ERGA Work Programme 2018

Introduction

The European Regulators Group for Audiovisual Media Services (ERGA) advises the European Commission on a consistent application of the Audiovisual Media Services Directive (AVMSD or Directive) and other matters related to audiovisual media services within the competence of the European Commission. ERGA also encourages the exchange of experiences and good practices between the regulatory authorities.

The Work Program of ERGA is a fundamental document that defines the activities of ERGA throughout the year. It should provide ERGA's members with clear guidance on ERGA's work and priorities for 2018 keeping in mind that the text of the new AVMSD is still under discussion by the co-legislators. The work program should respond to the strategic challenges posed by a dynamic and changing audiovisual media sector. In 2018 ERGA will enter into a new phase of maturity, particularly in the light of the important tasks that the group will face after the adoption of the new AVMSD. In order to accomplish these statutory duties, ERGA should take significant steps forward in furthering as a strong and authoritative network and towards a further professionalization of its activities within the remits of the Directive.

This proposed work program is taking into account the issues on that ERGA may be requested to give an expert opinion to the Commission, but also leaves enough room to exchange views and best practices about the relevant topics that are of high interest for audiovisual media regulatory authorities in Europe. The four workstreams are designed as framework of our main activities in the following year. The workstreams contain an emerging topic to gain and align knowledge to prepare ourselves for the future. There is one workstream to improve even further the exchange of experiences and best practices. One workstream deals with the continuation of deepening our knowledge on and application of self- and co-regulatory schemes. And finally we have identified the need for a workstream to prepare ourselves for the application and challenges of the new AVMSD, once adopted.

Combined these four workstreams balance between current and future challenges; they further our procedures and organisation and contribute to our professionalization, but they also enable us to gain and align expertise. The four workstreams are:
- Internal and external plurality;
- Exchange of experiences and best practices;
- The extension of the material scope of the AVMS Directive;
- Self- and co-regulation.

1. Internal and External Plurality

This includes topics such as transparency of media ownership, measurement framework, the representation of groups in society, in programming and staff, and the way content is selected, composed and presented to audiences. This workstream may also deal with the measures and tools that National Regulatory Authorities (NRAs) have in order to implement and ensure both the internal and external plurality.

2. Exchange of Experiences and Best Practices

A. Online knowledge base

The Digital European Toolkit (DET) has been greatly enhanced not only by adding tag words and document descriptions to the existing documents but also by uploading numerous new documents in the system. There is more work to be done in the system as one of its key features, which would allow searchability by tag words exclusively, will only be released with the new user interface launch. In 2018, ERGA will continue developing the DET to increase functionality.

B. ERGA Academy

National media regulators directly pick up signals from the media industry and viewers, observe obstacles and develop good practices to deal with challenges they face. This expertise is valuable because of the speed at which change occurs, especially in the dynamic sector for audiovisual media services. The ERGA Academy is in the first place a coordination mechanism for easier offline exchange of good practices and expertise, potentially supported by the online knowledge base, between the members of ERGA and primarily at an executive level and also at expert level. Using this mechanism, ERGA will organise activities for the heads and high level representatives and for experts that aim to deliver inspiration and allow regulators to learn from each other as well as from renowned speakers.

Regulators can use this knowledge to improve their oversight, monitoring and enforcement. Ultimately this will increase effectiveness of NRAs and will bolster the quality of all the regulators as a group. The ERGA Academy therewith empowers NRAs on an individual and collective level. In 2017 the ERGA Academy Roadmap 2018 has been produced and this contains activities planned for the continuation of the work of this subgroup in 2018. In addition, this group could pick up on specific topics that other groups have or will have identified as ones that could benefit from exchange of practices and information among ERGA members.

Finally, the group should take into consideration the work of other relevant networks, notably European Platform of Regulatory Authorities (EPRA), to explore mutual exchanges of information and opportunities for collaboration.

3. The extension of the material scope of the AVMSD – Preparing for new tasks for NRAs and ERGA and for challenges for law enforcement online

An in-depth exchange on the different challenges in terms of **law enforcement online** could be beneficial to ERGA members and justify a respective **subgroup**. This, from our point of view, concerns certain aspects of the current Directive (e.g. handling of Vloggers) but, of course, also numerous questions arising from the envisaged extension of the material scope of the future Directive to video sharing platforms.

Considering the numerous aspects related to this overall question and expressed interest from other authorities to play an active role, we would like to establish **two or more taskforces** under the umbrella of this subgroup – for example dealing with "**The role of NRAs and ERGA within the revised AVSMD**" or "**Enforcing fundamental principles in audiovisual media services online**". This highly depends on the content of the finally adopted Directive, which will determine the scope of this subgroup.

