



## **Minutes of ERGA 8<sup>th</sup> Plenary Meeting Brussels, 9 November 2017**

### **Opening**

The meeting was opened by ERGA Chair Prof. Dr Madeleine de Cock Buning who welcomed all the participants.

Ms de Cock Buning provided an overview of the current work strands of ERGA and the key developments in the last two years when she was Chair. These include the publication of several comprehensive reports most of which contained concrete recommendations for the European Commission.

The last two years also saw the development of two tools which should greatly contribute to the exchange of information among members. Through the Digital European Toolkit members can share documents that could be useful for other group members. Ms de Cock Buning also announced the publication of all speeches that she held over the last two years as ERGA Chair. She also mentioned that 2017 saw the launch of the ERGA Academy making it possible to learn from each other's experiences and strategic policies. She referred to the fact that national media regulators in a fast changing media landscape receive direct signals from the media industry and consumers, the regulators observe obstacles and develop good practices to deal with those challenges. This expertise is extremely valuable given the dynamics in this sector. The ERGA Academy enables the regulators to share and gain knowledge to improve our oversight, monitoring and enforcement. This will increase harmonisation and effectiveness of NRAs and will bolster the quality of all the regulators as a group. The ERGA Academy empowers NRAs on an individual and collective level. With the aim to further facilitate the exchange of information through training/lectures, Prof. Dr Annetje Ottow was the first to give an inspirational speech in the context of this Academy platform.

The Chair underlined that the last two years were important for the efficiency of the group. The Contact Network was set up as an interface between the sub-groups and the plenary. In 2017 members were active in sub-groups with 11 meetings and over 230 participants in total. Guidelines were discussed to guarantee that the functioning of sub-groups remained effective in view of the increasing workload. She also expressed her gratitude to the Sub-Group Chairs who have shown great commitment to quality and timing by keeping everyone involved.

The Chair also underlined that ERGA and its members provided support to the individual NRAs who in the past years experienced difficulties regarding their independence.

She further referred to the recent introduction of the newsletter aimed at keeping members up-to-date with the developments within the ERGA.

Finally, the Chair highlighted that only common efforts brought ERGA in a position where it is relevant and ready to take aboard new tasks. The Chair underlined that she is proud of what ERGA has accomplished so far. ERGA is not just a summing up of individual NRAs, but has gained a strong identity as a whole.

## Adoption of the Agenda

<b>VOTE</b>	<b>The Agenda was adopted.</b>
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## ERGA Academy Lecture by Prof. Dr Annetje Ottow

Ms Ottow, Professor and Dean of the Faculty of Law, Economics and Governance at the University of Utrecht, gave a presentation on the principles for good oversight and why these are of importance for the independent work and strategies of regulatory bodies. These principles are Legality, Independence, Transparency, Effectiveness and Responsibility. She also provided very interesting examples of case studies, where several of the principles were at stake. Ms Ottow concluded that a balance has to be found between on the one hand policy considerations from the legislator and ministries point of view and sufficient discretion for the independent authority on the other hand. Absolute independence is not realistic and can conflict with the democratic principle of the Member States. In this respect, ERGA is a very important platform to share ideas, to learn from each other and to set the example. Being a good agency and effective supervision is a challenge, where there is still a lot of work to do.

### Debate

On a comment that a social media dialogue with consumers increases transparency but that it also represents a burden, Prof. Ottow agreed that openness leads to dialogue. She also highlighted that it brings with it a risk of more criticism, which needs to be handled appropriately. When discussing the balance between self- and co-regulation, Prof. Ottow agreed that a balance between trust and intervention is necessary, and that NRAs are in the best place to do that. On the question whether self-Regulation can be applied to new groups, such as vloggers, Prof. Ottow explained that if the self-interest of these actors is not in line with the main goals, the success of self-Regulation is limited. The Chair concluded that you have to look diligently at this market to see whether it is trustworthy.

