

<b>Subgroup 3 – 2018 Terms of Reference (ToR)</b>	
<b>Name of Subgroup 3 (SG 3)</b>	The extension of the material scope of the AVMSD – Preparing for new tasks for NRAs and ERGA and challenges of law enforcement online
<b>SG Chair, NRA</b>	Olivier Schrameck, CSA (France)
<b>Background</b>	<p>Article 3(a) of the ERGA rules of procedures says that the Group’s mission is “<i>to advise and assist the Commission, in its work to ensure a consistent implementation in all Member States of the regulatory framework for audiovisual media services</i>”.</p> <p>Keeping this objective in mind, building on the previous works produced by ERGA, as well as NRAs’ experience with the current Directive, and while considering the advanced state of play of inter-institutional negotiations on the future Directive, it is timely for ERGA members to prepare themselves to fulfil their duties, both as members of the Group and as national regulators.</p> <p>In 2018, European legislators should adopt a revised AVMS Directive, paving the way for the ERGA to take on new responsibilities and a step forward in its development.</p>
<b>Subgroup scope and purpose</b>	<p>The general purpose of the Subgroup is to best prepare ERGA members to the entry into force of the new AVMS Directive. Although the text is still under discussion at the European level, it is absolutely crucial that NRAs start now to think about how the updated rules could be implemented. This forward-looking approach does not however preclude the Subgroup to reflect on the application of the existing rules, particularly in the digital environment.</p> <p>The Subgroup will also look into the consequences of the proposed extension of NRAs and ERGA’s responsibilities and discuss how to foster co-operation amongst them. This work can build on NRAs’ experience of applying the current Directive and on the output of the previous ERGA work on Material and Territorial Jurisdiction. In this context, and without prejudice to the ongoing AVMSD revision, the aim of the Subgroup is to produce a paper to contribute to the consistent implementation of the new Directive by NRAs. This document should help ERGA members (and the Commission) to best prepare to enforce the future regulatory framework once the revision is over.</p> <p>Due to the extensive number of topics covered by the Directive, it was suggested that the Subgroup be divided into 3 taskforces. The taskforces shall aim to best coordinate their respective workstreams in particular so as to ensure consistency in the Subgroup deliverables. The taskforces will cover some of the key issues raised:</p> <ul style="list-style-type: none"> <li>• <b>Taskforce 1 on the enforcement of relevant rules in the online environment regarding audiovisual media services and video sharing platforms</b> (chaired by DLM) will address issues arising from the foreseen extension of the scope of the Directive to new players (e.g. video-sharing platforms, also potentially covering social media) and, more broadly, from the application of the existing Directive to “non-traditional” providers of audiovisual content, particularly looking at the latest evolution of the European case-law.</li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Taskforce 2 on the promotion of European works</b> (chaired by AGCOM) will take a look at the new obligations for audiovisual media services in relation to the promotion of European works. Enforcement issues might appear and it is important to work on common approaches amongst ERGA members, especially when it comes to applying those rules to global players.</li> <li>• <b>Taskforce 3 on territorial jurisdiction / ERGA's role</b> (chaired by CSA) will aim at identifying common principles of cooperation in the framework of the new Directive. The taskforce members should aim at developing common approaches when it comes to improving the achievement of some key general interest objectives while respecting the COO principle. More specifically, the taskforce should deliver inputs about how to improve exchange of information between NRAs; how to develop common understanding of the criteria establishing territorial jurisdiction; how to deal with cross-border/EU-wide services<sup>1</sup> and how to best cooperate in derogation procedures. It will also explore – taking into account the other taskforces' inputs - to what extent ERGA has to adapt itself to its new responsibilities.</li> </ul> <p>Although each of the taskforces would deal with distinct topics, it is important to ensure consistency in the activities of the Subgroup. Regarding the new provisions of the Directive, the members of the respective taskforces should therefore strive to work within a <b>common frame</b> and meet the <b>same purposes</b>:</p> <ol style="list-style-type: none"> <li>1. <i>What are the main legal changes brought about by the revision of the Directive in the area covered by the taskforce?</i> – Analysing and comparing the “new” provisions of the Directive (as soon as they are no longer discussed at the European level).</li> <li>2. <i>How to make sure those new provisions will be consistently implemented by the NRAs?</i> – Looking at all the possible implementation options and identifying respective benefits and shortcomings (e.g. self vs. co-regulation?).</li> <li>3. <i>How best to coordinate the application of those provisions by NRAs?</i> – Thinking about common schemes and cooperation mechanisms through which ERGA members could better deal with cross-border/EU-wide issues.</li> <li>4. <i>What is the role of ERGA in this area?</i> – Preparing ERGA to fulfil its tasks in accordance with what the text of the Directive provides.</li> </ol>
<p><b>Taskforces purpose(s)</b></p>	<p><b>Taskforce 1 on the enforcement of relevant rules in the online environment regarding audiovisual media services and video sharing platforms</b></p> <p><i>Chair: DLM</i></p> <p>In an online audiovisual media environment, the traditional regulatory instruments often seem not to be sufficient to sustainably enforce and safeguard fundamental principles like protection of minors, protection against hate speech and consumer protection. Furthermore, technical</p>

