

Presentation of preliminary results of the study on:

# Co-Regulation Measures in the Media Sector

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**Seminar 1, Brussels, 28 April 2005**

Study commissioned by the European Commission,  
Directorate General Information Society and Media, Unit A1  
(Tender DG EAC 03/04)

# Agenda

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## I. Opening of the meeting / Introduction

1. Opening: Jean-Eric de Cockborne

2. Introduction: Wolfgang Schulz

# Opening of the meeting

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by

**Jean-Eric de Cockborne**

European Commission, DG Information Society

Unit A1 Audiovisual and Media Policies, Digital rights, Task force on coordination of media affairs

# Agenda

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## I. Opening of the meeting / Introduction

1. Opening: Jean-Eric de Cockborne

2. Introduction: Wolfgang Schulz

# Introduction and presentation of seminar agenda

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## 1. The Contractor:

- Hans-Bredow-Institute for media research at the University of Hamburg, Germany
- Staff: Dr. Wolfgang Schulz (Director), Thorsten Held (Lawyer and Researcher), Arne Laudien (Researcher), additional support by social scientists Prof. Dr. Uwe Hasebrink (Director) and Anja Herzog M.A. (Researcher)

## 2. The Subcontractor:

- Institute of European Media Law, Saarbrücken, Germany
- Staff: Alexander Scheuer (General Manager), Dr. Carmen Palzer (Lawyer and Researcher), Stefanie Mattes (Lawyer and Researcher)

# Introduction and presentation of seminar agenda

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## 3. The study:

- **Commissioned** by DG Information Society, Unit A 1 Audiovisual and Media Policies, Digital rights, Task force on coordination of media affairs.
- **3 steps:**
  - (1) Research of theoretical and methodical framework, analysis of studies
  - (2) Stocktaking: 3 reports in member states : Outline of media systems, Outline of co-regulatory systems, field research in selected member states
  - (3) Impact Assessment and options for further development

# Introduction and presentation of seminar agenda

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## 3. The advisory board:

- Prof. Dr. Otfried Jarren, University of Zurich, Switzerland
- Prof. Kaarle Nordenstreng, University of Tampere, Finland
- Doz. Mag. Dr. Michael Latzer, Austrian Academy of Science
- Prof. Tony Prosser, University of Bristol, United Kingdom
- Dr. Kernaghan Webb, Carleton University Ottawa, Canada

# Introduction and presentation of seminar agenda

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## 4. The agenda (1/2):

### 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? – Steps towards a working definition 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



# Introduction and presentation of seminar agenda

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## 4. The agenda (2/2):

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 European and national levels**

17.00 h

End of meeting

# Agenda

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## II. Scope of Co-Regulation

1. Co-Regulatory Measures in the Media Sector  
– a promising tool?

2. What is Co-Regulation?

3. Media Systems of the Member States

4. Discussion

# Co-Regulatory measures in the media sector – a promising regulatory tool?

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**Prof. Kaarle Nordenstreng**

