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Seminararbeit

# **The Role of Gender in Audiovisual Media Regulation**

## **A Comparative Overview of Austria and Poland**

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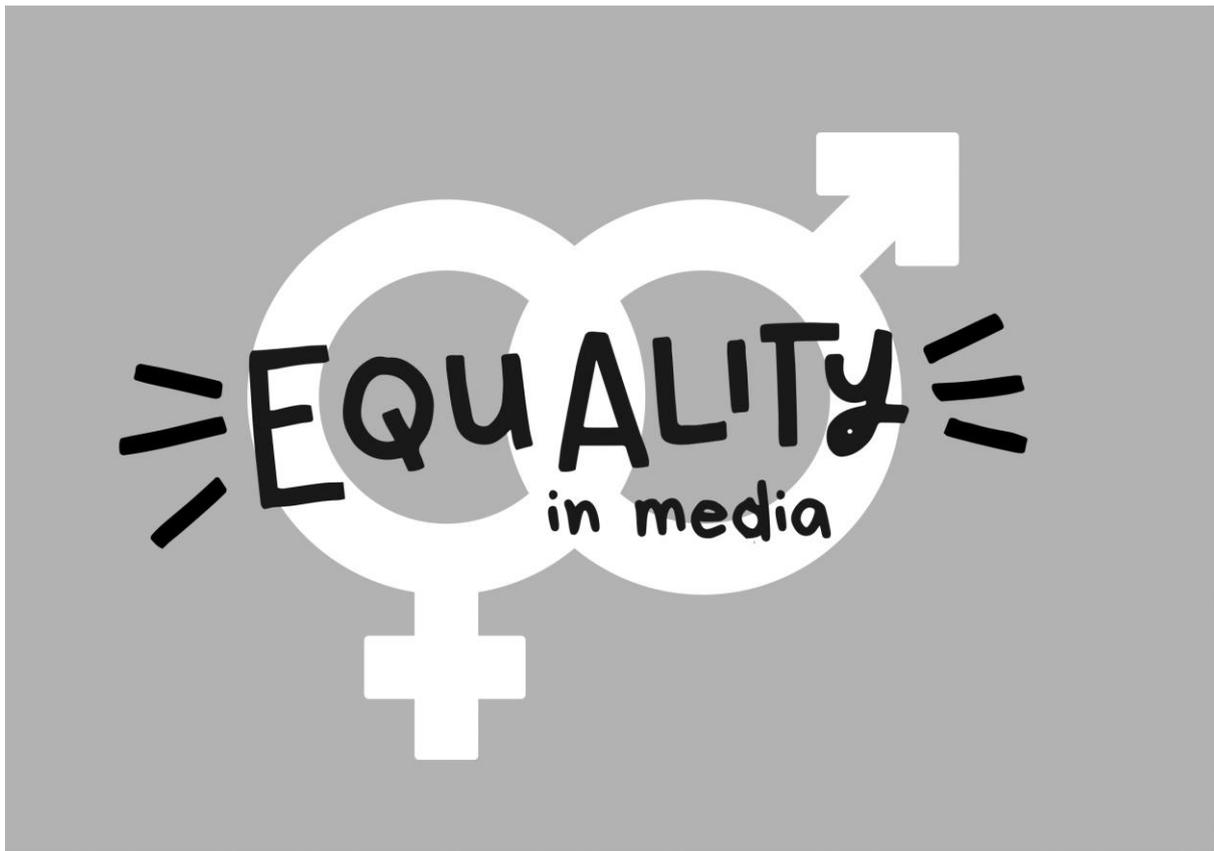
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## Table of Contents

<b>Abstract</b> .....	4
<b>I. Understanding audiovisual media regulation and its relevance to gender equality</b> .....	6
<b>II. The implementation of audiovisual media regulation and the role of regulators in a gendered perspective</b> .....	9
<b>1. Policy objectives of gender-sensitive media regulation</b> .....	9
1.1. Regulations in Austria.....	10
1.1.1. ORF law part 5a: Equality between women and men.....	11
<b>2. media regulatory authorities: the role of regulators: Examples in Europe (ERGA, EPRA)</b> .....	11
2.1. Media Regulators in Austria .....	12
2.1.1 Telekom Control Kommission (TKK) .....	12
2.1.2 The Communications Authority Austria (KommAustria).....	12
2.1.3 The Federal Communications Senate (BKS) .....	13
2.2 Gender equality within KommAustria and RTR.....	13
2.2.1. KommAustria .....	13
2.2.2 RTR .....	13
2.3 Examples (ERGA, EPRA) .....	15
2.3.1 The ERGA- European Regulators Group for Audiovisual Media Services.....	15
2.4. Study on industry-led good practices related to gender diversity in the European audio-visual sector .....	16
<b>III. How does the Austrian and Polish media regulatory practice fit in with European best practices? A comparison.</b> .....	19
<b>1. Austria</b> .....	19
1.1. Media regulation.....	19
1.2. Legal framework.....	20
1.3. Public broadcasters.....	21
1.4. Analyses of the legal environment.....	21
1.5. How does it fit in Europe and its practices EPRA and ERGA?.....	23
1.6. The Austrian Press Council: code of ethics and guidelines.....	24
<b>2. Poland</b> .....	25
2.1. Media Regulation .....	25

2.2.	Legal framework.....	25
2.3.	Public broadcasters.....	26
2.4.	Analyses of the legal environment.....	26
2.5.	How does it fit in Europe and its practices EPRA and ERGA?.....	28
<b>IV.</b>	<b>Findings from interviews.....</b>	<b>29</b>
1.	Findings based on the Interview with Susanne Lackner .....	29
2.	Findings based on the Interview with Corinne Schweizer: A digression into the Swiss media landscape.....	31
<b>V.</b>	<b>Conclusion: mainstreaming gender in Austrian media regulation in the context of European best practices.....</b>	<b>33</b>
<b>VI.</b>	<b>Sources .....</b>	<b>36</b>
<b>VII.</b>	<b>Illustration Sources .....</b>	<b>39</b>
<b>VIII.</b>	<b>Appendix .....</b>	<b>40</b>

## Abstract

“Dass man Richtlinien hat, heißt nicht und das wissen Sie sehr gut, dass man die Richtlinien auch wirklich lebt. Es ist auch sehr oft das Gegenteil so, was nicht gegen Richtlinien sprechen soll. (...) Es darf nur nicht dazu führen, dass es ein hohles Instrument gibt, das dann in der Praxis keine Anwendung findet.“ (Schweizer) (“This research report conducts an in-depth look into the role of gender in audio-visual media. Regulations set by Austria were explored and furthermore a focus on the activities of ERGA and EPRA was placed. Finally, a comparison between Austria and Poland was drawn since they both exhibit different approaches to gender regulation.

Since there still are a lot of gender issues in the media industry, a closer look into gender was conducted: from representation of women in the media to discrimination at workplaces, based on gender. Furthermore, through the growing space of the digital world, new problems in gender equality have arisen.

When it comes to audio-visual media regulation, it is important to understand the reasons why regulation is necessary in the first place. There are three types of regulation: state regulation, co-regulation, and self-regulation. Depending on that, rules are set, monitored, and sanctioned by different actors. Media regulation covers different policies of the media, which play an essential role in fulfilling social interest. Regarding reasons for media regulation, three areas can be located: democracy, economy, and culture.

In this research report, a methodical mix of various research instruments was conducted, including a complex policy analysis. Here, problems and goals regarding inequality, as well as arguments in this debate were examined. Implementations of the policy were analysed afterwards. To discuss and extend these findings, interviews were conducted: a stakeholder interview with Susanne Lackner, a member of the regulatory authorities RTR and KommAustria. Furthermore, an expert interview with Corinne Schweizer, a senior researcher at the University of Zurich, took place. Her research interest focuses on media regulation as well as gender debates. Finally, a document analysis through best practices in Europe was conducted, as well as general literary research on this topic.

Important findings were discovered in the comparison between Austria and Poland. Based on equality distribution of gender in the media space, it was clear to see that Austria provides more equality than Poland, which only has few female representations in the media space.

Furthermore, Poland does not give their women full access in the media. Finally, the research has shown that Austria did not participate in the projects, aiming to lessen discrimination against women in the media, set up by the regulator groups EPRA and ERGA.

There is still a significant research gap regarding gender mainstreaming in audio-visual media regulation. Based on the findings of this report, it can be stated that gender equality has not been achieved sufficiently in media regulation. Both interview partners expressed the difficulty of the research topic gender mainstreaming because of the lack of research in that field. That is why more public, medial and scientific attention needs to be drawn to the issue.

## **I. Understanding audiovisual media regulation and its relevance to gender equality**

Media regulation is a system of normative rules established to modulate the creation, distribution and communication of (mass) media. Though there is not one law which is valid for media, there are a number of regulations for specific sections of media, like the BVG-Rundfunk law which protects the independence of broadcasting. Subjects of media regulation are for example private and public broadcasting (radio and television), copyright, protection of personality rights, photojournalism and especially in the last few years internet legislation (Korn, 2017: 6-9).

Regulations, in general, exist to set rules for media organisations and mass-media. These rules are to follow and are to sanction, in the possibility of a rule break. Through interest analysis, institutions can help to find regulation guidelines and their benefits. Regulation therefore, plays an important role, in fulfilling Social Interest (Puppis: 2007,51-55).

