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SOCIAL MEDIA REGULATION FROM THE PERSPECTIVES OF NATIONAL MEDIA REGULATORY AUTHORITIES IN V4

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ABSTRACT

The availability of studies which assess the implementation and performance of social media (SM) regulation within European Union countries is currently sub-optimal. Therefore, this study uses a problem-oriented approach, from a political-regulatory perspective, inspired by governance concepts, to investigate existing regulatory challenges within a specific region of Central and Eastern Europe. Based on interviews with the National Regulatory Authorities (NRA) experts from Slovakia, Hungary, Poland and the Czech Republic, and review of official documents, it provides insights on the regulatory policies and approaches enacted, proposed and used by NRAs. The study found that suggested approaches and opinions of the NRAs on possibilities of SM regulations show variety of challenges and that suggested regulatory approaches are often mutually contradictory. This study thus sets the stage for awareness creation among the key stakeholders that will facilitate further advancement of planned common social media regulatory protocols within the EU. Finally, this study sets a foundation for further regional or comparative studies on the regulation of social media.

Keywords: regulation ▪ social media ▪ digital services ▪ the Czech Republic ▪ Hungary ▪ Poland ▪ Slovakia ▪ national regulatory authority

1. INTRODUCTION

The evolution of social media (SM) into indispensable tools for the performance of various leisure, political, journalistic, academic and business activities has stimulated ongoing discussions about social and political harms caused by SM within Visegrád Four (V4) countries located within the European Union (EU) sub-region. Brix and Busek (2018) argue, supported by Kirch (2019), that there is an ongoing informal exchange of information between civil servants and politicians in the Czech Republic, Hungary, Poland and Slovakia. This exchange of information should

compensate for the resource deficits in smaller countries when compared to larger EU states or other existing regional alliances. It is true that media-related regulatory issues are discussed within European Regulators Group for Audiovisual Media Services (ERGA) network and, less so, within the European Platform of Regulatory Authorities (ERPA) network. There is also the Central European Regulatory Forum (CERF), which was set up in 2009, and currently includes the NRAs in Croatia, the Czech Republic, Hungary, Poland, Romania, Slovenia, Serbia, and Slovakia. It seems that the CERF does not play significant role among NRAs in regulatory discussions. The 2018 EU Coalition Explorer (European Council on Foreign Relations, 2018) confirms that the V4 are each other's default partners. Seen from this perspective, Lang (2018) claims that the V4 is one of the most actively cooperative regional blocs within EU. This justifies our focus at V4 approaches to potential regulation of SM from the media regulatory authorities' (NRAs) perspectives. Be that as it may, a recent study on the rules on access to the audiovisual market within EU 28 member states (MS) has found that: "It was impossible to even detect significant similarities between countries that in principle share geography, language or history" (European Audiovisual Observatory, 2018, Foreword). In other words, it is challenging to carry out any comparative study in this research area, or, more precisely, to select a proper sample.

The article assesses existing regulatory strategies for legacy media, as well as emerging or discussed regulatory strategies that have been suggested for SM by NRAs of V4 countries. These strategies – self-regulation, co-regulation and public regulation – are collectively placed as the key regulatory strategies within the context of media governance, as suggested by Freedman (2008), "the totality of institutions and instruments that shape and organize a policy system – formal and informal, national and supranational, public and private, large-scale and smaller-scale" (p. 14). For example, a new form of self-regulation has emerged – sometimes called "institutional self-regulation" (e.g. Frankel, 2018). This is specifically important form of regulation regarding the role of SM platforms which currently very much rely on self-regulation by themselves.

This article argues that the existing regulatory strategies have challenges and are sub-optimal, and proceeds through four sections to adequately address the prevailing concerns. It begins with a brief introductory overview of the current academic and policy discussions related to the regulation of the SM environment in general. This is followed by discussions on legacy and SM self-regulation and co-regulation in V4, public regulation of traditional NRAs in V4, and finally presents the latter opinions on SM regulation. The conclusion from this study is based on the findings from field research – interviews based on the questions sent to key experts working for the NRAs from Slovakia, Hungary, Poland, and the Czech Republic in this specific emerging regulatory area – and a review of the relevant literature, as well as official documents on the regulatory policies and approaches for SM.

The study was driven by two observations. Firstly, there is relatively little research

about the regulation of SM within the V4 region, and no research on this specific topic. Even though this regulatory area has been by and large until recently ignored by the academic community within V4 region, there have been considerable ongoing discussions at supranational academic, political and regulatory levels concerning emerging and evolving general regulatory policies for SM in the EU countries or at the EU level (see e.g. Školkay et al., 2020).

Secondly, the inter-dependence or ongoing convergence of legacy and new media – there can be embedded links of TV programmes on YouTube or Facebook – complicate the subsequent identification of regulatory strategies for individual platforms. Planti et al. (2016) argue that platform-based services acquire characteristics of the infrastructure they are built on, while new and existing infrastructures are built or reorganized based on the logic of platforms. This development suggests a new form of capture which can be called infrastructural capture: "circumstances in which a scrutinizing body – for example, news industry – is incapable of operating sustainably without the physical or digital resources and services provided by the businesses it oversees and is therefore dependent on them" (Nechushtai, 2018, Abstract). For example, this may be related to a needed speed of regulatory intervention in the case of hate speech or terrorist broadcast live. Another example could include the non-transparent use of algorithmic operations by some SM platforms. These issues raise a novel challenge – the traditional NRAs might be handicapped and may not be capable of efficient regulation of SM without their close cooperation. Consequently, we acknowledge that regulatory needs are different from previous period and the variations observed between given existing and emerging regulatory systems necessitate the analysis of regulatory approaches. It should be noted that the question of origin of the content provided via SM is not tackled here in detail.[1] This is a follow-up "technical" issue that will arise after prior decision concerning who (which institution) should regulate SM. Similarly, the question of roles and responsibilities of Internet Services Providers (ISP) is beyond our focus at SM.[2] As it will be discussed furthermore, the NRAs in our sample, with one exception, do not have unique competencies in the Internet (or telecommunications) regulation. For that purpose, there are different regulatory authorities. It is, of course, possible, that these regulatory authorities will merge.

