



MINUTES OF THE 3rd ERGA PLENARY MEETING PARIS, 14 APRIL 2015

1. Introduction to ERGA 3rd meeting

The ERGA Chair, Mr Olivier Schrameck (CSA, France) and Mr Harlem Désir, French Secretary of State for European Affairs, opened the meeting.

The European Commission was represented by **Mr Giuseppe Abbamonte, Director for Media and Data, DG CONNECT.**

Mr Harlem Désir, in his opening speech, underlined that audiovisual regulatory authorities are one of the pillars of European democracy. In this context, he welcomed the proposal for a statement on freedom of expression, to be adopted by the ERGA members. He underlined that the adoption of the statement would send a strong signal that audiovisual regulators take responsibility to defend this fundamental freedom.

He also referred to the Digital Single Market agenda and underlined the French support to two major lines: firstly, the country of destination principle and secondly, the need for the copyright reform to respect cultural diversity, access to works and remuneration. He also pointed that the media pluralism aspect should be part of the review of the Audiovisual Media Services Directive.

2. Adoption of ERGA Statement on Freedom of Expression

The ERGA Chair and President of the French CSA – Mr Olivier Schrameck – presented the proposal for a statement on freedom of expression. The statement aimed at reaffirming the significance of freedom of expression in the wake of the terrorist attacks in Paris and Copenhagen.

The ERGA vice-Chair – Ms Madeleine de Cock Buning – suggested a slight amendment in the text of the preamble. The change aligned the wording of the preamble with the wording used by the AVMS Directive (*to ensure that all audiovisual media services do not contain any incitement to hatred (...)*)

The **ERGA members** adopted the Statement following a lengthy discussion on whether to refer therein also to the cyber-attacks in France and Belgium. However, this idea was not supported by the majority, who believed that this extension would weaken the statement. Their view was that the cyber-attacks could not be compared to the tragic events in Paris and Copenhagen. Moreover, the Belgian regulator pointed out that there was no evidence as to the origin of the cyberattacks in Belgium.

Some wondered about the nature of the statement in view of ERGA's statutory tasks but, given the exceptional circumstances, nobody, including the Commission, opposed the adoption.

The Commission representative expressed his full support to the statement. He underlined that freedom of expression; media freedom and pluralism are the pillars of democratic societies. He also stressed that the challenges to these fundamental values still exist, inside and outside the EU, offline and online.

3. Preliminary findings of the questionnaire on regulatory independence

The Chair of the ERGA sub-group on regulatory independence - Ms Benedetta Liberatore (AGCOM, Italy) – presented the preliminary findings of the questionnaire on regulatory independence, based on the replies from 27 regulatory authorities. The questionnaire, prepared by a group of drafters (FR CSA, IE BAI, PL KRRiT, ES CNMC, CY CRTA and IT AGCOM) took into account national specificities and distinguished between de jure and de facto indicators of independence.

Next steps:

In the coming months the sub-group will continue working on the analysis of the replies to the questionnaire. To this end the sub-group intends to meet again in September 2015. The findings of this analysis will be summarized in the final report that will include a chapter identifying possible criteria to assess the independence of regulatory authorities. The report will be adopted at the next ERGA plenary meeting, in autumn 2015.

The Chair added that ERGA will decide at the next plenary meeting whether it will prepare a proposal for the Commission to be inserted in the revised AVMS Directive.

The Commission representative briefed the group on the parallel work on regulatory independence done in the context of an independent study launched by the Commission. The objective of the study is to update a previous study by INDIREG (the AVMS RADAR study). The Commission informed the ERGA members that it was launched in January 2015 and its final report is expected in August 2015.

He further informed that in January 2015, the contractors participated in a meeting of the ERGA sub-group on independence. The ERGA Secretariat had sent an e-mail few days before the ERGA plenary meeting, updating the members of the Contact network on the fact that the contractors had already received some country reports. The contractors would like to share the reports with the regulatory authorities in order to get their comments. In this context, they would contact all the regulatory authorities by the end of April, also requesting them to answer the questionnaire.

Some **ERGA members** complained about the double work imposed on them by, on the one hand, the ERGA sub-group questionnaire and, on the other hand, a similar questionnaire by the contractor in charge of preparing an independent study for the Commission (the AVMS-RADAR study).

