of 20 November 2001 concerning the detailed methods of classifying, transmission and announcing programs and other broadcasts that might impair the physical, psychological or moral development of minors.

Press: Press Act, dated of 7 Mai 1990

Online-Services/Internet: Act on Providing Services by Electronic Means, dated of 18 July 2002
Act on Electronic Signatures, dated of 18 December 2001
Act on Telecommunications, as last amended in 2002

Film: Cinematographic Law, dated of 16 July 1987

Regulatory Authorities

Broadcasting: Ministry of Culture
The National Broadcasting Council

Regulation

Broadcasting: Ethics Commission (Komisja Etyki)
Rules of Journalist´s Ethics of Polish Public Television adopted on 10 of January 2001
Code of Professional Conduct in Polish Radio adopted on 9 September 2004

Press:	The Media Charter of Ethics, was signed by all existing journalists' organisations and major media organisations and inaugurated the Media Council of Ethics Press Editors´ Chamber ("Izba Wydawców Prasy") Press Distribution Control Union ("Zwiazek Kontroli Dystribucji Prasy")

Conclusion

Most of the relevant legislation in the broadcasting sector is ruled in the Broadcasting Act of 29 December 1992, as implemented by regulations of the National Broadcasting Council. The press activity is mainly regulated by the Press Law of January 1984, amended eight times. Interesting is the Media Council of Ethics and the Media Charter of Ethics, which applies to all media. Another interesting aspect is the co-operation of the two regulatory bodies [National Broadcasting Council (NBC) and the President of the Office of Telecommunications and Post Regulation (URTIP)] in case of conditional access systems, electronic program guides, multiplexing of digital signals.

4.2.20. Portugal

Constitution

	Right of Expression, Right of Information, Prohibition of Censorship, Right of Reply and of Rectification, Art.37 Freedom of the Press, Independence from political and economic powers, Pluralism, Guarantee of a Public service of Radio and Television, Art.38 Right of TV broadcasting time, Right of Reply and Political argument, Art.40 Institutionalisation of an independent authority incumbent on the defence of rights and liberties (AACS), Art.39

Relevant Legislation

Horizontally Applicable Provisions:	The Competition Act, dated of 16 June 2003 Statute of the Journalists, dated of 13 January 1999
Broadcasting:	The Television Act, dated of 22 August 2003 The Radio Act, dated of 23 February 2001 (amended) Law of Electronic Communications, dated of 10 February 2004
Press:	Press Act, dated of 13 January 1999 (amended)
Online-Services/Internet:	Decree-Law 7/2004, dated of 7 January 2004
Advertising:	Advertising Code, dated of 23 October 1990 (amended)

Regulatory Authorities

Broadcasting:	High Authority for the Mass Media and Press (AACS) Competition Authority (AC) Communication's National Authority (ICP-ANACOM) Institute for the Mass Media (ICS) Institute for the Cinema, Audiovisual and Multimedia (ICAM) National Elections Commission (CNE)
Broadcasting/Press:	Journalists Professional License Commission (CCPJ)
Advertising:	Consumer's Institute (IC)

	Commission for the Application of Financial Penalties on Economic Matters and Advertising (CACMEP)
Online-Services/Internet:	Communication's National Authority (ICP-ANACOM)
Film:	Entertainment Rating Commission (CCE)

Regulation

Press:	Journalists' Code of Practice
	Common Platform for Ethics and Self-regulation in the Media
	Codes of Conduct (of some periodical publications)
Broadcasting:	Agreement on the depiction of violence on television (proposal of AACS)
	Protocol on the safeguarding of human dignity in television programming with particular regard to the so-called reality shows (proposal of AACS)
	Declaration of Principles and Mass Media Agreement concerning the Reporting of Judicial Proceedings (proposal of AACS)
Advertising:	Civil Institute of Advertising Self-discipline (ICAP, which is a member of EASA)
	Code of Best Practise (concerning Alcohol Beverages) adopted by the Portuguese Association of Announcers (APAN)

Conclusion

Media activity is based and exercised under extensive and well developed levels of recognition and protection of fundamental rights and liberties within the Constitution and ordinary law. Non-state regulation mechanisms still play a small relevant role in such a regulatory structure, without prejudice of the growing recognition of its importance and the emergence of occasional and more or less important examples, particularly in the sector of television broadcasting and press. A second view on the media system could be worthwhile.

4.2.21. Slovakia

Constitution

	Right of Expression and the Right of Information, Art.26 (Art 26 provides also that radio and television companies may be required to seek permission from governmental authorities to set up private businesses)

Relevant Legislation

Horizontally Applicable Provisions:	Act 445/1990 (i.a. Protection of Minors)
	Act 40/1964 the Civil Code (Human Dignity)
Broadcasting:	Act 308/2000 on Broadcasting and Retransmission
	Act 16/2004 on Slovak Television
	Act 619/2003 on Slovak Radio
	Announcement of the Ministry of Foreign Affairs of the Slovak Republic 168/1998 on conclusion of the European Convention on Cross-border Television
	Announcement of the Ministry of Foreign Affairs of the Slovak Republic 345/2002 on conclusion of Protocol amending the European Convention on Cross-border Television
Press:	Act 81/1966 on Periodic Press and Other Mass Media
Advertising:	Act 147/2001 on Advertising