<sup>1</sup> In this context, ‘cross-border services’ refer to services established in the EU which strategy is to make their programmes accessible in more than one Member State.

	<p>developments enable content providers to be more mobile and, thus, effective enforcement may be increasingly challenged from outside national borders.</p> <p>Against this background, the Taskforce focuses on the new challenges arising from a rapidly changing media landscape in terms of enforcing relevant rules online and on finding possible solutions to address those challenges. In this vein, the Taskforce explores 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.</p> <p>The Taskforce takes a twofold approach. On the one hand, it addresses in particular the question of how national regulators deal with media services in the online environment on the basis of the <u>existing legal framework</u> (current AVMS Directive and national transpositions/ implementations). On the other hand, the Taskforce also takes into account upcoming new challenges arising from the <u>envisaged changes to the AVMS Directive</u> (i.e. amended definition of audiovisual media service, inclusion of video-sharing platforms and maybe social media).</p> <p>In particular, the Taskforce aims to explore the following four aspects:</p> <ol style="list-style-type: none"> <li>1. Identification of the status quo: What is theoretically and legally possible for NRAs? Which defining criteria do NRAs apply when e.g. assessing whether a service has to comply with the Directive? What are the realistic options in practice? Where are the gaps?</li> <li>2. Identification of best practices for cooperation amongst regulatory authorities</li> <li>3. Identification of future challenges after the revision of the AVMS Directive</li> <li>4. Identification of suitable options (self-regulation, co-regulation), measures and taking into account innovative ways of exercising regulation e.g. participatory regulation<sup>2</sup>) to address these challenges. The Taskforce will liaise, where appropriate, with Subgroup 4 on Self- and Co-regulation.</li> </ol> <p><i>Relevant articles of the draft AVMSD: 1, 6, 6a, 9, 10, 11, 12, 28a, 30-a.</i></p> <p><b>Taskforce 2 on the promotion of European works</b></p> <p><i>Chair: AGCOM</i></p> <p>This taskforce will focus on the issues resulting from the application of new obligations (cf. new draft Article 13 of the Directive).</p> <p>The taskforce will particularly reflect on how these new provisions could be applied by regulators and service providers. For instance, the taskforce members may think about how to put into practice:</p> <ol style="list-style-type: none"> <li>i) the provision that might require providers of on demand audiovisual media services established in a Member State but targeting audience in another one to contribute financially to the production of European works;</li> </ol>
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<sup>2</sup> In the context of these Terms of Reference, “participatory regulation” refers to ways of exercising regulation. Its objective is, amongst others, to allow for citizens to effectively engage with regulatory authorities, for instance via social media, notification mechanisms, public consultations, etc...