There are three different regulation types: self-regulation, state regulation and coregulation. Self-regulation is regulation where private participants regulate their own branch, set rules and sanction in case of a rule break. Coregulation is where private actors set rules in order of the state for their branch. Finally, state regulation means that rules are set on a national and statewide level, which also have influence on global and europe-wide regulations (Puppis: 2007,60-61).

An important question when it comes to media regulation is why media is and should be regulated, and how this relates to gender equality. Answers are found in the work of Feintuck and Varney (2006). Media regulation is not only necessary to avoid monopoly and a further increase of commercialism, it also plays a crucial part in granting public access to information and communication (Feintuck/Varney, 2006: 55). Furthermore, there are also technical aspects in media distribution like the correct assignment of broadcasting frequencies to ensure steady transmission and to evade interference between channels that need to be regulated (ibid: 56). Other examples for reasons why we regulate media, are the protection of minors regarding the broadcasting of violent and/or sexually explicit content (ibid: 62), and the guarantee of freedom of communication and speech (ibid: 56).

Reason for media regulation can be also parted into three. There can be technical reasons, economic reasons and society-political reasons. This is because the media is not only an economic, but also a cultural good. Therefore the state must use regulation to make sure the interests of the society are looked after (Puppis: 2007,62).

In the guideline book of Eve Salomon, various reasons for regulation of broadcasting media are given. Those reasons are undermined by three main areas that justify and advocate regulation: (Salomon, 2008: 11-16)

1. **Democratic Purposes**
2. **Cultural and Consumer Protection Reasons**
3. **Economic Purposes**

These purposes shape three different main chapters and contain different perspectives. In the first one, **democratic purposes**, gender is explicitly mentioned as a topic within the chapter “rules preventing discrimination” in the subsection. This area of democracy consists of various matters like freedom of expression as a universal human right, independent and autonomous means of communication, freedom of speech and the circumstances when those basic rights may be restricted by regulation. Salomon states that broadcast media can shape people’s thinking and behavior intensely. Therefore, the goal of regulation should conclude in using this fact to empower democracy (Salomon, 2008: 12-14). Gender is located in this because, there should be equal access and opportunity for participation in society. Achieving through reforming and abolishing gender hierarchies, which are still a problem in the social institution (Heinrich Böll Stiftung).

Rules for broadcasters that help to prevent discrimination are stated in this part of Salomon’s text: “Given the power of the broadcast media, it is desirable to apply and enforce rules to ensure that programmes do not broadcast material - including the views of interviewees or programme guests - which discriminate against people, for example on the grounds of race, nationality, religion or sex“ (Salomon, 2008: 13).

Another reason for regulating broadcasting is the enhancement of **cultural** promotion, where national language and culture is reproduced and therefore reinforced. For that reason, cultural independence can be achieved in a world of globalization (Salomon, 2008: 14-15). Regarding gender, cultural aspects mainly concern ‘cultural diversity’. For media to be considered culturally diverse, pluralism in both content and media ownership is needed, as the identities of those who produce media have great impact on their product. This pluralism refers to different cultural groups regarding “race, gender, age, sexual orientation or other social variants” (Feintuck/Varney, 2006: 60,61). Furthermore, the way women are depicted and represented in the media, affects the way women are viewed in society as a whole.

Also, **economic** interests, like work relations and environments, partnerships, investments or competition are being considered by Eve Salomon. Gender equality is important in media content as well as in employment according to Ross and Padovani (2016). It is suggested “that *who* produces media content in terms of balance of women and men can influence *what*

content is produced” (Ross/Padovani, 2016: 9). Moreover, women seem to generally work in less significant positions than men. The only area where male dominance is not as strong are careers as news anchors, though it is notable that most of the female newsreaders are considered to be “young and attractive” (ibid: 10). Though gender equality has changed for the better, there is still a lot to be done, as “differences in pay, education, and job positions remain” (ibid: 56).

Salomon also refers to regulatory authorities, where the rules are being executed. Here, **quotas**, based on ethnic minority, race or gender are ought to be followed. That includes gender, ethnicities or religions. Linked to this fact is the process of placing obligations on broadcasters, which is usually conducted via licensing. This process engages other purposes of regulations, as democratic, economic, cultural and consumer protection causes (Salomon, 2008: 16).

An example for regulation in all these three areas, democratic, cultural and economic, and one of the most serious issues in terms of regulation is **hate speech** based on race, ethnicity, tribal origin, religion, sex/gender or nationality. Irresponsible broadcasting can have an enormous impact on these groups, especially women (Salomon, 2008: 48). Access to the public discourse and women’s right to have a say in the general public are reasons why hate speech can be located in the area of democracy.

Concerning cultural purposes of media regulation, hate speech can have a great impact on the way women are viewed and treated in society. If women are regular subjects of hate speech and targets of degrading comments, this becomes ‘normal’ and is integrated into day to day communication and vocabulary.

Lastly, hate speech is also a matter of economy. Generally speaking, women working in the media have to deal with hateful comments a lot more frequently than men. This can affect their career performance and the way they work in general. Some even feel the need to abandon their job all together, which further widens the pay gap and makes women even less independent.

## **II. The implementation of audiovisual media regulation and the role of regulators in a gendered perspective**

### **1. Policy objectives of gender-sensitive media regulation**

As previously mentioned, gender-sensitive media regulations have different purposes. The general aim of gender sensitive media regulations is to promote and establish gender equality in media outlets as well as in the media organisations with regards to a gender balanced staff in order to fight discrimination against women. (European Parliament, 2018: 7) Such media regulations can be applied in different dimensions. They are implemented either internationally (UN/EU), nationally (proposed by governmental bodies or NGOs) or simply within a specific media organisation (media professionals). These can be either proposed as obligatory state-wide legislations or voluntary guidelines in form of self-regulations, which means that the media regulates itself and is independent from governmental control. Self-regulations are designed to uphold the quality of media in forms of ethics codes, press and advertisement councils like the Presserat or the Werberat in Austria which offer complaints commissions. However, self-regulation always means: it's voluntary and the media organisations are free to decide whether to join or not.

These regulations focus in general on increasing women's access to roles enhancing their intellectual skills and competences, giving women voice in the media products that are more relevant in shaping public opinion, promoting participation of women in the media production process at any level and access of women to decision-making in the media sector, and of course on redressing gender imbalances. (European Institute for Gender Equality, 2014: 2) Examples are the Voluntary Code of Ethics and similar attempts in forms of acts in France and Belgium. (ibid: 2)

The UN plays a vital role in the fight for gender equality. Article 1 of the UN Charta states that their purpose is to „to achieve international co-operation in solving international problems (...) and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.” (Charter of the United Nations: Article 1)

One of the most important guidelines on gender equality is the Beijing Platform for Action for Equality, Development and Peace (BPfA) that resulted from the Fourth World Conference on Women, held in Beijing in 1995. It articulates several strategic objectives and actions for gender equality to be followed by governments, NGOs and media professions. This Platform means primarily to promote the importance of a balanced and non-stereotyped portrayal of

women in the media as well as increase women's participation in and access to expression and decision-making in and through the media and new communication technologies. (BPfA, 2014: 149)

The European Parliament set the focus of current policies on various issues in the media industry such as the gender pay gap, gender-based discrimination at work but also new issues emerging in the digital sphere such as gender inequality on digital media platforms (European Parliament, 2018: 10) All European Union Member States have signed and ratified, or acceded to, the United Nations Convention on the Elimination of Discrimination Against Women (CEDAW). Furthermore, all EU Member States have ratified the Beijing Platform for Action for Equality, Development and Peace (BPfA) (ibid: 11)

Still, apart from the EU-wide aim to tackle gender inequality in the media with the BPfA, research shows that most Member States have no legislation focused solely on gender parity. Most States rely on non-legally-binding industry self-regulation and codes of conduct. EU Member States' public broadcasters and state-sponsored media companies are often subject to rules about gender equality in governance and production but commercial companies are free to self-regulate. (European Parliament, 2018: 34)

### **1.1. Regulations in Austria**

Austria, as an EU-Member State, states the equality of both genders in its Federal Constitutional Law (Article 7 (2)). Still, it does not suggest any explicit gender-specific regulations regarding media (Austrian Federal Constitutional Law, 2021: 8). Regarding these questions, Austria seems to rely on self-regulation. The national public broadcaster, ORF, has its own law and a strong system of self-regulation as well. The presumably main codex for the press in general is provided by the Presserat Austria issuing voluntary reporting guidelines to the press, which includes aspects to reporting on women, but no guidelines or regulations regarding organizational questions: "Every discrimination based on age, disability, gender or based on ethical, national, religious, sexual, ideological or other reasons is forbidden" (Österreichischer Presserat, 2019: 3). For advertising, the Werberat, Austria's advertising council, provides an ethic codex with specific rules on gender discrimination including rules regarding sexist advertisements, which prohibits advertising "from directly or indirectly discriminating against persons or promoting discrimination, in particular for reasons of gender [etc.]" (Austrian Advertising Council, 2012: 3). Both organisations can impose only limited sanctions for transgressions of their codes.