Scientific Advisor

Department of Journalism and Mass Communication

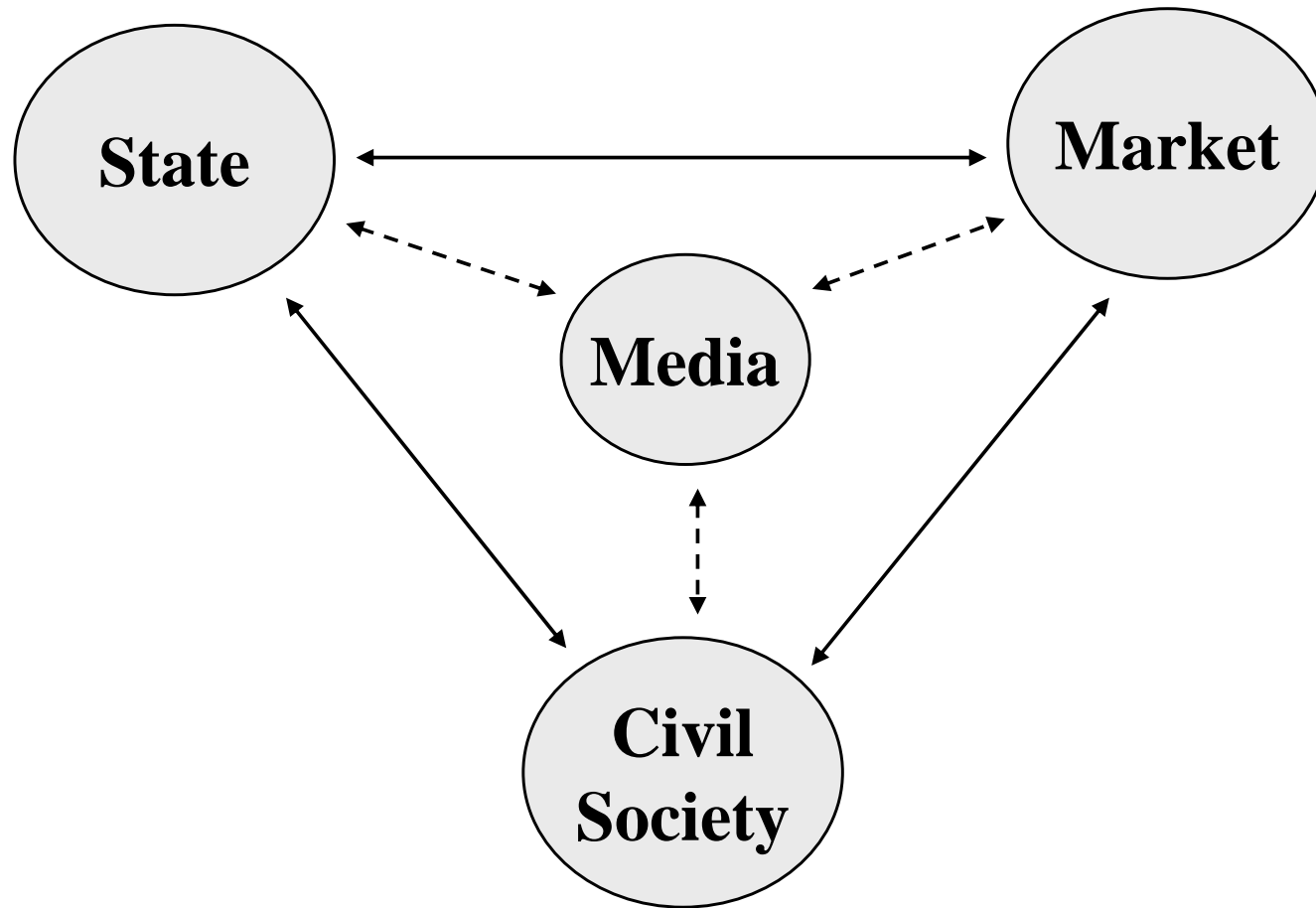
University of Tampere, Finland

# Academic thesis

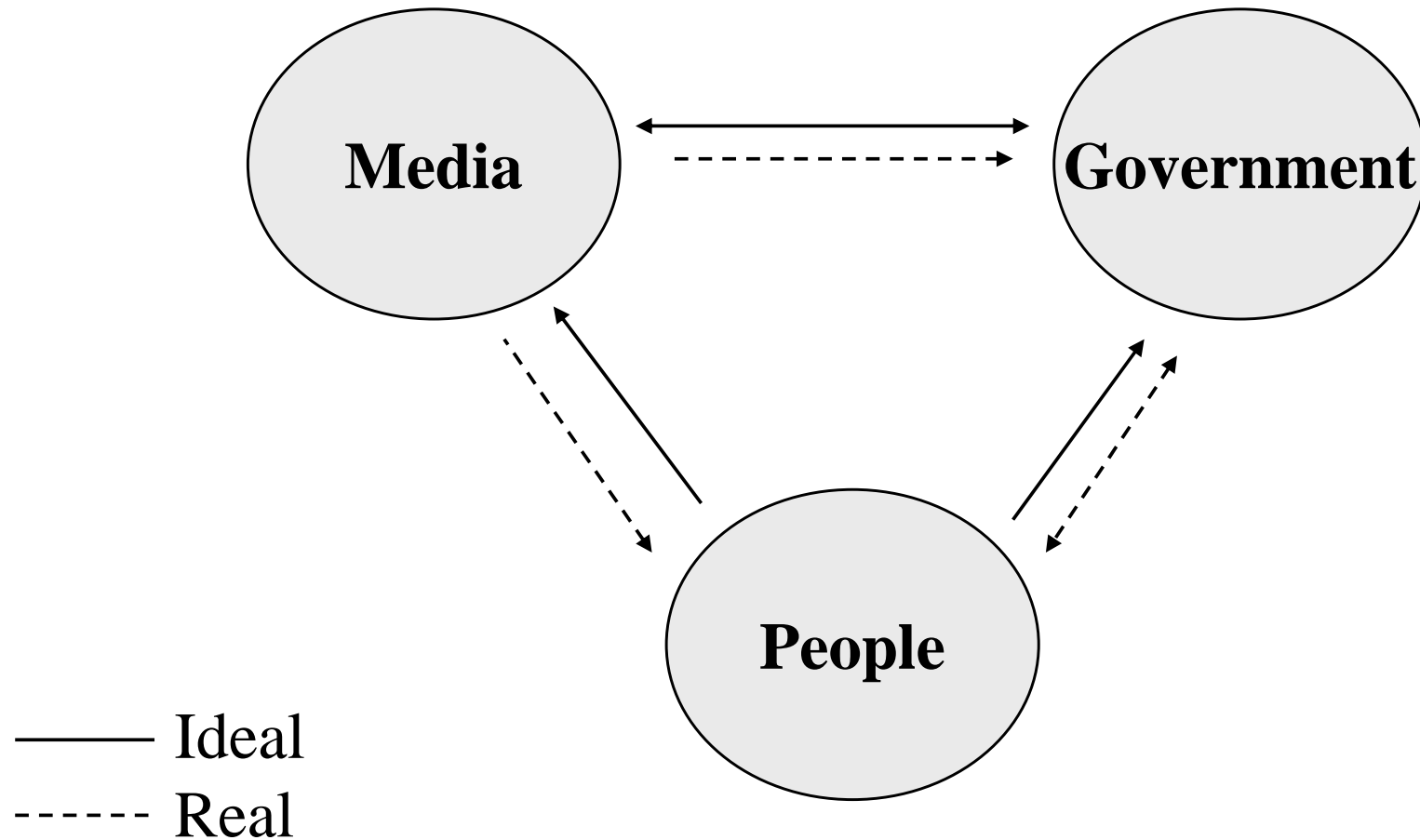
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- All social activity is regulated – controlled in general sense
- The question is at which level, by whom and for what

