

THE IMPORTANCE OF MEDIA PLURALISM
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Opening

Goodmorning ladies and gentlemen. I would like to express my warmest thanks to both Florence Hartmann-Vareilles of ERA and Mark D. Cole of EMR for organising this conference. Thank you for inviting the European Regulators Group for Audiovisual Media Services to deliver a speech on media pluralism. My name is Madeleine de Cock Buning, and I am the Chair of ERGA in 2016 and the president of the Dutch Media Authority.

The topic of today is highly relevant as the core values of the European media are under pressure. Last week the European Commission presented its proposal to revise the AVMS Directive. During the presentation Commissioner Oettinger found it important to underline that these values are to be uphold. He said the following:

“The way we watch TV or videos may have changed, but our values don't. With these new rules, we will uphold media pluralism, the independence of audiovisual regulators and will make sure incitement to hatred will have no room on video-sharing platforms. We also want to ensure a level-playing field,

responsible behaviour, trust and fairness in the online platforms environment,”

Today I will first tell you something about ERGA and its work including its statements on the worrying developments in some EU Member States.

I will describe the recommendations ERGA gave to the European Commission and reflect on how these are incorporated in the proposal. I have to say though, that ERGA is still elaborately studying the new proposal, which means that I am not in the position to say too much in detail about ERGA's opinion yet.

Lastly I will show you why it is so important to protect the independence of media with the help of independent media regulation.

ERGA

ERGA was established in 2014 by a Decision of the European Commission. It consists of the heads of the national audiovisual media regulators in the EU. Its task is to independently advise the European Commission on the AVMS Directive and other matters related to audiovisual media services within the Commission's competences.

So far ERGA published four reports on the following topics:

- the Protection of Minors in a Converged Environment,
- Material Jurisdiction in a Converged Environment,
- Territorial Jurisdiction in a Converged Environment,
- the Independence of National Regulatory Authorities.

The four reports all contain concrete recommendations to the Commission in the light of the revision of the AVMS Directive. In the considerations with the new AVMSD proposal, the Commission seems to highly value the contributions ERGA made so far. Also therefore the Commission proposes to formally recognise and reinforce the role of ERGA in the Directive. ERGA takes this as a vote of confidence.

Recent Developments

On several occasions ERGA has raised the attention to worrying developments in the EU on the independence of media and media regulation. I will touch upon the developments in Poland, Greece and Croatia.

On January 7 of this year a new law came into force in Poland on public service media. It features measures depriving the independent national authority of the power to nominate and dismiss the management and supervisory boards of the public service broadcasters. The Polish government furthermore expressed explicit intentions to influence the programming of public broadcasters. ERGA found these developments alarming and immediately issued a statement. In this statement ERGA strongly calls upon *all* Member States of the European Union to act to uphold the principle of independence of media.

Also the European Commission has concerns about the developments in Poland. The current AVMS Directive does not provide a legal basis to act as regards the independence of regulators. However, both the new Polish media law and the

legislation to overhaul the constitutional court and modify its decision-making rules, caused the European Commission to open the dialogue with Poland, in the context of the Article 7 procedure. This procedure enables the Commission to enter into dialogue with a Member State to prevent endangering fundamental freedom and democracy in that Member State.

This dialogue is on-going behind the scenes. Last Wednesday the European Commission took a next step in this procedure by adopting an Opinion. Despite the dialogue and extensive exchanges between the Commission and the Polish government, it has not yet been possible to find a solution to the issues identified by the Commission.

The issues mentioned by the Commission are the appointment of judges to the Constitutional Tribunal and the functioning of the Constitutional Tribunal. But also a number of sensitive new legislative acts, such as a new media law are mentioned. I sincerely hope that the dialogue will remain constructive and the Opinion will result in satisfying outcomes, because in the mean time we saw plans of the Polish government to issue yet another new law, turning public media into national media.

We also saw worrying developments regarding the national media regulator in Greece. At the end of 2015, all except one of the members of the national media regulator were dismissed, without being replaced. Up until now. At the same time the competences of the media authority were partially transferred to the government.

Then we have the situation in Croatia. In the beginning of March the Croatian government has proposed to dismiss *all* current members of the Council of the national authority. The reason stated is that there are some formal omissions in the annual activity report of the regulator for the year 2014.

Although this proposal was put on the agenda in April, it is still not voted upon by parliament. A couple of months have passed now and there is still no outcome. We can picture that this ongoing situation has a chilling effect on the independent and effective functioning of the regulator in Croatia.

And there are more national regulatory authorities within the EU who expressed within ERGA that they are in a situation where their independence is at risk: Cyprus, Bulgaria, Romania. There seems to be an alarming trend in which a number of regulators for audiovisual media are struggling with circumstances that can impair their independence and effective functioning.