The revised AVMS Directive is expected to be adopted soon. It is likely that the new Directive will include a certain extension of the scope in order to cover "new" services as well as "new" providers of audiovisual content. This will predominantly result in a clarification of the definition of an audiovisual media service and the nature of short videos (referring to the ECJ judgement in *New Media Online*) as well as in new rules and obligations for video sharing platforms (and maybe social network providers).

Keeping in mind that the text of the new Directive is still under discussion, the subgroup could already look into the consequences from any extension for NRAs and ERGA. Once the Directive is adopted, it should in particular focus on finding harmonised approaches to the enforcement of these (new) rules ensuring fundamental (regulatory) principles underlying the AVMSD. In addition, the subgroup should explore how to foster co-operation amongst NRAs, both bi- or multilaterally and within ERGA, with a particular view on audiovisual content provided over the Internet.

4. Self- and Co-Regulation

In a dynamic audiovisual media sector self- and co-regulation (SRCR) are becoming more and more effective methods to protect (vulnerable) viewers and listeners from potentially harmful content. SRCR can offer flexibility, prompt adaptability to change and potentially create stronger support for regulation, because the sector commits itself to SRCR schemes. These can offer increased flexibility and adaptability of regulation at a time when the pace of change in technology and markets can make it difficult for more traditional forms of regulation to keep up.

The proposal to revise the AVMSD includes to a considerable extent proposals for SRCR. Therefore ERGA set up a subgroup specifically for SRCR in 2017. The aim was to exchange experiences and good practices regarding the establishment of SRCR regimes, codes of conduct and the role of the NRA. A survey of ERGA members has revealed that there is already widespread use of these approaches, across a diverse range of regulatory applications. Regulatory authorities are engaging with and enabling schemes in various ways. The identified SRCR schemes are in general evaluated

as positive, because they include the active involvement of stakeholders, which enables a strong level of compliance.

ERGA members have identified further opportunities to collaborate and share their experiences of SRCR, so that these might be applied to new regulatory challenges. This will be the subject of further work by ERGA during 2018. ERGA continues its work on SRCR into 2018 and will develop its Terms of Reference for the next year based on four possible proposals for further work made by the group:

A. Further analysis on some detailed aspects

Further analysis would be possible with more time to consider the complex survey data. This could enable the investigation of specific hypotheses regarding SRCR, for example relating characteristics of schemes to their favourable evaluation by NRAs. It could also enable the bringing together of different aspects of the survey data to give a holistic picture: for example, the analysis of monitoring and sanctions practices together with activity levels in terms of workload/cases completed.

B. Possibility of case studies and identification of best practices

The survey has revealed that – while the majority of ERGA members (16 NRAs) have experience of both SR and CR and a substantial additional number have experience of one or the other – there are at least 12 NRAs that have no experience of either SR, or CR, or both. There is the possibility of further work that might assist these ERGA members in establishing schemes for the first time – or indeed, other ERGA members with some limited experience of SRCR in one area of application but wanting to establish a scheme in another area. This work could discuss best practices in the abstract, but the broad range of SRCR schemes might make it difficult to generalise across them. It seems more useful to identify particularly successful schemes to focus on as case studies, and perhaps in collaboration with the ERGA Academia, to find ways for NRAs overseeing these schemes to advise those who wish to learn from them.

C. Work towards a publishable report incorporating some of the survey data and the above further investigations.

The Terms of Reference during 2017 included an internal report, in view of the still on-going process related to the revision of the Directive. However, after the adoption of the Directive it would be possible to consider an external output, which might include elements of the internal report on the survey, and also reporting on any subsequent work during 2018 (e.g. 1-3 above).

D. Relating the survey results to the SRCR proposals in the Directive

The survey has focused on the current uses of, and approaches to SRCR by ERGA members: the subgroup has not made any assumptions about the new AVMSD while negotiations have been underway. However, after the adoption of the Directive it will be possible for the subgroup to do work relating to the new Directive provisions on SRCR to the existing practices by ERGA members, in particular to establish any gaps between these, and to make recommendations that will assist ERGA members when the Directive is implemented.

These four proposals are for consideration by the Chair, Contact Network and Plenary. It is likely that there would not be time during 2018 for the subgroup to deliver all four of these proposals. In developing the Terms of Reference for the subgroup during 2018, the Chair would consult subgroup members and also the Chairs of other subgroups to determine the tasks to prioritise, and whether any of the work might be developed within other subgroups.

Terms of Reference

ERGA will be able to decide on the more specific themes and the expected outcomes of the new subgroups, and their timetables, in the Terms of Reference. They will be drafted by the future subgroup chairs, in close cooperation with the ERGA chair and vice-chairs. The Terms of Reference are expected to be adopted during the first plenary meeting of ERGA, in 2018.