### **1.1.1. ORF law part 5a: Equality between women and men**

The ORF dedicates part 5a of the ORF law to gender equality. It focuses in first place on equal opportunities when it comes to representation of both genders in “total number of permanent employees and functions as well as existing unfavourable treatment of women in relation to employment” (ORF Act: 64).

Secondly, they try to reach those goals with a quota of 45 %: “women shall be deemed underrepresented if the proportion of women in the total number of permanent employees, including leased employees, of the Foundation is less than 45 per cent” (ibid: 64). This quota concerns relevant qualification grade, pay grade or functional grade as well as other positions or functions which require specific qualifications, not classified in grades (§ 30a., ibid: 64). Further, the part includes an equal opportunities plan (§ 30b.) focusing mainly on the proportion and unfavourable treatment of women, providing training (§ 30 e.) for the technical professions in ORF to raise awareness and to improve a general approach to equal opportunities and encourages both men and women to be able to reconcile work and private life. It shall be adopted by the Director General and adjusted to current developments every two years. The part also provides standards regarding preference in hiring (§ 30c.) including the gender equal addressing of advertisements of jobs and functions (§ 30g.) and promotions (§ 30d., ibid: 64ff).

### **1.1.2 private media acts**

Every other media which is not regulated by the ORF-law is regulated by the Private Radio Act (PrR-G), the Private Television Act (PrTV-G) or the Audiovisual Media Services Act (AMD-G). When it comes to gender and addressing gender equality there is no law comparable to the ORF law part 5a in any of the private media acts. All three acts only address gender regarding creating hate speech based on gender (or religion, race, nationality) in the content (§ 16 (4) PrR-G, § 31 (2) PrTV-G, § 30 (2) AMD-G) and in advertising and teleshopping (§ 37 2. PrTV-G, § 31 (3) 2. and § 54d. (1) 2. AMD-G). There are no guidelines or regulations regarding organizational questions.

## **2. media regulatory authorities: the role of regulators: Examples in Europe (ERGA, EPRA)**

With regard to the information in the previous chapter, this report will now further specify on the media regulators in Austria. This chapter focuses on the general functions of each media

regulator and its purpose. Most importantly, the gender equality issues will be discussed further on in the chapter.

## **2.1. Media Regulators in Austria**

In Austria, there are three main media regulators:

1. Telekom Control Kommission (TKK)
2. The Communications Authority Austria (KommAustria)
3. The Federal Communications Senate (BKS)

### **2.1.1 Telekom Control Kommission (TKK)**

The TKK was established by the Telecommunications act 1997, which also lays down its tasks. The TKK has three members, who are independent and may not be bound by any forms of instructions. The chairperson of the TKK is a judge. All members are appointed by the Federal Government for a five years term. The decisions of the TKK can only be revised by the Administrative Court and the Constitutional Court. The Broadcasting and Telecommunications Regulations-GmbH (Rundfunk und Telekom Regulierungs-GmbH, RTR) supports the TKK (as well as the KommAustria), provides office structure and prepares the decisions. The TKK is the independent national regulatory authority having the competencies as provided in the EU regulatory framework for electronic communications networks and services. (EMR, 2003)

### **2.1.2 The Communications Authority Austria (KommAustria)**

KommAustria, is the regulatory authority for electronic audio media and electronic audiovisual media in Austria. The members of KommAustria are independent and not bound by instructions from any other authority.

Austria's Federal Chancellor does not have the power to give instructions to KommAustria. However, the Federal Chancellor is authorized to collect and request important information on all matters handled by KommAustria.

Appeals against KommAustria decisions can be submitted to the Federal Administrative Court (BVwG). Further appeals against BVwG decisions may be submitted to the Austrian Administrative Court (VwGH) and the Austrian Constitutional Court (VfGH). (EMR, 2003)

### **2.1.3 The Federal Communications Senate (BKS)**

The BKS has five members, three of them are judges. All members may not be subject to directives. The members are nominated by the Federal Government and elect one of the judges as their chairperson. The BKS controls the decisions of the KommAustria. It is the authority of ultimate resort in broadcasting matters. The BKS supervises the ORF in content-related matters. Its independence is granted by Constitutional Law. The BKS is an authority with powers equivalent to a court. Its decisions can only be revised by the Administrative Court and the Constitutional Court. (EMR, 2003)

## **2.2 Gender equality within KommAustria and RTR**

This subchapter will specify on the gender topics within KommAustria and their member, but especially RTR.

### **2.2.1. KommAustria**

KommAustria consists of the following members:

- Mag. Michael Ogris (Chairman)
- Dr. Susanne Lackner (Deputy Chairwoman)
- Dr. Martina Hohensinn
- Mag. Thomas Petz, LL.M (Berkeley)
- Dr. Katharina Urbanek

(Die KommAustria | RTR, 2020)

After examining the members of KommAustria, we can clearly see that it is very gender-balanced – meaning that they have both male and female members. In this case, the female members even outweigh the male members.

### **2.2.2 RTR**

The Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) is entirely owned by the Republic of Austria. RTR's main obligation is to promote competition in the broadcasting, telecommunications, and postal markets. They also achieve the goals set out in the KommAustria Act and the Telecommunications Act.

RTR's activities on behalf of the PCK in particular include postal service points, providers' terms of business, regulation of competition and legal supervision. (Die Weisungszusammenhänge | RTR, 2020)

In total, RTR employed 55 women and 59 men, which corresponds to a proportion of women of 48%. Of the 55 women, 30 (55%) worked part-time according to various models, and of the 59 men 6 (10%).

In the Telecom department, the proportion of women was 45%, in the Media department 47%, in the service area 58%. The proportion of part-time employees was included in the media department 34%, in the telecom department 28% and in the service area 38%.

As of September 30, 2019, RTR employed more men than women, a reflection on different hierarchical levels shows that management functions were all occupied by male employees with just one exception – seven male department heads, six male team leaders and only one female team leader. The *Gleichstellungsplan* from RTR contains information saying that all RTR assistants were female. The proportion of male managers have thus increased further since the 2017 Equal Opportunities Plan. During the observation period, no management positions were offered (*Gleichstellungsplan*, 2020)

The reason as to why this is a gender matter, is because most women are obliged to work part-time due to their personal and family responsibilities – that is their main reason for their reduced hours. Many researchers have claimed that part-time work limits workers' development opportunities. Often, part time workers are seen by others as less dedicated and less worthy of career advancement. Part-time workers are seen to have less time for development and mentoring and therefore they are more likely to miss out on high-profile tasks and critical obligations, all of which are vital to career development.

Evidence for such reduced career advancement or personal growth in part-time work mainly hinders from in-depth interviews with women who work part-time, who report reduced advancement opportunities and who believe that their job status puts their career on hold. Considering this line of literature, one would conclude that part-time work has negative effects on organizational career growth. (Schaveling, van Osch, 2020)

However, RTR is committed to equality between women and men in all matters. It is a concern of RTR, to support the independence and self-preservation of women. The goal set in the 2017 Equal Opportunities Plan was to increase the average weekly working hours of female part-time employees as of December 31, 2018 to 25 hours. A conducted survey in 2017 showed that many part-time workers could not increase their hours due to care obligations. The RTR as an employer would like to contribute through optimal framework conditions that the part-time workers can increase the weekly working hours. (*Gleichstellungsplan*, 2020)

RTR could try to improve this by supporting work-life balance, like for example by providing accessible, affordable and high-quality services for care of dependents at the workplace. Also,

providing incentives for flexible working arrangements and promotion of part-time work to be shared equally between women and men.

Furthermore, strengthen women's presence in entrepreneurship through new role models and try to better their data gathering by improving the quality and quantity of sex-disaggregated data and support the implementation of surveys and studies to further explore the cultural factors influencing women and men at RTR. (European Institute for Gender Equality, 2014)

## **2.3 Examples (ERGA, EPRA)**

After taking a look at the media regulators in Austria, this subchapter will specify more on the European context. Explaining the position of Austria in the European regulator groups: ERGA and EPRA. Further, focusing on each European regulator group and their functions combined with their objectives.

The European regulators group for audiovisual media services, ERGA, and the European platform of regulatory authorities, EPRA, are both European networks for audiovisual media regulators with a common interest. ERGA and EPRA have expressed their intentions to further the cooperation. Both platforms aim to coordinate their activities to achieve synergies and to avoid duplication. (Letter of Intent Cooperation ERGA | EPRA ,2017)

### **2.3.1 The ERGA- European Regulators Group for Audiovisual Media Services**

ERGA brings together heads of national independent regulatory bodies in the field of audiovisual services, to advise the Commission on the implementation of the EU's Audiovisual Media Services Directive (AVMSD).

On 3 February 2014, the European Commission adopted a Decision on establishing the ERGA and setting the objectives for the Group:

- to advise and assist the Commission in its work, to ensure a consistent implementation of the AVMSD as well as in any other matters related to audiovisual media services within the Commission's competence.
- to facilitate cooperation between the regulatory bodies in the EU, as provided for in the directive regulating audiovisual media services.
- to allow for an exchange of experience and good practices.

(European Regulators Group for Audiovisual Media Services, 2020)

The audiovisual industry is becoming increasingly sensitive to gender diversity. The purpose of the ERGA's Working Group on Gender Diversity was to enhance regulators' and stakeholders' awareness of initiatives across the EU that are combating discrimination and are actively promoting equality in the audiovisual media industry.

