

Minutes

**2nd Meeting of the
European Regulators Group for Audiovisual Media Services
Tuesday, 21 October 2014**

10am-5pm

1. Opening of the meeting by the Chair – Mr Olivier Schrameck

The ERGA Chair - Mr Olivier Schrameck - welcomed both the ERGA members as well as the new observers. He summarised the achievements of the year 2014, starting with the creation of the Group and its Inaugural meeting, adoption of the Work Programme 2014, setting up of sub-groups, and their first results.

He thanked the chairs of sub-groups and all the members for their work this year and he apologised for the delays in sending the documents. He also announced that the third ERGA meeting will take place in spring, in Paris.

2. Adoption of the Agenda

The Agenda was adopted.

3. ERGA sub-groups – state of play and further activities

a) Sub-group on the independence of regulatory authorities for audiovisual media services

The Chair of the sub-group on regulatory independence – Ms Benedetta Liberatore presented the statement on independence. She described the process that led to the final draft. She explained that the sub-group's intention was to send a strong signal to the European Commission that the current legislation at EU level needed strengthening. She also underlined that the key characteristics of independent regulatory bodies, identified in the document, were supported by all the members of the group.

Both the ERGA Chair and the Commission's representative- Mr Roberto Viola - congratulated Ms Liberatore on the document. In their view, it constituted a very good basis for a more detailed analysis that will take place in 2015. Mr Viola also added that the document is very inspiring for the Commission in view of the upcoming review of the AVMSD and the possibility of strengthening current Article 30 of the Audiovisual Media Services Directive (AVMSD).

The Chair opened the floor to comments by all the delegations.

Some regulators, such as the Italian regulator (AGCOM), the Bulgarian regulator (the Council for Electronic Media - CEM), the Cypriot regulator (Cyprus Radio and Television Authority - CRTA), the Irish regulator (BAI), the Spanish regulator (CNMC), the Maltese regulator (BA), and the UK regulator (Ofcom), the Croatian regulator (Agency for Electronic Media) and the Montenegrin regulator

(Agency for Electronic Media Council) strongly supported the document as presented by the sub-group.

However, there was also a group of regulators – the German regulator (DLM), the Danish regulator (Danish Agency for Culture), the Swedish regulator (the Swedish Broadcasting Authority) and the Austrian regulator (Austrian Communications Authority) that had some reservations as to the last paragraph of the statement which directly called on the Commission to legislate in order to strengthen the current Article 30 AVMSD.

Another group of regulators indicated they could accept the text as adopted by the sub-group (the Belgian regulators; VRM, CSA, Medienrat and the Luxembourgish ALIA), but they argued that the reservations of some of the regulators should be taken into account at this stage, as a lack of consensus would mean that any new legislative initiative by the Commission would not have had a chance to be adopted.

The German DLM, while supporting the work done by the sub-group, was of the opinion that the call on the Commission to legislate went too far. The German DLM stated that at the moment the characteristics of independence differ among the Member States. According to the German DLM, the role of ERGA was rather to focus on the issues faced by the independent regulators and it was the Commission's role - on the basis of the regulators experience - to make decisions to legislate.

This view was supported by regulators from Denmark, Austria and Sweden.

The Danish regulator additionally held that the call on the Commission to legislate could only be made after the analytical work that is still to be carried out in the second stage of the sub-group's work has been finalised. At this moment they deemed it too early to include this kind of conclusion. They also argues that the following sentence in Paragraph 4 of the statement went too far: "any independent regulator should be equipped with". The Danish regulator would rather have a catalogue of characteristics present in different Member States which could be used by the Commission.

In reply to the above views, the Cypriot regulator appealed to the delegations not to make the same mistake as in the past when the AVMSD was going through the legislative process and when the inclusion of the independence requirement was deleted from the original text.

The regulator from Luxembourg pointed to the fact that regulatory authorities may only act within their material competences, which are not always the same among audiovisual regulatory authorities in the EU. The Chair of the sub-group indicated that the sub-group will look at this issue in the second stage analysis.

Mr Schrameck remarked that, in his view, none of the characteristics of independent authorities included in the text of the statement are surprising as they are all present in every democracy. What differs is the constitutional systems and thus he proposed to better reflect this in the text of the statement.

Mr Viola underlined importance of the principle of independence. In his view, this is not a political but rather technical issue and should be seen as such by the regulators. The question is whether regulators want to adapt the current framework.

Ms Helena Mandic from EPRA stated that she shared the feeling of how important independence is for regulators. At the same time she noted that at the last EPRA meeting not all the members wholeheartedly agreed on how things should look like.