In general, two closely related schools of thought are worthy of consideration here. According to the first one, multiple regulatory interventions and discussions can be seen as governance, i.e. as reflexive coordination which focuses on those "critical moments" when routine activities become problematic. According to the second, they can be seen as regulations constituted as public or private interventions

1 It can be either original – or at least curated – which means that the service controls what is being transmitted, or by third party – uploaded by the users in which case the service works only as a hosting service.

2 An Internet service provider (ISP) is a company that provides customers with Internet access. Data may be transmitted using several technologies, including dial-up, DSL, cable modem, wireless or dedicated high-speed interconnects (Techopedia, 2016).

targeted at influencing the behaviour of others (Hofmann et al., 2017). The assessment of regulatory approaches from these two theoretical perspectives provides valuable insights into the inconsistencies which characterise regulations and discussions about possible regulations across different countries. In other words, "in such times, when routines stop working and actors recognize a mismatch in their understanding of the situation, a transition takes place from simple coordination to reflexive coordination" (Hofmann et al., 2017, p. 1415). Concurrently, this permits the discovery of available forms of regulatory frameworks which can be successfully adopted in a convergent environment. To sum up, we assess and discuss suggested regulatory solutions in the V4 countries; self-regulation, co-regulation and public, sometimes referred to as statutory or state regulation. The assessment focuses on the past and current efforts, with significant focus on the challenges, toward the regulation of specific media sectors including audiovisual and print media sectors, or specific issues like advertisements. We assume that there is sufficient experience with the regulation of the audiovisual sector (and, in addition, with print media for self-regulation, be that negative or positive experience) and there is a normative-professional or legal basis for cooperation with self-regulatory and co-regulatory bodies on the part of the NRAs. In this regard, current and progressive roles for the NRAs and other existing media regulatory institutions for traditional audio, audiovisual and (very briefly) digital platforms, i.e. Video on Demand (VoD) and Video Sharing Platforms (VSP), will be discussed too.

2. A VERY BRIEF INTRODUCTION TO THE CURRENT ACADEMIC AND POLICY DISCUSSIONS ON REGULATING A CONVERGED MEDIA ENVIRONMENT WITHIN EU

Discussions and debates within academic, regulatory and policy-making jurisdictions highlight divergent views on regulatory approaches and interventions for SM in particular and for digital media or the Internet in general. There are distinct areas of regulation reflected in policy discussions in relation to different domains of regulation (copyright issue, harmful content, fake news and hoaxes, surveillance, SM influencers, virtual reality, bots, etc.). Different solutions or policy responses (notice and correct, notice and takedown, hard or soft approach, behavioural economy based and technology-algorithm based approaches, etc.) are also being discussed, as well as the question of who should regulate and guarantee the enforcement (self-, co-, and public regulation) or at which level (state or some global organisation).

The existing and proposed regulatory approaches are characterised by inconsistencies across media systems and nations. As an instance, the EU MS set different age limits for television programmes for minors (ERGA, 2017), yet television broadcast is no longer limited to national borders, or even satellite distribution – it is increasingly becoming available online and especially on SM, accessed via smartphones, and this makes it difficult to enforce appropriate parental control. It is hoped that some of

these issues (e.g. regulation of VoD and VSP) will be successfully tackled by national legislation based on the revised Audiovisual Media Services Directive 2010/13/EU as amended by Directive (EU) 2018/1808. There are also challenges related to copyright protection. Several attempts at regulating illegal downloading have been reported as failures (Edwards et al., 2012). These challenges should be seen as by and large solved by Directive (EU) 2019/790 – the so-called Copyright Directive. Similarly, many critical indicators including clearly defined responsibilities, transparent regulatory processes and measurable results, adequate sanction powers, periodical reviews and external control by the general public and the state, have not been effectively prioritized in self-regulatory initiatives (Lievens, 2016), although, many SM providers have committed themselves at supranational and national levels to self-regulatory interventions. In particular, the European Commission agreed with Facebook, Microsoft, Twitter and YouTube (later joined by some other SM) a "Code of Conduct on countering illegal hate speech online" in 2016. There are regular monitoring exercises of this form of institutional self-regulation and quasi co-regulation by SM. The most recent assessment from September 2019 argued that "the Code of Conduct has contributed to achieve quick progress, including in particular on the swift review and removal of hate speech content" (Council of the European Union, 2019, p. 2).[3] Yet there are debates that this approach may be seen as going against constitutional rights – there is no due process (see Hanych & Pivoda, 2017), that this does not cover all the media but only 96% of the EU market share of online platforms and it obviously covers mostly hate speech (see Cappello, 2018). It is also questionable whether this institutional self-regulation is in line with established principles (see EESC, 2015). There is also ongoing discussion that efforts to tackle information disorder with help of fact-checkers may hamper freedom of expression and perhaps sometimes go too far (see Goda, 2020). Therefore, there is still room for additional or alternative regulation of SM. We are going to discuss experience with self- and co-regulation of legacy media in the next section.

The regulatory discrepancies across media and nations have resulted in a heightened focus specifically on the convergence of legacy and SM and follow up interventions to be tailored to the regulatory requirements of the converged media environment. For example, Niklewicz (2017) proposes that SM platforms should be considered as media companies and should be regulated by modified versions of existing press laws adapted to suit new technologies. The creation of a *notice and correct* procedure,[4] as he calls it, would in his view provide an effective tool to stop libel, fake news, and hoaxes and allow affected parties to protect their rights. Yet, the question remains – who could provide effective supervision of any such regulatory regime?

3 72% of hate speech content was removed in 2019 comparing to 28% in 2016; while only 40% of notices were reviewed within 24 hours in 2016, in 2019 it was 89% (Council of the European Union, 2019, p. 2).

