



ERGA Subgroup 3
Taskforce 3 on 'Concrete mechanisms of regulation'
Brussels, 10 April 2019
Minutes

Attendees: DLM Germany (chair), CSA/VRM Belgium, CEM Bulgaria, RRTV Czechia, SLKS Denmark, TJA Estonia, ESR Greece, CNMC Spain, CSA France, AEM Croatia, AGCOM Italy, NEPLPADOME Latvia, NMHH Hungary, BA Malta, KommAustria Austria, KRRiT Poland, ERC Portugal, AKOS Slovenia, RVR Slovakia, MPRT Sweden, OFCOM UK, Medietilsynet Norway, RTÜK Turkey, European Commission.

The Chair, Tobias Schmid (DLM Germany) welcomed the participants and explained that the aim of the meeting is to present and discuss the draft results of the Taskforce's Workstreams 1-4.

Workstream 1: New mechanisms of regulation and responsibilities (led by HU)

The Hungarian NRA explained that the aim is to compare best practices and find out which areas and fundamental values could be best suited for which kind of regulation: statutory regulation, strong approach and soft approach.

In the absence of a universal definition of human dignity, the analysis is based on the one from Hungarian law. Protection of minors has been always important in all Member States and has been, under the revised AVMSD, extended to new services. Following the Hungarian approach, human dignity should be guaranteed by the state: either in media law or civil law, possibly by combination of both. Interventions by the state may be necessary with infringements expected to be met with serious consequences.

The best examples of co-regulation exist in the field of consumer protection. Co-regulation is usually considered an intermediate option between regulation and self-regulation but its use can be much broader. Self-regulation does not imply that issues covered by it are less serious but mainly that the regulatory consequences can be softer. The Greek NRA noted that, due to the differences in the administrative systems, no uniform scheme can be applied in all Member States. Regarding external pluralism (diversity of stakeholders), especially small markets require stronger state oversight compared to the bigger markets.

Workstream 2: Development of concrete measures to improve cooperation between NRAs (led by SK, DE)

The Slovak and German NRAs aim to identify ways to improve cooperation between NRAs in cross-border cases. Cooperation can be based on bilateral agreements between NRAs but often personal contacts (e.g. at ERGA meetings) may suffice to clarify the positions of the NRAs affected. When a case is handed to another authority it is helpful to provide all available information about the case and provider in question (channel, specific time, etc.), including a possible translation. For third-country providers the best approach could be to directly contact the NRA in the third country jurisdiction regarding the breach of rules. There may be need for a regular reporting on cross-border cases, both internally within ERGA, and externally to signal the industry the regulators' activities in order to prevent forum shopping.

In case of a disagreement between NRAs (e.g. if certain service is VOD or not), direct contact with the provider to obtain more information on the VODs activities may help to resolve the issue. ERGA may even suggest setting up timeframes for cooperation between NRAs. In the future contact points could be set up, possibly through the ERGA website, to foster direct contact among NRAs. The Chair also raised the possibility of cooperating with EPRA regarding the contacts with third countries, and to explore the possibilities of including platforms and using the MAVISE database, for the purpose of external reporting.

Workstream 3: Development of possible frameworks to improve and facilitate cooperation and exchanges between ERGA members and other relevant authorities (led by FR, IT)

The Italian NRA shared their experience of cooperating with the Italian competition authority through a memorandum of understanding. This facilitates the exchange of information, for example in concentration proceedings if these concern communication enterprises. The memorandum states what kind of cooperation is possible. The Italian model cannot be applied in every Member State, for example in Germany media is state competence but telco falls under federal competence. However, the Chair pointed out that existing and well working systems can incentivise others to follow.

Workstream 4: Analysis of service providers' responsibilities and development of possible options to foster compliance with media law online (led by AT, HR)

Fostering compliance with media law in the online environment is challenging, considering that the identity of content providers is not always easy to establish and that conflicts with other legislative acts, such as the e-Commerce directive, are possible. Problems should also be solved within a reasonable period of time. With respect to the relevant legal framework, the chair envisaged a step-by-step procedure with the primary target being the content provider (if possible), then the host provider (if possible) and finally the access provider. The approach would also differentiate between actors under the NRA's jurisdiction, foreign EU jurisdiction or under foreign non-EU jurisdiction. The Greek NRA also noted that providers may easily change jurisdictions, leaving the access provider often as actor in the chain who is the easiest to contact. It is important to clearly differentiate harmful and illegal content and focus on illegal content.

Next steps

The result of this exercise will be a short practical document with best practices. The Chair concluded that final paper should have approximately 6 to 10 pages, an executive summary and that the scope should be more focused on the AMVSD. The Chair explained that the workstreams will continue their work and that a first outcome will be shared at the Plenary in June.

The next Taskforce meeting is scheduled for September.