	<p>ii) the possible exemptions of low turnover companies, thematic services and small and micro enterprises from the requirements established in article 13;</p> <p>iii) the provision requiring providers to secure a share of European works in their catalogues and to give prominence to these works (e.g. should the quota be calculated based on the number of titles or hours? what does “prominence” actually mean according to each category of non-linear services?).</p> <p>It would also be useful to identify tools allowing NRAs to properly assess whether the on-demand service providers fulfil their obligations. For instance, transnational classification schemes may be beneficial to achieve a harmonised application of the rules, and more effective standardisation of the periodic reports provided to the European Commission.</p> <p>The taskforce will also explore whether there is an opportunity for ERGA to work as a forum where to exchange best practices and recommendations amongst members as well as beyond the ERGA, including with relevant experts (e.g. industry experts, agencies such as EFADs, etc.) concerning the promotion of European audiovisual works in respect of both linear and non-linear services.</p> <p><i>Relevant articles of the draft AVMSD: article 13</i></p> <p><b>Taskforce 3 on territorial jurisdiction/ERGA’s role</b></p> <p><i>Chair: CSA</i></p> <p>The taskforce will analyse changes made to articles 2 (territorial jurisdiction), 3 (derogation procedure), 4 (anti-circumvention procedure), 5 (information requirements) and 13 (promotion of European works – regarding cross-border cooperation), as well as the new article 28b (territorial jurisdiction in the case of video-sharing platforms). The objective of this assessment is for the taskforce members to share a common level of understanding about the changes made to the current rules.</p> <p>Although the country of origin principle (COO) will remain a cornerstone of the future AVMS Directive, exceptions to that principle are going to raise some new and interesting issues: e.g. how to elaborate common criteria and cooperation mechanisms so that derogations to the COO principle are effectively and appropriately handled?</p> <p>NRAs will be confronted with new/complex questions, e.g. in the case of cross-border on-demand media services. This is why NRAs will discuss and define procedures so as to help the competent NRA make sure the services respect their obligations.</p> <p>Lastly, the taskforce will look at ERGA’s new responsibilities in a horizontal manner with a view to preparing the grounds for a change in the practical organisation of the Group. The objective is to ensure that ERGA will be ready to take on board new tasks as from the date of entry into force of the new Directive.</p> <p><i>Relevant articles of the draft AVMSD: articles 2, 3, 4, 5, 13, 28b, 30a and 30-a</i></p>
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Subgroup 3 Deliverables

<p><b>Deliverables SG3</b></p>	<p><b>Deliverable 1: Consolidated ToR</b></p> <ul style="list-style-type: none"> <li>• <u>Objective</u>: organization of work between the SG and the TF</li> <li>• <u>Method</u>: Written adoption procedure</li> <li>• <u>Due Date</u>: 7 March</li> <li>• <u>Publication</u>: yes</li> </ul>
	<p><b>Deliverable 2: Workshop on “The future of audiovisual regulation in the EU” (exact title tbc)</b></p> <ul style="list-style-type: none"> <li>• <u>Objective</u>: gaining practical inputs from professionals, academics, and regulators about how to best implement some relevant provisions of the new Directive</li> <li>• <u>Method</u>: one day workshop bringing together experts from NRAs, industry, academics and other relevant bodies (e.g. EFADs, European Audiovisual Observatory, etc.)</li> <li>• <u>Due date</u>: to be confirmed</li> <li>• <u>Publication</u>: activity report, for internal purposes only</li> </ul>
<p><b>Extra deliverables – specific to taskforces</b></p>	<p><b>Deliverable 3: ERGA Paper to contribute to the consistent implementation of the new Directive (“The Audiovisual Media Services Directive: towards the application of the revised text”)</b></p> <ul style="list-style-type: none"> <li>• <u>Objective</u>: preparing the grounds and making proposals for an effective implementation of the new AVMS Directive across the EU by NRAs.</li> <li>• <u>Method</u>: collecting inputs and recommendations in a coordinated manner, so as to ensure global consistency of the deliverable, from all the 3 taskforces about a) implementation options (risks and benefits assessment); b) best cooperation practices;</li> <li>• <u>Due date</u>: November (plenary meeting)*</li> <li>• <u>Publication</u>: yes</li> </ul> <p><i>* The content will be adapted according to the pace at which European legislators conclude the revision of the AVMS Directive.</i></p> <p><b>Deliverable 1a: DLM conference on challenges of enforcing relevant rules online (TF1) – in co-operation with ERGA</b></p> <ul style="list-style-type: none"> <li>• <u>Objectives of the twofold event</u>: <ul style="list-style-type: none"> <li>○ The first, public part of the conference is aimed at facilitating the exchange in an EU-wide context between regulators, legislators, and those being regulated. In this vein, the conference is dedicated to the experience of NRAs when dealing with “new” services such as influencers and harmful content on online platforms on the current framework.</li> <li>○ In the second, merely internal part ERGA members will discuss the lessons learned from the various interventions and contributions made during the public part.</li> </ul> </li> <li>• <u>Method</u>: <ul style="list-style-type: none"> <li>○ First part: Panel discussions and presentations, involving regulators, experts, policy makers, and academics.</li> <li>○ Second part: Internal workshop, involving ERGA members exclusively.</li> </ul> </li> <li>• <u>Due date</u>: 11 April 2018</li> </ul>