4 In this framework, the contested item could be corrected either by the author(s) or by the SM platform itself.

Moreover, in the context of a more narrowly focused self-regulatory approach, Hanych and Pivoda (2017) argue that the current liability regime for SM, based on the *notice and takedown* procedure,[5] appears to be an inappropriate solution for different kinds of expressions. This regulatory approach does not meet the requirements of legal certainty of users or the transparency of the process, and allows significant interference with users' rights. It is required of effective governance to allow the media and its audience to freely express themselves, and to be immune from negative influences of conflicts of interest and fear of the state. The authors conducted a review of relevant theories which led to the conclusion that SM are indirectly under obligations which usually belong to states. Therefore, they developed further an idea on a new liability regime based on the principles of *notice and action*,[6] to give appropriate consideration to expressions which do not carry significant negativity and offer constructive criticism, and guarantee the balanced regard for the fundamental rights of all the parties concerned. Yet, again, who should guarantee the enforcement of this goal?

Flew (2015) pointed out that almost all SM are on platforms that are both transnational and private. This would suggest international approach to their regulation, thus highlighting importance of this study. Indeed, SM platforms are not neutral providers; they influence – they already intervene in various areas (Gillespie, 2015). Consequently, it is not surprising that the European Commission is planning a comprehensive directive regulating SM that should have originally come in force in late 2020 (Khan & Murgia, 2019). The very important Directive 2000/31/EC (Directive on electronic commerce), which covers inter alia rules of liability exemption of ISP for third party content (the so-called safe harbour), is apparently not a sufficient tool for effective and efficient SM regulation. As put by Cappello (2018, Foreword):

> This directive is a regulatory answer to those problems that were apparent in the year 2000. Again, a world without Facebook, YouTube and iPhones. A world without big data or fake news. Even its nickname, Directive on electronic commerce, sounds outdated, passé. Everything all those services offer and the things you can do with those little devices go way beyond just "commerce".

Currently, it is expected that the planned SM regulation (with working title "Digital Services Act") within the EU will be at play not sooner than in three years from now (Struhárik, 2020). Within this discussion, the contribution of academics of V4 countries to discussions of SM regulations has until recently remained limited. There was just a single article which focused explicitly on discussions about how to regulate SM (see Hanych & Pivoda, 2017) in the sample of academic articles on SM from Slovakia

5 The content is removed by the host following notice.

6 See the related terminology in ICF et al. (2018).

(200), the Czech Republic (100), Hungary (130), and Poland (180), published between 2013 and 2017. It is true that many articles discussed specific regulatory aspects, especially those related to the protection of minors or copyright protection in a changing media environment (Bartoň, 2016; Hazucha, 2014; Abelovský, 2015). Some discussed legal aspects of employers' interest in the surveillance of social sites (Lukács, 2017). Others discussed the legal aspects of virtual identity (Naseh, 2016) or the hate speech regulation. For example, Smieško (2016) analysed the regulatory aspects of criminal liability with the use of feedback buttons on Facebook. Kutiš (2014) raised a question about the general regulation of the Internet, albeit in the context of Bitcoin. Finally, there are two books, even though relatively outdated, about general legal responsibility on the Internet (Husovec, 2014 and follow up in 2016; Matejka, 2013). Notably, the book by Pouperová (2016) actually questioned the very foundations of the state/public regulation of broadcasting from the constitutional law perspective. It is true that this lack of academic literature on SM regulation has recently been changing, with a number of articles dealing with SM regulation directly (e.g. Mazúr & Patakyová, 2019).

While there is slowly emerging academic discussion on SM regulation among V4 authors, in the meantime, at the country level, for example Germany was the first among the EU Member States to pass a law providing for hefty fines for larger SM companies if they do not remove hate speech quickly from their portals in 2018. In 2019, Germany introduced the first regulatory proposal in the EU to impose binding diversity obligations on SM platforms' ranking and sorting algorithms in 2019 (Helberger et al., 2019).[7] This means that while some countries are lagging behind in academic regulatory discussions, some other countries are already introducing specific regulatory policies for SM.

In general, the European institutions are not proposing separate rules just for SM, instead, they are keeping to the tradition of horizontal rule-making whenever possible and trying to find a holistic solution as opposed to patchwork solutions applying to individual parts of the sector (see Yar & Stolton, 2020; Micklitz, 2017). One of the exceptions to this rule is the newly approved AVMSD, taking a sectoral approach. It may be interesting to learn how experts from the V4 NRAs perceive these challenging SM regulatory issues. Before that, a short overview of local regulatory experiences with legacy and social media might be useful. Can perhaps self-regulation and

7 These obligations include a) non-discrimination – video platforms are prohibited from "unfairly hindering" the content they carry, or "treating it differently without a commercially justified reason", both in terms of the access conditions for content providers and the search and browsing features for users; b) priority for the public broadcasting content – public broadcasting content, for those platforms that offer it, should be "especially highlighted and made easy to find"; c) user choice and customization – video platforms must offer users the choice between at least two different types of sorting logics, such as alphabetical, chronological or view-based sorting. More generally, the algorithm must also be customizable by the user; and d) search features – users must be able to access the video platform's content through a search function, which must be "discrimination-free" (see Helberger et al., 2019).

co-regulation be used for SM regulation, as well? Does experience make us optimistic in that regard?

3. LEGACY AND SOCIAL MEDIA SELF-REGULATION AND CO-REGULATION IN V4

We put together the two out of three regulatory forms, self-regulation and co-regulation in this section. This was based on three observations which we made from our analysis: firstly, it is difficult to distinguish between the self-regulation and co-regulation when they are at work, and secondly, the number of countries implementing effective self-regulation in the media sector is very low, while the implementation of co-regulation remains questionable in some countries. Thirdly, there are also authors who use for co-regulation a term "regulated self-regulation" as well as "statutory self-regulation" (see Ukrow, 2019). Thus, this decision is supported by both theoretical and practical considerations.

