

Meeting of the working group Independent Self-Regulation in Poland: “Establishing Effective Media Self-Regulation in Poland”

**UNIVERSITY OF GDAŃSK AND HOTEL VILLA BALTICA SOPOT,
SEPTEMBER 24, 2022**

Internationally acclaimed representatives of the working group Independent Self-Regulation in Poland (established in January 2022) attended the 6th Congress of the Polish Communication Association entitled “Media and Society in the Age of Platforms, Algorithms and Data” (<https://kongres.ptks.pl/en/>). During the Congress, the working group representatives were offered guidance into the establishment, effectiveness and financing of self-regulatory mechanisms such as the proven examples of press councils in Belgium, Germany and Estonia. The members of the working group are representatives from Ethical Council REM, TVN, Civic Pact for Public Media, Agora, Institute of Political Science and Institute of Journalism and Social Communication, University of Wrocław (UWr), Editors-In-Chief, Ringier Axel Springer Polska, Polish Chamber of Press Publishers (IWP), University of Warsaw (UW), Association of Polish Journalists (SDP), Journalistic Association (TD), Journalists’ Association of The Republic of Poland (SDRP), Local Press Publishers Association (SGL). The dialogue organizer on annual basis and working group initiators since 2020 are the Erich Brost Institute for International Journalism in cooperation with the Journalism Departments of the University of Warsaw and the University of Wrocław.

During the 1-day event on September 24, 2022 participants gained an overview about the benefits and challenges of implementing systems of self-regulation like press councils or ombudsmen, including budgetary aspects and efforts from the media sector to be undertaken to implement such institutions. Additionally, Dr. Michal Chlebowski, News Programming Standards Manager at TVN of the TVN Warner Bros. Discovery also introduced his own PhD research about the status of ethical code knowledge of working journalists in Poland.

ACADEMIC RESEARCH ON MEDIA ACCOUNTABILITY

During the session entitled „Media Accountability and Self-regulation: The Global Perspective” as part of the 6th Congress of the Polish Communication Association at the University of Gdańsk Prof. Dr. hab. Bogusława Dobek-Ostrowska mentioned the importance of media accountability and specifically also media self-regulation from the perspective of collaborative research. In this context she mentioned the MediaACT project (11 partners from Eastern and Western European countries plus 1 partner from the Arab world), which has set the scope for further dialogues on media accountability and relevant enhancement for getting active in media self-regulation, such as currently is the case in Poland. Dobek-Ostrowska explained that the research teams analysed and compared the development and influence of the forms of media accountability from 2010 to mid-2013. In a broad field study, they investigated which established and which innovative forms of media self-regulation are represented across the diverse countries. This is because the quality of media self-regulation is also a measure of the quality of the public sphere and an essential indicator of media pluralism. Media self-regulation should be understood holistically as it concerns not only print media (such as press councils), but every form in which media (print, digital, electronic) are held accountable to society (ombudspersons, media journalism, media blogs, codes of ethics, etc.).

Prof. Dr. Susanne Fengler from the TU Dortmund provided in her presentation key insights of „The Global Handbook of Media Accountability” (Routledge, 2022) – a comparative research related to the status of media accountability in 44 countries, which included Poland. Fengler explained during the 6th Congress of the PCA the key concepts of media accountability, media self-regulation and media transparency. In context, she also characterised three varied regions of media accountability in Europe: liberal, democratic-corporatist, polarized-pluralist. She also introduced pushing and limiting media accountability factors and presented the results of the exemplary study, showing the diffusion of press councils and broadcasting councils over time. Fengler also pointed out the differences between the professional and dysfunctional professional models of media accountability, with special focus on Poland and Ukraine, where the institutions function but do not take enough collective action to prevent state interference. Fengler used the case of Turkey to show the fragility of media accountability from political pressure: „The example of Turkey shows how fast media accountability institutions can also deteriorate under political pressure. Twenty years ago, the Turkish media accountability system was considered a model for the region – with an independent press council, ombudsmen, and the like. Today, all MAIs appear ‚captured’. This underlines how vital it is for media freedom to ensure professional and independent media accountability institutions.”