Online-Services/Internet:	Act 22/2004 on Electronic Commerce
Film:	Act 1/1996 on Audiovisuals

Regulatory Authorities

Broadcasting:	The Council for Broadcasting and Retransmission
Press:	The Ministry of Culture of the Slovak Republic
Advertising:	The Council for Broadcasting and Retransmission State Veterinary and Food Administration of the Slovak Republic State Institute for Drug Control State Institute for Veterinary Drug Control Slovak Trade Inspection The Ministry of Culture of the Slovak Republic
Online-Services/Internet:	Slovak Trade Inspection
Film/Interactive Games:	Ministry of Culture of the Slovak Republic

Regulation

Press:	Code of Ethics, adopted by the Slovak Syndicate of Journalists The Press Council of the Slovak Republic
Advertising:	The Advertising Standards Council [Rada Pre Reklamu (SRPR), which is a member of EASA] The ethical principles of advertising practice in Slovakia (Code of Ethics)

Conclusion

The regulations governing the media sector in Slovakia are numerous, which is apparent in particular in advertising where there are a number of regulations in force and several regulatory bodies exist.

There are no effective non-state-regulatory bodies or mechanisms in broadcasting and retransmission, and the regulatory framework is exclusively in the hands of the state. A similar situation exists also in the field of audiovisuals and e-commerce. Advertising and press are the two sectors where other regulating systems are applied. Here, the professional non-state organisations perform regulatory activities and complement state regulation by applying the ethical non-state-regulation. Another characteristic feature of Slovakia's media sector is the absence of subordinate legislation – the most fundamental regulations are laws.

4.2.22. Slovenia

Constitution

Freedom of Expression, Freedom of Speech and
Right to Information, Art.39
Rights to Personal Dignity and Safety, Art.34
Right to Correction and Reply, Art.40
Right to Privacy, Art.35
Protection of Personal Data, Art.38
Rights of Children, Art.56

Relevant Legislation

Horizontally Applicable Provisions:	Mass Media Act ("Zakon o medijih", dated of 26 May 2001) Penal Code
Broadcasting:	Law on Radio-Television Slovenia ("zakon o Radioteleviziji Slovenija", adopted in 1994)

Regulatory Authorities

Broadcasting:	Ministry of Culture ("Misitrstvo za Kulturo") Media Inspector The Telecommunications, Broadcasting and Post Agency of the Republic of Slovenia, i.e. The Broadcasting Council
Online-Services/Internet:	Market Inspectorate of the Republic of Slovenia (within the Ministry of the Economy)

Regulation

Broadcasting:	Council of RTV Slovenia oversees the Professional Standards and Ethical Principles of Journalism in the Programmes of RTV Slovenia
Press:	Ethic Council of the Association of Journalists and the Union of Journalists supervises the Code of Ethics of Slovene Journalists
Advertising:	Slovenian Advertising Chamber (SOZ, which is a member of EASA)

Conclusion

The systemic media law (Mass Media Act) covers all media: broadcasting, print, electronic publications, teletext and other forms. Non-state regulation can be found in the field of advertising and in the Code of Ethics of Slovene Journalist, which applies to all media. Therefore a second view could be worthwhile.

4.2.23. Spain

Constitution

Freedom of Information and
Freedom of Expression, Art.20

Relevant Legislation

Horizontally Applicable Provisions:	The Competition Act 16/1989, amended by the Act 62/2003 The Royal Decree 1189/1982 on the Regulation of Certain Activities not Convenient or Dangerous for Youth and Children
Broadcasting:	Act 4/1980 of the Statute on Radio and Television Act 10/1988 on Private Television Act 111/1991 on the Organization and Control of the Local Councils Radio Stations Act 46/1983 on the Regulation of the Third Television Channel Act 37/1995 on Satellite Television Act 41/1995 on Local Hertzian Television Royal Decree 410/2002 on Television Programmes Classification and Signalization Royal Decree 1287/1999 on the National Technical Plan of Digital Terrestrial Radio Broadcasting Royal Decree 2169/1998 on the National Technical Plan of Digital Terrestrial Television The Royal Decree 439/2004 on the national Technical Plan of Local Digital Terrestrial Television (with a modification by Royal Decree 2268/2004) Some regional governments have passed their own law on audiovisual services contents, e.g. Galicia, Catalunya and Pais Vasco

Online-Services/Internet:	Act 32/2003 on Telecommunications Act 34/2002 on Information Society Services and Electronic Commerce Royal Decree 292/2004 on the Creation of a Public Trust Mark for Information Society Services and Electronic Commerce
Film:	Act 15/2001 on the Promotion of Cinema and the Audiovisual Sector
Advertising	Act 34/1988, 11 November 1998, on Advertising Act 26/1984, 19 July 1984, on the Defence of Consumers and Users Act 25/1994, 12 July 1994, on the incorporation of the Directive on Television without Frontiers (modified by the Act 22/1999, 7 June 1999)