Media self-regulation is a joint endeavour by media professionals and media owners to set up voluntary editorial guidelines and abide by them in a process open to the public. If the state and the private regulators co-operate in joint institutions, this is called "co-regulation." As mentioned, there emerged important concept of "institutional self-regulation" which reflects regulatory codes and initiatives by individual SM platforms.

3.1. Self-regulation and co-regulation in the Czech Republic

The Czech NRA, the Council for Radio and Television Broadcasting (Rada pro rozhlasové a televizní vysílaní; RRTV), reported co-operation with the Association for Internet Development in the Czech Republic (Sdružení pro internetový rozvoj v České republice, SPIR), a self-regulatory body, as successful in 2016, although, there were no administrative proceedings which involved it. The RRTV assessed conclusions and analyses of the self-regulator and noticed that the key regulatory issue was concerned with online betting. The RRTV did not report any form of cooperation with the other self-regulator, Association of Television Organisations [Asociace televizních organizací; ATO] (RRTV, 2017). The ATO and the Association of Independent Radio and Television Broadcasters (Asociácia nezávislých rozhlasových a televíznych staníc; ANRTS),[8] are primarily professional associations of organisations in television and/or radiobroadcasting in the Czech Republic and Slovakia respectively. Their members include public broadcasters (in the case of the ATO) and commercial broadcasters in both cases. In contrast to the (former) ANRTS, the ATO has established its self-regulatory commission as well as created code of ethics for editors news and current affairs programmes in television broadcasting (ATO, n.d.; ATO, 2009).

8 Since 2020, only the Association of Radios of Slovakia, Asociácia rádií Slovenska, ARS.

Although the ATO cooperates, according to its statute (ATO, 2016, Article III, 1j), with the Czech RRTV, its self-regulation is complementary to administrative regulation by the RRTV, and judicial regulation by the courts. This existing regulatory triplicity could explain why only nine findings from 2009 until early 2018 were issued by the Ethical Commission of the ATO. Interestingly, the last finding was issued in 2014 (ATO, 2014). Clearly, the ATO's ethical self-regulation is limited, firstly, to its members, secondly, within the television broadcasting sector, and thirdly, to news and current affairs programmes and is not working well, if at all.

In the press sector of the Czech Republic, there is a Commission for Ethics at the Syndicate of Journalists (Syndikát novinářů; SN). The Commission for Ethics, geographically limited to the territory of the Czech Republic, is supposed to cover only the work of journalists, including members and non-members of the SN, within the dictates of professionalism, although, the code of ethics is only binding for its members. Furthermore, it extends its coverage to online versions of newspapers, and the website of the Czech Television. Nevertheless, the system does not work, as the commission reports that its calls for cooperation with third parties remain unanswered. The last "statement" issued by the Ethics Commission is from February 2019 (Komise pro etiku, 2020).

3.2. Self-regulation and co-regulation in Slovakia

In Slovakia, the radio and television sector has not officially attempted implementation of self-regulation except within the advertising sector. The Advertising Standards Council (Rada pre reklamu; RPR), a private sector initiative for ethics in advertising which was co-founded by the ANRTS, has its own code of ethics for advertising practice. However, these ethical principles are de facto only binding for members. The Interactive Advertising Bureau of Slovakia (IAB Slovakia – združenie pre internetovú reklamu; IAB), an association for online advertising, comes closer to the effective regulation of SM with its issuance of the code of ethics for electronic media. The code is comprehensive in covering all electronic media, goes beyond the requirements stated by law, and is open to all complainers. However, it is also limited to marketing-related communication. The code defines electronic media as "any medium which ensures electronic interactive communication through the Internet" (IAB, 2010, Article 3). This could, theoretically, include SM which show some signs of marketing activity. An even more important regulatory instrument is the Code for Copying Content from the Internet (IAB, 2014, updated in 2020). The Code focuses mainly on identifying media which base their business model on such illegal and unethical practices, with little attention to minor breaches. The Ethical Commission exists to supervise adherence to this code, however, the IAB did not publish results of its regulatory activities until 2019 and this qualifies for a completely non-transparent self-regulation.

There is a bit unusual legal situation here. The Administrative Division of the Supreme Court in Slovakia in almost every ruling that tackled media commercial

communication (i.e. advertisings) mentioned that the court could not consider a possible sanction issued by a self-regulatory authority, since such body does not exist (Školkay, 2019). However, section 5 of the Act on Broadcasting and Retransmission (Act 308/2000) assumes that NRA "shall cooperate with self-regulatory authorities in the area of broadcasting, retransmission and providing audiovisual services on demand at establishing efficient self-regulatory systems".[9] Thus, despite the RPR's long-time existence – over twenty years – the judiciary did not notice its existence, and the NRA did not enter into effective cooperation with the RPR, although the law that expected that this would happen had been passed almost twenty years ago (Školkay, 2019).

Indeed, the RPR (2019) adopted an Optional Protocol to the Ethical Code of Advertising in spring 2018 only, with consolidated version available since 2019 (RPR, 2019). This was done on request of the ANRTS. This Protocol should tackle ethical aspects of media commercial communication (i.e. advertisements in television and radio broadcast). The consolidated version tackles advertising at SM, too.

An earlier attempt at regulation of the digital world in Slovakia could be noticed in 2017 when the IAB joined the founding body of the Press Council, which was responsible for regulating ethical aspects of print journalism, and since then has become the Press-Digital Council (Tlačovo-digitálna rada; TRSR). As a result, the Ethical Code of the Journalist has changed and currently covers providers of information services and Internet portals. The aims of the Ethical Code of the Journalist include, "ensuring that all content published in print or on the Internet should be in line with the generally binding Slovak legislation and good manners", and it is purported to serve as a guideline on all technological platforms (TRSR, 2017, p. 3). However, both the Code for Copying Content from the Internet (IAB, 2020) and the Ethical Code of the Journalist (TRSR, 2017) are only binding for those who explicitly sign up to it.