## Election of the Vice chair

<b>VOTE</b>	<b>Members confirmed the following constellation of the Board for 2018: Damir Hajduk (Chair, Croatian NRA), Ľuboš Kukliš (Vice-Chair, Slovak NRA), Tobias Schmid (Vice-Chair, German NRA).</b>
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## Information from the Commission

Mr Giuseppe Abbamonte from the European Commission greeted the participants and thanked them for their expertise and hard work in 2017, which resulted in important and high-quality deliverables. He provided an overview on three ongoing legislative initiatives: revision of the Audiovisual Media

Services Directive (AVMS Directive), the new Copyrights Directive, and review of the Satellite and Cable Directive.

**Copyright.** Mr Abbamonte explained that there are several outstanding issues, which need to be addressed before trilogue negotiations can start. These include the publishers' rights, the value-gap and the text and data mining provisions. The aim is to have the proposed Copyright Directive adopted next year.

**Satellite and Cable Directive.** With a review, the Commission would like to enhance cross border access to broadcasting and related online services across the EU. The idea is to include online services and extending the Country-of-Origin principle, which is not seen as ideal by some stakeholders. The Commission expects that trilogue negotiations could start soon in 2018.

**AVMSD.** The proposal has been in trilogue since July with the next negotiation round scheduled for the end of November. In principle, the co-legislators agreed on several provisions regarding jurisdiction, accessibility of content and provisions concerning the national regulators, including ERGA. However, technical details will need to be further discussed at working level.

On the still open issues the Commission is convinced that the co-legislators will find good solutions. Mr Abbamonte stressed that also due to the good work and strategy of ERGA the co-legislators are now recognising ERGA's crucial role in the impartial and professional implementation of the Directive.

#### **Debate**

In the following debate some members underlined that the experience of ERGA and the NRAs are of a great added value to the AVMS Directive. Some concerns were also raised about how the future legislation will address the new digital players and that legislation should be applied in a flexible way when targeting smaller markets, as these have more difficulties to adapt.

### **Subgroup 4 – Deliverable: Internal Guidelines for Subgroups**

Benedetta Liberatore, the Chair of Subgroup 4 (Italian NRA), presented the *Internal Guidelines for Subgroups*. The Internal Guidelines are laying down more detailed rules on the functioning of ERGA sub-groups thus guaranteeing their efficient work. The Guidelines do not alter but are in line, support and reinforce the ERGA Rules of Procedure. The Guidelines define in further details the rules on setting-up of subgroups, the appointment of subgroup chairs and their duties, the appointment of drafters and the preparation of the specific Terms of Reference. The Guidelines shall be reviewed in one year.

In the debate it was highlighted that the Terms of Reference should be adopted as soon as possible so that subgroups can start their work on the deliverables. In this respect it was agreed that the Plenary also would need to be organised as soon as possible in the next year but should allow enough time for the subgroups to prepare the Terms of Reference. It was also clarified that Terms of Reference can be adopted by written procedure.

It was agreed that the following amendments be done without having to vote on the entire text again:

- Typo in Art. 24 – The text should refer to Art. 22 and not Art. 23.
- The Guidelines should envisage the possibility of changes in the composition of Sub-Groups.

**VOTE** The Internal Guidelines for Subgroups were approved.

### **Subgroup 1 – Deliverables: DET and Roadmap ERGA Academy**

The Subgroup Chair, Damir Hajduk (Croatian NRA), provided an update on the ERGA Knowledge Base/ Digital European Toolkit (DET) and an overview on the ERGA Academy.

With regards to the DET online knowledge base the subgroup worked on improving the tagging system for documents, on the functionality of the online platform and developed documents description guidelines. The subgroup concluded that the search function of the platform needs to be further improved, which should happen soon with the upgraded new User Interface of the underlying CIRCABC platform. For now only full text search is possible but exclusive tags base search should be enabled as well in the future. The Knowledge Base is used by 23 NRAs and is now enlarged with more documents and covers now more areas of expertise.

Mr Hajduk thanked the ERGA Chair's office for making the explanatory note and roadmap for the ERGA Academy, which outlines the role of the ERGA Academy and sets out basis for the Subgroup „Exchanging best practices and experiences” in the 2018 Work Programme. The Academy is a platform of exchange of information between NRAs in form of trainings and lectures at different level. For efficiency reasons these should take place in parallel with ERGA events. It could also be envisaged to combine ERGA Academy with NRA activities.