Regulatory Authorities

Broadcasting:	Spanish Parliament Ministry of Culture Ministry of Industry, Tourism and Commerce Regional Governments and Parliaments City Councils
Online-Services/Internet:	Commission of the Telecommunications Market (CMT) "Red. es" (a public company, belonging to the Science and Technology Ministry)
Film:	Ministery of Culture The Institute of Cinematographic and Audiovisual Arts

Regulation

Press:	The Federation of Spanish Press Associations The Catalunya Journalists Professional College The Galicia Journalists Professional College
Broadcasting:	The Broadcasting Council of Catalunya The Broadcasting Council of Navarra Watchers' Office of Antena 3 Ombudsmen of regional public television channels Self-Regulation Code on Television Contents and Children, with the Agreement of the Public Commercial National Channels
Online-Services/Internet:	Deontological Code (declaring the respect for Human Rights Values, freedom of Information, Human Dignity and specially, Protection of Children and Youth
Video Games/Interactive Games:	Pan European Game Information self-regulation code (substitutes the code of the Spanish Association of Entertainment Software Editors and Distributors, Aesde)
Advertising	Association for Self-regulation on Commercial Communications Code of Advertising Conduct Ethical Code on Electronic Commerce and Interactive Advertising Ethical Code on Cinema Advertising

Conclusion

Most parts of the media landscape in Spain are ruled by state authorities, but some regional and local regulation can be found in the broadcasting and advertising sector. The most remarkable deontological issue is the signing of an agreement in December 2004 between the Spanish government and the directors of the major public service and commercial TV-stations, which shall increase the quality of the programmes and ensure the protection of minors, as well as the efficiency of the Association for Self-regulation on Commercial

Communications The existence of two regional authorities must be also remarked: the Audiovisual Council of Catalunya and the Audiovisual Council of Navarra.

4.2.24. Sweden

Constitution

The Instrument of Government, dated of 1 January 1975 (as amended)
The Fundamental Act on Freedom of Expression, dated of 1 February 1992 [(YGL), as amended by Act No. 1998:1439]
The Freedom of The Press Act, dated of 1 January 1949 [(TF), as amended by Act No. 1998:1439]

Relevant Legislation

Horizontal Applicable Provision:	Personal Data Act (SFS 1998:2004) (PUL) Market Practices Act (MPA)
Broadcasting:	Radio and Television Act (1996:844) [(RTL), (as amended)
Film:	Examination and Control of Films and Videograms Act (SFS 1990:992) Examination and Control of Films and Videograms Ordinance, dated of 8 November 1990 Regulation on the National Board of Film Classification (SFS 1990:994)

Regulatory Authorities

Broadcasting:	The Radio and Television Authority (RTVV) The Swedish Broadcasting Commission (GRN)
Film:	Swedish National Board of Film Classification (SBB) The Council on Media Violence
Data Protection:	The Swedish Data Inspection Board (DI)
Advertising:	Consumer Agency headed by the Consumer Ombudsman (KO)

Regulation

Press:	The Swedish Press Council and the Press Ombudsman Press' Committee of Collaboration has issued the Code of Ethics for the Press, Radio and TV
Online-Services/Internet:	Consumer Ombudsman has issued Guidelines on the Use of Personal Data and Market Practices
Advertising:	ERK ("Näringslivets Etiska Råd mot Könsdiskriminerande reklam", includes representatives from the business including organisations such as Sveriges Reklamförbund, and from various companies such as TV 4 AB and Kanal 5 AB)

Conclusion

In Sweden, in some media sectors there are co-existent state regulatory authorities and non-state bodies. Sweden's tradition with the Press Ombudsman has frequently been taken as a model example for non-state regulation in the press sector. There is no specific legislation addressing online-services, save for Lag (1998:112) which stipulates responsibility as regards content for the administrator or owner of a Bulleting Board System. As a principle rule the fundamental laws do not apply to information on the internet.

4.2.25. United Kingdom

"Constitution"

No formal written constitution

Relevant Legislation

Horizontal Applicable Provisions:

Data Protection Act 1998
Deregulation and Contracting Out Act 1994

Broadcasting: Communications Act of 2003
Broadcasting Acts 1990 and 1996
Office of Communications Act 2002

Press: Enterprise Act 2002 (media concentration)

Online-Services/Internet: Electronic Commerce Regulations 2002 (SI 2002/2013)
Distance Selling Regulations 2000 (SI 2000/2334)

Film: Cinemas Act 1984
Video Recording Act 1984
Criminal Justice and Public Order Act 1994

Regulatory Authorities

Broadcasting/Telecommunications: Ofcom [former: Independent Television Commission (ITC), Radio Authority (RA), Broadcasting Standards Commission (BSC); Radio Communications Agency; and Oftel (the former telecommunications regulator)]

Broadcasting: The Programme Code
TV and Radio Advertising Code
Sponsorship Code

Film: British Board of Film Classification (BBFC) based on Video Recording Act 1984
Guidance on Film and Video Classification

Regulation

Broadcasting: Advertising Standards Authority (ASA, which is a member of EASA)
Code of Advertising Practice, ASA (B)

Press: Press Complaints Commission (PCC) (Code of Conduct)