The report issues recommendations emerging from the analysis of existing practices, such as: Encouraging public authorities to set specific targets in audiovisual legislation in terms of gender equality and

- a) to implement data gathering statistics and monitoring mechanisms related to gender balance
- b) to allocate funding to gender diversity studies in screen industries sectors.

Encouraging content providers and media service providers to consider gender balance during all stages of writing, development and production.

Encouraging the advertising industry to develop charters to promote un-stereotyped advertising.

Encouraging audiovisual media providers to adopt specific targets related to gender diverse representation and to develop gender-related statistics in human resources.

Encouraging funding bodies to:

- a) develop financial incentives to enable the creation of diverse projects while ensuring diversity in selection panels,
- b) develop mandatory courses on unconscious bias for members of panels, producers and commissioners to enable a more diverse and open analysis of projects,
- c) implement mandatory declarations as regards gender balance when producers are applying for public funds to support any film production project,
- d) monitor key content creators by gender in order to ensure gender parity and diversity.

## **2.4. Study on industry-led good practices related to gender diversity in the European audio-visual sector**

The report sets out the conclusions of the ERGA working group on gender diversity. It is articulated around the following two objectives: first, to produce a report on existing industry-led practices to ensure a fair representation of genders both on and off-screen, and, second, to develop non legally binding recommendations on good practices, including common

indicators of gender equality allowing for the analysis of the efficiency of the reported initiatives.

The ERGA subgroup on gender diversity was established to increase knowledge of National Regulatory Authorities practices implementing AVSMD provisions aimed to fight gender discrimination and measures taken to promote gender diversity in the audio-visual industry. The goal was to develop a framework allowing to foster implementation of good industry-led practices and initiatives as well as to gather indicators on gender equality. The first step in achieving these goals was the dissemination of a questionnaire to ERGA members.

17 National Regulatory Authorities from the following countries answered the questionnaire: France, Sweden, Greece, Italy, Cyprus, Slovenia, the Netherlands, Hungary, Spain, Slovakia, Denmark, Croatia, United Kingdom, Poland, Ireland, Portugal, French speaking Belgium. (ERGA SG 4 - Gender diversity Report with recommendations)

Austria was not on this list, which can probably mean that RTR did not provide Data to ERGA. The answer as to why they did not participate in best practices will be discussed at the end of this report.

### **2.4.1. EPRA – European platform of regulatory authorities**

This was set up in 1995 in response to the need for increased cooperation between European regulatory authorities. The membership of EPRA is open to regulatory authorities of non-EU countries. With its 25 years of experience and a strong network of working-level contacts, EPRA is the oldest and largest network of broadcasting regulators and is a perfect setting for the exchange of information, cases and best practices between broadcasting regulators in Europe.

- EPRA holds two meetings a year at the invitation of a regulatory authority.
- The EPRA Board Members are elected as individuals, they are nominees and are performing their duties on a philanthropic basis.
- The Secretariat is exclusively financed by members and hosted by the European Audiovisual Observatory, to ensure stability and independence, and to make use of natural synergies with the host and minimize administrative burdens and costs.
- The EPRA Board Association, a non-profit association under Alsatian law, is in charge of administering and legally representing the EPRA in its daily business. The Association is registered at the Association Registry of the Court of First Instance in Strasbourg. (European platform of regulatory authorities, 2020)

## **2.4.2. A better representation of society – on-screen and off-screen**

The issue of improving representation of gender in the media has been an ongoing discussion and debate for a number of years and there appears to be recognition and understanding within the broadcasting industry that diversity is important, both on-screen and off-screen. EPRA members decided to include in EPRA's Work Program for 2018 a biannual group exploring practical ways to encourage a better representation of society – on-screen and off-screen – by addressing the issues through the specific angles of gender representation and social, cultural and ethnic minorities.

The purpose of the research is to provide an overview of the different roles and approaches that national regulatory authorities have adopted in relation to promoting greater gender representation and portrayal both on and off screen and raising some points for regulators to consider. This project is based on the answers to a questionnaire circulated by the EPRA Secretariat. In total, 31 Countries responded to this questionnaire.

Amongst respondents to the questionnaire and amongst participants in the EPRA Working Group, there was general agreement on the need for more complete and comprehensive data. There is potential for a Europe-wide initiative to coordinate the production and publication of comprehensive, consistent and streamlined data that would deliver a more complete picture of both the challenges and progress in this area and allow for a comparative assessment of the position across jurisdictions.

Subject to the willingness of regulators to collaborate further, there is also potential for greater coordination and co-operation in the activities that regulators undertake and for a greater sharing in the experience gained and lessons learned. Guidance and support on the development of good regulatory practice might also be helpful in bringing on board regulatory bodies that have not been active in this field to date. (Achieving greater diversity in broadcasting - special focus on gender; Benefits and best practice approaches, 2018)

Once again Austria did not participate in the project like this. The answer as to why they did not participate in best practices will be discussed at the end of this report.

### **III. How does the Austrian and Polish media regulatory practice fit in with European best practices?**

#### **A comparison.**

Poland as well as Austria is a European country located in Central Europe. Compare to Austria, Poland is an ex-communist country and was through some changes the last of couple of years. Yet one of the reasons why is decided to compare it with Austria is because of how the both countries are related to each other. Although with some differences such as language, history and ethnic background, they both have similarities and good relation to each other nowadays.

Since the end of communism at 1989 in Poland, Austria has been a supporter of Poland's integration to the Western world. Both two nations enjoy significant progress, as Poland joined NATO and European Union which Austria is a permanent member. Recently, there has been stronger economic and democratic cooperations between two nations, such as mutual civil law and document (Balicki, 1974).

Not only that, but another thing that is common between them is that both countries tempt to be highly religious. Though varied religious communities exist in Poland, most Poles adhere to Christianity. Yet the religion takes a huge part of Poland's culture and perception of women. Although the country has a long history of feminist activism, Poland stays strongly influenced by the conservative social views of the Catholic Church. In Austria, however, the legal position of women is improved since the middle of the 1970s. With regard to women's rights, the priority in Austria is based on the equal treatment of both genders, rather than having equal rights only.

There are also some differences in the Media regulation of both countries. To compare more precisely the Media regulation of Austria and Poland, it was easier and more understandable to use different comparison features like- media regulation, legal framework , public broadcaster, analyses of the legal environment and how they both fit in Europa and it's practices such as EPRA and ERGA.

## **1. Austria**

### **1.1. Media regulation**

The Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) is wholly owned by the Republic of Austria. RTR's core mandate is to promote competition in the broadcasting, telecommunications and postal markets as well as to achieve the goals set out in the KommAustria Act and the Telecommunications Act. With the funds under its

administration, RTR supports projects in the broadcasting and media sectors. The two specialist divisions within RTR also offer alternative dispute resolution services, which can also be provided via its officially recognised consumer arbitration centres. In its role as the administrative agency of the TKK, RTR is active in matters including the regulation of competition, spectrum awards, approving providers' terms of business, net neutrality and the electronic signature system. The remit of the Telecommunications Division also includes the management of communications parameters (such as the numbering scheme) and the Single Information Point for Infrastructure Data (ZIS). Also, RTR assists the Austrian Communications Authority (KommAustria) in its role as the supervisory authority of the Austrian Broadcasting Corporation (ORF) and its subsidiaries, and in administrative procedures involving broadcasting and audiovisual media regulation. RTR also fulfils a number of mandates that include advertising monitoring, administration of the Act on Transparency in Media Cooperation and Funding (MedKF-TG) and managing broadcasting frequencies. When it comes to Gender equality it's seems to appear in the language where any personal designations are used in the masculine form on RTR's web site, those designations refer equally to women and men. (Die KommAustria | RTR, 2020)

In the reorganisation of Austria's broadcasting authorities in early 2001, the Austrian Communications Authority (KommAustria) was set up as a "one-stop shop" for all official broadcasting matters in the first instance. As a result, KommAustria assumed the responsibilities of the former private broadcasting authority in the fields of terrestrial radio broadcasting, cable and satellite broadcasting, as well as the broadcasting-related duties of the telecommunications authorities. In addition, the Private Television Act (PrTV-G) 2001 – now superseded by the Audiovisual Media Services Act (AMD-G) – put KommAustria in charge of introducing private terrestrial television and digital broadcasting. Since October 2010, the authority has also been responsible for the legal supervision of audiovisual media services in Austria. On the basis of amendments to the ORF Act and KommAustria Act, KommAustria also assumed responsibility for legal supervision of the Austrian Broadcasting Corporation (ORF) and its subsidiaries in 2010. RTR is responsible for providing KommAustria with operational support. (Media | RTR, 2020)

## **1.2. Legal framework**

The legal framework of the Austrian media industry underwent substantial changes in the year 2001, when private terrestrial radio was provided with a new legal basis in the Private Radio Act (PrR-G), and private terrestrial television was made possible by the Private Television Act (PrTV-G), which also included the provisions of the Cable and Satellite Broadcasting Act. The

Austrian Communications Authority (KommAustria) was also created at that time. Moreover, the Austrian Broadcasting Corporation (ORF) was also subjected to new legal provisions under the ORF Act (ORF-G).

