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The Role of Non-State Actors in the Regulatory Reforms outside the EU

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Outline

- ❑ The appearance of non - State actors in regulation
- ❑ The scope of the attention
- ❑ Specific examples
- ❑ Takeaways



The appearance of non – State actors in regulation

- ❑ Traditionally, regulation has been an exclusive domain of the State. However, there is a growing recognition that this is not the case anymore.
- ❑ The move towards the “decentralisation” of State regulatory powers has been described in various ways: outsourcing or contracting out, public-private partnerships, privatisation of public management functions.
- ❑ The major critiques moved to the phenomenon concerned the fact that privatisations are neither participatory nor accountable.
- ❑ The appearance of non-State actors in regulation can have different causes, depending on the context as well as on the specific sector.



The appearance of non – State actors in regulation

- ❑ In developed countries, since the '90s we have generally witnessed a move to the State reliance on new forms of regulation, increasingly involving self-regulating organisation and regimes of enforced self-regulation.
- ❑ In some economic sectors (highly technological industries), this shift can have various advantages:
 - ❑ It better adapts to technological and business developments and it allows faster regulatory processes
 - ❑ Negotiated solutions can be better enforced
- ❑ Some examples:
 - ❑ In 2011, European trade associations and e-commerce platforms came together to sign a Memorandum of Understanding to establish a code of practice against the sale of counterfeit goods over the Internet.
 - ❑ The Committee on Payments and Market Infrastructures (CPMI), which promotes the safety and efficiency of payment, clearing, settlement and related arrangements, thereby supporting financial stability and the wider economy. It is a global standard setter in this area. It aims at strengthening regulation, policy and practices regarding such arrangements worldwide.



The appearance of non – State actors in regulation

- ❑ In **developing countries**, the appearance of non- State actors often derives from the fact that the capacity of the State itself and most of its institutions is eroded, undermined or simply still fragile.
- ❑ **Development assistance**, and thus the massive financial support for structural projects (for example, the building up of infrastructures) increases the influence of the donors/funders over the State.
- ❑ The **privatisation** processes triggered by neo-liberalist theories have resulted in the transfer of immense power to private entities.
- ❑ Moreover, the globalisation of businesses pushes companies to outsource parts of the activities. When these are conducted in third world countries with weak (or weakly implemented) social and environmental policies, companies tend to rely to self-regulation to keep **control of the supply chain**.



The scope of our attention

In order to define the scope of our attention, we have to look at three layers:

- which non- State actor
- which context
- which sector



The scope of our attention – first element

- ❑ There is a variety of non-State actors:
 - ❑ Broad range of **profit-oriented organizations** (i.e. industry and trade associations, companies). Regulation by the industry or company is referred as self-regulation. There are many examples available: Standard Setting Bodies (for patents, for payment systems etc), Codes of Conducts (electronic industry, Australian wine industry, etc.), certification systems (ISO's Committee on Conformity Assessment, CASCO)
 - ❑ **Civil Society**: NGOs, charities, trusts, foundations, advocacy groups
 - ❑ In some cases, companies and civil society come together in **partnered governance** (for example, for the Roundtable on Sustainable Palm Oil)
 - ❑ **International and supranational organizations**:
 - ❑ World Bank, IMF and other international agencies, with their financed projects/programmes
 - ❑ ITU with its advocacy and standard- setting activities
 - ❑ European Union with its accession process
- ❑ We will focus on the international/supranational organisations



The scope of our attention – second element

- ❑ As said, the role of non-State actors in regulatory reforms may vary a lot depending on the context where it takes place.
- ❑ We will look at developing countries, with particular focus on two case studies:
 - ❑ Republic of the Union of Myanmar
 - ❑ Western Balkans



The scope of our attention – third element

- ❑ Non-State actors can play a major role in a number of sectors
- ❑ We will concentrate on the regulatory reforms in the electronic communications and media sector



Specific examples:

1. Myanmar wireless broadband

- ❑ Country's situation at the end of 2012:
 - ❑ Following decades of dictatorship and isolation, the country is undergoing a profound and sudden social and political transition
 - ❑ Connectivity rates: 0.018% for fixed; 0.029% for mobile
 - ❑ Telecom market very uncompetitive, although the liberalisation process was already planned
 - ❑ Very limited fixed and mobile BB infrastructure
- ❑ October 2012: ITU, in conjunction with the Korean Communications Commission (KCC) released the **wireless broadband masterplan project for Myanmar**, as part of the wider masterplan for countries in the Asia-Pacific region.