Online-Services/Internet: Internet Watch Foundation (IWF)
ICSTIS has established the Independent Mobile Classification Body (ICMB) to deal with internet content accessed via mobile phones
Code of practice for the self-regulation of new forms of content on mobiles ICRA

Film: Video Standard Council (VSC)
Code of Practice designed to promote high standards within the video industry

Conclusion

There is no consistent approach to regulation across the media sector in the UK. There are different levels of regulation and different mechanisms for regulation. Some sectors are tightly regulated, with a specific legal framework; others are subject merely to the general laws. A variety of regulatory bodies are involved, from trading standards officers (which are government officials) and governmental bodies such as the British Board on Film Classification (BBFC) to bodies such as ASA whose non-state regulatory functions are backed by statute, through to pure self-regulation in the form of Press Complaints Commission (PCC). With the development of new media, there seems to have been a proliferation of industry bodies, codes of practice and

adjudicating bodies with the result that there is quite a complicated patchwork of rules and standards with which some media (e.g. games) must comply depending variously on type of content and sometimes the platform used. The European PEGI system is under the aegis of the Interactive Software Federation of Europe (ISFE). ISFE have contracted the administration of the system to the relevant Dutch Authority (NICAM), which (in turn) is using the Video Standard Council (VSC) as its agent. A second view on the media system could be worthwhile.

4.3. Abstracts Country Reports Non-EU-Countries

Third Country not chosen yet (see p. 5).

4.3.1. Australia

Relevant Legislation

Horizontally Applicable Provisions:	Trade Practices Act 1974
Broadcasting:	Australian Broadcasting Corporation Act 1983
	Broadcasting Services Act 1992
	Radiocommunications Act 1992
Film:	Classification (Publications, Films and Computer Games) Act 1995

Regulatory Authorities

Broadcasting:	Australian Broadcasting Authority (ABA)
	Australian Communications Authority (ACA)
	Australian Competition and Consumer Commission (ACCC)
Film:	Classification Board
	Classification Review Board

Regulation

Broadcasting:	Codes and Standards developed under the Broadcasting Services Act 1992 as follows:
	Children's Television Standard
	Australian Content Standard
	Commercial Radio Standards
Advertising:	Telephone Information Services Standards Council (TISSC)
	Australian Association of National Advertisers (AANA)
Press:	Australian Press Council
Online-Services/Internet:	Internet Industry Association (IIA) adopted three Codes of Practice

Conclusion

The regime for regulation of prohibited content in relation to online-services is contained in Schedule 5 to the Broadcasting Services Act 1992. It became law in 1999.

These provisions required an industry association [the Internet Industry Association (IIA)] to develop a code of practice addressing issues identified in the legislation by 31 December 1999 or the regulator (the ABA) was required by law to determine a standard. A code was developed and registered by the relevant date but the ABA maintains reserve powers under the legislation to include greater direct regulation if it considers necessary to do so. Regarding this example of co-operation between the state regulator and an industry association shows why – inter alia – it could be worth to have a closer look at the media system in this country.

4.3.2. Canada

Constitution

Constitution Act, dated of 1867
Canadian Charter of Rights and Freedoms

Relevant Legislation

Horizontal Applicable Provision:
Copyright Act
Competition Act
Food and Drugs Act
Canadian Human Rights Act
Criminal Code

Broadcasting:
Broadcasting Act 1991 and the subsequent Regulations:
Radio Regulations, Television Broadcasting Regulations,
Pay Television Regulations, Speciality Services Regulations and
Broadcasting Distribution Regulations
Radio Communications Act

Press:
Foreign Publishers Advertising Services Act

Online-Services/Internet:
Personal Information Protection and Electronic Documents Act
Privacy Act and the subsequent
Canadian Code of Practice for Consumer Protection in Electronic Commerce

Film:
Examination and Control of Films and Videograms Act (SFS 1990:992)
Examination and Control of Films and Videograms Ordinance, dated of 8 November 1990
Act on the National Board of Film Classification (SFS 1990:994)

Regulatory Authorities

Broadcasting:
Canadian Radio-Television and Telecommunications Commission (CRTC)
Canadian Broadcasting Corporation (CBC)

Film:
National Film Board (NFB)
Film classification boards in different states

Regulation

Broadcasting:
Canadian Broadcast Standards Council (a non-judicial appeals committee for six codes:)
Action Group on Violence on Television (AGVOT) developed two standards;
Canadian Association of Broadcasters (CAB) developed the Violence Code and Sex Role Portrayal Code and the Code of Ethics;
Radio-Television News Directors Association (RTNDA) approved the Code of Journalistic Ethics;
Cable Television Standards Committee (CTSC) administers three codes inter alia Cable Television Community Channel Standards;
Advertising Standards Canada (ASC, which is a member of EASA) administrates the Canadian Code of Advertising Standards (CCAS) and the ASC Gender Portrayal Guidelines - inter alia;
ASC/CAB Broadcast Code for Advertising to Children;
Code for Broadcast Advertising of Alcoholic Beverages of CRTC;