The participants have been highly interested in this panel. In the Q&A session Fengler explained her hopes for the Media Freedom Act – for it to create (at last) a common regulatory board on EU level, which will provide the opportunity to check whether members states are following the EU regulatory framework.

Prof. Halliki Harro-Loit from the University of Tartu in Estonia provided in her speech entitled “From Analog to Digital – One Step Upward but Two Steps Back?” an overview about the Media Accountability System in Estonia. She pointed out that the Estonian media market is small and oligopolistic, and there is a minimum of state interference. Harro-Loit stressed that the competition is an important factor in influencing the development of journalism culture. In Estonia, the process of Media Accountability was frozen as two competitive self-regulatory bodies simultaneously exist. The national Code is enforced by two press councils, of which one is affiliated to the Newspaper Association and the other to the Journalists’ Union and the Association of Media Educators. This richness of press councils derives from a conflict 15 years ago, but today it provides competitive viewpoints and, as a result, improves the self-regulatory discourse. The working self-regulation has prevented the State from interfering with media performance, even when it would have been eligible to do so, for example, to protect the public’s interest, or to protect the rights of an individual. Furthermore Harro-Loit emphasized that the code of ethics in Estonia is outdated and that there is currently no motivation among the various actors to renew it. The situation in Estonia, as it emerged in the Q&A session, was similar to that in Poland, where different Council of Honour as well as ethical councils for self-regulation exist, however without any kind of interlinking and also without effective or visible results.

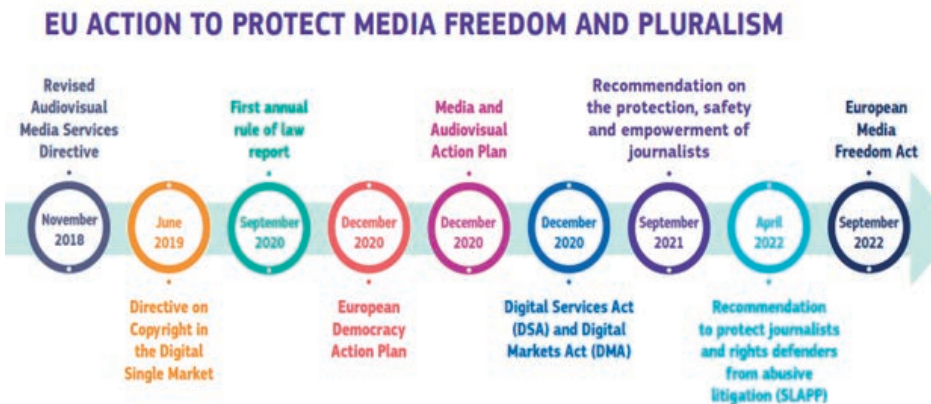
Dr. Michał Kuś from the Institute of Political Science at the University of Wrocław (UWr) presented in a specific presentation entitled „Poland: The Polarised Model of Media Accountability” the state of media accountability in Poland. The major positive characteristics are that there are quite a lot of developed media self-regulatory instruments, however, these instruments are neither effective nor ineffective. In their research for the polish chapter in “The Global Handbook of Media Accountability” (Routledge, 2022) the researchers Michał Głowacki and Michał Kuś found out a broader context for their research – connected to the high level of political and social polarisation, media tribes, verbal aggression and double standards. They also identified new instruments and actors of media accountability: NGO’s activities (such as media monitoring and fact-checking), social media, media journalism outlets and academic actors as important tools. Kuś pointed out, that “We should stop thinking in terms of double standards, like ‘there is a lot of irregularities, but others are responsible for that, not us’. This is the basis for further dialogue on the establishment

of a press council in Poland. After all, control over the quality of journalism in Poland is a common concern”.

THE EUROPEAN MEDIA FREEDOM ACT – A SOLUTION FOR APPLIED MEDIA SELF-REGULATION?