Specific examples:

1. Myanmar wireless broadband

- ❑ Key considerations in the Myanmar wireless broadband masterplan included:
 - ❑ the economic and social importance of broadband and its role in improving productivity and providing information and services
 - ❑ the structure of the Myanmar telecommunication market and the current regulatory framework
 - ❑ broadband access targets and Myanmar future spectrum requirements
 - ❑ the case for legal/regulatory reform
 - ❑ key technologies, including GSM, W-CDMA/HSPA, WiMAX, satellite, and LTE.

- ❑ From July 2013 to July 2014, the ITU has also ran a project aimed at providing **technical assistance** on telecommunication/ICT policy and regulation in Myanmar.



Specific examples:

1. Myanmar wireless broadband

- ❑ Starting from 2012, the Government of Myanmar has launched three parallel initiatives:
 - ❑ A public open international competition for assignment of telecom licensees, and their actual release
 - ❑ A process of reform of the telecom law
 - ❑ The establishment of an independent telecom regulator



Specific examples:

1. Myanmar wireless broadband

- ❑ The three initiatives have been conducted following slavishly what recommended in the masterplan. This has led to a number of outcomes:
 - ❑ Licensing: the bidding criteria have **de facto excluded single running domestic bidders**. There are concerns about the fact that the government may seek to involve telecom companies in illegal surveillance, censorship and other abuses.



Specific examples:

1. Myanmar wireless broadband

- ❑ Telecom law reform:
- ❑ The government implemented the new telecom law through a transparent, public and inclusive process. However, the draft law was made available for **consultation in English only**, dramatically limiting the capability of national actors to take part and excluded most of the population.
- ❑ Moreover, the draft has been developed with the **close support of the World Bank**, which is highly involved in the connectivity plan of the country. In a document signed by 61 civil society organizations, the World Bank is criticized for having failed in securing the right of freedom of expression and digital privacy even before launching the telecom reform.
- ❑ In addition, civil society organizations claim that **the law primarily pleased international investors**, establishing obstacles for local investors in the form of market entry conditions that they are not able to meet.
- ❑ In October 2013, the new telecoms law has been approved. In February 2014, the **World Bank has granted \$31.5 million credit** for a telecoms sector reform in Myanmar, aimed at creating the enabling policy and the regulatory and legal environment for a competitive telecoms market.



Specific examples:

2. Media regulation in the Western Balkans

- ❑ Area's situation in 2015 (general framework of the accession process and its relevance to media freedom and media pluralism):
 - ❑ All countries in the region, apart from Albania, have experienced a type of redefined statehood and borders
 - ❑ Low quality of governance and high corruption that prevents countries from easily catching up with the EU levels and criteria
 - ❑ Increased complexity of the criteria has a discouraging effect
 - ❑ Large donor programs and strong presence of international institution since the aftermath of war period is seen as intrusive. As a consequence, local governments have shown different levels of willingness to comply with the EU accession process
 - ❑ However, the strong need of external support is demonstrated by the inability of national institutions to maintain their independence and restrain political hijacking following the withdrawal of international donors



Specific examples:

2. Media regulation in the Western Balkans

- ❑ The EU looks at the media sector from two perspectives:
 - ❑ Market and competition perspective → comprehensive approach towards liberalization, harmonization and pro-competition regulation
 - ❑ Human rights perspective → acknowledgment of protection of media freedom and media pluralism as a fundamental rights.
- ❑ The instruments the EU can use vary depending on the perspective:
 - ❑ Market and competition perspective → primary legislation
 - ❑ Human rights perspective → soft law and policy intervention
- ❑ Nevertheless, in the context of the accession, political players and civil society perceive the EU as the ultimate standard-setter and guarantor of observance of human rights.



