

Minutes of the written procedure:

All ERGA members (but the Portuguese ERC) took part in the voting procedure leading to the adoption of three ERGA reports and to the nomination of the ERGA Vice-Chair – Ms Mirjana Rakić. They congratulated the first ERGA Chair - Mr. Olivier Schrameck - for his excellent work in the years 2014-2015. They also expressed their appreciation for the results achieved under his chairmanship. The ERGA members wished the incoming Chair, Ms. Madeleine de Cock Buning, a successful mandate.

Mr. Jan Dworak, the ERGA vice Chair thanked all ERGA Members for entrusting him this honorable position in the years 2014 – 2015. He also wished to express his gratitude and appreciation to Mr. Olivier Schrameck ERGA Chair and to Ms. Madeleine de Cock Buning for the excellent co-operation within the ERGA Presidency team.

**1. Nomination of ERGA Vice-Chair**

**Ms. Mirjana Rakić was elected for the position of the ERGA vice-chair by 24 ERGA members.**

**2. Written procedure - ERGA reports:**

**3 ERGA reports were adopted almost by unanimity (27 ERGA members).**

All ERGA Members expressed their sincere congratulations to the chairs and drafters of the ERGA sub-groups, for their commitment and remarkable quality of the work carried out this year.

**a. ERGA Report on material jurisdiction**

There were two purely informative **comments** on the report by the sub-group on material jurisdiction, chaired by Mr Steve Gettings from Ofcom. The report was thus adopted in its version of 1<sup>st</sup> of December.

**The French-speaking CSA** wanted to draw the attention to the importance of introducing a new category of audiovisual platforms and intermediaries to enhance the European specific audiovisual public policy goals and to recognize the role that these actors play in the audiovisual ecosystem.

**The Danish Radio and Television Board** has noted that the report includes significant analysis of the relevant factors and that many of the recommendations point towards further assessments and investigations, which the Board agrees with.

**b. ERGA Report on protection of minors**

As regards the report by the sub-group on protection of minors, chaired by Ms Madeleine de Cock Buning from CvdM, five regulatory authorities (**Spanish, Hungarian, Danish, Swedish and Belgian CSA** ) submitted comments. However, as they constituted rather remarks that would have been expressed during the Plenary meeting, they were not integrated in the report. The report was thus adopted in its version of 1<sup>st</sup> of December

**Comments by the Spanish CNMC**

"In particular, we would like to thank the EWG on Protection of Minors for including our remarks regarding the proposal to setting default restrictions for content that "might seriously impair" across all services, which implies that this kind of content would be allowed on linear TV, provided an adequate access control mechanism is in place. As other ERGA members, CNMC expressed some concerns about this approach. Although we consider that it might be useful in the future, its implementation would be premature, as the reliability and effectiveness of technical control systems is not yet ensured. We therefore thank the Chair of the Subgroup to have appropriately reflected our remarks in the document."

#### **Comments by the Hungarian NMHH**

"Understanding of the key terms is pivotal both from the legal and from the monitoring standpoint. We could enhance the effectiveness of the provisions pertaining to the protection of minors. A clarification of the terms "likely to impair" and „might seriously impair" could be cases in point. Some Member States - taking a different approach - do not consider pornography to be capable of seriously impairing minors. Differences in interpretation might give rise to conflicting approaches. The regulations of a country of destination can easily be skirted, should a media service provider decide to provide services from a country with more relaxed approach to the protection of minors.

In Hungary, the media service providers comply with the regulation concerning the protection of minors. After the amendment in 2002, NMHH has registered more than 300 breaches per year in this field. In the past few years, the number of infringements declined radically. In our opinion, these results cannot be sustained without strict monitoring measures. In parallel with the growing compliance, the institution of co- and self-regulation is gaining more and more prominence. The realization of adequate organisational background and network along with the media outlets consistent compliance can provide an environment where NMHH will initiate the introduction of co- and self-regulation regarding to the protection of minors gradually. Presently NMHH has the leading role regarding the protection of minors in Hungary."

