

Speech by Prof. Dr. Madeleine de Cock Buning

Chairperson, ERGA

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Ladies and gentlemen,

My name is Madeleine de Cock Buning and I am the Chairperson of ERGA, the European Regulators Group for Audio Visual Media Services.

Today I want to talk to about the importance of safeguarding free and pluralist media. And I want to talk to you about the relevance of independent media regulators and the valuable support they receive from ERGA. These two issues are connected in a way that is relevant to today' s discussions about the proposed new directive.

This directive is a very important piece of EU legislation. Because for all its technicalities, what it essentially does is protect the values and beliefs that lie at the heart of Europe. Values like freedom of expression and information. Freedom of thought, conscience and religion. And the right to cultural, religious and linguistic diversity. These are enshrined in

the European Convention on Human Rights and the EU Charter of Fundamental Rights.

To protect these values and the lives we have built upon them, we need to have free and pluralist media. Such media empower us to make well-informed opinions and decisions. They provide checks and balances that will keep our governments sharp and accountable to their citizens. And they give us an objective and diverse window on the world.

Europe' s media can function and flourish only when they are free from the influence of any single stakeholder, including commercial entities and the state. Europe' s history is full of examples of what happens when they are not, when media are curtailed or silenced. Then a small group dictates what we know and what we are free to say. Then government and economic powers hamper critical media, while they favor those friendly to them. Then licenses and frequencies are awarded to friends rather than those who serve the interest of society, for example by paying a fair market price. All in all, these things have a devastating effect on the freedom and plurality of media, lead to (self) censorship and prevents citizens from being informed.

Which brings me to the role of regulators. Because media regulators are the watchdogs that safeguard the integrity of each nation' s media landscape. They ensure media abide by the rules that each country sets, but also ensure that their rights are safeguarded. Provided, of course, media regulators are independent and empowered. Independent from governments and the European Commission. And empowered to actually do their work effectively.

Neither is a given. The current directive, for example, lacks a formal obligation for member states to create an independent regulatory body. This leaves regulators vulnerable to structural weaknesses in their design, either on purpose or by accident, particular in environments with reduced checks and balances. Recent events in countries such as Poland, Croatia, Greece, and signals we received from colleagues in Cyprus, Bulgaria and Romania show this is not a theoretical possibility.

This echoes our own research among ERGA members, which are Europe' s media regulators. What we found should worry you. Some regulators have to deal with the politically-motivated dismissal of board members. Some regulators have seen their powers reduced by the state. Quite a number of regulators simply do not have the financial resources to adequately perform their tasks. In Greece, for example,

three of the four council members have not been replaced after their mandate ended last year and their e-mail system has been down since August.

This has a chilling effect on the functioning of regulators. What we need instead, is to give these crucial watchdogs for pluralistic and independent media the tools to be at their best. This means ensuring more transparent governance and decision-making, better powers of enforcement, more manpower and more financial independence.

Thankfully, the proposed directive takes steps in that direction, steps that will bolster regulators across Europe. It defines the independence, competences and powers of the national regulator, and stipulates that national regulatory authorities shall have adequate enforcement powers. The proposal also introduces rules for the dismissal of the head/board member of the national media regulator.

ERGA welcomes these changes, as they will help all of us safeguard the independence and pluralism of Europe' s media. But we even think there is more that can be done to support regulators. For example, the European Parliament could consider adding a provision to the directive

securing independent appointment procedures for heads and members of media regulators, which is currently not the case.

But regardless of how the position of regulators is protected, we believe that ERGA needs to be an integral part of the new directive. To be clear, ERGA does not make or implement audiovisual media policies. That is and will remain the preserve of the European Commission, the European Parliament and national member states. And we are neither a proxy of the European Commission, nor do we have the ambition to become a supra-national European regulator.

We are and want to remain independent from all policymakers. And we genuinely believe in our specific remit and wish to do only what we are good at: pragmatically sharing experiences and expertise among all European regulators, while respecting national differences.

To this end, our 2016 working program focuses on three areas. First, we advise the European Commission on the practical application of the proposed revision of the directive. We pool the day-to-day experiences of our members to flag practical issues that may occur when regulators apply the proposed provisions.

Second, we focus on the protection of minors against harmful content and the practical issues surrounding the accessibility of audiovisual media services to people with a disability. In Europe' s fast-changing and converging media landscape, this work safeguards the health and well-being of all people.

The third and final area is the most important one: the Digital European Toolkit. By collecting existing tools, best practices and experiences from our members, we free them from the need to reinvent the wheel.

Our work makes a valuable contribution to Europe' s media landscape, which is why ERGA has been included in the proposal to begin with. Specifically, by collecting and redistributing the knowledge and experience of European regulators, ERGA ensures that individual regulators can deliver optimal results. And through this empowerment, we contribute to the regulators' independence. In addition, we ensure more alignment in the way the directive is applied across Europe. If national regulators do not communicate and share their work, the protection of Europe' s media landscape will be fragmented and less effective.

Having said that, I realize that there are concerns about the independence of regulators and the role of ERGA and that these have been expressed in some amendments to the proposal.

One amendment proposes the deletion of the condition to dismiss a head or a member of the collegiate body of a national regulatory authority only if they no longer fulfill the conditions required for the performance of their duties. This concerns us, because in practice we have seen that in Croatia and Poland board members are (about to be) dismissed for political reasons.

The deletion of this part of the article directly jeopardizes the independence of national regulators. Several publications and studies have reiterated the importance of clear rules for nomination, appointment and dismissal of members of NRAs.

There also seems to be confusion about the roles of ERGA and the Contact Committee. Our roles, however, are different and complementary. ERGA is the platform of national regulators, which independently advises the Commission on the practical application of the provisions in the directive based on hands-on experience. The Contact Committee, on the other hand, is the platform of Member

States and advises the Commission about the implementation of the provisions in the directive. Their focus is on policy and, as I mentioned in the beginning, this is neither ERGA' s expertise nor ambition.

So the proposal that ERGA will only submit draft opinions, while the Contact Committee decides upon the draft opinions from ERGA, blurs the clear line between the opinion of independent regulators and Member States policies. Both institutions should be able to advise the Commission from their own role and expertise and the Commission should evaluate/weigh both opinions on their own merits.

Finally, another amendment seeks to diminish the role of ERGA itself. But would this not be a missed opportunity taking into account that from their specific experience regulators can find practical solutions for urgent problems in areas such as jurisdiction and protection of minors? Therefore I urge you to let us continue providing impartial expert advice from a practical perspective on jurisdiction, co-regulation, protection of minors and other issues of importance.

Ladies and gentlemen,

Europe' s media are indispensable to the health and cultural richness of the European Union. Which is why ERGA and the European regulators we serve should be adequately enshrined in the new directive. ERGA is committed to independently and professionally advise the European Commission and support all national regulators with their work. This way we will protect Europe' s values and the media through which they come to life.

Thank you.