**VOTE** The Roadmap and Explanatory note of ERGA Academy were adopted.

### **Subgroup 2 – Deliverable: Results from the Workshop on Protection of Minors**

The Subgroup Chair Ľuboš Kukliš (Slovak NRA) presented the results from the Protection of Minors (PoM) workshop in October. The workshop brought together over 50 participants – besides ERGA members also all the main stakeholders, such as industry players, parental organisations, researchers and academia. The Workshop was divided into four thematic sections:

1. Current measures – overview, categorisation and level of protection
2. AVMS providers and Video sharing platforms – the frontline
3. Intermediaries – gatekeepers and distribution platform operators – are there any gaps?
4. Creating the protective web – weaving the elements together

Encouragingly, all the trends identified in the previous PoM report<sup>1</sup> were confirmed by the stakeholders at the event. Participants explained that parental controls are not sufficient measures by itself but should complement parenting, not just provide control. In addition, the amount of data also influences whether automation, human input or a mix is sufficient to provide the desired level of protection. While many classification systems used worldwide have relatively many elements in common which would create room for international harmonization, the willingness of sharing the information between the players to increase interoperability between the system is less clear. Nevertheless, the workshop concluded that stakeholders would support and benefit from further harmonisation in the field of PoM.

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<sup>1</sup> ERGA report on Protection of Minors in the Audiovisual Media Services: Trends and Practices. Available at: [http://ec.europa.eu/newsroom/document.cfm?doc\\_id=44167](http://ec.europa.eu/newsroom/document.cfm?doc_id=44167)

The format of workshop received positive feedback from the participants and it was suggested to use it for other topics as a model.

Susanne Mahler (Danish NRA) remarked, that it should be quite clear that the conclusions mentioned in the report only are based on the outcome of the workshop itself to avoid misunderstandings.

The Subgroup Chair agreed with the member's observation. He also clarified that report is a summary of the Workshop and that its conclusions are the findings and observations made during the event, as indicated in its text.

The representative of the European Audiovisual Observatory added that their organisation also produced a report<sup>2</sup> in 2016 on a mapping study of media literacy in Europe commissioned by the European Commission, which had been distributed in the room.

**VOTE** The activity report from the Workshop on Protection of Minors was adopted.

### **Subgroup 3 – Deliverable: Internal Report on Self- and Co-Regulation**

Oli Bird, the Chair of Sub-Group 3 (UK NRA), presented the outcome of the internal report on Self- and Co-Regulation (SRCR). He concluded that there was a broad and shared understanding between ERGA members of what SRCR is and that the majority of ERGA members had experience of both SR and CR. Moreover, there is a lot of potential for exchanging information. NRAs play various roles in SR and CR so the boundaries are sometimes blurred, while governments play less of a role in schemes than NRAs. Monitoring for compliance is usually complaints-driven and a wide range of approaches to sanctions is taken by SRCR bodies to address these. It was felt that there is potential transferability of SRCR schemes to other countries (not without its challenges). In 2018 the survey could serve for further analysis and for case studies of best practices. Ideas for continued work in 2018, including the possibility to prepare an external report, will be addressed in the Terms of Reference.

**VOTE** The Internal Report on Self- and Co-Regulation was approved.

### **Working Arrangements with EPRA to coordinate the Annual Work Programmes**

The Chair informed the members that as a follow-up to the previous plenary, there had been very constructive and fruitful contacts between the ERGA Chair's office and the EPRA secretariat. This resulted in a working arrangement to coordinate the development of the respective Annual Work Programmes, with the aim to encourage complementarity and meaningful synergies.

The EPRA representative confirmed that the idea behind working agreement is to encourage synergies and exchanges between the two platforms and to avoid the overlap of both organisation's work.