## Structure of society



# Media in society



# Traditions of normative thinking

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- Corporatist : search for public wisdom
- Libertarian : opening for personal freedom
- Social responsibility : growth of popular democracies
- Citizen participation : rise of postmodern cultures

# Types of media regulation

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- Law by parliament / state bodies
- Market by property, consumers, advertising, etc.
- Citizens by associations, etc.
- Media themselves by journalistic/business professionals



# Types of media governance

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|          | FORMAL   | INFORMAL   |
|----------|--|--|
| EXTERNAL | Law<br>Regulation                                  | Market forces and relations<br>Pressures and lobbies<br>Public opinion and criticism |
| INTERNAL | Management<br>Financial control<br>Self-regulation | Professionalism<br>Organizational culture<br>Norms and ethics                        |

# Types of self-regulation

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|          | EXTRA-ORGANISATIONAL | ORGANISATIONAL     |
|----------|----------------------|--------------------|
| IMPLICIT | Market               | Corporate culture  |
| EXPLICIT | Codes of conduct     | Quality management |

# So what?

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- Command-and-control regulation: shrinking
  - Self-regulation: expanding
  - Co-regulation: soulsearching
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All in service of civil society

# Agenda

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## II. Scope of Co-Regulation

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## Defined scope of systems to be examined further

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- Theoretical background
- Purpose of the definition
- Definitions in existing Studies
- Working definition: criteria for determining which types of regulation are covered by the study

# Definition: Theoretical background

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Reasons why traditional forms of regulation are becoming less and less effective: (1/2)

- Regulation that ignores the interests of the regulated companies may generate resistance rather than co-operation
- Knowledge gap
- Information, the most important “finite resource”, is not at the privileged disposal of the state.
- Autonomous social systems follow their own internal operating codes
- → ...

# Definition: Theoretical background

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Reasons why traditional forms of regulation are becoming less and less effective: (2/2)

- ... →
- Initiatives, innovation and commitment cannot be imposed by law.
- Traditional regulation tends to operate on an item-by-item basis only, and not in a process-orientated manner
- Globalisation enhances the potential for international “forum shopping”

# Definition: Theoretical background

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Changes in regulation:

- 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.



# Definition: Theoretical background

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### Theoretical approaches to this phenomenon

- Macro perspective: legal and socio-political line of debate, system theory
- “meso” perspective: institutional settings in modern societies
- micro perspective: studies which are centred on specific actors and their (potential) behaviour, e.g. game theory

# Definition: Purpose of the definition

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The **aims of this study** are 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.

### Definition: Purpose of the definition

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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

### Definition: Purpose of the definition

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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)
- → ...

# Definition: Purpose of the definition

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- ... →
- 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

# Definitions in existing studies

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### Examples of existing papers

- White Paper on European Governance
- Final Report of the Mandelkern Group on Better Regulation
- Action Plan „Simplyfing and improving the regulatory environment“

# Definitions in existing studies

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## Examples of existing studies

- IPMZ, Zurich: „Selbstregulierung und Selbstorganisation“
- PCMLP, Oxford: „Self-Regulation of Digital Media Converging the Internet“
- ÖAW, Vienna: „Selbst und Ko-Regulierung im Mediametik-Sektor“
- HBI, Hamburg: „Regulates Self-regulation as a Form of Modern Government“

# Definitions in existing studies

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- Non-state component
- State component



# Definitions in existing studies

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### Non-state component:

- What is meant by regulation? – “market intervention”, “rules of the game”
- Does the industry regulate itself? – “measures taken by the actors most concerned”, “industry sets and polices its own standards”
- How much must the non-state component be formalised? – “agreements, codes, rules”, “informal concepts possible as well as perfect market situation”

# Definitions in existing studies

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### State component:

- What are the goals? – “public policy goals”
- How much formalisation must there be on the state side? – “binding legislative”; “also threat of legislation = co-regulatory oversight”
- What scope do non-state actors have for decisions? – “public restraint is essential and room for self-reg.”; “independence of social dynamics is respected”
- Does co-regulation imply any state influence on non-state regulation? – “cooperation”; “ongoing dialogue”; “state can create rules for procedure, structure and content of regulation”

# Working definition

| Non-state-regulatory system   |   |
|---|---|
| Criteria  | Cases excluded by this criterion            |
| The creation of organisations, rules or processes   | Informal agreements, case-by-case decisions |
| To influence decisions by persons or, in the case of organisations, decisions by or within such entities              | Pure consultation                           |
| 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)       |

# Working definition

| Link between the non-state-regulatory system and state regulation                |  |
|--|--|
| Criteria   | Cases excluded by this criterion   |
| The system is established to achieve public policy goals                         | Measures to meet individual interests  |
| There is a legal basis for the non-state regulatory system                       | Informal agreements without any legal criteria to judge the functioning of traditional regulation                            |
| The state/EU leaves discretionary power to a non-state regulatory system         | non-state-regulation   |
| 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 |

# Working definition: criteria for determining which types of regulation are covered by the study

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## non-state component:

- creation of specific organisations, rules or processes
- to influence decisions
- performed by the addressees themselves.

## link between non-state and state regulation:

- achievement of public policy goals
- legal basis
- discretionary power of the non-state regulatory system
- state uses regulatory resources

# Agenda

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## II. Scope of Co-Regulation

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# Overall picture

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- In most countries, traditional state regulation for the media (co-) exists together with (other) forms of non-state regulation;
- There is seldom a conceptual link between these two;
- In several countries, decisions are made by non-state institutions and these decisions are taken into account or supervised by media authorities;
- Some countries have implemented systems which would seem to come under the working definition of co-regulation, several are preparing the switch from traditional command- and-control to new forms of governance

## Sectors / Press

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- In Western European Countries, traditionally the field in which self-regulation is applied, most prominent example being the Swedish Press Ombudsmann;
- In the New Member States rather slow move to press council model, adopting Codes of Ethics and applying them;
- Mostly, no supervisory authority for the press in place for reasons of paramount importance of freedom of expression;
- The same holds true for lighter touch approach in form of co-regulation;
- Example: DE - Data protection in the media



## Sectors / Broadcasting (Television) (1/4)

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- For *public service television*, non-state regulation plays a major role, in particular due to the freedom of expression element of freedom from state interference;
- Programme codes highly relevant for psb;
- Not all Member States foresee competencies of external bodies for supervision of psb;
- For *commercial television*, non-state regulation as regards Codes of Ethics is not that wide-spread, mainly applicable in areas such as advertising content and protection of minors;
- A regulatory mixture for these policy goals exists, it becomes increasingly important in some MS

## Sectors / Broadcasting (Television) (2/4)

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### Examples:

- advertising (content-related): CY, CZ, DE, FI, GR, HU, IT, NL, PT, SK, UK, AU (non-exhaustive)
- protection of minors: DE, EE, ES, IT, LU, NL, PT, SI (non-exhaustive)
- Further examples not excluded, especially with regard to the ongoing processes in some MS
- Advertising prominent example for European initiative: EASA

## Sectors / Broadcasting (Television) (3/4)

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### Advertising:

- In the UK, Ofcom consultation on advertising content control, subsequent establishment of ASA(B) (monitoring and control) and BCAP (Codes), contracting out but final responsibility remains with Ofcom;
- In the Czech Republic, the Broadcasting Council will - as foreseen by the Act - take into account, when dealing with issues of TV advertising, the opinion of the Advertising Council on possible infringements of the Code of Advertising Practice.

# Sectors / Broadcasting (Television) (4/4)

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## Protection of Minors:

- In Germany, a certified institution of voluntary self-regulation (FSF) will - upon submission by the broadcaster - assess a programme and decide on the appropriate time of the broadcast, the state regulator (KJM) will oversee the decisions;
- In the Netherlands, NICAM has established a system which i.a. broadcasters use to (self-)classify content which might impair the development of children (content descriptors and age rating); according to the Media Act, broadcasters have to accede to NICAM or must refrain from broadcasting impairing content.

### Sectors / Online, Mobile Electronic Communications (content)

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- Mainly industry-led development of non-state regulation as initial kind of regulating Internet content at all;
- Impact of eCommerce-Directive and Recommendation on protection of youth/human dignity still not definitely to be determined;
- Focus of genuine initiatives rather on protection of minors than advertising;
- Content on mobile phones receives rapidly growing attention of state, and then by industry
- Prominent example for European initiative: EuroISPA
- Examples: BE, CZ, DE, DK, ES, FI, FR, GR, HU, IE, IT, LT, NL, UK

## Sectors / Online Services

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### Protection of Minors:

IT: Code of Conduct signed under the auspices of the Ministry of Communications

works on a completely voluntary basis

Supervision: Guarantee Committee is made up of eleven experts appointed by a ministerial decree issued by the Minister for Communications, including representatives of the adherents, the Ministry for Communications, the presidency of the Council of Ministers, the associations for the protection of minors and the National Users Council.