In addition to a large number of laws and ordinances which define the legal and technical framework for KommAustria's activities, international treaties as well as legal acts of the EU also have an influence on broadcasting regulation in Austria.

The most recent substantial changes in the media field took place in October 2010, when KommAustria was provided with a new basis in constitutional law, transforming it from a monocratic, subordinate authority into an independent panel authority which is not subject to instructions from any other authority. At the same time, all of Austria's broadcasting laws were amended: In particular, the ORF Act has equipped the regulatory authority with far-reaching supervisory powers over ORF and its subsidiaries, while the Audiovisual Media Services Act (formerly the Private Television Act) implements the EU's Audiovisual Media Services Directive (AVMSD) and expands the authority's substantive control over broadcasting to include audiovisual media services on the Internet. Finally, additional considerations regarding the digitisation of television and radio broadcasting were also taken into account in the Austrian Audiovisual Media Services Act and Private Radio Act. (Broadcasting and media law |RTR, 2020)

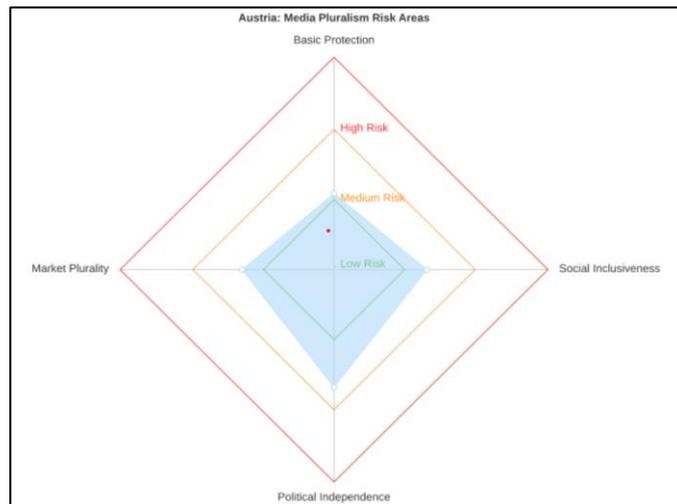
### **1.3. Public broadcasters**

There are different kinds of broadcasters in Austria, but the biggest one is The Austrian Broadcasting Corporation (ORF). The ORF is Austria's largest media provider, operating four national television and twelve radio channels. They also have a comprehensive range of websites.

### **1.4. Analyses of the legal environment**

To precisely analyse the legal environment in Austria, it was useful to use the data of the European's Project CMPF and its results. In 2016 CMPF (Centre for Media Pluralism and Media Freedom) did a research about different countries in Europe (including Austria) to compare and understand if the countries' media regulation could lead up to risk of media pluralism. The results from the data collection were at medium risk. The Media authorities in Austria work independently and effectively. PSM journalism is strong, but – equally important – there is a rich and varied supply of media services, including a lively community media sector. Broad access to media by regional and local communities supports the idea of a federalist state. Based on these viable foundations, it is up to all stakeholders to remedy the shortcomings and prepare not only for tomorrow's media infrastructure development, but also,

most importantly, for the challenges of a democratic and diverse society (Seethaler/ Beaufort/ Dopper, 2016, p. 3).



*Illustration 1: Austria Media Pluralism Risk Areas (cf. Seethaler/Beaufort/Dopper)*

The indicator Access to media for women is also ranked as being at medium risk (50%). Generally, the Austrian Equal Rights Act does provide a framework to ensure equal rights in employment matters. It also provides a number of sanctions as well as mechanisms to enforce the law; however, a complaint must be filed before action is taken. Moreover, there are no sufficient legal requirements in place for setting up monitoring bodies. In the area of media law, only the ORF Act provides a more explicit framework for the equal rights of employees and for monitoring practices such as a gender mainstreaming plan. The ORF Public Value Report from 2015/16 shows that women make up 43.2% of all personnel. Although PSM law provides a legal threshold for the desired share of women working at the PSM (45%), this rule does not apply to the management board. Regarding the programming content, the ORF Act rather vaguely demands a policy regarding equal rights of several groups such as women, disabled persons, recognised religious groups, etc. According to the 2015 Annual Report of the Global Media Monitoring Project, women account for 21% of all people who appear in news stories as subjects or sources from traditional media (print, radio and television) and for 16% online. An Austrian study using a similar methodology and based on a representative sample of more than 20,000 media reports in 2014 reveals even lower percentages for traditional media (14.4%) and slightly higher percentages for online media (17.9%; c.f. Seethaler 2015).

## **1.5. How does it fit in Europe and its practices EPRA and ERGA?**

The Austrian constitutional framework is composed of a range of domestic and international instruments. The core constitutional act from 1920 is detailed, as are amendments regarding EU and international law. However, the 1867 State Basic Law provides only a generic bill of rights, and therefore the ECHR is the main, constitutionalised source of fundamental rights protection. The Constitutional Court reads the relevant provisions from the different instruments together, to provide a comprehensive protection. Earlier, the constitutional culture had been characterised as formalistic; this changed in the 1980s under the influence of the German Constitutional Court and the ECtHR towards a strict approach to the rule of law and rights. Constitutional review is marked by the principles of legality and reasonability. It is notable that several cases at the heart of the present research project have originated from Austrian courts, such as Data Retention (Seitlinger), Heinrich, Schmidberger and Weidacher. Regarding the European Arrest Warrant, the Austrian courts stand out with a rights-protective approach. The challenge to the ESM Treaty led to constitutional amendments that ensure parliamentary authorisation for increased expenditure. The report outlines areas where EU law has improved fundamental rights protection as well as those where it has been weakened. The report makes a case for retaining the pluralism and diversity of constitutional cultures, finding that it is necessary to see the incommensurability of the various legal traditions and the impracticability of attempting to unify all traditions in one common constitutional tradition (Lachmayer, 2019).

However, as it was mentioned before in the text, Austria is not a current member of European Platform of Regulatory Authorities (EPRA), which purpose is to informal discussion and exchange of views between regulatory authorities in the field of media in Europe. One of the speculations why Austria decided to not participate in the project is because its regulatory bodies (RTR) do not have the desire to cooperate and exchange data on this topic, but also the fear that they do not have representative data that they can 'share with others and not share it's standards for best practices.

As it's also written before in the text, ERGA (European Regulators Group for Audiovisual Media Services) did a report about the Gender Diversity in the European Audiovisual Sector and also a questionnaire to ERGA members. Yet Austria didn't take place in it. The reason why the country did not participate in best practices will be discussed at the end of this report. Still, the self-regulation in Austria is focusing in general on increasing women's access and giving them voice in media productions.

## 1.6. The Austrian Press Council: code of ethics and guidelines

The Code of Honor for the Austrian Press contains rules and principles for journalistic work to ensure journalistic professional ethics. "The Austrian Press Council is a platform for all those who are committed to the truthful and correct use of press freedom and are prepared to have it examined by the Press Council in specific cases. Permanent voluntary self-regulation is a suitable means of meeting the obligations of the press."

The following 12 points are cited for ethically appropriate reporting:

1. **Freedom** (in reporting and commentary, in words and images within the limits formulated in the Code of Ethics).
2. **Exactitude** (certainty and correctness, correction if wrong statement of facts was published)
3. **Distinctiveness** (of facts, foreign opinions and comments must be clear to the readership, photomontages must be recognizable as such)
4. **Influence** (free from influence of outsiders on the content or form of an editorial contribution)
5. **Protection of personality** (preservation of the honor of the person)
6. **Privacy** (protection of the privacy of every person)
7. **Protection against defamation of character and discrimination** (on the grounds of age, disability, gender, as well as on ethnic, national, religious, sexual, ideological or other grounds)
8. **Procurement of materials** (correct procurement of documents and images, do not use unfair methods)
9. **Special editorial areas** (protection against one-sided reporting in special sectors, e.g. reports on tourism, automobiles, and gastronomy also cite environmental, traffic, and energy policy contexts)
10. **Public interest** (balancing the interest of the public in publication with the interest of individuals worthy of protection, e.g. public figures)
11. **Interest of media employees** (private interests of media employees must not have any influence on editorial content)
12. **Suicide reporting** (in the case of reporting on self-mutilations or suicides, careful consideration must be given to whether there is an overriding public interest and refrain from excessive reporting)

## **2. Poland**

### **2.1. Media Regulation**

In Poland, the main function of the Council is to protect the freedom of speech and the independence of broadcasters, interests of viewers and listeners and open and pluralistic character of radio and television. Furthermore, statutory mission of the National Broadcasting Council is to exercise control over the advertising broadcasters, including the control of issued advertisements, teleshopping and sponsored programs for compliance with the Broadcasting Act, the provisions of concessions and other legislation related to the sphere of advertising and sponsorship. Another main function of the council is to organize and initiate international co-operation in the field of radio and television broadcasting, including cooperation with regulatory bodies of Member States of the European Union competent for media services (Klimkiewicz, 2017).

### **2.2. Legal framework**

The Polish constitution of 1997 guarantees freedom of the press and prohibits both preventive censorship and licensing requirements for the press. The media sector is regulated by the 1984 Polish Press Law and the 1992 Broadcasting Act, which have both been amended since then. The Broadcasting Act defines the rules for appointing the members of the National Broadcasting Council (Krajowa Rada Radiofonii i Telewizji, KRRRiT) and its powers. According to the Constitution, the KRRiT's role is to "safeguard the freedom of speech, the right to information, and the public interest in radio and television broadcasting".