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<sup>2</sup> The protection of minors in a converged media environment

## Inspirational intermezzo

Tony Close, a representative from the UK NRA, shared with the participants the outcome of Ofcom's monitoring report<sup>3</sup> with regards to diversity and equal opportunities in the UK broadcasting industry. The report uncovered the scale and nature of the diversity challenge facing the TV industry, with a focus on the main five broadcasters. One of the conclusions of the report is that too many people from minority groups struggle to get into television, creating a cultural disconnect between the people who make programmes and the millions who watch them. For example, women and ethnic-minority employees are significantly under-represented in senior roles across UK-based broadcasters. Disabled people are particularly poorly represented at all levels of the industry. Ofcom has announced a range of measures to supplement industry action on diversity, which include developing Ofcom's monitoring programme, to provide better diversity guidance and enforce action against broadcasters who failed to provide the required data. Ofcom decided to launch series of annual reports on diversity issues and to hold broadcasters in account.

In the resulting discussion the FR representative provided a snapshot on the situation of women in France, where there is clear progress in this respect, but they still tend to occupy less important roles. In January 2017 a law was passed on the sexual portrayal on women. The French NRA is also the bearer of the diversity label. The Belgian representative explained that they have conducted monitoring in this field and that work on gender equality is foreseen.

## Work programme 2018.

Damir Hajduk (Vice-Chair, Incoming Chair) presented the DRAFT Work Programme 2018. The following four areas of work were proposed:

### **1. Sub-Group – Internal and External Plurality**

Safeguarding media pluralism is a role for NRAs and as such it could be tackled by a subgroup. As it is a broad area it would have to be narrowed down in the Terms of Reference. Two more concrete topics, which would not overstretch the subgroup's capacity, were suggested in this respect: (i) the way content is selected, composed and presented to audiences or (ii) transparency of media ownership.

### **2. Sub-Group – Exchange of Experiences and Best Practices**

This would be the continuation of the current Sub-Group:

- *Online knowledge base – Digital European Toolkit (DET)*  
The DET is growing in the number of uploaded documents, but also in functionality. This work has to be continued in 2018, which should also see the launch of the new user interface as part of the CIRCABC update.
- *ERGA Academy*  
The ERGA Academy is a platform with the aim to facilitate the exchange of information among NRAs via a pool of experts and through training/lectures at plenaries, workshops, Contact Network or subgroup meetings. The approved Roadmap and the accompanying Explanatory Note foresee the Academy to become a more structural part of ERGA.

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

In view of the review of the AVMSD it is expected that the scope of this legislative framework will change, which will also be reflected in the future work of ERGA. Once the Directive is adopted, the

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<sup>3</sup> Diversity and equal opportunities in television : Monitoring report on the UK broadcasting industry. Ofcom. (2017). Available at: [www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2017/diversity-uk-television-industry](http://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2017/diversity-uk-television-industry)

group should focus on the implementation of these new rules. It is also acknowledged that an in-depth exchange on the different challenges in terms of law enforcement online could be beneficial to ERGA members. In light of this, three Taskforces have been proposed:

- *Taskforce 1 on the regulation of audiovisual media services online and video sharing platforms*
- *Taskforce 2 on the promotion of European works*
- *Taskforce 3 on territorial jurisdiction / ERGA's role*

#### **4. Sub-Group – Self- and Co-Regulation**

As a continuation of the existing Subgroup, the aim would be to follow-up on its work and the survey conducted among NRAs in 2017 on Self- and Co-Regulation. Its scope would concentrate on the identification of case studies, allow for the comparison of self and co regulatory approaches and the use of Digital European Toolkit (DET).

#### **Subgroup Chairs**

Prior to the Plenary a Call for Expression of Interest was launched by the ERGA Secretariat. The following ERGA members volunteered to be the chairs of the Sub-Groups:

##### **1. Sub-Group on Internal and External Plurality – Slovak NRA**

2. Sub-Group on Exchange of Experiences and Best Practices – **Hungarian & Polish NRA** (Co-Chairs). The Hungarian NRA would lead the work on the Digital European Toolkit (DET) and the Polish would lead the work on ERGA Academy.

3. Subgroup on The extension of the material scope of the AVMS Directive – Preparing for new tasks for NRAs and ERGA and for challenges for law enforcement online – **French NRA** (Chair, coordinating role).