#### **Comments by the Belgian CSA**

"Among different key definitions, the report underlines the need to harmonising the concept "might seriously impair" at least through indicating "pornography" and "gratuitous violence" as examples of this concept (cfr. p.7). It is even suggested to clarify in a revised directive that the proposed examples would apply to both linear and non-linear content (p. 10). Given this emphasis on the importance to harmonising and clarifying this category, revealing a willingness to make it very significant – as attested by many amendments' requests -it might seem contradictory to suggest that, in "an alternative 'graduated approach' to maintaining the current distinction between content that 'might seriously impair' and content that is 'likely to impair', [...] these two current AVMSD categories could become less relevant to determining the strength of content (p.10). Along these lines, it is recommended to waive this potential contradiction in the definitive report to be approved. Moreover, we would find adventurous to modify such a concept on which regulators share a common understanding at a time where we would consider applying it in the non linear world.

On December 14 the Belgian CSA expressed this point is elaborated sufficiently in the report."

#### **Comments by the Danish Radio and Television Board:**

"In the light of the importance of the protection of minors in a converged media landscape, the Radio- and Television Board agrees with the focused and illustrative analyses in the report as well as with the recommendations.

The Board would like to underline the importance of the general clause stating that regarding a revised Directive it is essential that it continues to reflect that each Member State is able to apply

more detailed or stricter rules in the areas covered by the Directive, hereby taking into account the cultural differences between Member States, but that it sets clear minimum standards at the same time. In the light of the cultural differences in the Member states, the Board is in particular doubting regarding the listing of common characteristics associated with content that is 'likely to impair' or content that 'might seriously impair'.

With those remarks, the Radio and Television Board agrees with the adoption of the report without further comments.

Further, The Board would like to add the following:

In cases regarding protection of minors, The Danish Radio and Television Board involves the expertise of another Danish authority: The Media Council for Children and Young People in Denmark. The Media Council represents Danish expertise, research and knowledge on the field of the protection of minors in regard to film classification and the evaluation of harmfulness of programs to children and minors Denmark. The Media Councils has been asked for its view on the report and has come forth with valuable comments. Please find the Media Councils comments attached for your information."

#### **Comments by the Swedish Broadcasting Authority**

"As for harmonisation of key definitions and concepts the Authority finds it important with a high common level on protection of minors with the possibility for further national rules. If such harmonisation is decided it is thus important not to lower the level on the protection of minors."

#### **c. ERGA Report on regulatory independence**

The Report was adopted in its version of 1<sup>st</sup> December.

However, the Chair of the sub-group on independence - Ms-Benedetta Liberatore - introduced some **minor editing changes (suggested by BAI and requested by the Belgian regulator of the German community of Belgium)**. The final report will also include **a comment by Ofcom**, referring in its introduction to the work by EPRA.

The three **Belgian regulatory authorities** also pointed out to "the need for regulators to have sufficient resources to ensure their effective oversight tasks. Especially, for the Belgian German-speaking MEDIENRAT, the allowed amounts are modest and do not enable the NRA to have its own staff, premises or equipment."

There was also a **comment from the Swedish regulator** on the issue of incompatibility, as below:

"The suggestions on appointment procedures and governance could, in the Authority's opinion, in general be useful for NRAs. Nevertheless the Authority wishes to express concerns regarding a generic reference to principles on holding an office in other public institutions, associations and/or unions mentioned in the report. As noted above all Member States have different constitutional prerequisites. As for Sweden such a reference might be incompatible with constitutional law on freedom of association. Furthermore the Broadcasting Commission, which might be considered as a board from some aspects, consists of members holding other offices. As an example the chairman and vice-chairman shall be active or former permanent judges."

However, the Chair believed that the fact that (some) Board Members can work only on a part-time basis for the regulator does not necessarily make those Members incompatible or makes them lose their independence. Therefore, as this did not change the conclusions of the report, it was agreed not to include this remark in the final report.

**The Danish radio and Television Board** has noted and "appreciates the inclusion of a general clause underlining the general understanding regarding the Member State's possibility of application of more detailed or stricter rules, hereby taking into account the differences in organization of the public sector and tradition for law regulation between Member States, but that it sets clear minimum standards at the same time."

**There were no comments related to the conclusions and recommendations of the report which, therefore, remained unchanged.**

### **3. Extension of the work of ERGA sub-group on territorial jurisdiction to 2016**

A number of ERGA members supported the extension of the timeframe for the 4th ERGA sub-group on territorial jurisdiction to 2016 in order to allow for sufficient time for discussions and for finalizing the report.

Please find enclosed the reports in their final version.