In order to find a compromise text of the statement, the UK regulator volunteered to help in redrafting the last paragraph. In the end, the Chair proposed the following wording of the last paragraph:

ERGA would ask the European Commission, as the initiator of European legislation, to take these considerations and the following work into account in the context of the upcoming REFIT exercise of the AVMS Directive. The Group will continue the analysis of the characteristics of independence in the light of the existing studies and the experiences of regulatory authorities and it will present the results to the European Commission.

This wording was adopted by more than 2/3 of the ERGA members.

b) Sub-group on material jurisdiction

Mr Steve Gettings from Ofcom - Chair of the sub-group on material jurisdiction - presented the scoping paper on material jurisdiction.

Both Mr Schrameck and Mr Viola underlined the importance of the work of the sub-group. Ms Lorena Boix Alonso of the ERGA secretariat pointed to the need to obtain the factual data and thus taking this aspect into account in the results of the work of the sub-group.

The Belgian regulators, while supporting the work of the sub-group, mentioned the need of physical meetings in order to have a proper discussion. Mr Steve Gettings explained that in the last few weeks they worked under enormous time pressure so this may explain why the communication by e-mail was not always reliable. It should change as they dispose now of around 5-6 months before the next plenary meeting.

The scoping paper was adopted by consensus.

c) Sub-group on protection of minors

The Chair of the sub-group- Ms Madeleine de Cock Buning made a reference to the special position of regulators and the importance of the subgroup on protection of minors. She underlined that the paper presented by her sub-group was just a discussion paper at this point and not conclusive. The sub-group intends to draw conclusions by the end of 2015.

Ms De Cock Buning presented the work that had been done so far by the sub-group and explained the content of the discussion paper.

Both Mr Schrameck and Mr Viola expressed their appreciation for the discussion paper.

The discussion paper was adopted by consensus.

Ms Susanne Nikoltchev of the European Audiovisual Observatory (EAO) took the floor and said that she was very pleased to be an observer to ERGA. As the EAO is also the member of other similar bodies and they collect data on the audiovisual sector. By combining the participation in these different bodies they hope be useful for the work of ERGA.

As regards the possibility to join the sub-groups at that stage - a question raised by Danish regulator - the Chair replied that any member or observer may join the sub- groups at any time.

4. ERGA Work Programme 2015

Mr Schrameck presented the ERGA draft Work Programme (WP) 2015. He explained that in addition to the continuation of 2014 topics, the territorial jurisdiction topic had been added. All the four topics reflect the results of the consultation launched in 2014 on the WP 2014. He announced that French CSA would like to chair the sub-group on territorial jurisdiction. In addition to these topics, an ERGA public consultation on the uses of big data was proposed.

Some regulatory authorities who took the floor (Spanish CNMC, Finish Ficora, Slovenian Agency for Communication Networks and Services, Italian Agcom, Irish BAI and British Ofcom) while supporting the creation of the new sub-group on territorial jurisdiction had doubts as to the relevance of the public consultation on the uses of big data to the audiovisual sector to the remit of the audiovisual regulatory authorities. They requested to receive more information concerning this project in order to be able to approve it.

Regulators from Lithuania (Radio and Television Commission), Sweden (The Swedish Broadcasting Authority), Croatia (Agency for Electronic Media), Bulgarian (CEM) and Belgium (VRM, CSA, Medienrat) supported the creation of the sub-group on territorial jurisdiction. The Belgian CSA volunteered to be drafter in the sub-group on territorial jurisdiction.

The Swedish regulator mentioned that the current provisions of the AVMSD in this respect are not satisfactory. Additionally, the representative of Swedish regulator pointed to the topic of accessibility which he hoped could be included in the following work programme. Replying to this the Chair hoped this topic could be included in the Work Programme 2016 if the next Chair (Ms Madeline de Cock Buning) agreed.

The Bulgarian regulator wanted to add additional topic - the switch-over from analogue TV. Replying to this, the Chair offered the help of FR CSA as France has already completed the analogue switch-off process. He was also convinced other members would be willing to cooperate.

As regards the idea of a public consultation on uses of big data, Mr Schrameck explained the background of this consultation. He referred to the appearance of new audiovisual media services based on algorithms, developed by players not necessarily based in Europe who intend to fragment the market and then replace standard TV services with on-demand services. According to Mr Schrameck this is not immediate perspective, but it will happen within the next decade. The Chair further explained that since this a crosscutting issue between different sectors, he intended to also involve data protection authorities in this project.

Ms Madeleine de Cock Buning asked Mr Schrameck about the proposed timing of the subgroup on Territorial jurisdiction. Mr Schrameck replied that the subgroup will deliver a discussion paper in April 2015. However, after that, in consultation with the future chair of ERGA, a decision has to be made on the agenda of the proposed in-depth analysis that is to be conducted by the subgroup on territorial jurisdiction, noticing that the work could be followed up in 2016.