Specific examples:

2. Media regulation in the Western Balkans

- ❑ The EU most recent enlargement strategy emphasizes the need for candidate countries to respect “fundamental first”; therefore, freedom of expression is a key priority in the area.
- ❑ Moreover, the EU promotes policies and monitors the implementation of the *acquis communautaire* according to the existing standards and to those developed by the CoE and OSCE on media freedom and pluralism.



Specific examples:

2. Media regulation in the Western Balkans

- ❑ The CoE and OSCE have played an essential part in defining European standards for media freedom and media pluralism. The EU enlargement process in the area has benefited indirectly from this.
- ❑ The political role of the CoE and the OSCE has been and still is relevant and pivotal in the region, despite having been shadowed during recent years by the rising importance of the EU, because of the high benefits the EU can offer to aspiring countries (pre-accession assistance, and accession itself).
- ❑ Thus, the EU, when dealing with candidate countries during the accession process, can intervene with broader actions on media freedom than those that can be used within the EU.



Specific examples:

2. Media regulation in the Western Balkans

- ❑ The assistance and financial support of the EU during the accession process is seen as one of the main factors that increases the influence of the EU compared to other international organizations.
- ❑ In the media sector, the EU intervenes with the IPA in four main directions:
 - ❑ Supporting journalism: joint project with UNESCO, aiming at improving ethical and professional standards and at developing self-regulation and media literacy
 - ❑ Supporting industry through the development of an enlargement strategy for the support of the media
 - ❑ Supporting the establishment of solid PSBs via partnerships with the European Broadcasting Union
 - ❑ Digitalization of media archives



Specific examples:

2. Media regulation in the Western Balkans

- ❑ Notwithstanding the high level of EU commitment to media freedom and media pluralism, a number of criticalities have been raised:
 - ❑ Arbitrary distribution of the funds in the media assistance
 - ❑ Suboptimal use of financial resources
 - ❑ Indicators for measuring the aspiring countries' compliance with the EU standards and conditions in the field not perfectly aligned with the specificities of the individual countries
 - ❑ Lack of continuity and long-term commitment to particular media assistance programs
- ❑ Moreover, the accession process in the area goes by fits and starts. In many countries:
 - ❑ the EU has failed to ensure absence of political and financial pressure on key media institutions;
 - ❑ violations of media freedom and media pluralism are still often reported;
 - ❑ the independence of the regulators is not satisfactory
 - ❑ the conditions of journalists keeps on raising concerns.



Takeaways

- ❑ A number of cultural and contextual factors weight on the establishment of non-State forms of governance, such as, for example: geopolitical factors, allocation of resources, pre-existing relationships between stakeholders.
- ❑ The scope and the range of intervention of the international/supranational organizations can vary, and so its influence on the regulatory reforms.
- ❑ The more the intervention is pervasive, the more it is important to evaluate it in terms of democratic legitimacy. One of the key questions to ask is: are the international organization's objectives be in line with the State public policy objectives? And what if they are not?
- ❑ Targets and beneficiaries should be clearly identified, and participate in the process as much as possible. The involvement of civil society can be an effective advantage and help in impact assessment and monitoring exercises.



Takeaways

- ❑ Often, more than one international organisation intervenes, although with different degrees of pervasiveness. In these cases, actions tend to complement and mutually support.
- ❑ Financial support appears to magnify the role of international organisations/supranational organisations in regulatory reforms.
- ❑ Capacity building and personnel trainings seem to be easier to realise than overtaking political and social resistances over issues concerning fundamental rights and freedoms.
- ❑ Although there is already wide literature about the role of non-State actors in regulation, there is definitely the need for more research focused on the telecoms and media sector.



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