## Sectors / Mobile Services

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### Protection of Minors:

UK: Mobile Classification Body (IMCB) deals with specific content accessed via mobile phones, in accordance with the UK Code of Practice for self-regulation of new forms of content on mobiles

IR: New approaches envisaged regarding content on cellular phones

including the registration of 3G mobile phones and regulation in terms of content labelling and filtering

## Sectors / Film, Interactive Games

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- For film, in few countries, also a 'traditional' sector for non-state regulation - as opposed to others who maintained state regulation;
- Importance of film classification for TV should be borne in mind (cf. i.a. Olsberg study);
- In some MS, extension of scope of application according to technical development, i.e. film -> video/DVD -> games
- Games prominent example for European initiative: PEGI
- Examples: CZ, DE, ES, LV, MT, NL, SE, UK



## Sectors / Film

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### Protection of Minors:

DE: Classification of films carried out by the FSK, a non-state organisation, founded by the film industry organisation (SPIO).

Members: nominated by film industry and state authorities, majority always with state representatives

Right of veto for representative of administrative authority for youth protection

Agreement as foreseen in the *Jugendschutzgesetz*: FSK-decisions are taken over by the competent administrative authority (*Oberste Jugendbehörden der Länder*)

## Sectors / Interactive Games

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### Protection of Minors:

UK: Mandatory legal classification in certain cases, carried out by BBFC, final decision remains with the local authorities

where legal classification is not mandatory, classification by PEGI

link: [specific questions in PEGI assessment form regarding games to be distributed in the UK](#)

## Preliminary conclusions

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- Sector-specific approach to be followed also in next steps;
- Advertising and protection of minors deserve specific attention, also in a horizontal manner, i.e. irrespective of medium;
- Protection of human dignity, personal honour etc. not main object of non-state regulation;
- Introduction of co-regulation might face legal (from a state organisational point of view) and societal obstacles in different countries;
- Rather broad approach advisable for next country research phase, promising examples identified

# Next steps

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- 2nd round of country reports analysing in depth several examples where state and non-state regulation co-exist and show some links - however, for reasons of comparison, also pure state regulation as well as pure non-state regulation will be examined by national experts;
- Analysis of reports and identification of models which would seem important for an impact assessment;
- 3rd round includes impact assessment by national experts and contractors; not only legal but also social science experts; comparison with status ex quo ante and other countries which rely on different countries;
- Identification of key factors for best practice models.

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## III. Impact Assessment

1. Assessing efficiency and impact of co-regulatory systems

2. Discussion

# Agenda

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## III. Impact Assessment

1. Assessing efficiency and impact of co-regulatory systems

2. Discussion

## Where do we start? (1/3)

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Co-Regulation as an alternative way between traditional state regulation and pure self-regulation

- Effectiveness

- Does it guarantee the same level of protection as traditional command-and-control-regulation?
- Does it reduce side effects?

- Efficiency

- Are the states likely to save money?
- What are the burdens to be borne by the industry?



## Where do we start? (2/3)

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### Regulatory Impact Assessment (RIA)

- Standard rules making procedure in several countries, but no generally accepted and consistent methodology

**Inadequate mechanical and uni-directional approaches.**

**Different basic approaches are used to measure the effectiveness and efficiency of regulation, to name but few:**

- Cost effectiveness
- Cost assessment
- Benefit assessment
- Benefit-cost analysis
- Risk assessment

## Where do we start? (3/3)

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- 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?

## What has already been done?

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- **Empirical Studies**
  - Measurable indicators (prices, number of complaints etc.)
  - Indicators to be constructed
  
- **Rational Choice Approaches**
  - Prediction of behaviour of actors
  - Game theory allows for integration of regulatory feedback
  
- **Economic Theory**
  - Prediction of costs and benefits
  - Especially analysis of transaction costs

## What has already be done?

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### Approach of studies already done in the field

- Empirical studies are rare
- Analytical modus operandi
  - Adequacy check (examination of written law)
  - Compliance check (evaluation of observance of rules)