	<p><b>Deliverable 2a: Roadmap on the future internal organisation of ERGA (TF3)</b></p> <ul style="list-style-type: none"> <li>• <u>Objective</u>: preparing ERGA to adapt its internal organisation in order to be able to cope with new responsibilities in the future</li> <li>• <u>Method</u>: pinpointing new ERGA's responsibilities and developing various plans with suggestions for change in the internal ERGA organisation</li> <li>• <u>Due date</u>: November (plenary meeting)</li> <li>• <u>Publication</u>: no, for internal purposes only</li> </ul>
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<p><b>Allocated Resources SG3</b></p> <p><b>Chairs</b> <b>Drafters</b> <b>Members</b></p>	<p><u>Chair of the SG</u>: Olivier Schrameck, President, CSA (France)</p> <p><u>Subgroup meetings participants</u>:</p> <ul style="list-style-type: none"> <li>• Tobias Schmid, Commissioner for European Affairs, DLM (Germany)</li> <li>• Nathalie Sonnac, College Member, CSA (France)</li> <li>• Benedetta Liberatore, Director in Directorate for Audiovisual Content, AGCOM, (Italy)</li> </ul>
<b>Taskforce 1</b>	<p>Peter Matzneller, Bianca Heuser, Elke Nussbaum, DLM, (Germany)</p> <p>Martine Coquet, Gil Moureaux, Pierre Dagard, CSA (France)</p> <p>Susanne Lackner, KommAustria, (Austria)</p> <p>György Ocsko, NMHH, (Hungary)</p> <p>Francesca Pellicano, AGCOM (Italy)</p> <p>Marcel Betzel, CVDM, (Netherlands)</p> <p>Lubos Kuklis, Martin Dorociak, CBR, (Slovakia)</p> <p>Oli Bird, Ofcom, (United Kingdom)</p> <p>Tine de Baere, VRM, (Belgium)</p> <p>Bernardo Herman, Paul-Eric Mosseray, Samy Carrere, CSA (Belgium)</p> <p>Robert Tomljenovic, AEM, (Croatia)</p> <p>Petr Kozak, Michal Spirek, RRTV, (Czech Republic)</p> <p>Ulrike Clade Christensen, Marie Frank-Nielsen, SLKS, (Denemark)</p> <p>Kalle Varjola, FICORA, (Finland)</p> <p>Zoran Trajchevski, Emilia Janevska, AVMU, (FYROM)</p> <p>Charis Tsigkou, NCRTV, (Greece)</p> <p>Stephanie Comey, BAI, (Ireland)</p> <p>Ieva Beitika, Uldis Lielpeters, Nepļdadome, (Latvia)</p> <p>Mantas Martisius, RTCL, (Lithuania)</p> <p>Joanna Spiteri, BA, (Malta)</p> <p>Line Langnes, Medietilsynet, (Norway)</p> <p>Elena Alvarez, CNMC, (Spain)</p> <p>Teja Antoncic, Petra Zupancic, AKOS, (Slovenia)</p> <p>Kerstin Morast, Jessica Durehed, MPRT, (Sweden)</p> <p>Agnieszka Wasowska, KRRIT, (Poland)</p> <p>Marta Carvalho, ERC, (Portugal)</p>
<b>Taskforce 2</b>	<p>Giovanni Gangemi, Claudia Angrisani, AGCOM, (Italy)</p> <p>Martine Coquet, Gil Moureaux, Raphaël Honoré, CSA, (France)</p> <p>Bernardo Herman, Paul-Eric Mosseray, CSA, (Belgium)</p> <p>György Ocsko, NMHH, (Hungary)</p> <p>Lubos Kuklis, Martin Dorociak, CBR, (Slovakia)</p>