Independence of Media Regulation

This underlines the importance of ERGA's advise to the European Commission on "the Independence of National Regulatory Authorities".

For the effective fulfilment of its tasks and to ensure public values, the independence of regulators is key. ERGA analysed the position of NRA's and published its report at the beginning of 2016. ERGA sets clear minimum standards for all Member States to ensure independence of national regulatory

authorities, including common characteristics that any NRA should be equipped with. These are:

1. Member States shall establish National Regulatory Authorities which are independent from public authorities and from the private sector.
2. The NRA's shall be accountable and carry out their work in line with the principle of transparency. This means that the NRA should have transparent consultation procedures and its decisions should be publicly available.
3. NRA's shall have the power to take autonomous decisions.
4. NRA's should be provided with adequate enforcement powers. These powers should be handled autonomously, but also in line with fair, transparent and non-discriminatory published procedures.
5. NRA's shall have sufficient human and financial resources to carry out its tasks effectively. NRA's shall be autonomous in the allocation of their budgets.
6. There shall be open and transparent procedures for the nomination and appointment of Board Members of the NRA's. The dismissal of Board Members of the NRA's shall be based on transparent and objective grounds.

Before I touch upon the proposal for the new AVMS Directive, I would like to remind you of how this is arranged for now. The current AVMS Directive does **not** contain any formal obligations for the EU Member States to create an independent regulatory body. Moreover, it does **not** define the terms of independence. But the Directive does stipulate that *if* there is a regulatory body,

it should be independent. Or, more precisely: Member States are obliged to put in place a regulatory framework that is structurally capable of implementing the aims of the directive in an impartial manner. To ensure this, a minimum requirement of independence is needed.

In too many countries, both inside and outside the European Union, the provisions remain empty shells and too many national regulatory authorities are struggling to protect their independence. This was also addressed by some studies commissioned by the Commission in the recent past such as the INDIREG and RADAR studies. A lot of regulatory media authorities deal with serious financial budget cuts. Regulatory capture, either by the government or market players, or a combination of both, remains a reality.

At the end of 2015 I asked the question in the European Parliament whether we should content ourselves with a European media regulatory framework that lacks the safeguards that are indeed already liberally granted to the national supervisory authorities that regulate our internet access, our electricity or our banking facilities? And especially in a sector where public values such as the freedom of speech are directly at stake, independent supervision is crucial.

With its new AVMS Directive the European Commission has made concrete proposals to enshrine the independence of audiovisual regulators into EU law.

In its recitals it is considered that Member States should guarantee the independence of national regulatory authorities from both the government public bodies and the industry with a view to ensuring the impartiality of their decisions.

According to the newly proposed Article 30 Member States will be obliged to designate an independent national regulatory authority, which is legally distinct and functionally independent of any other public or private body.

The competences and powers of the NRA , and the ways of making them accountable, are to be clearly defined in law. NRA's shall also have adequate enforcement powers. The proposals introduces rules which apply to the dismissal of a Head of the NRA.

Member States are to ensure that independent NRA's have separate budgets. NRAs shall have adequate financial and human resources to carry out their tasks assigned to them and to actively participate in and contribute to ERGA.

We can conclude that most of the advices from ERGA have been taken into account. We very much welcome the steps being taken, although ERGA will give a more detailed opinion later in the process.

Why do we need to protect the independence of media by independent media regulation?

But why is the independence of media regulation so important?
Why does it concern *all* the citizens of the EU?

All EU Member States have committed themselves to abide by the European Convention on Human Rights and the EU Charter of Fundamental Rights. That includes respecting the freedom and pluralism of all media. Undermining the independence of media restricts that freedom. Independent media are the cornerstone of our European democracies. They enable citizens to form their own opinions and not be steered in one way or another by any stakeholder, including the state.

Independent regulatory authorities are there as a shelter for independent media. Independent regulators are the rocket shield to guarantee independent media. Independent from political influence or commercial interests, the media authorities must be put in a position that they can defend those core values.

Both the report on independence of ERGA, and the recent events, show that independent regulation of audiovisual media cannot be taken for granted. Now more than ever the concept of independence of regulators, already well developed and implemented in other sectors, should be ensured to the sector of audiovisual media.

The proposed revision of the AVMS Directive is a step in the right direction. We sincerely hope that the importance of independent media regulation is enshrined in EU law and will be recognized by both the Council and the European Parliament..

The Ministers already had a first exchange of views on the proposal last Tuesday. Ministers agreed on the importance of updating the AVMS Directive, and also underlined that it must respect European cultural and linguistic diversity, the freedom and pluralism of the media, the openness of the Internet and the protection of consumers and in particular minors. The impression of the Chair of the meeting was that there are no fundamental differences between Member States (although there may be some controversial issues).

We are therefore looking forward to a swift adoption of the new directive with better guarantees for the independence of audiovisual media regulators.