In panel attended by media practitioners and academia representatives entitled „The Polish Challenge of Media Accountability and Self-regulation”, the relevance of academic collaborative research about the state of play of self-regulation in EU member countries, as well as the development of recommendations as made in the MediaACT survey for European Media Policy makers was highlighted by Dr. Isabella Kurkowski. The recommendations from media practitioners and academia are today more than relevant, specifically in the light of the newly adopted European Media Freedom Act (EMFA). Kurkowski explained that the EMFA is highlighting the role of media self-regulation at the EU level as an important tool of media freedom and as a cooperative and necessary counterpart towards only the regulatory process. The opportunities and new standards of EMFA were, in detail, introduced at the PCA conference by Isabella Kurkowski, regional coordinator on Media Accountability at the Erich Brost Institute for International Journalism. Kurkowski stressed the importance of cooperation between statutory and self-regulation, which EU policy-makers highly encourage.

Relevant steps of protecting Media Freedom and Pluralism on EU level of the last 4 years are following:



Source: European Commission: https://ec.europa.eu/commission/presscorner/detail/en/fs_22_5507

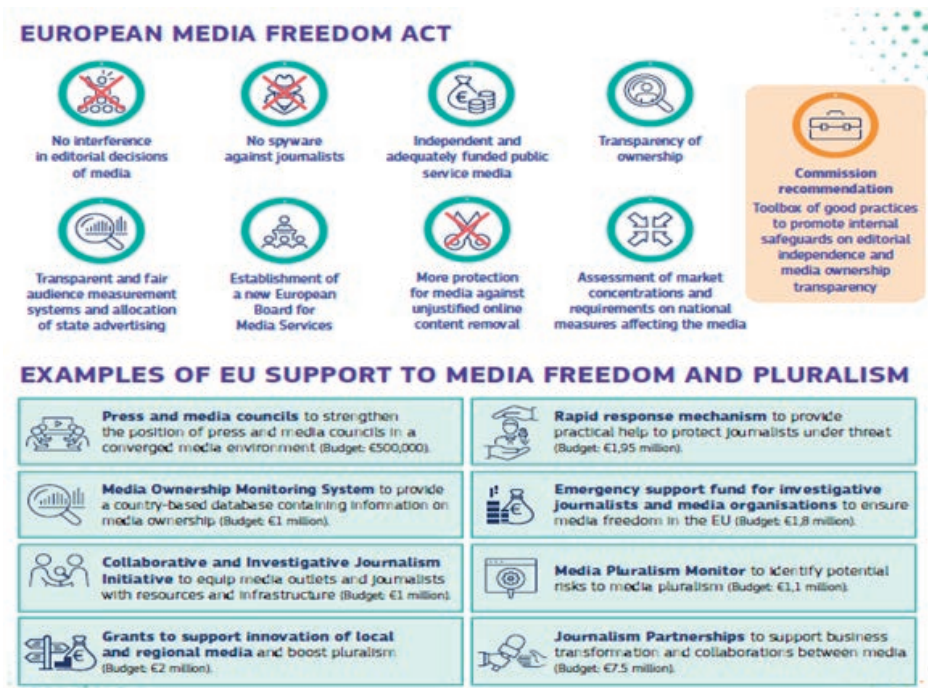
In her presentation on the newly adopted EMFA, Kurkowski emphasized that for the first time self-regulation has become an important part of the legislation. Until now, relevant recommendations and resolutions have been provided by the Council of Europe, such as:

- Resolution 2066 (2015) “Media responsibility and ethics in a changing media environment”
- Resolution 1636 (2008) “Indicators for media in a democracy”

The European Parliament has provided further recommendations, such as:

- European Parliament resolution of 11 November 2021 on strengthening democracy and media freedom and pluralism in the EU: the undue use of actions under civil and criminal law to silence journalists, NGOs and civil society (2021/2036(INI))

It is important to note that under the new EMFA legislation, funding will also be made available to strengthen press and media councils.