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<b>Taskforce 3</b>	<p>Frédéric Bokobza, Martine Coquet, Pierre Dagard, Raphaël Honoré, CSA, (France)</p>
	<p>Bernardo Herman, Paul-Eric Mosseray, CSA, (Belgium)          Peter Matzneller, Bianca Heuser, Elke Nussbaum, DLM, (Germany)          György Ocsko, NMHH, (Hungary)          Adele Morello, AGCOM, (Italy)          Lubos Kuklis, Martin Dorociak, CBR, (Slovakia)</p>
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**Work flow for Subgroup 3 (internal and external milestones)**

<i>Date</i>	<b>Action / Deliverable</b>	<b>Internal</b>	<b>External</b>
		Subgroup/Taskforce only	Board, CN, Plenary, Publication
16 January	Draft ToR discussed during ERGA board meeting		Board
25 January	Draft ToR distributed to SG members	Chair/ERGA secretariat/taskforce	

<i>Date</i>	<b>Action / Deliverable</b>	<b>Internal</b>	<b>External</b>
		Subgroup/Taskforce only	Board, CN, Plenary, Publication
		chairs/drafters/ members	
31 January	Deadline for sending out comments to the draft ToR	Subgroup members	
2 February	<p>First meeting of SG3 &amp; taskforce 1, 2, and 3</p> <p>Organization of the work between the SG and the taskforces.</p> <p>Agreement on the planned activities and deliverables of the SG.</p>	Chair/taskforce chairs/drafters/members	
8February-22 February	Written procedure of adoption (first step: consultation)	Chair	Plenary
22 February	Contact network meeting		CN
2 – 9 March	Written procedure of adaption (second step: electronic vote)	Chair	Plenary
23 March	<p>ERGA plenary meeting</p> <p>Taskforces to report on their activities so far.</p> <p>Update on the AVMSD negotiations</p>	Chair	Plenary
11 April	<p>2<sup>nd</sup> meeting of taskforce 1 – Drafting of the questionnaire</p> <p>Taskforce 1 workshop on “challenges of enforcing relevant rules in the online environment” (deliverable 1a)</p>	taskforce 1 members	
Mid-April	2 <sup>nd</sup> Meeting of taskforce 2 and 3	taskforce 2 and 3 members	
tbc	<p>Second meeting of SG3</p> <p>Workshop on the future of audiovisual</p>	Chair/drafters/members	



<i>Date</i>	<b>Action / Deliverable</b>	<b>Internal</b>	<b>External</b>
	regulation in the EU (exact title tbc) (deliverable 2)  Update on the AVMSD negotiations	Subgroup/Taskforce only	Board, CN, Plenary, Publication
June	3 <sup>rd</sup> meeting of taskforce 1	taskforce 1 members	
	3 <sup>rd</sup> meeting of taskforce 2	taskforce 2 members	
	3 <sup>rd</sup> meeting of taskforce 3	taskforce 3 members	
September	Third meeting of SG3  Discussion on Draft ERGA Paper to contribute to the consistent implementation of the new Directive ( <i>"The Audiovisual Media Services Directive: towards the application of the revised text"</i> ) (deliverable 3)	Chair/drafters/members	
October	Contact network  Draft ERGA Paper being discussed at the CN	Chair	CN
November	ERGA plenary meeting  Adoption of the ERGA Paper to contribute to the consistent implementation of the new Directive	Chair	Plenary