It is important to consider these limitations relating to regulation of journalistic content and digital media in Slovakia. Apparently, the TRSR does not plan to deal with self-regulation of digital media, apart from journalistic content, in the near future (see TRSR, 2018). Generally, it appears that the majority of SM platforms are still not effectively regulated in Slovakia; exceptions can be made of those which are defined as journalistic and fall outside the broader scope of SM, voluntarily adhere to self-regulation, or have registered voluntarily with the NRA, based on the AVMSD, following guidance issued (VoD, referring to the older version of the AVMSD). In spite of the growing interest in the regulation of SM, as part of regulation of the digital media world, self-regulation appears to be in its embryotic and rather confusing stage in Slovakia. Concurrently, co-regulation, that should be represented by cooperation between the RVR and RPR, did not work; the RPR is not going to deal with SM except in advertising-related issues.

9 An English version is available at: http://www.culture.gov.sk/extdoc/3626/308_aj_342.

3.3. Self-regulation and co-regulation in Hungary

In Hungary, as Urban (2018) argues, there are limited instruments of media accountability. An effective system of self-regulation and a common code of ethics are yet to be adopted by the whole industry. A self-regulatory body, named Korrektor, established with numerous ambitions aiming at ethical journalism in 2015 on the initiative of the Forum of Editors-in-chief in co-operation with the Hungarian Publishers' Association (MLE) and the Association of Hungarian Content Providers (MTE), has made a couple of substantive decisions, even though these are mostly dismissals of some existing discrepancies. The Association of Hungarian Journalists (MÚOSZ), the Community of Hungarian Journalists (MÚK), the Association of Hungarian Content Providers (MTE), and the Self-regulatory Advertising Association (ÖRT), as independent self-regulatory bodies, also have their own code of ethics. Major online outlets are members of the MTE, which issued a code of conduct in 2007 dealing with data protection, copyright, archiving policy and responsibility on the Internet. The code on responsibility on the Internet, requires online content producers to monitor and remove any textual and visual elements which are considered unlawful from their platform. However, the above-mentioned associations are fragmented and this makes it difficult for them to enforce the needed regulatory controls – their members are journalists and not publishers. There is very little publicly available information about the effectiveness of these self-regulatory bodies, apart from the ÖRT. Nevertheless, we can safely argue based on the aforementioned trends that at the moment, effective self-regulation is absent in the media industry of Hungary.

Co-regulation, on the other hand, is permitted in media administration by the Hungarian media and interested professional organisations can assume media administrative duties following authorisation of the National Media and Info-communications Authority (NMHH) – there are four such co-regulatory bodies. Importantly, these co-regulatory bodies can investigate complaints that are related to selected violations including: advertisements which violate human dignity or offend religious or ideological convictions; use of subliminal advertising techniques or subconscious perception; advertisements promoting tobacco products, weapons, ammunition, explosives, prescription medication; advertising content representing harmful or unfair influence to minors. Nevertheless, they can only act within the limited jurisdiction of printed and online press products, and on-demand media services. Moreover, Urban (2018) claims that co-regulatory arrangements could be most aptly described as the outsourcing of official responsibilities, therefore, efficient enforcement mechanisms are not involved. The Media Council, which is a semi-autonomous part of the NMHH, is obliged to review every decision rendered by the co-regulatory bodies and partly finances them. The NMHH and the co-regulatory bodies enter into an administrative contract which must be reviewed annually, and the NMHH passes certain regulatory powers to the body which in return submits to the code of conduct which is a mandatory extension of the contract. Subsequently,

when the NMHH receives a complaint regarding those media which are part of the co-regulatory framework, it forwards it to the co-regulatory body. Applicants also have the right to appeal to the NMHH against the co-regulatory body's decision. Unfortunately, the co-regulatory mechanism has been practically applied only in a handful of cases; there are less than ten cases annually and only a maximum of two end up with a substantive decision (NMHH, 2017). Meanwhile, the main areas covered by complaints received are the protection of minors, hate speech and personality rights (Berkényi, 2016).

3.4. Self-regulation and co-regulation in Poland

In Poland, the Polish Chamber of Press Publishers (Izba wydawców prasy, IWP), along with the two biggest professional journalism organisations, the Polish Journalists Association (Stowarzyszenie Dziennikarzy Polskich; SDP) and the Journalists' Association of the Republic of Poland (Stowarzyszenie Dziennikarzy Rzeczypospolitej Polskiej; SDRP), formulated their own codes of professional ethics and established internal disciplinary courts for their members (SDRP, 2020a, 2020b). However, there are no further reports on ethics available either for the SDP or SDRP. The Council of Media Ethics (Rada Etyki Mediów; REM), linked with the SDRP, provides only communication tool for uploading complaints, i.e. it is just a website (http://www.dziennikarzerp.pl). The Supreme Journalistic Court of SDP (Naczelny Sąd Dziennikarski), which may be ethical council does not provide any further public information about its activities (SDP, 2020b). This was confirmed in e-mail communication with the organisation (Zielińska, 2020).

Media owners and other professional organisations adopted the Charter of Media Ethics and Journalistic Code of Conduct at a (Permanent) Conference of Polish Media, which appointed the advisory Council of Media Ethics (Maślankiewicz, 2015). It appears that the Council of Media Ethics operates somehow, reportedly dealing with up to 500 cases annually (Dziennikarze RP, 2019). However, detailed checking of its public website and verdicts issued shows that the last annual report is from 2010 year (REM, 2020a). Moreover, there are no internal documents publicly available that would prove how the Council actually operates, save for its verdicts (REM, 2020b).

Public broadcasters also formulated their own code of ethics, initiated by the National Broadcasting Council (Krajowa Rada Radiofonii i Telewizji; KRRiT) round table, to fight disinformation and hate speech, and promote best practices. The Commissions of Ethics have no sanctioning powers, but act as advisory bodies to the public Polish Television (TVP) and Polish Radio (PR) supervising boards.

Generally, self-regulatory media accountability mechanisms do not work well, if at all, nation-wide in Poland. We are going to discuss co-regulation in the Polish case in the next part since it appears to be working in some areas instead of self-regulation.