The Commission representative explained that both questionnaires are complementary and that the same replies that were already provided for the ERGA questionnaire can be used when replying to the independent consultant. We underlined that it was ERGA's decision, which we respect, not to merge the two questionnaires, as suggested by the Commission and supported by the consultant.

As pointed out by **the ERGA Chair**, the fact that the Commission was going to update the INDIREG study was known to all regulators already for a long time.

4. Inventory of research/studies on protection of minors in the European Union

The chair of the sub-group on protection of minors - Ms. Madeleine de Cock Buning (CdvM, Netherlands) - presented the outcome of the sub-group's work - the inventory of research and studies on the protection of minors in the European Union.

The inventory was prepared jointly by a number of regulators and focuses on five areas important for REFIT:

- the distinction between the standards that apply to linear and non-linear audiovisual media content;
- the harmonisation of key definitions and concepts among Member States,
- protection measures in view of new challenges due to numerous techniques and distribution platforms,
- effective enforcement, shared responsibilities, self- and co-regulation;
- media literacy aspects

Next steps:

In the coming months the sub-group will focus on the identification of the areas where more information and evidence is needed. This will be necessary to report to the Commission on an adequate system for the protection of minors in a converged world. As a next step, the sub-group will prepare a short questionnaire aimed at collecting missing

information. If deemed necessary in order to finalise this task, Ms De Cock Buning indicated that the sub-group would meet again.

The final report will be presented for adoption at the next plenary meeting in autumn 2015.

The ERGA Chair and ERGA members expressed their appreciation for the high quality and very extensive analysis produced by the sub-group on protection of minors.

The Commission's representative congratulated Ms De Cock Buning on the sub-group's work and pointed to the cross-cutting nature of this topic, linked both to material and territorial jurisdiction. He also referred to the need of focusing on the protection of minors in user generated content (UGC). This view was also shared by the Chair and other ERGA members.

Ms De Cock Buning assured that in its work the sub-group takes integral approach and looks at the key values across different EU instruments thus also e-Commerce Directive and standardisation. Replying to comments, she also indicated they might involve stakeholders (e.g. CEO coalition).

5. Preliminary findings of the questionnaire on material jurisdiction

The Chair of the sub-group on material jurisdiction – Steve Gettings (Ofcom, UK) – presented a fact-based summary of the replies to the questionnaire on material jurisdiction. It focused on the following areas:

- the regulatory distinction between linear and non-linear AVMS;
- the distinction between regulated on-demand AVMS and other online services not within scope of the AVMSD;
- the points of interaction between the AVMSD, the e-Commerce Directive and the Electronic Communications Framework;
- anticipating future developments and possible implications;

Next steps:

In May the sub-group intends to organise a 'comments round' on section 3 and then at the end of May/beginning of June a 2nd sub-group meeting. In the 3rd and 4th quarter of the year the sub-group will work on the preparation of the final report to be presented during the 4th ERGA meeting in autumn 2015.

Both **the Chair and the Commission representative** thanked Mr Gettings for the richness of the analysis and the impressive work of the sub-group.

The Commission representative requested though more clarifications as to what was meant by the statement, used in the presentation, on the potential negative impact of big data on diversity. Mr Gettings agreed to provide more clarifications on this issue in the final document.

6. Adoption of ERGA Scoping paper on territorial jurisdiction

The Chair of the sub-group on territorial jurisdiction - Mr Frédéric Lenica (CSA, France) - presented the scoping paper on territorial jurisdiction. He described the main issues raised in the paper, including questions on whether the country of origin principle is still fit for purpose and whether the cooperation procedure should be improved.

Next steps:

The Chair pointed out that the sub-group should be able to prepare a detailed discussion paper on territorial jurisdiction for the next plenary meeting in autumn and ultimately reach common conclusions on the adaptation of the current regulatory framework.

The ERGA Vice-Chair - Ms De Cock Buning - congratulated the Chair of the sub-group. She emphasised that it was very important to get the conclusions on the country of origin principle that could feed into the AVMSD revision process.

ERGA members mentioned that the importance of the sub-group is highlighted by the fact that 25 regulatory authorities participate in its work.

Some regulators pointed to the need of revising the cooperation procedure as the existing one does not work well in practice. One regulatory authority suggested looking at the examples of similar procedures in other EU instruments. The Latvian regulator proposed to also focus on non-European services. The Belgian CSA supported this view.