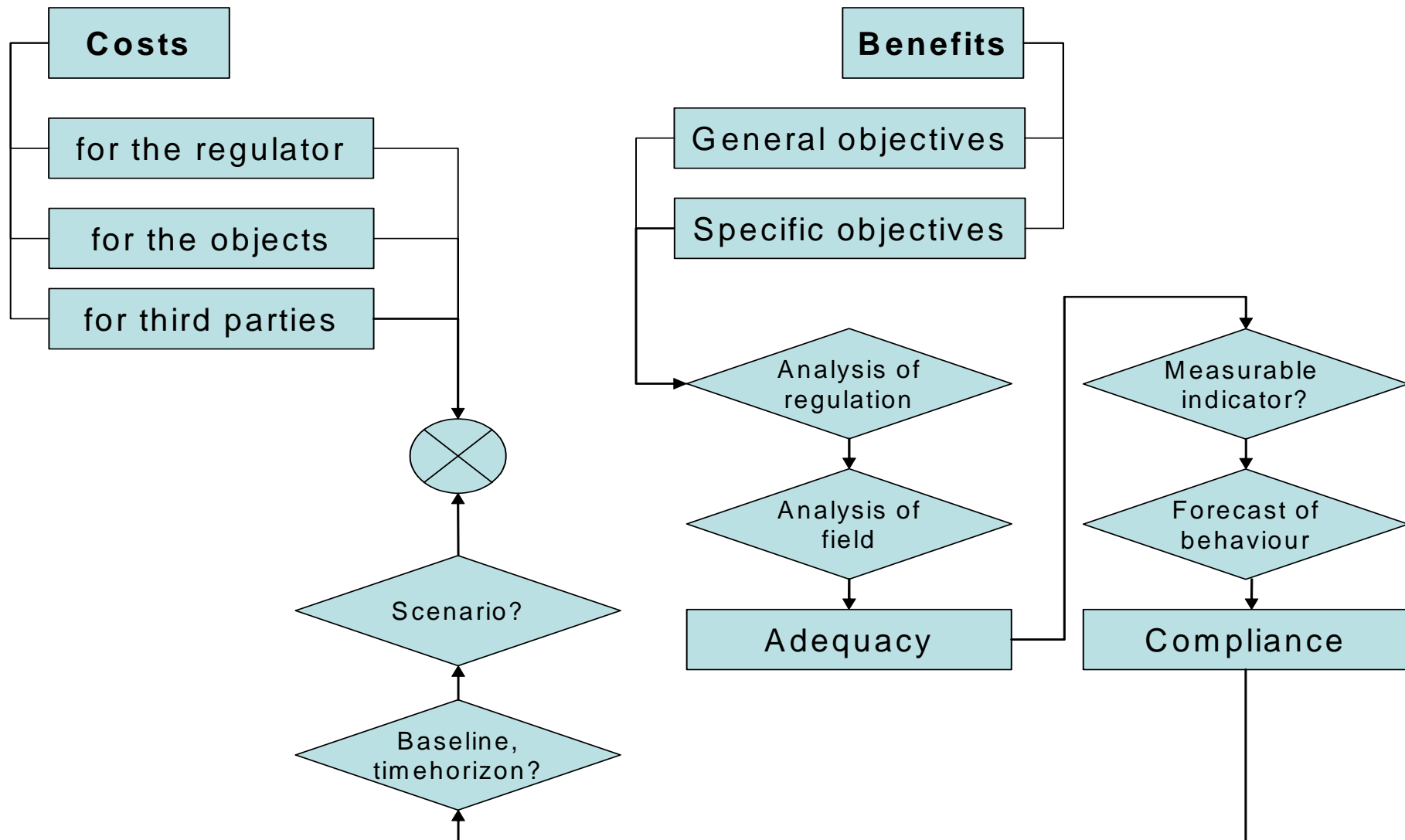
## What has already been done?

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Example: Relevant indicators according to *Latzer, Just, Saurwein* and *Slominski*:

- 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.

# What is the train of thoughts?



## Where do we go from here?

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### Our approach

- **Possible dimensions of analysis:**

- Before and after change of regulatory system
- Countries with comparable objectives but different approaches
- Different types of countries
- Different Objectives

- **Methodology mix**

- Analysis of regulation and policy field (adequacy and compliance check)
- Collecting and comparing existing data (regulatory authorities, auditors, independent research)
- Expert interviews

# Agenda

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## III. Impact Assessment

1. Assessing efficiency and impact of co-regulatory systems

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# Agenda

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## IV. Outlook on further work