Even if its members are not allowed to belong to a political party or perform public activities, the KRRiT in practice has been politicized, with members somehow affiliated with political parties. Also the governments' reform attempts of the KRRiT have been largely politically driven. These attempts have been strengthened by the right-wing Law and Justice Party (PiS) government which, after winning the parliamentary elections in October 2015, partly replaced the management at the public television and radio broadcasters. Polish print media and radio outlets are mainly private and diversified in terms of ownership, however foreign owners control around three-quarters of the Polish media market. The main domestic competitor is Agora, which owns Gazeta Wyborcza and a number of magazines, radio stations, internet platforms and a publishing house. (Chapman, 2017)

### **2.3. Public broadcasters**

Telewizja Polska S.A.(TVP S.A) is the only public TV broadcaster in Poland. It is the largest Polish television network, with 13 national and 16 regional channels. In addition to the public broadcaster, there are more than 200 commercial media outlets.

### **2.4. Analyses of the legal environment**

As it by Austria it was also easier here to analyse the legal environment in Poland, using the data from the results of the European's Project CMPF. When it comes to gender equality and the role of the gender by the polish media regulation in year 2016 the CMPF (Centre for Media Pluralism and Media Freedom) did a report also about Poland and researched if the country's media regulations could lead up to risk of Polish media environment is composed of strong and concentrated TV networks (including both private and public), which dominate news provision, declining, but still influential in opinion-formation, newspaper groups, and growing web portals.[5] A volatile and swiftly-changing political scene in Poland has stabilized since more than last 10 years. Left-oriented and social-democratic movements have lost their mass appeal, and the political spectrum is dominated by two actors – the Civic Platform (centre-right, liberal party) and Law and Justice (conservative right-wing party). The victory of Law and Justice Party in the parliamentary election in October 2015 was marked by a historical precedent. For the first time since 1989, the single party has formed a majority government, in addition supported by the President sharing the same political background. Media policy and regulatory changes introduced by the government and parliament were part of a set of 25 main reforms in various fields of social and economic life including family policy, public finance, national security, justice, media, under the formula of a “good change” (dobra zmiana). Media policy changes were based on the two broadcasting law amendments affecting in principle appointment and operation of PSM and a leading national press agency (PAP), as well as competences of constitutionally recognized media authority – National Broadcasting Council (Krajowa Rada Radiofonii i Telewizji – KRRiT). These regulatory developments sparked criticism of various international and national organisations, including CoE, OSCE, EBU. The European Commission took an unprecedented move to launch an investigation into the rule of law in Poland. Frans Timmermans, First Vice-President of the European Commission, addressing two Polish ministers (of Foreign Affairs and Justice), referred explicitly to freedom and pluralism of the media as one of the common values on which Union is founded, adding that “Protocol 29 to the Treaties equally recognizes that the system of public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism.”[7]In 2016, press freedom in Poland was evaluated more critically by both Freedom House (Poland received the highest score since

2005 – 28) as well as Reporters Without Borders (Poland moved to the category of ‘fairly good’ press freedom, placing itself on the 47th position in the ranking, with score 23.89). Media pluralism.

However, the general conditions of media pluralism in Poland demonstrate a medium risk level in all measured areas. The area of basic protection detects medium risk near low level, while the scores for market plurality and political independence reach the edge of the high-risk level. Ownership media concentration (both horizontal and cross-media) present traditionally one of the largest threats to diversity in market plurality area, and these structural conditions have endured for a relatively long period of time in Poland. Another problematic issue includes independence of PSM governance and funding (83%), that reflects 2015 and 2016 regulatory changes resulting in control of PSM appointment procedures by the government first, and next by a newly created PSM regulatory body nominated by the parliamentary majority and president. This issue, among others (criminalization of defamation, surveillance, invigilation of journalists and 2016 amendment to the Police Act) contribute to medium risk near high level of the indicator measuring freedom of expression within the basic protection area (58%). Access to media for women presents the highest risk (81%) in the social inclusiveness area. Although women contribute to a significant portion of Polish journalists, they are underrepresented in PSM boards. They are also not protected by equality law measures that would specifically apply to employment of women in media organisations or offer comprehensive gender policy in PSM.

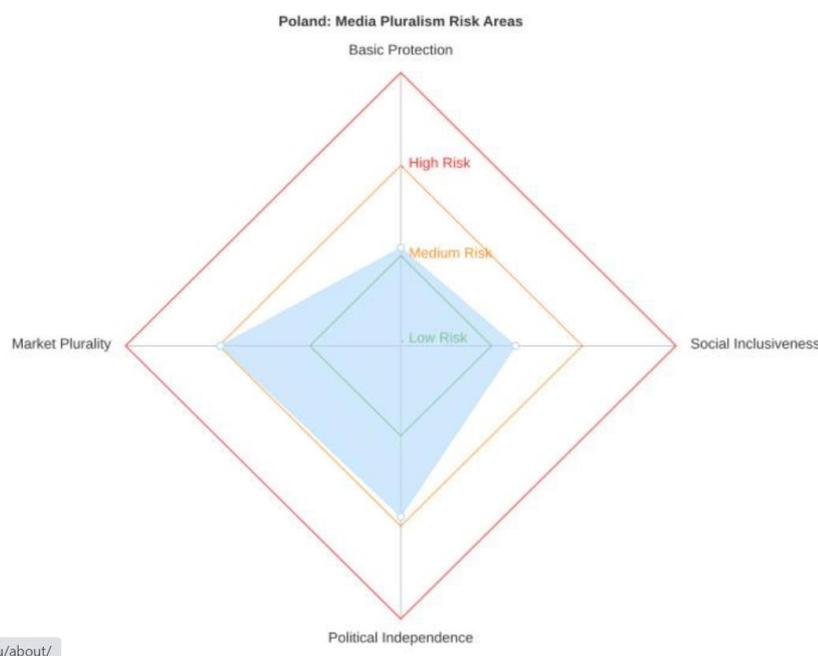


Illustration 2: Poland: Media Pluralism Risk Areas (cf. Klimkiewicz)

The indicator Access to media for women scores high risk (81%). In Poland, there are no specific legal measures that would refer to employment of women in media organizations, but general provisions apply that protect equal rights of women and men in employment, including constitutional provisions and the Labour Code. PSM have no comprehensive gender equality policy and the representation of women on PSM management boards is scarce (Klimkiewicz, 2016, p.3-5).

## **2.5. How does it fit in Europe and its practices EPRA and ERGA?**

However, the medium risk of pluralism, Europe has still some concerns about Poland's media regulation. In 2016 the Poland's conservative Law and Justice Party has caused considerable controversy in Europe. One of the most notable moves the new government has made so far is a new law designed to overhaul the country's state-run broadcasters and news agencies – widely seen as a step toward taking them fully under government control. Free speech advocates and European officials have balked at the new moves. European Union Commissioner Frans Timmermans expressed concern that they were backward step in Eastern Europe's advance toward democracy. (Adam,2016)

Compared to Austria, Poland is in fact a member of EPRA or the European Platform of Regulatory Authorities. The country is represented by the National Broadcasting Council-Krajowa Rada Radiofonii i Telewizji (KRRiT), which is the main Audio-visual Regulator in Poland. As it's written before one of the main aims of the project EPRA is to exchange information about common issues of national and European broadcasting regulation. What was interesting to read is one of EPRA's reports about gender equality and focusing on one genre in Europe. According to this report, the KRRiT in Poland commissioned a study into the portrayal of women in programmes about relationships and dating. They found that women were depicted as more family-oriented and more concerned about finding a relationship than men. The presentation of women's sexuality was also found to be very traditional, with far more judgement and discipline associated with their behaviour compared to the men who take part. Not only that, but also a research from Poland in 2014 showed that the lack of women experts perpetuates the stereotype that some fields of knowledge are more appropriately suited to men. The fields of science, technology and sport were identified as particularly dominated by men in this regard. (EPRA-GENDER-REPORT, 2018)

However, there is a motivating information about gender equality reported next year, in 2019. Poland is a current member of ERGA and unlike Austria, Poland did take part of the questionnaire in 2019 about the Gender Diversity in the European Audiovisual Sector. According to this report In Poland, Polish Female Filmmakers organization and Women in Film advocate and raise awareness on the lack of women in the industry and advance careers of

women working in screen industries to achieve parity and transform culture (ERGA SG 4 - Gender diversity Report with recommendations).

## IV. Findings from interviews

### 1. Findings based on the Interview with Susanne Lackner

Susanne Lackner has been working in the media sector for 25 years and has been employed by both RTL Germany and ORF during her career. She was also a member of the Commission for Audiovisual Media Policy. Thus, she has had a very comprehensive exposure to media regulation and media policy. Susanne Lackner has been working at the RTR since 2010. For four years she has also been Vice-Chairman of KommAustria.

As stated in the beginning of this research: The Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) is entirely owned by the Republic of Austria. RTR's main obligation is to promote competition in the broadcasting, telecommunications, and postal markets. They also achieve the goals set out in the KommAustria Act and the Telecommunications Act. RTR's main task is to preserve the diversity of the media. Diversity is promoted as far as possible.