ERGA Secretariat - Lorena Boix Alonso, Head of Unit for Converging Media and Content - confirmed that the Commission services are aware of the problems with the cooperation procedure. This matter was discussed at the Council Working Group few weeks before. She shared the view that the jurisdiction criteria and the cooperation procedure are two issues that will have to be addressed in the review of the AVMS Directive.

One regulator requested the Commission representative whether there was any value in discussing the country of origin principle as it was also the case at the previous revision of the Directive and the Commission did not want to give any concession as this principle was considered essential for the internal market.

The Commission representative confirmed that indeed the country of origin is the core principle of the internal market and it would be difficult to change it.

The Chair however suggested that at that stage all the options should be open.

7. Information from the Commission

a. Update on REFIT exercise

The Commission representative updated ERGA members on the progress of the REFIT exercise. He mentioned that the Commission services were working on designing the evaluation and consultation process and its timing. He stressed that the work should be finalised by the end of the year. He also explained that as regards the reports expected this year (the 2nd Application Report and the Report on Articles 16 and 17 AVMSD) they will be subsumed by the Refit exercise. They will therefore be part of the final Refit conclusion and will not be published separately.

He further underlined that following the announcement by Commissioner Oettinger the work on the review and revision of the AVMSD will be done in parallel.

b. REFIT questionnaire on cost and benefits of AVMSD

The Commission representative explained that in order to complete the Refit exercise, the Commission needed data on compliance with the provisions of the Directive and its costs and benefits. Therefore Mr Abbamonte requested ERGA members for help in assessing the costs and benefits of the AVMSD. He referred to the documents distributed before the meeting: questionnaires on 4 main areas of AVMSD review and the grid on direct and indirect costs of compliance as well as direct and indirect benefits.

He stressed that the Commission understood that it could be difficult for some of the regulatory authorities to give the precise figures. However, the Commission was asking for a best efforts assessment of the costs and benefits of applying the Directive. This should cover the costs by the regulatory authorities and by the stakeholders mentioned in the grid. He underlined that the questionnaire referred to the incremental costs, i.e. all costs that are additional to the costs that would emerge in the absence of the Directive. He also said that he was aware that for some stakeholders it might be difficult to provide answers in a foreign language. Therefore, the Commission services will provide the questionnaire first in 3 languages and if necessary, will prepare translations into all EU languages.

This point of the Agenda raised a lot of comments from the regulatory authorities.

The Chair indicated that for some regulators the Commission's request poses a problem of resources and timing. This view was supported by the regulatory authorities from Austria, Sweden, Ireland, Spain, Cyprus, Malta, Poland, Germany and Bulgaria. They pointed that the Commission's questions would be difficult if not impossible to answer and the regulatory authorities do not have enough resources to analyse all the replies. What the Commission would receive would not be helpful as it would just be an "educated guessing". Moreover, the data would not be comparable as the regulatory authorities could understand the questions differently. Some other regulators pointed to a lack of skills, staff and even competences (some regulators cannot deal with economic issues) to reply to this

type of questionnaire. Others suggested that the Commission should contract out this job to an external contractor (MT).

The German regulator also pointed to the fact that this type of work is usually done by a contractor and asked for financial support to the regulators. Otherwise, due to the lack of resources it would not be able to reply to the questionnaire.

Several regulatory authorities (from PL, NL, UK, FR, ES, IT) supported the idea of creating a **task force** whose role would consist in simplifying the questionnaire. They volunteered to participate in the exercise on the basis of a simplified questionnaire.

The Commission committed to set up the task force as soon as possible.

The Chair confirmed that this exercise could only be run by the regulatory authorities on a voluntary basis.

Next steps:

The e-mail setting up the task force was sent by ERGA Secretariat to all ERGA members following the meeting. So far 11 NRAs volunteered to be part of the task force:

French CSA, , PL KRRiT, UK OFCOM , Spanish CNMC, Italian AGCOM, Hungarian NMHH, Slovenian AKOS, Croatian AEM, Irish BAI, Maltese BA and Greek NCRTV.

The first meeting of the task force will take place on 6 May in DG CNECT premises.

c. Copyright reform

Due to the lengthy discussions on the Refit questionnaire **the Commission representative** was not able to update ERGA members on the copyright reform. **The Chair** requested that ERAG Secretariat sends the written overview to all ERGA members.

8. Adoption of ERGA logo

ERGA members adopted the ERGA logo as proposed by the Chair.