1. Outlook on further work

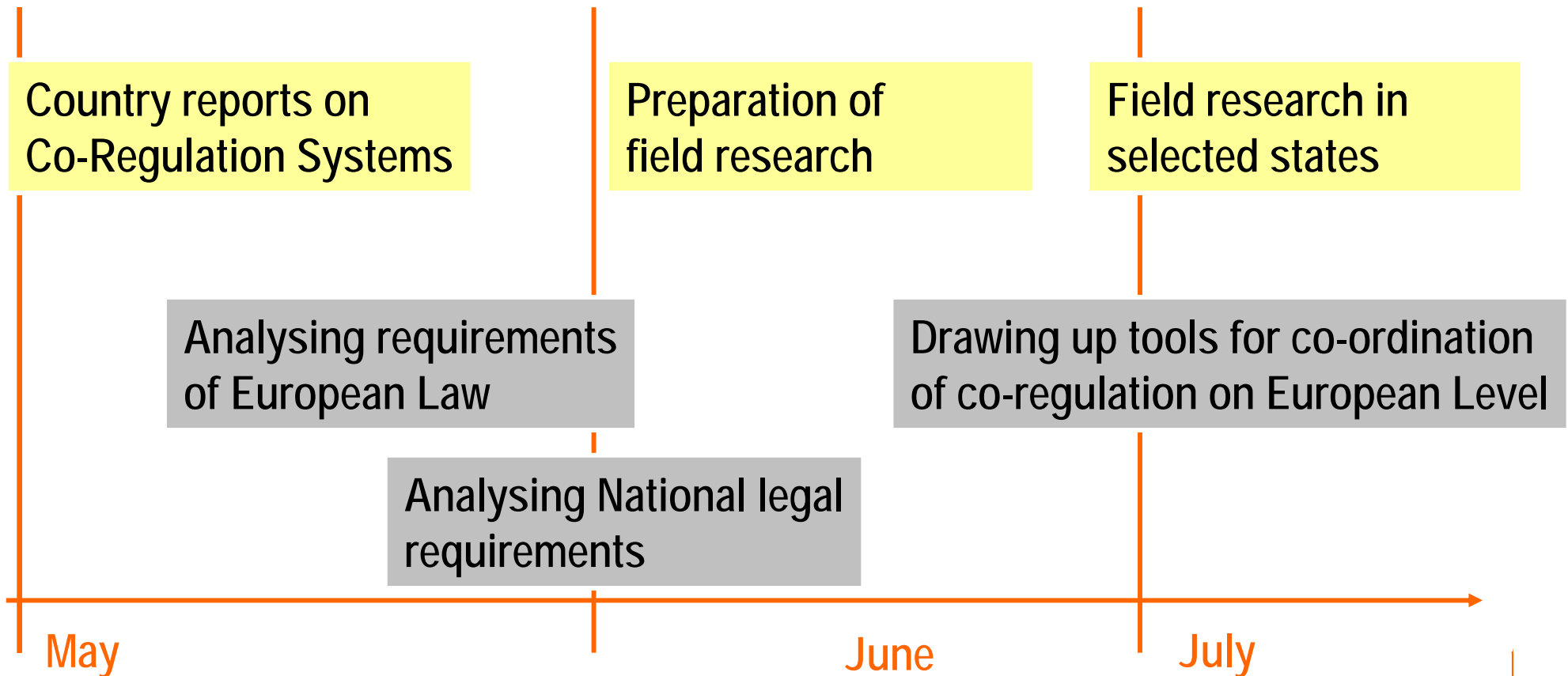
2. Discussion

## Forthcoming milestones

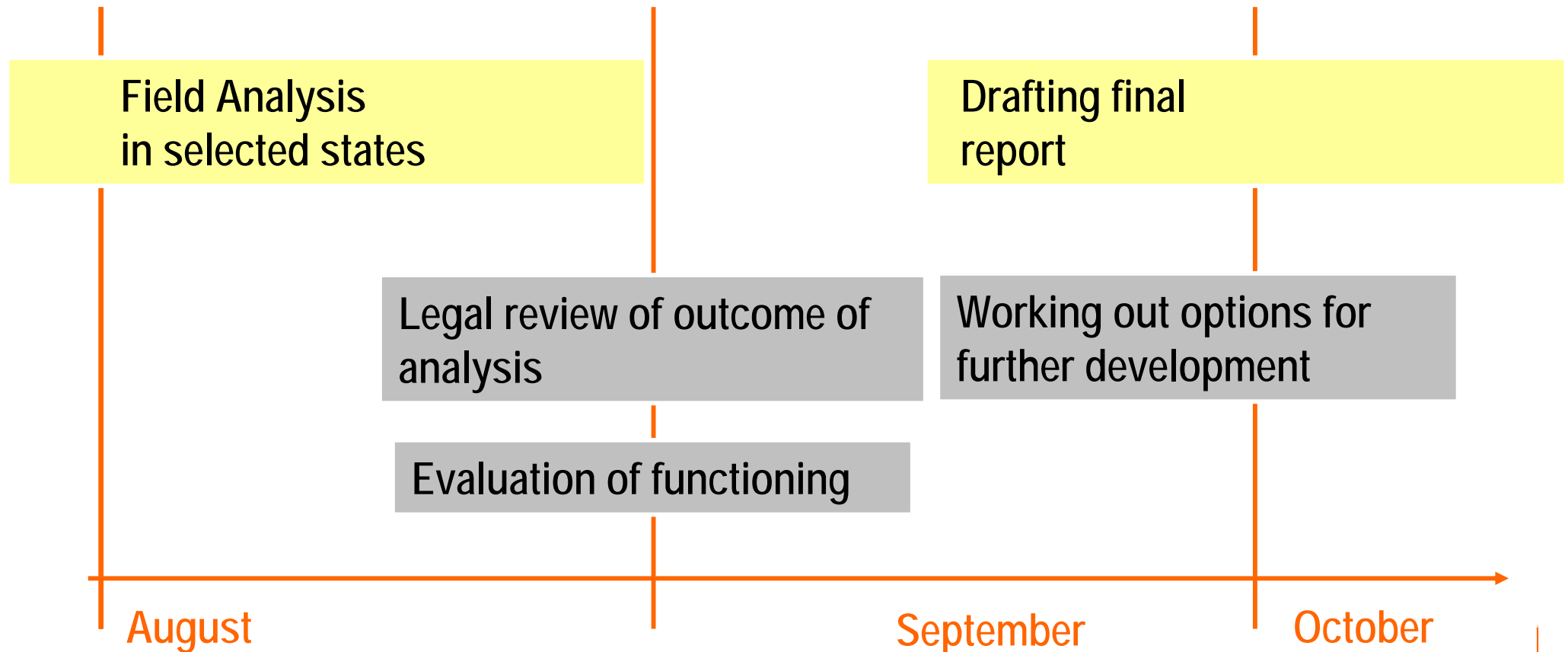
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- Reports on Co-Regulation Systems in member states and three Non-EU-States
- Meta analysis of "Co-Regulation Reports"
- Preparation of field research
- Field Research in selected member states
- Working out options of further development / implementation on European and national levels
- Finalisation of final report
- Presentation of final results on Seminar 2
- Submission and publication of final report