- *Taskforce 1 on the (co-)regulation of audiovisual media services online and video sharing platforms – German NRA*
- *Taskforce 2 on the promotion of European works – Italian NRA*
- *Taskforce 3 on territorial jurisdiction / ERGA's role – French NRA*

##### **4. Subgroup on Self- and Co-Regulation – UK NRA**

In the following debate some members expressed their interest in contributing to the following suggested Sub-Groups as drafters: CSA-Belgium (SG 1 and SG 3), SLKS-Denmark (SG 3 and SG4).

<b>VOTE</b> <b>The Work Programme and the Chairs of the Subgroups were confirmed.</b>
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As the next steps the Terms of References will be prepared, which will define the Subgroup's work, as outlined in the Work Programme. The Terms of Reference are due to be adopted at the Spring Plenary 2018.

With regards to the work of SG 1, Ľuboš Kukliš (Vice-Chair, Slovak NRA) explained that the scope should be targeted over a longer time period. The available tools, their use and possible use in the future should be defined in the first year. He also clarified that Internal Plurality is about editorial questions, while External Plurality deals with issues related to ownership, including transparency of ownership.

## **ERGA Rules of Procedure: Adjustment for EEA participants**

The Chair referred to the decision of the ERGA members at the March 2017 to change its Rules of Procedure (RoP) so that they reflect the EEA Joint Committee Decision with regards to EEA membership in ERGA. The amendments were explained by a Commission representative and state that EEA states (Liechtenstein, Iceland, Norway) can participate in the group, except for the right to vote. In addition, an EFTA Surveillance Authority representative can participate at the meetings.

<b>VOTE</b> The amendments to the Rules of Procedure were adopted.
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The representative of Liechtenstein thanked members that the adjustments were made so quickly. As the next step, the ERGA Secretariat will publish the updated RoP online.

## **Information from EPRA**

The EPRA representative outlined the upcoming work of EPRA and anticipated that the work agreement with ERGA will align both organisations and thus reduce the risk of overlapping work. Ms Craig also invited the incoming Chair Damir Hajduk to report on ERGA activities at the EPRA Plenary.

On a similar note, the representative of the French CSA informed that the Mediterranean NRA group, which includes Turkey and some other non-ERGA countries, will have a meeting in November.

## **Any Other Business**

### **Report on the Conflict of competences and jurisdiction.**

The representative of the Media Observatory announced that in spring 2018 the organisation will publish the report. Ms Craig thanked the ERGA members, who participated in the questionnaire, on which the report is based.

### **Contact Network guidelines.**

The Chair informed that the Contact Network meeting on 16 October reviewed its guidelines. Two amendments were agreed upon: to have two annual Contact Network meetings, linked to the two Plenaries, and to become more involved in the preparation of the ERGA Work Programme.

## **Closure**

The Chair concluded her two-year ERGA presidency by thanking all members, who have contributed to the work of ERGA, particularly all current and previous board members, Subgroup chairs, the ERGA Secretariat and the ERGA Presidency team.



