



# ERGA report on material jurisdiction in a converged environment

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Extract

## ERGA recommendations on material jurisdiction

### **Recommendation 1 – “TV-like”**

ERGA suggests that the Commission should revisit the definition of an audiovisual media service in a revised AVMSD and review the “TV-like” criterion in Article 1.b and recital 24. In reviewing it, the Commission should be mindful of the underlying goals of the Directive (e.g. the need for fair treatment of competing services, impact on society, democracy and culture, audience protection) and the principle of proportionality. The EU-Commission should consider whether, by working with ERGA, it can develop a set of guidelines that will help to provide greater clarity and a more consistent application of the definition.

**Background:** *The “TV-like” criterion is unavoidably subjective and there are several different national interpretations.*

### **Recommendation 2 – “principal purpose of one service”:**

ERGA proposes that the Commission should review and clarify whether the Directive is compatible with the notion of “one service”; i.e. that one legal entity can offer or one website can contain several services, each with its own principal purpose.

**Background:** *When audiovisual content is presented to viewers as part of a multimedia service, regulators can face the challenge of first defining the service in question before they can evaluate whether the content is incidental to the service, or part of its principal purpose.*

### **Recommendation 3 – Editorial Responsibility:**

There is a broad consensus among ERGA Members that the concept of editorial responsibility should be clarified through guidelines in order to address interpretation issues that may arise from situations where more than one actor in the value chain appears to exercise a form of control. ERGA suggests that in future the European Commission could work with ERGA and the industry to develop guidance on the concept of editorial responsibility, in particular on the aspect of “effective control”, “relevant impact” and the organisation in a “catalogue”.

**Background:** *Of particular interest are cases where two or more actors in the value chain exercise some form of editorial decision in determining the range of the programmes offered in a service or how it is organised or presented. It is fundamentally important, for the purposes of efficient enforcement, that there is one clear locus of editorial responsibility.*

### **Recommendation 4 – audiovisual platforms/intermediaries:**

ERGA recommends the European Commission should consider – within its current comprehensive assessment on the role of online platforms – whether it is desirable, in a revised AVMSD, to

introduce a specific set of rules for audiovisual platforms and intermediaries with relevant impact on media pluralism and diversity. The Commission should take account of what the relevant impact and economic assessments, and experience related to current legislative tools that exist at a European and national level, might suggest for extending the scope of the Directive in this way.

ERGA could consider further in-depth reflection on this topic, examining in particular the aspects of definitions, the potential effects on pluralism and diversity of the enhanced role of certain intermediaries, and how to weigh up any proposed new regulations with the need to preserve innovation online.

**Background:** *In the converged audiovisual environment, audiovisual platforms (e.g. cable, IPTV or OTT players offering own or third party commercial audiovisual content) or intermediaries such as search engines play an enhanced role in the value chain. These new players may directly influence or control the content offer and the choice of the consumer. The Commission will need to carefully consider the potential implications in terms of plurality, diversity and consumer protection and whether it would be appropriate to address these under the AVMSD and its specific goals.*

*The Commission will need to bear in mind the need for any new rules to be carefully designed and proportionately applied.*

#### **Recommendation 5 – Continuity**

There is a broad consensus among ERGA Members that some provisions in the current Directive that already set a common standard for all audiovisual media services have proven efficient. This applies to the rules on editorial and human dignity standards, co- and self-regulation and accessibility and the rules on common qualitative requirements for audiovisual commercial communication.

ERGA recommends that this coordinated approach should be maintained.

#### **Recommendation 6 – Modifications of the Directive**

For a number of other provisions, however, a majority of ERGA Members takes the view that a more coordinated approach in order to reflect the changes in consumer expectations and market dynamics brought about by convergence is necessary and recommend a modification of the Directive in respect of the following rules:

##### **a) Distinction between advertising and content:**

The Commission should consider establishing a common minimum standard for all audiovisual media services in the sense that advertising must be recognisable from editorial content.

##### **b) Integrity of the programme:**

ERGA recommends establishing a common basic rule for all audiovisual media services that sets out a principle at EU level that the insertion of advertising should respect the integrity of the programme.

##### **c) Protection of minors:**

As noted in the ERGA report on the protection of minors, the level of protection provided should be more consistent across linear and non-linear content. Rather than using the means of delivery as the criterion for graduating regulation, a revised Directive could introduce level protections across linear and non-linear for the protection of minors, which would recognise both the different ways of controlling minors' access to audiovisual content and the harmfulness of content. The Commission should also consider introducing a requirement for all AVMS providers to restrict access to content that "might seriously impair" the development of minors.

**d) Right of reply:**

ERGA recommends that the existing rules on the right of reply, which only apply to linear broadcast services, should apply to all audiovisual media services.

**Recommendation 7 – Specific rules for linear media services**

There is a majority view among ERGA Members that the specific provisions on events of major importance to society cannot be replicated to all audiovisual media services but continue to be justified in the linear environment.

**Recommendation 8 – Further in depth-research**

On a number of topics there are a widespread range of views, and further in depth research is required. The Commission might consider conducting an assessment on the economic effects of applying uniform rules to the following topics.

**ERGA could consider further in-depth discussion on:**

**a) Advertising of specific products:**

A number of Member States have introduced stricter rules on advertising of specific products than those of the AVMSD. The different frameworks and their motives, and the impact of a more harmonised approach must be carefully examined.

**b) Quantitative advertising rules**

Further in-depth analysis should consider the effects on audiences and national advertising markets of amending or removing current provisions on minimum teleshopping windows duration, and hourly advertising limits, or if a daily limit would be more practical.

**c) European works:**

There is a need to examine whether the quota system is still the most efficient way to promote European works and independent producers or whether alternative concepts like obligations on prominence or production budgets should be considered. ERGA could also look into the different funding systems, the promotion of cross-border circulation of EU works and explore more efficient procedures for monitoring processes.

**d) Short news reports:**

ERGA recommends that the Commission should consider conducting an assessment of the economic effects of applying the existing rules on short news reports to the online environment before a further in depth discussion within the Group.