Mr Viola expressed his support to the WP 2015. As to the new topic of territorial jurisdiction he agreed it was very relevant. Mr Viola added that it was considered a key issue for a majority of respondents to the Green Paper on Convergence. Moreover, the Commission would like to discuss the possibility of reserving some of the ERGA time for possible *ad hoc* requests in the context of the REFIT exercise.

As regards the issue of running public consultations, Mr Viola indicated two possibilities: either consultation *ex ante* (questionnaire sent to market participants) or once the work is advanced. It is possible to distinguish between public and confidential info. He offered the support of the ERGA Secretariat in running the public consultation.

Mr Schrameck concluded that, given the scope of ERGA work in 2015 and the doubts raised by some of the ERGA members, the public consultation on the uses of big data should be deleted from the WP 2015. The Group could come back to this initiative at a later stage.

WP 2015 was adopted by consensus (with the exclusion of the item on public consultation).

5. Information from the Commission

Cooperation between regulatory authorities: Russian language channels in Latvia and Lithuania

Mr Viola explained the context of this case. He pointed that one of the main reasons to create ERGA was to strengthen the cooperation between regulators.

In the last months, the Commission has witnessed concrete example of such cooperation. It took place when against the background of the Ukrainian political crisis, the Latvian and Lithuanian national audiovisual regulators decided to suspend some Russian-language television channels in Latvia and Lithuania.

Those suspensions raised several questions, in particular regarding jurisdiction, the substance of the content at stake and the procedures of Articles 3 and 4. These questions were asked in the Discussion Paper circulated ahead of this meeting. As the paper was meant to prepare a ground for discussion, Mr Viola invited all the regulators to take the floor and express their views on those points. He was especially interested in receiving the answer to the following questions:

How to best exchange information between regulators and the Commission to determine jurisdiction? Can the issues concerning national security and public order be invoked and how to draw a line between hate speech and propaganda? Finally, are the procedures in Articles 3 and 4, appropriate to deal with emergency situations?

The Lithuanian regulator pointed out that it might be difficult to understand the situation of Baltic States for countries that are far from Russia. The Lithuanian regulator took the decision to suspend the Russian channels as they believed there should be some legal barriers to stop not only incitement to hatred, but also "brainwashing" on 3rd country channels. He compared the situation to tobacco advertising that is banned notwithstanding the principle of free speech.

The Lithuanian regulator described the background of the decision to suspend the Russian channels. The suspended channel - Mir Lithuania - was licensed in UK, with uplink in Riga while RTR Planeta/Rossiia RTR is the same programme under different logos, broadcast from Russia. Re-broadcasters said they picked up signal from Eutelsat East, uplink in Russia. But there was also information that they could also be in Sweden under Swedish jurisdiction.

The Latvian regulator referred to the suspension of the Rossiya RTR channel - a 100% state-owned company in Russia with its advertising directed to the Latvian advertising market. The decision by the Latvian regulator was also meant to raise attention of other Member States on how 3rd countries used weaknesses of the AVMSD for their war propaganda objectives.

In reply to the presentations by the Lithuanian regulator, the Cypriot regulator asked what was meant by "brainwashing", while Bulgarian and Hungarian regulators indicated that they fully understood the context in which the suspension decisions were taken.

The Hungarian regulator additionally requested whether the European Convention on Transfrontier Television could have been applied in these cases. Mr Viola replied that there was no such need as these situations were fully covered by the AVMSD framework. He also underlined that the Commission is not taking this issue light-heartedly. On the contrary, it raises important issues for the Commission, in particular whether the instruments provided by the AVMSD are sufficient to deal with this kind of situations/emergency situations. Ms Lorena Boix-Alonso called on the regulators to cooperate closely in similar cases, also by informing the Commission. In response to this, the Latvian and the Swedish regulators said that cooperation between regulators were not the problem, but rather the inadequate procedures of the AVMSD.

Moving to the next item Mr Viola described **the new college for the Commission** and Marcel Boulogne of Unit G1 of DG CNECT explained **the REFIT exercise on the AVMSD**.

The last two points on the Agenda were covered by the Commission representatives from different Commission services. Ms Anna Herold of Unit B1 of DG CNECT described the state of play of **the Telecom Single Market**, while Mr Branislav Stantchev of Unit B4 of DG CNECT talked about **the Lamy Report on the future of the UHF band**.

Under AOB, the Hungarian regulator informed ERGA members about the Media Literacy Conference to be held in Budapest on 24 and 25 November 2014.