## Annex 1: List of participants

<b>FIRST and LAST NAME</b>	<b>ORGANISATION</b>
Michael Ogris	Austria - Rundfunk und Telekom Regulierungs-GmbH (RTR-GmbH)
Stefan Rauschenberger	Austria - Rundfunk und Telekom Regulierungs-GmbH (RTR-GmbH)
Bernardo HERMAN	Belgium - CSA
Paul-Eric Mosseray	Belgium - CSA
Joris Sels	Belgium - Vlaamse Regulator voor de Media
Dirk Peereman	Belgium - Vlaamse Regulator voor de Media
François Jongen	Belgium – German speaking Community of Belgium
Maria STOYANOVA	Bulgaria - Council for Electronic Media
Damir Hajduk	Croatia - Agency for Electronic Media
Sanja Pančić	Croatia - Agency for Electronic Media
Stanislav Bender	Croatia - Agency for Electronic Media
Rona Petri Kassapi	Cyprus - Radio Television Authority
Neophytos Epaminondas	Cyprus - Radio Television Authority
Petr Kozak	Czechia - Council for Radio and television Broadcasting
Susanne Mahler	Denmark - Agency for Culture and Palaces
Ulrike Clade Christensen	Denmark - Agency for Culture and Palaces
Oliver Gailan	Estonia - Technical Regulatory Authority
Petri Makkonen	Finland - Finnish communications regulatory authority
Olivier Schrameck	France - CSA
Nathalie Sonnac	France - CSA
Martine COQUET	France - CSA
Raphaël Honoré	France - CSA
Pierre Dagard	France - CSA
Tobias Schmid	Germany – Die Medienanstalten
Peter Matzneller	Germany – Die Medienanstalten
Elke Nussbaum	Germany – Die Medienanstalten
Bianca Heuser	Germany – ARD GVK
Athanasios Koutromanos	Greece - National Council for Radio and TV (NCRTV)
Persefoni Sofia Lampropoulou	Greece - National Council for Radio and TV (NCRTV)
Mónika Karas	Hungary - National Media and Infocommunications Authority
György Ocsko	Hungary - National Media and Infocommunications Authority
Annamaria Takach	Hungary - National Media and Infocommunications Authority
Kinga Sorbán	Hungary - National Media and Infocommunications Authority
Michael O'Keefe	Ireland - Broadcasting Authority of Ireland
Claire O'Sullivan	Ireland - Broadcasting Authority of Ireland
Antonio Martusciello	Italy - AGCOM
Benedetta Liberatore	Italy - AGCOM
Antonio De Tommaso	Italy - AGCOM

<b>FIRST and LAST NAME</b>	<b>ORGANISATION</b>
Ieva Beitika	Latvia - National Electronic Media Council
Mantas Martisius	Lithuania - Radio and Television Commission
Thierry Hoscheit	Luxembourg - ALIA
Joanna Spiteri	Malta - Broadcasting Authority
Simon Manicolo	Malta - Broadcasting Authority
Madeleine de Cock Buning	The Netherlands - CvdM
Marcel Betzel	The Netherlands - CvdM
Marianne Minnechré	The Netherlands - CvdM
Witold Kolodziejcki	Poland - National Radio and TV Council
Ewa Murawska-Najmiec	Poland - National Radio and TV Council
Carlos Castanheira	Portugal - ERC
Marta Carvalho	Portugal - ERC
Tanja Muha	Slovenia - AKOS
Tomaz Gorjanc	Slovenia - AKOS
Lubos Kuklis	Slovakia - Council for Broadcasting and Retransmission
Martin Dorociak	Slovakia - Council for Broadcasting and Retransmission
Alejandra de Iturriaga Gandini	Spain - CNMC
Juan Enrique Gradolph Gadierno	Spain - CNMC
Ana Sanchez Couso	Spain - CNMC
Sonia Monjas	Spain - CNMC
Charlotte Ingvar-Nilsson	Sweden - Press and Broadcasting Authority
Kerstin Morast	Sweden - Press and Broadcasting Authority
Tony Close	UK - OFCOM
Oli Bird	UK - OFCOM
Julie Mamou	UK - OFCOM
Sophie Valais	Council of Europe / European Audiovisual Observatory
Emmanuelle Machet	EPRA
Celene Craig	EPRA
Heiddis Lilja Magnusdottir	Iceland - Media Commission
Kurt Bühler	Liechtenstein - Office for Communications
Mari Velsand	Norway - Media Authority
Hanne Nistad Sekkelsten	Norway - Media Authority
Philipp Metzger	Switzerland - Federal Office of Communications FCOM
Oliver Gerber	Switzerland - Federal Office of Communications FCOM
Emilija Janevska	Former Yugoslav Republic of Macedonia - Agency for Audio and Audiovisual Media
Djordje Vujnovic	Montenegro - Agency for Electronic Media
Ljubisa Kuvekalovic	Serbia - Electronic Media Regulatory Authority
Ebubekir Sahin	Turkey - Radio & Television Supreme Council
Nihat Caylak	Turkey - Radio & Television Supreme Council
Annetje Ottow	Utrecht University
Giuseppe Abbamonte	European Commission
Krisztina Stump	European Commission
Marcel Boulogne	European Commission
Joanna Wrona	European Commission
Žiga Drobnič	European Commission