Source: European Commission: https://ec.europa.eu/commission/presscorner/detail/en/fs_22_5507

THEORY AND PRACTICE OF MEDIA SELF-REGULATION IN POLAND

This panel clarified from the perspective of media practitioners what kind of applicable tools of media accountability currently are used in Poland. In this regard Dr. Michał Chlebowski presented the TVN Warner Bros. Discovery's approach, in which he serves as TVN Standards & Practices Coordinator. In 2018, a new project within the standards and practices department was introduced as a tool of in-house media self-regulation: The standards and practices department, as well as editors, oversee the work of journalists on three levels, all related to ethical standards:

1. whether (or not) the team follows the internal ethical rules;
2. on-air control by checking complaints from the public on the broadcast;
3. consulting – attending the editorial meetings and helping cover stories according to the code of ethics.

Chlebowski emphasized that TVN implements other projects, such as monitoring the balance of gender of the guests. In order for the journalists to learn from the best lessons, monthly internal meetings discussed ethical mistakes with the overall team.

Dr. Damian Flisak, Head of Public Affairs, Ringier Axel Springer Polska emphasized that in Polish media outlets that are well functioning – there is no need for another level of media regulation as suggested by the EMFA. External regulation of already proven ethical approaches in newsrooms might destroy media freedom and already well-developed media self-regulatory in-house mechanisms. Flisak – a lawyer specializing in media legislation – estimates that such a regulation can, however, have positive outcomes in Poland when related to the failed distributions of public funds for advertising and to shelter the independence of public media from political interference. By contrast, negative effects can be the editorial independence of each media outlet, which suggests independence of this type should not be covered by any kind of regulation within EMFA. Flisak explained that related to these topics there are more open consultations between EU and the private media in all EU member countries. There is no need for a EU regulator for media, because there is no EU media, but rather 27 different economic media markets. Plurality is, however, a pre-condition for media accountability, which is why the checks and balances are already provided in the media market by the audience. Flisak stated that: “In a well-functioning media outlet there is no problem with editorial independency – and this type of problem will not disappear after creating more legal rules on EU level”.

Chlebowski explained additionally that most cases of ethical breaches are proceeded in instances of electronic media by the Polish regulator National Broadcasting Council, which investigates the method of the reporting. However, other than external monitoring, TVN has several internal levels of communication

with the audience and in resolving complaints. Nonetheless, civil court proceedings also exist.

Damian Flisak stated in relation to the missing self-regulation process of a press council on the national level: “In Poland, we don’t have an effective mediation element of the self-regulatory process – it simply doesn’t work (for several reasons)”. In some cases, media are relevant experts in ongoing court proceedings and fulfil the role of *amicus curie*. In media cases of relevance, the Commissioner for Human Rights interferes and brings up topics into public or parliamentary level discussion. So, in this sense an Ombudsman position on national level already exists in Poland. Flisak, however, names other important problems such as the implementation of the Digital Services Act (DSA), which poses a new challenge in terms of content moderation – and provides a positive outlook. Perhaps self-regulation may serve in future as a good grounding for consulting with the gate-keepers? Digital services include a large category of online services, from simple websites to internet infrastructure services and online platforms. The rules specified in the DSA primarily concern online intermediaries and platforms. For example, online marketplaces, social networks, content-sharing platforms, app stores, and online travel and accommodation platforms. The Digital Markets Act includes rules that govern gatekeeper online platforms. Gatekeeper platforms are digital platforms with a systemic role in the internal market that function as bottlenecks between businesses and consumers for important digital services. Some of these services are also covered in the Digital Services Act, but for contrasting reasons and with distinct types of provisions. Gatekeepers are allowed to take down content violating not only law, but also their own terms of service – which are their private rules. Checks and balances applied by self-regulation in this field indeed might be very much needed!