At KommAustria she is responsible for on-demand services, i.e. social media services - if they fall under the definition of on-demand services in the directive and the law. Lackner also monitors advertising in this area. Above all, she is the chairwoman of the so-called Senate 2, the television senate, which deals with all regulatory issues in the field of television. She is also a member of Senate 3, which is the Senate for economic supervision. There, she is primarily responsible for competition issues. This senate is responsible for the economic supervision of ORF. As soon as the new laws come into force, RTR/ KommAustria will also be responsible for communications platforms and, as an individual member, that will be Susanne Lackner's job. And what Susanne Lackner also takes care of are the international activities, especially on behalf of ERGA.

Lackner has been involved with women's issues since she was 18 and notes that things have improved since then. Concerning Gendermainstreaming Susanne Lackner said: *Ich glaube einfach dass es keine sachliche Rechtfertigung für die Diskriminierung der Frau in irgendeinem Lebensbereich gibt. (...) Jede Benachteiligung bedeutet, dass man auf wertvolle Ressourcen verzichtet.*<sup>1</sup> And concerning challenges in that matter, Lackner mentioned this

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<sup>1</sup> I just think that is no factual justification for discrimination against women in any area of life. (...) any discrimination means giving up valuable resources.

insufficiently highlighted problem: the social discussions in any matter between men and women. It was always a problem in analogue form, and now it has become a problem on social networks as well. Furthermore she is of the opinion that problems in regard of Gendermainstreaming won't go away easily.

KommAustria is composed of a total of five members, three women and two men. In this case, the female members outweigh the male members.

There are no guidelines for KommAustria, which Lackner says is probably due to the small unit of members. She does mention that the lack of guidelines should not lead to a use of instruments that are not applied in practice. Therefore Media organisations are encouraged to adopt self-regulatory measures, internal codes of ethics and internal monitoring. Incentives, from KommAustria, are intended to create a good process of self-regulation.

KommAustria has been working with ERGA for four years now. ERGA brings together heads of national independent regulatory bodies in the field of audiovisual services, to advise the Commission on the implementation of the EU's Audiovisual Media Services Directive (AVMSD). The cooperation with ERGA takes place in groups and deals with three to four focus areas each year, of which gender diversity was one last year. There are also plenaries twice a year and meetings of the working groups about six times a year. The exchange of experience with the regulatory authorities of other European countries are the best resources that KommAustria receives. Lackner is convinced that the exchange of experiences brings a lot of benefits, because these resources are easily accessible and also because this compensates for weaknesses of the others. But concerning Gendermainstreaming there seems to be no best practice, but in the area of other regulatory fields, which are also made available to KommAustria. Discussions on various topics take place. Concerning the exchange of experiences Lackner stated that the Brexit also has an effect on the media regulation area, since the British have an excellent KNOW- HOW in all aspects.

In the year 2020, a memorandum of understanding was drafted with the purpose of formalizing and regulating collaboration among regulators. This memorandum provides an opportunity to help set up a common framework under which ERGA members could provide each other mutual assistance and exchange of information.

The memorandum was fully drafted by a female colleague, the deputy chair of the Irish Media Regulatory Authority. Both the collaboration and the female element are strengthening ERGA, in the eyes of Susanne Lackner.

There are EU-wide "Rules of Procedure", but most relevant are the Media Services Guidelines. Here, the handling of the protection of minors, which plays a major role in all countries, is discussed. Especially on video sharing platforms, the monitoring instruments for

the protection of minors are easy to circumvent, which makes dealing with this aspect more difficult. Also the guarantee of freedom of communication and speech is obligatory.

Lackner points out that there is no gender-specific formulation in all jurisprudence and emphasizes that this deficit would have to be solved in a dialogue with the Constitutional Court and the Administrative Court. But "Gender-neutral or gender-inclusive language is more than a matter of political correctness. Language powerfully reflects and influences attitudes, behaviour and perceptions." (Papadimoulis,2018)

Although work is gradually being done on this, nevertheless, no developments can currently be expected regarding gender mainstreaming in Austria. Regarding developments Susanne Lackner also didn't mention any on ERGA level. Concerning ERGA, the following reasons are given: There is a multitude of new competences that regulators now have to deal with. In addition, there are new regulations in the area of video-sharing platforms and communication platforms. At RTR the protection of minors plays a very important role and, since they are now also responsible for video-sharing platforms, they'll have to intensify their efforts here as well. Furthermore, in the online sector, RTR is currently dealing with the Digital Services Act.

## **2. Findings based on the Interview with Corinne Schweizer: A digression into the Swiss media landscape**

Switzerland is a current member of European Platform of Regulatory Authorities (EPRA), which purpose is to informal discussion and exchange of views between regulatory authorities in the field of media in Europe. In the following, an interview with Dr. Corinne Schweizer ensures an insight into Swiss media regulation. Switzerland was chosen because of its linguistic ties to Austria as well as for the representation of another European country.

Dr. Corinne Schweizer is a Senior Research and Teaching Associate in the Department of Communication and Media Research at the University of Zurich. Her research focuses on media and communication policy, regulation, governance, and management, as well as the politics and mediated discourses surrounding it. Recently, she has also been discussing the perspective of feminism and gender (Schweizer, 2020).

Corinne Schweizer states that Gender Mainstreaming is a rather hard topic to approach in Switzerland due to lack of research and also public unconsciousness plays a role. She refers to the introduction of women's suffrage, which came 50 years later than in other countries. Generally speaking, Switzerland mainly (but not automatically) follows steps taken by the EU and other European countries. She emphasizes the impact the British Broadcasting Corporation (BBC) has on the public and states that she repeatedly notices its importance

through her research work on public broadcasting. With regard to the exchange of experience in the regulatory field, there is EPRA in Europe. And although Switzerland is not in the EU, it is very much involved. The Swiss media regulatory authority, Bundesamt für Kommunikation (BAKOM) also has its own international department.

Nevertheless, the lack of focus on Gender Mainstreaming is noticeable in the Swiss media. Women are underrepresented and there are few female editors-in-chief or editorial directors. Since the beginning of 2019, there is a provision in the license that the representations of the sexes are made equal. In June of the same year, there was a very large demonstration by women in Zurich. Since then, there seems to be more public attention to the issue. Recently, there is also a mention of masculine and feminine forms in official texts. Quote:

*„Also, ich persönlich finde es sehr wichtig, weil es mich überzeugt, dass das mit dem „Mitgemeint“ nicht funktioniert. Wenn Ungleichbehandlung oder eine Ungleichstellung in der Gesellschaft vorherrscht und man dann so tut als könnte man sich das im Kopf irgendwie wegdenken, das funktioniert meiner Meinung nach nicht.“<sup>2</sup>*

There are some startup projects and associations engaged in raising awareness internally on the topic of gender mainstreaming. For example, *Helfezia Rocks* for women working in the music industry or *Female Act* for actresses and female directors. Additionally, female journalists are also showing more commitment. For example, there is now an association called *Medienfrauen*.

As in other European countries, Swiss media regulation is on the one hand regulated by the state but is also left to self-regulation. Reference is made to gender equality laws. There is also the Swiss media regulatory authority BAKOM where the topic of gender mainstreaming does not seem to be on the agenda either. Priorities are set elsewhere. Corinne Schweizer is of the opinion that the authority alone cannot make any major changes, which is why it is important to start with politics and the laws.

Corinne Schweizer has the impression that Switzerland and Austria share similarities. Both countries are doing well financially, and the impression could be given that nothing more needs to be done. But speaking from a scientific way, more outdated patterns are noticeable. She believes that although Switzerland would like to be a role model, they are less advanced in gender mainstreaming compared to other European countries.

Nevertheless, it is important to take up and discuss this topic publicly. In general, it is more difficult to address the topic of gender mainstreaming in Switzerland, as there exists a huge

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<sup>2</sup> “So, I personally think it's very important because it convinces me that the "included" thing doesn't work. When inequality or an inequity is prevalent in society and then you pretend you can somehow make that go away in your head, I don't think that works.”

research gap. Therefore, it would be important to fund research on gender equality in the media in order to be able to conduct meaningful content analyses. In comparison to the past, many things have improved and young women and men in particular seem to be more sensitive in this regard, but it would be dangerous to say that everything has already been achieved. In many areas, we are still at the starting point.

## **V. Conclusion: mainstreaming gender in Austrian media regulation in the context of European best practices**

When it comes to audiovisual media regulation it is important to understand the reasons why regulation is necessary in the first place and what role gender plays in this. Media regulation

in general is a set of rules for the media which play an essential role in fulfilling social interest. There are social, political and technical reasons for media regulation, such as assigning broadcasting frequencies and evading interference between channels. Therefore these regulations make sure that the interests of the society are looked after. For further justification of media regulation, three areas can be allocated: democracy, culture and economy. For example, the segment democracy includes the execution of fundamental human rights, but also covers cases where these basic rights may be restricted through media regulation. A notable example for a gender issue in audiovisual media regulation is hate speech: it concerns all three areas and acts as a representation for many other topics in the debate between gender and audiovisual media regulation.