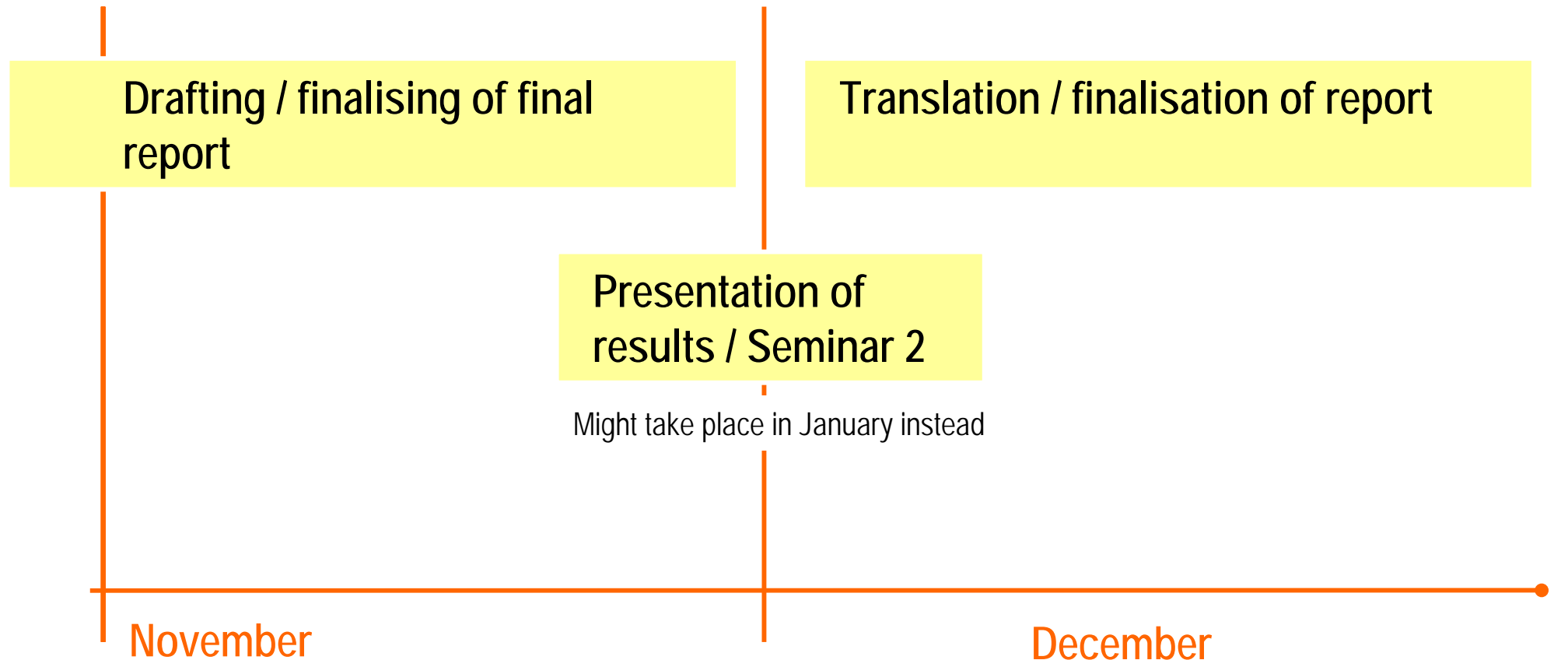
## Outlook on further work



# Outlook on further work



## Outlook on further work



# Agenda

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## IV. Outlook on further work

1. Outlook on further work

2. Discussion

Thanks for your attendance!

Presentation of preliminary results of the study on:

## Co-Regulation Measures in the Media Sector

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The reports on the media systems in the member states will be published  
in the beginning of May.

<http://co-reg.hans-bredow-institut.de>