Pieter Knapen, Secretary-General and Ombudsman at the Raad voor de Journalistiek in Belgium stated that media councils by their ethical nature are standing in the public and journalists. Digital platforms need to keep their hands off from media participating in the self-regulatory system, unfortunately this idea is not reflected in the DSA. In the French-speaking part in Belgium the media regulator can interfere in the spheres covered by the Press Council, in Flanders – this is not the case as the independence of the Press Council is previewed as the core value. According to the statement Knapen concludes that Media Councils, as part of the self-regulation system, should be excluded from any kind of digital platform regulation.

WHAT ARE THE BENEFITS OF ESTABLISHING MEDIA COUNCILS AS A SELF-REGULATORY APPROACH AND AS AN INSTRUMENT OF MEDIA ACCOUNTABILITY?

Dr. Michał Kuś clarified that prior to the establishment of a self-regulatory body the process of consultation should involve all relevant stakeholders, thus specifically a press council stands not only for the public, but also the journalists. Dr hab. Adam Szynol from the Institute of Journalism and Social Communication at the University of Wrocław (UWr) underlined the statement and acknowledged that there are two major problems existing in Poland related to media self-regulation: “The country has only very weak self-regulatory institutions in media and their position is not recognized on a broad scale by either the media outlets or the public. There is, however, a very strong media regulator with huge influence from the government”. Szynol argued that sometimes the business and corporate way of dealing with ethical issues is probably more effective than statutory regulation.

However, the discussion intensified when Andrzej Krajewski from the Journalistic Association (TD) in Poland posed the question: “If we have such weak self-regulation institutions in Poland, why don’t we rely more on EU institutions?” The discussion was unable to provide a solution to the complexity of the problem, but clearly a broader dialogue in the near future is needed on exactly this topic.

Prof. Halliki Harro-Loit underlined the ever increasing need for a consultative character. Everything connected to digital media is now ruled by the EU’s General Data Protection Regulation (GDPR), and unfortunately not by ethics. The GDPR, in this sense, is the toughest privacy and security law in the world. Though it was drafted and passed by the European Union, it imposes obligations onto organizations anywhere, so long as they target or collect data related to people in the EU. The regulation was put into effect on May 25, 2018. The GDPR will levy harsh fines against those who violate its privacy and security standards, with penalties reaching into the tens of millions of euros. Dr. Damian Flisak related that Ringier analyzes the regulations on a case-by-case basis, however the management of the media outlet prefers to prevent ethical breaches, rather than healing wounds.

A similar statement was provided by Dr. Michał Chlebowski, who highlighted that TVN analyses carefully all new EU regulations on a case-by-case basis and that the media outlet also participates in public consultations related to any new regulation, e.g., organised by the regulator. Unfortunately, public consultations tend to be ineffective – as was the case in implementing the revised EU Audiovisual Media Services Directive (AVMSD). Where programming for minors should be marked in a clear way, private broadcasters in Poland presented a draft of the regulation and gave feedback towards the regulator, but KRRiT decided

to take the draft version without comments, ignoring all feedback from the overall private broadcasting sector in Poland.

Prof. Dr. Bogusława Dobek-Ostrowska envisioned that researchers and media practitioners should establish a comparative EU project in order to research regulatory and self-regulatory mechanisms related to EU Media Policy and to see which solutions are working across the EU and how to take the lessons learned from their experiences.

PRE-CONDITIONS FOR SETTING UP A SELF-REGULATORY MECHANISM IN POLAND

A specific and more intense working group meeting was held as an afternoon, half-day, round-table on September 24th, 2022 at the Hotel Villa Baltica in Sopot. Attendees recalled the dialogue from 28 January 2022 in Warsaw, which indicated that representatives of the most important print and online publications in Poland, publisher associations, KRRiT, REM, OKEM and six journalists' associations as well as the Commissioner for Human Rights and academic media researchers shared the desire to establish a format of independent self-regulation in Poland. All participants at this event agreed to set up a working group on "Independent Self-Regulation" in order to foster self-regulatory mechanisms in Poland.