The focus of gender-sensitive media regulations lies mainly on the non-discriminatory and non-stereotyped portrayal of women as well as a gender balanced staff on all levels of employment. Looking at the information gathered above, it is clear that the goal of gender equality has not been achieved sufficiently in media regulations. Gender equality in Austrian media is mainly established through self-regulatory codes of conduct imposed by the Presse- or Werberat. The problem is that those regulations are not binding and voluntary, and that media organisations are not forced to sign such regulations.

Even though there are several approaches to address the importance of gender equality within a media organisation and the media's content, the research did not reveal any significant legally binding regulation met with sanctions if the guidelines are not followed in Austria. Most media organisations work with equality plans but those are mostly voluntary, thus not legally binding. A good example for well-established regulations concerning gender equality in the media is the ORF law, which could be adjusted and used as an orientation for a nationwide law in regard to achieving gender equality in Austria's media sector.

The media regulatory KommAustria has a very well gender-balanced team. The members of KommAustria are independent and not bound by instructions from any other authority. Considering RTR, they employ more men than women in higher positions. Meaning mostly men are in leadership roles. Concerning best practices, Austria did not participate, but they need to in the near future. After conducting an interview with Susanne Lackner, we came to the conclusion that when asked why Austria did not participate in best practices, she avoided concrete answers. The cooperation with ERGA actually takes place in groups and deals with three to four focus areas each year. Lackner said that the exchange of experiences brings a lot of benefits. Concerning Gendermainstreaming there seems to be no best practice This could lead to a final answer saying that Austria simply did not want to participate in best practice. Another reason could be that Austria was not aware of any best practices.

It is very important to send in current numbers and information concerning the regulatory bodies in Austria. If they are willing to participate next time, we will have better and more accurate information. Other countries can also learn from this.

The Council of Europe understands that, to guarantee the existence of a wide range of independent and autonomous media in the audio-visual media sector, it is essential to provide for its adequate regulation. A regulation framework must guarantee freedom of expression whilst at the same time ensuring a balance between this freedom and other legitimate rights and interests.

When both countries are compared with each other, it's clear to see that Poland has an indicative problem with its freedom of speech, that there is also only one public broadcaster and it's owned by the government. When it comes to gender equality women don't still have fully access to media, because there is not actual legal measure that would refer to employment of women in media's organizations.

Still the Council of Europe aims to develop cooperation between different regulatory authorities and participates in meetings of regional platforms and networks of cooperation such as the European platform of regulatory authorities (EPRA). By which project is Poland a member. However, by one of EPRA's report about gender equality, it becomes clear that in Poland there is a lack of woman as experts.

To sum up about the comparison between Austria and Poland, although with some differences and some changes, both countries would fit in with the Council of Europe concerning their regulation framework. Of course, every country can always benefit from improvement. For now, however, they are on the right path.

The topic of gender equality is not publicly discussed in the media. Additionally, there is hardly any gender-neutral and -inclusive language in the media. Politics, above all the Constitutional Court and the Administrative Court, should take responsibility and bring about change. Authorities alone cannot make any major changes, which is why it is important to start with politics and the laws.

ERGA, as an instrument of European cooperation, also seems to do little in the area of gender mainstreaming. Although there is joint work on various topics as well as access to knowledge, gender mainstreaming has not yet been a main topic. Also no best practices were mentioned in this field.

There is clearly an immense research gap on gender mainstreaming, much of which remains to be studied. Corinne Schweizer and Susanne Lackner both stated that Gender Mainstreaming is a rather hard topic to approach due to the lack of research. Public

unconsciousness also plays a big role when it comes to that topic. It seems that young people, both female and male, are more aware of the importance of the issue. Nevertheless, the lack of focus on Gender Mainstreaming is noticeable in the media. More public attention needs to be drawn to the issue.

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## VIII. Appendix

Questions to KommAustria: **Susanne Lackner**

Vice- Chair at Komm Austria/ Rundfunk und Telekom Regulierungs-GmbH (RTR)

- Wie funktioniert die internationale Zusammenarbeit im Hinblick auf den Erfahrungsaustausch im Regulierungsbereich?
- Gibt es spezifische Guidelines, an welche sich die EU-Länder halten müssen?
- Bekommen Sie mit wie andere europäische Länder in der Medienregulierung, bezüglich der Darstellung von Gender, vorgehen?
- Wie verläuft Ihre Zusammenarbeit mit der ERGA bezüglich der Initiativen die Diskriminierung zu bekämpfen und die Gleichstellung in der audiovisuellen Medienindustrie aktiv zu fördern?
- Inwieweit schreitet die ERGA in die österreichische Medienregulierung ein?
- Inwiefern dürfen wir zukünftig Entwicklungen auch in dieser Hinsicht erwarten?
- Bekommen Sie Feedback von der ERGA?
- Wie verhält sich die österreichische Medienregulierung im Hinblick auf die Verfolgung der Richtlinien der ERGA?
- Welche Ressourcen werden Ihnen von den europäischen Regulierungsbehörden zu Verfügung gestellt, um die Überwachung der Berichterstattung zu verbessern?
- Sind bereits Fortschritte in diesem Bereich der Überwachung feststellbar?
- Wann gilt eine Berichterstattung als Verstoß?
- An welchen Best Practices orientiert sich die KommAustria?
- Island gilt als Land mit der bisher größten Entwicklung der Gleichstellung der Geschlechter. Orientieren Sie sich an dem Umgang dieses Landes?
- Wie sehen Sie die Position der österreichischen Regulierung im europäischen Kontext?
- Wird ein Fortschritt erwartet? Mit welchen Mitteln soll dieser erreicht werden?
- Welche spezifischen Strategien und Politiken setzen Sie um, um die Gleichstellung der Geschlechter zu erreichen?
- Welchen Vorschriften müssen speziell genderspezifische Inhalte in der österreichischen Medienwelt gerecht werden?

Questions to KommAustria: **Corinne Schweizer**

Senior Research and Teaching Associate in the Department of Communication and Media Research at the University of Zurich

- Welche Aspekte bezüglich Gendermainstreaming in der Medienlandschaft zeichnen die Schweiz aus?
- Gibt es in der Schweiz spezifische Guidelines, an die sich Medienhäuser bezüglich Gendermainstreaming halten müssen?
- Das Formulieren von Richtlinien stellt nicht immer sicher, dass diese auch befolgt werden - inwiefern merken Sie in Ihrer Forschung, dass das der Fall ist?
- Gibt es in der Schweiz spezifische Guidelines, an die sich Medienhäuser bezüglich Gendermainstreaming halten müssen?
- Wie schätzen Sie die momentane Lage hinsichtlich Gendermainstreaming in der Schweiz ein?
- Sind bereits Fortschritte in diesem Bereich der Überwachung feststellbar?
- Wie können Medien Ihrer Meinung nach vorgehen, um das Thema Gendermainstreaming zu sensibilisieren?
- Wir haben im Zuge unserer Recherche herausgefunden, dass in der gesamten österreichischen Jurisprudenz keine genderspezifische Formulierungsweise vorhanden ist. Wie sieht das in der Schweiz aus?
- Werden zukünftige Entwicklungen in dieser Hinsicht erwartet?
- Als wie wichtig schätzen Sie die genderspezifische Formulierungsweise ein? Und warum?
- Welche Unterschiede im Umgang mit Frauen und Männern in den Medien können Sie in Ihrer Forschung wiederholt beobachten?
- Die RTR-GmbH setzt sich für die Gleichstellung von Frauen und Männern in allen Belangen ein. Das schließt ebenfalls die Anstellung sowie das Arbeitsumfeld ein. Gibt es diesbezüglich auch Beobachtungen in Ihrer Forschung?
- Arbeiten Sie mit den Schweizer Medienregulierungen zusammen um die Gleichstellung in der Medienindustrie aktiv zu fördern?
- Ist es ein Ziel von Ihrer Seite, dass die Schweizer Medienregulierungsbehörden von Ihrer Forschung aus Veränderungen vornehmen?
- Wünschen Sie eine Zusammenarbeit? In welchem Konzept soll diese von statten gehen?
- Inwiefern bekommen Sie mit, wie andere Länder in Europa in der Medienregulierung bezüglich der Darstellung von Gender vorgehen?
- Haben Sie in diesem Hinblick ebenso die österreichische Medienregulierung beobachtet - wie positioniert sich diese im Vergleich zu anderen Ländern?
- Wie funktioniert die internationale Zusammenarbeit der Schweiz in Hinblick auf den Erfahrungsaustausch im Regulierungsbereich?

- Werden von europäischen Regulierungsbehörden Ressourcen zu Verfügung gestellt, um die Überwachung der Berichterstattung zu verbessern?
- Island gilt als Land mit der bisher größten Entwicklung der Gleichstellung der Geschlechter. Ist hier ein Zusammenhang zu den Schweizer Regulierungen zu erkennen?
- Wissen Sie ob und an welchen Best Practices sich die Schweizer Medienregulierung orientiert?
- Würden Sie sagen, dass die Schweiz im Vergleich zu anderen Ländern in Europa vorgeschrittener im Umgang mit Gendermainstreaming in der Medienlandschaft ist?
- Welche spezifischen Strategien und Politiken müssen umgesetzt werden, sodass ein erfolgreiches Gendermainstreaming auch in anderen europäischen Ländern gewährleistet wird?
- Welchen Vorschriften müssen speziell genderspezifische Inhalte in der österreichischen Medienwelt gerecht werden?