	Health Canada (HC) and the ASC developed (in respect of the Food and Drugs Act) Guidelines for Cosmetic Advertising and Labelling Claims, Advertising Code of Standards for Cosmetics, Toiletries and Fragrance, Guide to Food Labelling and Advertising, Consumer Drug Advertising Guidelines; Pharmaceutical Advertising Advisory Board (PAAB) and the ASC developed nine individual codes of governance (of which six are regulated under the Food & Drugs Act) CBC's Journalistic Standards and Practices
Press:	Canada's six regional press councils (British Columbia, Alberta, Manitoba, Ontario, Quebec, Atlantic) The British Columbia and Alberta Press Councils approved Codes of Practice Quebec Press Council published the Rights and Responsibilities of the Press
Online-Services/Internet:	Canadian Internet Registration Authority (CIRA) Canadian Association of Internet Providers (CAIP) has promulgated Code of Conduct, Privacy Code and a Fair Practices document Retail Council of Canada (RCC) and the Entertainment Software Association of Canada (ESAC) announced a cooperative effort to promulgate the Entertainment Software Ratings Board (ESRB) classification system in the end of 2004
Film:	Canadian Motion Picture Distributors Association (CMPDA) developed the Canadian Home Video Rating System

Conclusion

Regarding the complex system of regulation in the Canadian media sector a second view could be worthwhile.

4.4. Sectors in the Countries where Co-Regulation Is Likely to Be Found

It is yet too early to definitely assess which regulatory systems meet the criteria that have been set up to define co-regulatory systems for the purposes of this study. At this stage, it is possible to name the member states where – with regard to specific types of media and specific regulatory objectives – there is regulation by state regulators *and* non-state regulators or by state laws *and* non-state regulation (promising fields are marked in **bold letters**). In the next step of this study it has to be analysed whether non-state regulation only exists besides state regulation and if co-regulation according to our criteria can be found.

In **Belgium** non-state regulation can be found in the fields of **press, advertising** and **internet**. As regards broadcasting, the "Collège d'Avis" could also be worth to have a closer look at.

In **Cyprus**, non-state regulatory codes of **ethics** (in the fields of **broadcasting** and **press**) are incorporated in the regulations drafted by the state regulatory authority with the consent of the respective professional unions. Especially, the role of the press council and the press authorities should be examined in depth.

In the **Czech Republic**, non-state-regulatory codes have been set up by unions and publisher associations in the fields of press journalist's ethics, **advertising** practice and internet advertisement. There is some kind of co-operation between the state regulator and the non-state regulatory body Council of Advertising Practice in the field of **broadcasting**.

In **Denmark**, a non-state regulatory body only exists in the field of **press regulation**: The Press Council is an independent public tribunal established under the Media Liability Act. It supervises the compliance with specific legislation as well as it owns guidelines. Although there is no state regulator in this field, the Press Council should be looked at for its legal foundation.

In **Finland**, the role of the non-state organisation Council for Mass Media (including **press, broadcasting** and **online-services**) should be examined as state regulators exist in the field of press, broadcasting and online-services, respectively.

In **Germany**, a concept called "regulated self-regulation" was incorporated in the field of **protection of minors in broadcasting and online-services**. There are state regulators and non-state regulators in this area. The same goes for the protection of minors in film and games. However, the regulatory concept is quite different from the concept for broadcasting and online-services. When it comes to advertising regulation, there are activities of state and non-state regulators as well. Data protection of the press is controlled by a non-state organisation.

In **Greece**, non-state regulatory codes exist in the field of broadcasting and **advertising** and in the field of **ethics** of press and broadcasting journalists. As state regulators exist in the field of **broadcasting**, there might be signs of co-regulation.

In **Hungary**, the state laws for **online services** and **advertising** contain references to existing non-state regulatory mechanisms (in a declaratory manner). Since in these fields state

regulators and non-state regulators exist alongside state laws and non-state codes, further examination is required.

In **Ireland**, there are state activities next to non-state activities only in the field of **online-services**. The relationship between the Commission for Communications Regulation and the two non-state bodies, the Internet Service Provider Association of Ireland and the Advertising Standards Authority of Ireland, should be subject of the next step of this study.

Coming from a rather traditional system of state regulation, **Italy** has recently experienced the establishment of a number of non-state regulatory initiatives, mainly in the **online** (**protection of minors)** and **advertising** sector. It may be advisable to have a closer look at the interaction of such alternative regulatory systems with the state regulation.

In **Lithuania**, non-state regulation can be found in the Code of Ethics of Lithuanian Journalists and Publishers and in the Ethics Commission, which is a non-state institution for the press. As there is also a state regulator, the Inspector of Journalist Ethics, **press regulation (ethics)** in Lithuania is worth deeper examination.

In **Luxembourg**, non-state law and state law as well as non-state regulators and state regulators can be found in the fields of **broadcasting, press** and **online services (ethics)** and **advertising**. The planned amendment of the criminal code may create a basis for including non-state regulation in the field of the protection of minors.

In **the Netherlands** non-state regulatory systems can be found in all fields of media. The details are worth a closer look.