3.5. Self-regulation and co-regulation across V4 countries

In summary, self-regulation of SM and legacy media across V4 countries works only with limited success and scope. SM media regulation does not exist in Slovakia, except for emerging advertising/marketing regulation within the digital online sector. Moreover, prospective self-regulatory arrangements (including SM) have been put in place but only for the journalistic sector. Similarly, co-regulation for audiovisual sector did not work. In the Czech Republic, self-regulation of legacy media is little effective, and co-regulation is demonstrable with formal signs of presence through two organisations co-operating with the NRA. Partial SM regulation appears to be even less developed that in Slovakia. In Poland, self-regulation is negatively influenced by political and related professional divisional dynamics and cannot be seen as a meaningful and relevant regulatory solution for the press sector or SM. Nevertheless, there are some sector-specific co-regulatory successes regarding co-operation with the Polish NRA (to be discussed next). The Hungarian case is more complicated with partial co-regulation and no self-regulation; co-regulation seems to work relatively well, however, dealing with only a few cases each year.

Although certain sectoral exceptions can be made, within V4 countries self-regulation and co-regulation for the traditional press and audiovisual sectors, with occasional focus on digital media possibly encompassing SM, are problematic, generally non-existent or dysfunctional. Therefore, it seems useful to explore future role of NRAs in SM regulation.

4. PUBLIC REGULATION – MEDIA REGULATORS IN V4

In every V4 country, there is a media board for audio-visual and audio services – radio and television, including re-transmissions (NRA). Yet there are huge differences in their legal definitions, internal organisational structures, competencies and real or formal independence from the government/parliament.

For example, Hungary is the only exception with a converged media board, the NMHH, which deals with both media and the telecommunications administration. The convergence in Hungary refers to the convergence within traditional broadcasting and telecommunications. Nevertheless, the Hungarian solution at the institutional level remains confusing for external observers; there are three partially independent administrative bodies within one complex body, that tackle various media and telecommunication policy related issues. The content related issues are primarily addressed by the Media Council (MC), having a separate and independent legal identity within the NMHH, and partially by the Office of the MC, which is the main administrative body of the MC with independent regulatory powers. The Office of the MC regulates selected issues including provisions on media content which contain or incite violence, or carries the potential of causing disturbance or infringing regulations on the protection of religious convictions. Consequently, the

MC and its Office share capacities. The NMHH is defined as an autonomous regulatory agency subordinated solely to the law.

In contrast to both definition and composition of Hungarian NRA, the Polish KRRiT split by law in 2016 into two parts, establishing separate the National Media Council (KRRiT, 2016). This latter body took over part of KRRiT's mandate concerning public service media and wire agency.

Thus, Poland, Slovakia and the Czech Republic have three or four separate bodies which deal with (almost) all audio-visual media services (traditional broadcasting), including some on-demand online media services, then there are supervisory bodies that oversee public service media and/or wire agency (there is a newly formed body for both public service television and radio as well as wire agency in Poland), and, finally, authorities that are responsible for telecommunications, postal services and frequency management (the last issue is in some countries shared competence with NRA).

The KRRiT is unique with its constitutional anchoring (KRRiT, 2020). In effect, this means institutional culture openly defined as "a supreme state body charged with broadcasting matters" (KRRiT, n.d., 1st paragraph). This can also be seen in composition of its members who can be politicians (but not members of political parties).

Although the RRTV in the Czech Republic is defined in the same way as "central state authority" (RRTV, n.d., 1st bullet), nonetheless, it appears to be by and large a more independent regulatory body. In Slovakia, the RVR is actually neither a fully state body, nor a fully autonomous body, but defined by the law as a sui generis body. In particular, it is defined almost identically as the Czech counter-partner, when it deals with execution of state administration in broadcasting and related issues. A slight difference consists in that it is not defined as "central state authority", but as "state authority with nation-wide powers" (Act 308/2000). However, in other (not-state) areas of oversight and regulation, it is defined as "collective independent organ" (RVR, n.d.).

In general, although nominees in the NRAs may not be closely or openly tied to politicians or political parties, they are usually not independent personalities. However, there is still difference how these candidates are selected and how openly these nominations are politicised. Hungary and Poland seem to be much more politically/ideologically polarised in this perspective than either the Czech Republic or Slovakia (see e.g. Kovács, 2019). Nonetheless, independence of all NRAs very much depends on how politicians intervene or not in their work, and how official or unofficial political nominees stay independent in their new posts. Obviously, political interventions, political nominations or overall legal and institutional design may have impact on professionalism and independence of the NRAs, too. This, in effect, may be seen as negative factor when entrusting the NRAs with SM regulation. For example, the initial findings of the joint mission to Hungary carried out by the International Press Institute (IPI), Article 19, the Committee to Protect Journalists (CPJ), the European Centre for Press and Media Freedom (ECPMF), the European Federation of Journalists (EFJ), Free Press Unlimited (FPU) and Reporters Without Borders

(RSF), supported by the South East Europe Media Organisation (SEEMO) came to conclusion in late 2019: "Hungary's system of media regulation is not independent" (European Federation of Journalists, 2019, paragraph on Media Regulation). A more detailed analysis came to the same conclusion, although formally there are present guarantees for independence of NRA (Rozgonyi, 2019). Similarly, Klimkiewicz (2019) states that "Despite these safeguards, the issue of weak independence, in particular from political pressure, has long been on the political and public agenda in Poland" (p. 93). Moreover, according to her, "the comparative results place Poland in the group of four countries with the lowest trust in the independence of key regulatory institutions of the media sector in the EU" (p. 94).