The aim of the half-day workshop in Sopot on 24th September 2022, at which all stakeholders of the working group were present, was to draw up a concrete road map and a model for the establishment of an independent press council or any other self-regulatory mechanism. In this discussion there were 21 members of the working group, consisting of representatives from Ethical Council REM, TVN, Civic Pact for Public Media, Agora, Editors-In-Chief, Ringier Axel Springer Polska, Polish Chamber of Press Publishers (IWP), University of Warsaw (UW), Association of Polish Journalists (SDP), Journalistic Association (TD), Institute of Political Science, University of Wrocław (UWr), Journalists' Association of The Republic of Poland (SDRP), Local Press Publishers Association (SGL), the Institute of Journalism and Social Communication, University of Wrocław (UWr) as well as the Erich Brost Institute for International Journalism.

Dr. hab. Adam Szynol gave a brief overview about the first meeting in September 2020 – as a milestone for establishing this working group and starting the discussion on whether a functioning media council is needed in Poland. He summed up the second meeting of the working group in January 2022, during which the Polish government plan was intensely discussed within the Group to establish a new media co-regulatory body at the national level. At this time the working group agreed on some basic characteristics of a potential self-regulatory body:

- independent,

- responsive,
- effective,
- representative for the media and the public,
- consistency for all media as a deep deprofessionalization of the media was noticeable.

Szynol stated that the challenge now was to engage the public and other actors in the process of establishing an effective media accountability system in Poland. Pieter Knappen in his function as an international consultant explained that actually an agreement on the ethical code before creating a media council is not necessary an internationally acclaimed Code of Ethics can be used. A more detailed and specific Code of Ethics can be developed at a later stage. The most important aspect is that the temporarily drafted Code of Conduct meets the criteria of transparency, inclusiveness, independence as well as representativeness. Szynol explained that the work of a media council does not involve ideology, politics, editorial decisions or editorial lines and each media-specific council commits to basic principles of journalistic ethics and to follow the agreed Code of Conduct procedures. Michał Chlebowski underlined however, the importance to start convincing and involving the key players of the Polish media market to create such a self-regulatory body. He said that the work of the press council is continuous and requires constant adaptation and setting timely guidelines, which requires a high-level of cooperation and recognition of the media in Poland. Michał Jaszewski, legal advisor at the Association of Polish Journalists (SDP) proved that representativeness of the stakeholders as well as the media and journalists itself is a key element – only then will the Press Council be a realistic endeavour. However, Andrzej Krajewski also argued clearly that the populist and mouthpiece government media would pose a huge challenge in this endeavor, because their work is a contradiction of ethical journalism. Paweł Czajkowski, Director of the Legal Department at Agora drew attention to inclusiveness being important, but it should not be a sine qua non condition for a successful self-regulatory system, which could be set up in the near future in Poland.

From the part of the media practitioners, one important statement related to digital media and bot-texts across all discussions: The Code of Ethics should also regulate the principles of transparency in relation to texts written by AI/ algorithms – media owners prefer self-regulation and are tired of ineffective institutions, he stated: “We don’t need more regulation, we need future-oriented thinking as a way forward in our independence”.

GOOD PRACTICES FROM FLEMISH AND GERMAN PRESS COUNCILS

Pieter Knapen shared his experiences from the Flemish Press Council and took into consideration various aspects of international donor funding, which often prevents independence of a council – therefore a healthy mix of stable income structure is needed when considering to establish a self-regulatory body. Knapen recommended to refrain at the beginning of the newly established self-regulatory body from the appeal procedure. However, Knapen said it was important to include appeals into the system mediation, in order to find an amicable settlement of a complaint. The Flemish Press Council consists of 12 representatives from the public, 12 from the media and 12 from the journalists, they work voluntary and have no income. The council is in its legal structure a not-for-profit organization and therefore truly independent. Related to the transparency of a new to be established Press Council in Poland – it is not enough to only publish the complaint decision on the website, but also to ask the media outlets to publish the relevant decisions. A transparent process of handling complaints guarantees recognition in the wider public – indeed, it might be worth also to consider public hearings for settlements, although involved parties might not be so open during such a mediation process.

