



ERGA Subgroup 2 on the future of ERGA
Brussels, 14 May 2019
Minutes

Attendees: CSA France (chair), AGCOM Italy, KommAustria, CSA/VRM Belgium, RRTV Czechia, SLKS Denmark, DLM Germany, RVR Slovakia, BAI Ireland, ESR Greece, CNMC Spain, NEPLPADOME Latvia, NMHH Hungary, CvdM The Netherlands, KRRiT Poland, ERC Portugal, AKOS Slovenia, OFCOM UK, Medietilsynet Norway, European Commission.

The chair welcomed the participants. The aim of the meeting was to present the work of the three workstreams and the proposed reform of ERGA.

Workstream 1 – Future tasks

The proposal with a detailed description of future tasks was sent after the drafters' meeting in April.

Direct tasks mentioned in Art. 30b of the revised AVMSD refer to jurisdiction issues, where ERGA would be obliged to provide its opinion following a request from the Commission. To effectively fulfil these tasks, a dedicated permanent structure within ERGA could be set up. The already existing tasks, taken directly from the Commission Decision on ERGA, are not further explained in the proposal. The document also lists organisational tasks, e.g. external representation, communication flow between the Commission and ERGA, and the adoption of ERGA's Rules of Procedure.

Indirect tasks could stem from certain provisions that do not address ERGA directly, but where the group could consider providing its expertise:

- Art. 2 (jurisdiction) – adopt guidance document with requirements for database of media service providers.
- Art. 3 (derogation) – assistance to Commission in urgent cases through quick assessment exercises.
- Art. 4a (co- and self-regulation) – assistance to Commission and Member States in assessing codes of conduct.
- Art. 7 (prominence) – help with assessing the reports from media service providers.
- Art. 7b (overlay) – guidance on elements of the regulatory details.
- Art. 28b (VSPs) – assessment of what platforms need to do and if the measures are appropriate.
- Art. 33a (monitoring of AVMSD application) – guidance on assessment of measures and provide input for guidelines.

These tasks could be carried out by sub- or working groups and result in the development of internal ERGA guidelines.

Workstream 2 – Comparative analysis of other networks/groups

EPRA (European Platform of Regulatory Authorities). There is a potential for further collaboration with ERGA, despite differences in the organisational structure. EPRA has taskforces on specific topics, as defined in the work programme (e.g. on MAVISE or media literacy) and its three year strategy. The EPRA executive board (chair, vice-chair, secretariat) meets a few times a year. EPRA plenary meetings are hosted on voluntary basis. The quality control of documents and press releases is guaranteed by the secretariat. Cooperation between EPRA and ERGA could be intensified.

ERGP (European Regulators Group for Postal Services). The similarities include the establishment by Commission decision, the existence of a “Troika” (chair, outgoing and incoming chairs), which form the “Steering group” when joined by subgroup chairs. The Work Programme is done by the incoming Chair and is approved at the last plenary before the respective year. The ERGP has a communication strategy drafted under the coordination of the incoming Chair and in line with the Work Programme.

BEREC (Body of European Regulators for Electronic Communications). The EU body initially started as a Commission’s expert group, similar to ERGA. The Chair and the Vice-Chairs of the Board of Regulators compose the Mini Board. As an EU body, the ties with the EU institutions are closer, so the draft-Work Programme has to be consulted with the European Parliament, the Council and the Commission. BEREC has a medium term strategy and a communication strategy in place to promote its work, and each year a stakeholder forum is organised to engage in strategic dialogue.

EDPB (European Data Protection Board). Set up by the GDPR in 2016 it provides guidance to Member States and the Commission on data protection issues. EDPB has ordinary and extraordinary plenaries. Members do not have to attend meetings but they may participate through video conference systems. To address issues, EDPB uses a subgroup and rapporteur system. EDPB does not have a strategy document in place, but a multi annual work programme.

Workstream 3 – Expectations concerning ERGA’s reform

Consultation of ERGA members

Based on the survey among members, bilateral discussions were carried out focusing on two aspects: what should ERGA be doing and the functioning of ERGA, including external outreach. The following conclusions were drawn:

- All the statements in survey were important for Member States, but ERGA’s internal deficiencies was seen as a priority to respond to.
- Member States are keen on strengthening cooperation between members and working with the Commission on common regulatory issues.
- ERGA should have a long-term strategy and the Work Programme should be prepared more in advance.
- The operation of subgroups needs more transparency in internal processes.
- The role of the Board should be specified, with some members advocating to give it decision making powers.
- The working procedures with the Commission should be clarified.
- Improve ERGA’s visibility, particularly online, and by engaging more with industry.

4 Pillars of the Reform

An important part of the reform is the adaptation of the Rules of Procedure, since some of the proposed changes will be reflected therein.

The Statement of Purpose (first pillar) is a declarative document clearly setting out what ERGA is, what it does and what it stands for. The document would contain three chapters:

- ERGA values
- ERGA tasks and operation principles
- ERGA strategy and priorities

The Board (second pillar) and its role should be clearly defined, specifically its internal tasks, its composition, and the transparency of its operation, as well as its role vis à vis the outside world.

The preparations for the annual **Work Programme** (third pillar) could start in the first trimester of the preceding year to guarantee the participation of the largest number of members and a transparent adoption process, aimed at the first plenary. This would leave enough time to set-up subgroups, define terms of reference and elect board members for the next year.

The new **Fast-Track Adoption Procedure** for opinions requested by the Commission could be facilitated by a small ad-hoc working group, which would prepare the draft opinion. The adoption could take place in writing or at a Plenary/Contact Network meeting. Further discussion with the Commission is planned to ascertain what would happen in case ERGA members would not be able to deliver an opinion due to diverging views or where more time would be needed than the allocated 15 working days.

During the debate, some Member States discussed the possibilities of widening the scope of ERGA's work and how to deal with different opinions in the adopted documents. Transparency in the drafting and adoption procedures were highlighted as important factors. Members also agreed that enlarging the number of board members to five would be more representative for all ERGA members, but they had diverging views with regard to the ability of the Board to take decisions on behalf of ERGA.

The reform package should be adopted at the last plenary in 2019 and become effective in 2020.

ERGA Relationship with the European Commission

In the context of the reform of ERGA, some members wanted to obtain more information and clarifications regarding the relationship with the European Commission, including the resources that ERGA will have at its disposal. The Commission clarified that its Expert groups are governed by horizontal rules and that any questions on the interpretation of these provisions or suggestions on how to improve the collaboration can be discussed. Members were invited to send written submissions to the Chair.

Next steps

Members may submit further comments to the documents by the end of the week. The chair will take comments into consideration as much as possible in the updated version, which will be distributed at the Contact Network.