The RRTV, RVR, KRRiT and NMHH are encouraged by their respective legal acts to co-operate with self-regulatory organisations and support co-regulatory mechanisms. However, as mentioned, this co-operation is non-existent in Slovakia, although, within the context of the working group established by the Ministry of Culture of Slovakia to draft a new media law, there is a strong tendency toward co-regulatory arrangements in several policy areas, most prominently advertising and protection of minors. The Czech RRTV officially recognises two self-regulatory institutions, although their past activities fall short of optimal. The Hungarian NMHH represents a more advanced case which, as earlier mentioned, has entered into administrative contracts with four self-regulatory bodies which, as a result, qualify as co-regulatory bodies: the Hungarian Advertising Self-Regulatory Body, the Hungarian Newspaper Publishers' Association, the Association of Hungarian Content Providers, and the Association of Hungarian Electronic Broadcasters – their activities were discussed in the previous section. In the Polish case, the KRRiT has encouraged adoption of codes of good practice in some areas, including those concerning the protection of children from advertisements of "junk" food and content containing pornography and violence in VoD services. KRRiT (2017) reported that in some cases self-regulation was not able to meet the expectations of recipients, and highlights the failure of self-regulation with regard to the gradual increase in the number of programmes with facilities for the disabled. Apparently, media regulation is dominated by public regulation with attempts being made to develop and/or promote self-regulation and co-regulation. This is the reason why we turn to the role of the NRAs with respect to SM regulation.

5. NATIONAL REGULATORY AUTHORITIES IN V4 AND SOCIAL MEDIA REGULATION

Initially, we carried out a search using the keywords, "social networks" and "social media" in national languages, on the websites of all four NRAs. The aim was to identify indirectly, if and to what degree the NRAs see SM as a relevant regulatory issue. Of course, this survey reflects and is impacted by overall communication efforts by NRAs as documented by level of development of their websites. Nonetheless, our

findings on the importance attributed to SM by the NRAs are demonstrated in statistics in Table 1. The marked differences also serve as notable indicators for transparency, as the detailed analysis may reflect the extent to which general information is presented to the public.

Table 1: Social media and social networks on websites of media regulators in V4 (May 2018)

	SK	CZ	HU	PL
Results for social networks	0	7	217	2948
Results for social media	0	65	3933	4540

The Polish NRA demonstrated the highest interest in these issues, yet it was found to offer mostly translations and wire agency reports on media related issues in published materials. On the other hand, the Slovak NRA (RVR) was found to provide little information to the public and demonstrated the lowest interest on SM. The Hungarian and Czech NRAs fell in between, with the former performing much better than the latter.

Furthermore, we were interested how these reporting and monitoring trends on SM are reflected in annual reports by the NRAs. The Czech RRTV, in its annual report, pointed to the novelty and sensitivity of the regulation of live-streaming of television broadcasts via YouTube, and the lack of sufficient regulation in the case of HbbTV (RRTV, 2017). However, it does not seem to be focused on the regulatory aspects of SM, unless discussions about revisions of the AVMSD are considered as part of this process. Interestingly, the Slovak RVR mentions HbbTV in its 2016 Annual Report, but does not mention any associated regulatory issues. The KRRiT, on the other hand, pays a lot of attention to SM in its 2016 Annual Report (KRRiT, 2017, pp. 46–50), however, this takes the form of statistics and does not focus on regulatory issues. Moreover, in its 2017 Annual Report (KRRiT, 2018), it only mentions SM as a tool for PR, media literacy and educational activities. The overview of annual reports of NRAs suggests that the NMMH has paid the most, although still relatively limited, attention to online content regulation. It carried out an interesting study (2016) on compliance with the recommendations on media content on the Internet among 120 media websites. Additionally, it examined 50 out of the most visited websites which had media content. Out of the 50 pages, 25 were reported to be harmful to minors. Hungary, since 2011, has had a set of legal regulations to be uniformly applied for all media. However, this is limited to activities of economic nature provided on a commercial basis. The NMHH sets details, and differentiates the rules pertaining to media services based on the nature of the respective services, in accordance with the media act.

In similar fashion to what is observed for majority of other EU countries, currently, there are no well-defined regulations of SM in V4 countries. Therefore, we

leveraged the answers to the questions and we asked experts from the NRAs in all four countries in order to get insights into current challenges and possible solutions to them from the national perspectives of these four NRAs. As regards their field of expertise – these were executive managers for the NRAs in Slovakia and Hungary, and members of European cooperation/legal department respectively, with focus on SM). The Polish and Czech contributors (specialists in SM – EU/ERGA cooperation representatives or contact points) were contacted via the Slovak NRAs' contributors. Although the answers presented below do not represent official positions of the NRAs, they are still informative opinions. Obviously, any policy position is drafted first of all by professional staff, not by a collective body. Moreover, this communication was done transparently and semi-officially, via official institution channels (the NRA in Slovakia facilitated the answers from NRAs in the Czech Republic and Poland) or directly via contact points in NRA in Hungary. The answers were much more complex than are their short summaries presented in tables.

The first question required definitions of the most problematic aspects of regulating SM from the perspective of each V4 country, and the answers are demonstrated in Table 2.

Table 2: The most problematic aspects of regulating social media in V4

Country	**CZ**	**HU**	**PL**	**SK**
Issues	Inconsistent regulation	Vagueness and enforceability	Cultural differences	Absence of direct editorial responsibility and mostly exterritoriality

The perceived greatest challenge varied with each country. The Czech NRA member or members (their exact number was not specified in the answer from NRA) highlighted inconsistency. The inconsistent regulation was defined in its context as a lack of balance between the regulation of SM and various fundamental rights. The Hungarian NRA experts (there were two of them) highlighted a difficulty in determining which SM sites should be regulated and the legal grounds for the selection criteria. The Polish NRA expert or experts (their exact number was not specified in the answer from the NRA) answer highlighted the cultural differences among the EU M.S. regarding issues like minors' protection and audio-visual commercial communications, for example, the ban of alcohol advertising in some countries. The Slovak NRA experts (there were two of them), also deviating from the others, highlighted regulatory challenges in foreign jurisdictions of major SM platforms and the absence of direct editorial responsibility.

We also observed hesitance or conditional attitudes towards delegating the general task of regulating content on SM to the media regulators (see Table 3).

Table 3: Should the National Regulatory Authorities regulate the content on social media?