Manfred Protze, Member of the German Press Council explained that that national council is registered in its legal form as an Association. The Council includes publishers and journalists' associations as well as founders. It consists of three complaint commissions and receives up to 2000 complaints (print and online news media) per year. The German Press Council has been in existence for 60 years and follows some basic rules, such as: the accused party must always have the opportunity to comment, however, the public doesn't have to take part in the council's judgements, as it is a process of media self-regulation which is decided on consensus in the complaint commission. Nevertheless, the public is the final judge of the reception of the Press Council adjudications on complaints against ethical breaches.

A FIRST ROAD MAP DRAFT FOR ESTABLISHING SELF-REGULATION IN POLAND

The 21 stakeholders of this working group developed in a joint and consultative process a first Road Map for the relevant pre-conditions in establishing an independent and self-regulatory body for the media in Poland by developing criteria such as:

- 1) structure, authorities, competences, legal status,
- 2) effective complaint procedure,
- 3) financial structure and administration.

WORKING GROUP – ROAD MAP

OUTCOMES:

1. STRUCTURE, AUTHORITIES, COMPETENCIES, LEGAL STATUS:

- Initiative Group (Temporarily Founders)
- Call for participants
- Informal internal consultations
- No start without publishers on board as members
- Starting Event of founding the Council
- New legal entity to be defined
- Decision on structures
 - » Using the European Media Freedom Act for a new set-up and/or to make REM more effective?
 - » KRRiT/REM part of the new to be established Press Council?
 - » Consultation and complaints acceptance deadline
 - » Nationwide call and naming event of (s)elected founding members
 - » Initiative Group starts its work
- Room can be provided for a first secretariat structure probably at the University Wroclaw or Warsaw

2. EFFECTIVE COMPLAINT PROCEDURE:

- Written complaints
 - » Both parties should be heard in either or both written and oral forms
 - » Realistic and not too long deadline for response must be given
 - » Mediation should be a part of the complaint work
- max. 12 complaint commission members

- Type of arbitrators:
 - » People with media experience (no business interests)
 - » Experts with legal, editorial and civil society expertise
 - » Different kinds of experienced media representatives: media representatives, journalists, lawyers, academia, civil society)
 - » Arbitrators to be randomly chosen
 - » Bridge between academia and media education
 - » Representatives must cover all regions of Poland
 - » List of experts to be included, for example psychological experts
- Complaints from Media against Media:

- » Proves to be a conflict of interest
- » No influence clause should be included in the statutes
- Monthly Complaint Commission Sessions by Zoom in the beginning
 - » Prior having a physical secretariat structure, including technical equipment
 - » 1x time per month complaint commission session on arriving complaints
- Establishing a PR and civil society reach out Commission
 - » Developing a structure how to reach out to the public in order to inform them about the Press Council work and about their rights to complain cost-free
- Establishing a Personal Data Management Plan

3. FINANCIAL STRUCTURE AND ADMINISTRATION

- EU Funding to start
- Business Plan Development
 - » Media Councils in the Digital Age project application
 - » REM can apply in order to improve the system and/or
 - » Through another NGO or Press Council who wants to support the establishment
- Proportional financial participation
 - » member fees to be paid by umbrella organisation
 - » Richer media outlets pay more
 - » Bigger media outlets pay more
 - » Every member has one vote
 - » Number of votes does not represent proportion
- To include freelancers
 - » Associated in journalistic organizations
- Governmental subsidy from various sources
- Who pays for the system and the organizational structure?
 - » Press publishers, broadcasting companies, journalists' associations, EU Funds, net native publishers

At the end of the workshop session, it was stated by the participants that as the next step, a solid concept for establishing media self-regulation in Poland should be developed as an official strategy paper in the Polish language. The further steps should be taken only after receiving the concept based upon the above-mentioned Road Map as well as lessons learned from other newly established Press Councils will be discussed in a further meeting. The goal will be to circulate the concept to representatives of the media outlets as well further possible future members.

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