Besides the press sector, where no state regulator exists, in **Portugal,** non-state regulation can be found in the fields of **broadcasting (protection of minors, ethics)** and **advertising**. In these fields, the interaction between non-state regulation and state regulation should be examined in depth.

Advertising and **press** are the two sectors in **Slovakia**, where non-state regulation is applied. While the press is also governed by the Ministry of Culture, advertising regulation in the broadcasting sector is supervised by the Council for Broadcasting and Retransmission on the state side.

Non-state regulation in **Spain** is characterized by codes concerning **the protection of minors in broadcasting, online services and interactive games**. The relationship between state laws and non-state provisions is worth a closer look.

Media regulation in **Sweden** is either state regulation or non-state regulation. Only in the field of **advertising** a state agency and a non-state regulator exist. However, when it comes to **protection of minors**, the role of the Swedish Media Council should be examined closely. It is an expert committee under the Ministry of Education, Research and Culture. Among others, its task is to support industry self-regulation, for example by MDTS, an industry association for computer games and multimedia. The areas of responsibility of the Media Council include film, video, television, video games and the internet.

In the **United Kingdom** non-state regulation exists in the fields of **press, film, broadcasting** and **internet**, as well as for **mobile content**. A co-operation of state and non-state regulation can be found in the field of advertising and broadcasting. A closer look will be worthwhile.

5. CRITERIA FOR CHOSING THE THIRD NON-EU-COUNTRY

In the tender we opted not to choose a 3rd Non-EU-country for a detailed country-research on co-regulatory measures at first glance. Several countries seemed to be suitable. After having consulted national experts and analysed studies or information open to the public three countries have been chosen.

5.1. Israel

Israel might offer an opportunity to analyse the implementation of a co-regulatory system in the media sector. Up to now the media regulation has been governed by a general requirement of a licence for all media publications. The broadcasting market is regulated by three different authorities: The Israel Broadcasting Authority (IBA) regulates the state-run broadcasting programmes; the Second Television and Radio authority (SSTRA) is responsible for commercial broadcasting channels and regional radio stations; lately the Council for Cable TV and Satellite Broadcasting (CCTSB) has been established for the regulation of cable, satellite and special interest channels. Currently, there are no fields of combination of state and non-state regulation in the Israel media system, but during the last months there have been first steps to develop a new model. A commission works on the creation and implementation of a new regulatory concept. The concept shall be established in order to regulate the advertising ethics. However, the commission has not yet finally decided on the matter.

5.2. South Africa

In South Africa a system which combines state and non-state regulation was established in the broadcasting legislation in 1993. Sec. 56 of the Independent Broadcasting Authority Act ("the IBA Act")[134] provides that all broadcasting licensees shall adhere to the code of conduct for broadcasting services which is called "the IBA Code"[135] and is included as "schedule 1" to the IBA Act. The IBA Code basically regularises the field of quality. Some rules affect the field of protection of minors and privacy.

According to sub-section 2 of sec. 56 IBA Act this rule does not apply to those broadcasting licensees that belong to a body, which has enacted a code of conduct. This code of conduct has to be approved by the state regulator, the Independent Communications Authority of South Africa ("ICASA")[136]. The members of the body must adhere to the Code.

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134 See http://www.icasa.org.za/Default.aspx?page=1029&moduledata=204.

135 See http://www.icasa.org.za/Repository/Resources/Legislation/CHAPTER%20VII%20IBA%20Act.pdf.

136 See http://www.icasa.org.za.

The National Association of Broadcasters of South and Southern Africa ("NAB")[137] has founded an adjudicative body, the Broadcasting Complaints Commission of South Africa ("BCCSA")[138], and set up a code that is recognised by the ICASA. The code, which is laid down in appendix 1 of the BCCSA's constitution, provides a set of rules concerning the field of media quality, privacy and partly protection of minors.[139]

5.3. Malaysia

Due to the economy and policy plan "Vision 2020" published in 1993, a reform took place in Malaysia in which – among other things – the regulation of the media sector was restructured. A Ministry for Energy, Communications and Multimedia was founded and the Communications and Multimedia Act ("CMA", 1998)[140] and the Communications and Multimedia Commissions Act ("CMCA", 1998)[141] were enforced. The Australian experiences gained with co-regulation models served as a role model.

According to the CMA and the CMCA the Communication and Multimedia Commission ("CMC")[142], which reports to the Minister for Energy, Communications and Multimedia, is the single regulator. To access the market for broadcasting and telecommunication in Malaysia companies need a licence.

Self-regulation of the licensees is accomplished by creation of codes that are issued by CMC-approved industry forums. The main task of these industry forums is to prepare and enact the codes; they are also responsible for the implementation and monitoring of the codes. The codes drafted by these forums have to be registered by the CMC, as well.

The CMA is considering different industry forums like consumer forums, access forums, technical standards forums, and content forums. Several forums have been approved by the CMC: The Communications and Multimedia Content Forum of Malaysia ("CMCF")[143], the Communications and Multimedia Consumer Forum of Malaysia ("CfM") and the Malaysian Technical Standards Forum Berhad ("MTSFB"). Presently two approved Codes can be identified: The Malaysian Communications and Multimedia Content Code[144] and the General Consumer Code of Practice of the Communications and Multimedia Industry Malaysia[145].