Country	CZ	HU	PL	SK
Position	No	Yes, but conditionally	Partly	Unclear

The Czech NRAs experts maintained that the regulation of SM should be limited, to a large extent, to self-regulation. In contrast, the Polish NRAs experts suggested that professional video content provided by SM should be regulated by current regulatory bodies. The Hungarian NRAs experts answered in the affirmative, yet with a condition, and their main challenges included authority and universality. The Slovak NRAs experts preferred to keep the answer open.

We also investigated expert opinions on the efficient regulatory frameworks to be adopted for SM, in response to the call for self-regulation or co-regulation among NRAs instead of reliance on an established NRA. Our findings are provided in Table 4.

Table 4: What are efficient regulatory alternatives for social media?

Country	CZ	HU	PL	SK
Position	Self-regulation	Co-regulation	Self-regulation	Co-regulation

The Czech NRA experts suggested that the primary choice should be self-regulation, and it should be an expression of the social responsibility of social network operators. In the context of effective legislation, they suggested that the German legislation, NetzGD, could be a good inspiration for V4 countries. The Hungarian NRA experts suggested co-regulation and possibly a global regulatory agreement, but the latter option is very unlikely according to them. The KRRiT experts intimated a lack of experience with alternative forms of the regulation of VSPs, but their positive experience with the self-regulation of linear media and VoD led them to a conclusion that self-regulation of VSPs could be an efficient solution. The Slovak NRA experts preferred co-regulation but also believed that at this stage, it is going to be subject to trial and error, since it is a new field for most of the public policy institutions.

Finally, we investigated the awareness of the NRAs experts on the impact of cross-border regulation, which has been a pertinent issue in discussions on SM regulation. Table 5 demonstrates our findings.

Table 5: Is there a room for global regulatory solutions (e.g. through Facebook itself or via the European Commission) or more room for regulation via national/local Internet Service Providers?

Country	CZ	HU	PL	SK
Position	Ideally global, practically at national level	Both global and national	Definitely global, national/local ISPs under national authorities + general basic rules for all MS.	European level, + Direct dialogue with the platforms for national regulatory solutions

The Czech NRA experts suggested that SM is a global technology, so optimal regulation should be global in nature; however, they agreed that the involvement of providers at national and local levels was essential. According to the Polish NRA experts, global regulatory solutions are definitely necessary for global players. Hungarian NRA experts believed that global and national approaches should be employed synergistically. Finally, the Slovak NRA experts believed that European solutions, within the ERGA and EPRA, are good approaches for solving common issues, but there are specific issues which need attention at the national level of individual Member States.

6. CONCLUSIONS

Although there is a custom of informal exchange of information and opinions among V4 countries, including within more international and formal discussion platforms such as the ERGA or ERPA, there are surprising differences how would V4 NRAs experts' approach SM regulation and how much attention the NRAs devoted to SM. In retrospective, both the overview of annual reports of the NRAs and of their websites suggests that the Hungarian NMMH has paid the most, although still relatively limited, attention to online content regulation, while Polish NRA paid more attention in communicating SM related topics on its website. Generally, there appear to be prevailing inconsistencies which characterise the present regulatory approaches and suggested regulatory approaches applied to SM, among the V4 NRAs.

The lesson learnt from this overview is that self-regulation and co-regulation for SM may work only in some sectors such as advertisements or protection of minors, but with questionable effectiveness. Historically, self-regulation as a regulatory modality for legacy media is comparatively most developed in Slovakia even though it is characterised by weak results and limited focus on advertisements and journalism. We argue that self- and co-regulation for SM in Slovakia are not practically evident except, very recently, online advertising, and tentatively for journalism and copyright related issues. Self-regulation in Hungary and Poland is practically non-existent (formally, there is some self-regulatory activity in Poland in journalism but it is non-transparent) either for legacy media or for SM, while it is marked by inefficiencies for legacy media in the Czech Republic. Co-regulation is more formal or rather symbolic in the Czech Republic, limited in Hungary, and focused on specific areas in Poland. It appears that within the Polish context, the KRRiT may play flexible, yet efficient, roles in regulating SM, especially if this will be done in cooperation with some other bodies. However, both Hungary and Poland may be challenged in SM future regulation by the political environment.

The coupling of nation-specific or sector-specific regulatory interventions and EU-wide approaches represents a promising solution to the evolving regulatory needs of SM as part of digital media in general. However, this still may be challenging

task, since our overview of opinions of the NRAs experts on possibilities of SM regulations shows variety of opinions and suggested approaches.

First, the most problematic aspects of regulating SM in V4 seem to be differently identified among V4 NRAs. For the Czech NRA experts, it seems to be a lack of balance between the regulation of SM and various fundamental rights. For Hungarian experts, it is vagueness of definitions (and inclusion) of SM and questionable legal enforceability of SM regulation. For Polish experts, it seems to be cultural differences among EU MS that may complicate SM regulation efforts even at the national level. The Slovak NRA experts see it as a more complex issue, namely as an absence of direct editorial responsibility and mostly exterritoriality in case of SM.

Second, the question whether the NRAs should regulate the content on SM appears to be rather challenging for NRAs experts. There was no enthusiastic support for full involvement of the NRAs in SM regulation, although there was awareness that some involvement may be necessary. In the related issue, what could be seen as efficient regulatory alternatives for SM (in general, or if we exclude NRAs roles), experts from the Czech and Polish NRAs would tentatively prefer self-regulation, while experts from the Hungarian and Slovakian NRAs would prefer co-regulation.

Finally, when asked whether there is a preference for global regulatory solutions or rather for regulation via national/local ISP, experts from three NRAs would prefer combination of global and local solutions, while experts from Slovak NRA would prefer a European approach.

Considering the results of this regional overview, it is evident that much more discussion and consultation is needed to find a common ground in the EC attempts to develop the pan-European approach to regulating SM. Interestingly, the first common position of ERGA on the Digital Services Act (see ERGA, 2020) was published in June 2020.

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