ERGA Subgroup 3
Taskforce 2 on 'Video-Sharing Platforms (VSPs) under the new AVMS Directive'
Brussels, 6 February 2019
Minutes

Attendees: CSA France (chair), CSA/VRM Belgium, CEM Bulgaria, SLKS Denmark, DLM Germany, BAI Ireland, ESR Greece, CNMC Spain, AEM Croatia, AGCOM Italy, CRTA Cyprus, NEPLPADOME Latvia, NMHH Hungary, BA Malta, CvdM The Netherlands, KRRiT Poland, ERC Portugal, AKOS Slovenia, RVR Slovakia, MPRT Sweden, OFCOM UK, Medietilsynet Norway, European Commission.

Introductory remarks

The Chair of the Taskforce, Pierre Dagard (French NRA) welcomed the participants. He explained that the work of the Taskforce will be divided in three workstreams:

- Workstream 1: recommendations for a methodology to identify VSPs
- Workstream 2: benchmarking of the existing measures taken by VSPs
- Workstream 3: NRAs' role in the monitoring/assessment of the measures taken by VSPs

The aim is to produce a document/toolkit, which NRAs may use when facing an issue and to see what role ERGA could have in the co-operation among NRAs.

Mr Dagard invited members to actively participate in the work of the three workstreams.

→ The agenda was adopted.

Tour de table

Many NRAs voiced that their interest was to develop a better understanding of the regulatory questions regarding VSPs in view of the upcoming transposition of the revised Audiovisual Media Services Directive (AVMSD) in which NRAs could become involved at some stage. The Commission explained that it started to develop guidelines on the essential functionality criterion in the revised AVMSD.

Retrospective view on ERGA's work in 2018 on VSPs

Mr Dagard reminded members of the work ERGA had done regarding VSPs in the last year, which will be included in the work of the Taskforce: the "ERGA SG3 – Analysis and Discussion Paper to contribute to the consistent implementation of the revised AVMSD" and the ERGA paper "A Framework for Effective Co-regulation of Video Sharing Platforms". For example, the Taskforce

would pick up some of the proposals made in the ERGA Analysis and Discussion Paper. Moreover, the questions raised in the ERGA paper "A Framework for Effective Co-regulation of Video Sharing Platforms" could be used as a basis for workstream 3.

In one of the interventions, a representative stated the importance of understanding the role of NRAs in different jurisdiction constellations, including when a VSP is acting from outside the EU. The Chair agreed and suggested that case studies could help NRAs to develop a clearer understanding regarding the jurisdiction issues.

Outlook on the proposed work plan of the Taskforce
The Chair proceeded to present the proposed work plan for 2019.

Workstream 1 – recommendations for a methodology to identify VSPs (led by the Hungarian NRA) would develop a list of case studies. The proposed approach would be to divide the definition of VSPs provided in the revised AVMSD into its various elements, Due consideration will be made for the Commission's drafting of guidelines regarding the interpretation of the 'essential functionality' criterion. The various parts of the definition identified would then be tested against the case studies (without any prejudice to whether a service might be a VSP or not, which is not for this Taskforce to decide but for individual NRAs). It was suggested that the list of VSPs for the case studies could be grouped, potentially according to their purpose. The German NRA noted that large services usually offer a variety of products compared to small services, which should be taken into account.

Workstream 2 – benchmarking of the existing measures taken by VSPs (led by the German NRA) would also develop a list of case studies with the objective to identify potential gaps between current VSP measures and what the revised Directive requires of them in the future. Members discussed the difficulty of selecting VSPs for the case studies The fact that some services may be used as examples of VSPs for the purpose of this exercise is without prejudice to each NRA's individual assessment. However, the list of case studies will be made of services which can very presumably – given the criteria of the definition – be considered as VSPs.

Workstream 3 – NRAs' role in the monitoring/assessment of the measures taken by VSPs (led by the Italian NRA) aims at developing a more detailed understanding of the responsibilities of NRAs when monitoring VSPs under the revised AVMSD. The workstream would be based on the questions raised in the ERGA paper "A Framework for Effective Co-regulation of Video Sharing Platforms", potentially complemented by additional questions.

Workstream 1: Recommendations for a methodology to identify VSPs
For Workstream 1, the first important step would be to agree on a list of case studies (determined by the number of volunteers for the workstream). The Hungarian NRA suggested different categories for services that might fall under the definition of a VSP (e.g. social networks, local platforms, platforms for professional use, etc.). The aim would be to develop a list of diverse types platforms to cover a broad range of potential VSPs.

Workstream 2: Benchmarking of the existing measures taken by VSPs
The German NRA suggested to focus on three different services, including a platform more likely to be identified as VSP, a local platform and those with adult content.

On the question of benchmarking/cataloguing the Irish NRA noted the usefulness of a discussion on the appropriateness of measures, but highlighted that an assessment should not be conclusive, considering that the transposition of the Directive has only started. The chair agreed and added that

the assessment would nevertheless include a critical view in order to be able to question VSP providers in the future.

Workstream 3: NRAs' role in the monitoring/assessment of the measures taken by VSPs
The Italian NRA explained that the Workstream's tasks will be twofold:
- The evaluation of the appropriateness of the measures adopted by the VSPs
- The handling of cross-border cases, whenever a user has complained about a particular piece of content on a VSP

The workstream will gather questions from these categories and look for answers. Members were invited to send their questions and to volunteer for drafters. The final report might include possible options for each of the identified issues for members to choose from. As mentioned in the introduction last year's ERGA paper "A Framework for Effective Co-regulation of Video Sharing Platforms" could be helpful in the workstream's work.

Regarding the evaluation of the appropriateness of the measures taken by VSPs, the workstream will outline the different situations that NRAs might face (e.g. different types of services and size of companies) and possibilities they might have when making the evaluation.

On user complaint mechanism, the workstream will discuss what forms such mechanism could take, their level of accessibility, issues of cross-border complaints, possible outcomes, the differentiation between three parties involved (VSP, user and uploader) and how to assure that the user and the uploader are represented in a balanced way.

Next steps
The Chair will prepare a roadmap for the work of the workstreams.
The next meeting will be on 9 April.