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137 See http://www.nab.org.za.

138 See http://www.bccsa.co.za/.

139 See http://www.bccsa.co.za/constitution.asp.

140 See http://www.mcmc.gov.my/mcmc/the_law/ViewAct.asp?cc=4446055&lg=e&arid=900722.

141 See http://www.mcmc.gov.my/mcmc/the_law/ViewAct.asp?cc=86951412&lg=e&arid=997371.

142 See http://www.mcmc.gov.my.

143 See http://www.cmcf.org.my/

144 See http://www.mcmc.gov.my/mcmc/facts_figures/codes_gl/guidelines/pdf/ContentCode.pdf.

145 See http://www.mcmc.gov.my/mcmc/registers/cma/commindcode/pdf/GeneralConsumerCode.pdf.

5.4. Conclusion

The chart may help to identify the country to be chosen for further analysis.

Country	Pros	Cons	proposal further proceeding
Israel	– Chance to accompany the implication – No co-regulatory system in the field of advertising, ethics and advertising has been identified yet	– Implication not yet finished – Uncertainty, system might not be established	Not to be chosen as third country, but monitoring of legal implication and conversion
South Africa	- Co-regulatory system with a wide application area (e.g. ethics, protection of minors) - "Existing code in the background" is a new approach, widely unaffected by models in other countries	- Code of co-regulatory body is very similar to the code in Broadcasting Act's appendix - Just one accepted co-regulatory body	Worth to be examined, but possibility of limited results
Malaysia	- Complex system of co-regulation - Broad area of applications - Three forums and two extensive codes have already been accepted	- Research might not lead to results exceeding those with regard to the Australian model	Albeit it is based on a model we analyse anyway it is worth examining because the approach contains enhancements

Proposal: Study will examine South Africa and Malaysia. Additionally, the implementation of a co-regulatory system in Israel will be monitored.

6. ORGANISATION OF SEMINAR 1

6.1. Concept of seminar 1

The main focus is set on the presentation of the work already done. The contractor intends to receive feedback and incitements for the further work. Input on the following topics is appreciated in particular:

- Relevant models which might be excluded by our working definition
- Recent developments within a member sate which might not have received the attention of the respective national expert
- Role models for impact assessment from other policy fields or described in reports which have not been published.

The outcome of Seminar 1 will be subject of the meeting with the advisors in July and will be taken into consideration for further research work.

6.2. Agenda

I. Opening of the meeting / Introduction

10.00 h

1. **Opening by Head of Unit A1 Audiovisual and Media Policies, Digital rights, Task force on coordination of media affairs**
   (Jean-Eric de Cockborne)

10.15 h

2. **Welcome and presentation of seminar agenda** (Wolfgang Schulz)

II. Scope of Co-Regulation

10.25 h

1. **Co-Regulatory measures in the media sector – a promising regulatory tool?** (Kaarle Nordenstreng (scientific advisor))

10.45 h

2. **What is Co-Regulation?** Definitions found in studies, criteria used to define forms of co-regulation (Thorsten Held/Wolfgang Schulz)

11.15 h – 11.35 h Coffee break

11.35 h

3. **Media Systems of the Member States – do co-regulatory systems already exist? Some examples of interesting approaches in the Member States** (Alexander Scheuer/Carmen Palzer)

12.05 h

4. **Discussion of Sec. II: Scope of Co-Regulation / Co-Regulation in the Member States**

13.00 h – 15.00 h Lunch break

III. Impact assessment

15.00 h

1. **Assessing efficiency and impact of co-regulatory systems** (Wolfgang Schulz)

15.20 h

2. **Discussion of Sec. III: Impact Assessment**

IV. Outlook on further work / Discussion

15.50 h

1. **Outlook on further work** (Arne Laudien)

16.05 h

2. **Discussion: Implementation of co-regulatory measures on the European and national levels**

17.00 h End of meeting

7. PROGRESS REPORT

7.1. Hans Bredow Institute

Following the predefined working plan, one of the institute's primary tasks has been to prepare the execution of the country reports by national experts in all member states. In collaboration with the subcontractor EMR a guideline for the experts has been worked out (see below EMR's report and Appendix II, representing the model questionnaire).

Additionally, the already existing studies on co-regulation in the media have been analysed regarding their understanding of co-regulation. From the studies we have learned which dimensions might be crucial (e.g. nature of state involvement necessary for calling it co-regulation), and we followed these dimensions when drafting our preliminary definition of co-regulation (see p. 21+) which is to be discussed in seminar I and will be the basis for the next country reports.

Furthermore, the envisaged scientific advisors have been contacted. All of the following experts have confirmed their participation at the advisory board: Otfried Jarren (Switzerland), Michael Latzer (Austria), Karnagan Webb (Canada), Kaarle Nordenstreng (Finland), Tony Prosser (United Kingdom) and Alberto Perez Gomez (Spain). They have been provided with the draft of our definition of co-regulation (see p. 21+ of the interim report) and asked to comment on it.

In respect to the third Non-EU country to be chosen for closer examination, national experts have been contacted and information primarily prepared by national regulatory agencies has been taken into consideration. From this process a short-list (see p. 73) emerged which we submit to the Commission with this interim report as a basis for final decision.

Another work package has been the scanning of international academic literature in order to get a picture of theoretical approaches and methods of regulatory impact analysis. This work is still in progress. However, we are able to present a comparatively broad overview in this interim report which allows us to outline our approach for the impact assessment of co-regulatory models. This can be modified in case new relevant approaches will be detected, especially from criminology, a field which has not been looked into yet. A major handicap with this work package has been that the outcome is not entirely persuasive, although Regulatory Impact Analysis (RIA) is used as a regulatory tool in several countries and although, therefore, many texts exist which could be supportive. A closer examination reveals, however, that RIA is methodically not very elaborated. In academic research there are different approaches to impact assessment which have not been consolidated to a generally accepted methodology.

There was no chance to meet the Contact Committee (Art.23a of the Directive 89/552/EEC, amended by Directive 97/36/EC) in March. The Commission and the Contractor have agreed to meet the Committee at one of the next meetings, either in July or autumn.

As far as staff is concerned, on the Institute's end the envisaged persons have taken part, i.e. Arne Laudien, Stephan Dreyer, Thorsten Held, Wolfgang Schulz and, as research assistant, Stefan Heilmann. Uwe Hasebrink has been consulted for outlining the guideline for the national experts and for the task to draft the definition of co-regulation.

So far, no grave difficulties have been encountered.

7.2. Institute of European Media Law (EMR)

In summary, the measures implemented to date by the EMR in the execution of the study focused, in the initial phase, on recruiting national experts in all Member States concerned as well as in the non-European countries Australia and Canada (in Appendix I an overview is given of the relevant national experts/correspondents).

Furthermore, in the framework of contacts to experts from other non-European countries, research was carried out in order to identify suitable proposals for the third non-European country (here, reference may be made toward the so-called "short-list" of proposals (see p. 73+).

Together with HBI, the EMR identified three important stages as regards the stocktaking and analysis of existing media systems in general, and, in particular, existing or evolving co- or self-regulatory instruments.

The preparation of a detailed questionnaire for the first stage of the investigation country-by-country was envisaged, and, in co-operation with the HBI, the structure for the country reports was finalised and sent to the correspondents (see Appendix II, representing the model questionnaire).

In addition, the EMR participated in the elaboration of a workable grid of criteria in order to define non-state regulation on the one hand, and the "link" to state legislation and/or public authorities on the other, which, together, should allow to describe sufficiently the theoretical approach to co-regulation. This grid was sent to the advisors for commenting, which were selected jointly by HBI and EMR, and, from now on, will report regularly on the preliminary findings of the study.

Subsequently, the EMR has studied carefully the country reports drafted by the national experts and, where appropriate, submitted requests for further clarification or more detailed information to the correspondents.

We then proceeded to the analysis of the description of the respective media legal landscape which allowed for a first overview, for each country, as regards the existing legal and regulatory frameworks and any considerable initiatives in the context of co- or self-regulation.

In terms of staff members involved, Ms Stefanie Mattes and Mr Alexander Scheuer have been working continuously on the study, they were assisted by Mr Ingo Beckendorf, another EMR staff member. In the course of drafting the definitional grid on co-regulation, Dr. Carmen Palzer has acted as the responsible researcher, under the auspices of Prof. Dr. Alexander Roßnagel, the EMR's scientific director, and in close collaboration with Alexander Scheuer.

At present, there have been no major hindrances in the pursuit of the tasks as defined in the working plan. The large majority of correspondents as identified in the tender documents were available for co-operation as foreseen in the present case. However, some adjustments had to be made. We had to accept a reasonable delay while obtaining a definite answer and/or the draft report by national experts, who were contacted after the previously addressed correspondent, had declined. Following the necessary timeframe, the remaining reports were due to be sent to the EMR no later than March, 29, as opposed to March, 8 for those correspondents who consented from the outset. Nevertheless, all major working items could be finalised in accordance with the deadlines established in view of the date fixed for the delivery of the Interim Report to the European Commission.

7.3. Next Steps

We have currently started to compile and analyse the country reports. The working out of the grid for the detailed reports on co-regulatory systems in place is finished. The national experts were briefed. The national experts were asked to exercise special care regarding the links to the European level (supranational associations e.g. and codes). They will work on the description until June.

The outcome of the seminar was analysed. A meeting with the advisory board will take place in July in order to ensure the quality of the research work done and to review and discuss the criteria of impact assessment of co-regulatory measures and the outcome of the second research.

After having analysed the co-regulation reports in June the work will focus on the meta analysis and preparation of the field research in a number of countries to gain more and detailed information on the efficiency and impact of co-regulation. The results gained from this field research and the reports on co-regulation will meet in the last step of the research to be done in autumn, which is work on options for further development. The conditions in the different member states have to be taken into account as well as the provisions of European Union law.

In the last quarter of 2004, the staff will work on the draft of the final report and the preparation and conduction of Seminar 2, which is planned to take place in December or January 2006.

For further details please see the revised working plan in Appendix 1.