



## **Minutes of ERGA 7<sup>th</sup> Plenary Meeting**

**Brussels, March 9<sup>th</sup>, 2017**

### **1. Opening**

The meeting was opened by ERGA Chair Prof. Dr. Madeleine de Cock Buning. She welcomed ERGA members, observers, and in particular new ERGA members: Ms Ieva Beitika, new member of the board of the Latvian National Electronic Mass Media Council and Mr Tobias Schmid, the German Commissioner for European affairs.

She underlined the importance of ERGA's contribution to the review of the AVMS Directive pointing out that ERGA managed to show internal cohesion while working hard to reach common ground on several complex issues. She also mentioned the work by individual ERGA members that resulted in achieving important goals, e.g. by taking on new competences (such as OFCOM) or adopting new policy guidelines on good governance of public service media (such as in the Netherlands). She also referred to setting up of media literacy policies by Croatian AEM and Irish BAI. At the same time the Chair pointed out that some of the regulatory authorities had been under pressure to perform their work.

Finally, the Chair briefly outlined the goal of ERGA's 4 subgroups.

She also underlined two challenges faced by regulatory authorities in Europe. Firstly, as the development in Europe may make it easier to adopt open norms, the regulatory authorities should remain independent, securing their integrity and adhering to the highest standards of good oversight. Secondly, while Europe's fundamental values are under scrutiny the regulators' role in preserving values connected to the audiovisual field, such as freedom of expression and information, is essential.

### **2. Adoption of the Agenda**

The Meeting Agenda was adopted. One point, requested by Liechtenstein regarding the participation of EFTA countries, was added under the AOB.

### **3. ERGA in 2017**

#### **a. ERGA Mission Statement**

The Chair explained the background of the ERGA Mission Statement. Given the still ongoing legislative process on the AVMSD proposal, she proposed to postpone the adoption of a mission statement until the Directive is adopted. This point on the Agenda was thus devoted to the preliminary discussion on the content of such a Statement. Two delegations that took the floor stressed that it was premature to discuss the wording of a statement given the still ongoing legislative process. Other delegations had comments about the proposed wording.

The Chair suggested to take the input into account in this preliminary version. .

The Chair concluded that ERGA needs to be both independent *per se* and up-to-date group. Moreover, Ms. de Cock Buning stressed that ERGA'S independence does not exclude mutual independence of its members and the discussion should include what independence from the EC means.

The decision making on the ERGA Mission Statement was postponed until after the adoption of the revised AVMS Directive.

#### **b. Cooperation with EPRA – "Letter of intent"**

The Chair introduced this point on the Agenda by stressing that due to the lack of ERGA's legal personality, the proposed letter aims to express good intentions on behalf of ERGA but does not constitute a letter of intent in the legal sense.

Celene Craig, EPRA's Chair, supported the cooperation with ERGA and stressed the need to reach an agreement to avoid duplications and achieve synergies and complementarities between the two groups.

Some regulators raised their concerns about including the mention of ERGA's Academia in the Letter of Intent as in their view this concept merits more debate within ERGA. There were also concerns regarding the addressees of ERGA Academia. A number of regulators believed that it should not be limited to the heads of regulatory authorities and focus rather on expert level. Some regulators pointed out that the reference to ERGA Academia differs from the rest of the text that is kept at rather general level. In their view the letter should be kept on the abstract level and the mention of ERGA Academia activities could be referred to in terms of examples of cooperation between the two organisations.

The ERGA's Chair pointed out that the proposed letter of intent was mainly aimed at outlining its key pillars and should be considered as a starting point to elaborate on them later on.

The document was then adopted by a majority under the conditions that some amendments would be made with respect to the wording on ERGA Academia.

#### **4. Report on the Protection of Minors in the Audiovisual Media Services**

Lubos Kuklis (CBR SK) – the Chair of the subgroup on protection of minors - summarized the content of the report. Following the presentation some members suggested to mention in the report that the countries chosen for the analysis are a sample and therefore the examples given in the report are no more than examples.

The Report was adopted with the proviso that some modifications will still be done within two weeks.

## **5. Information from the European Commission**

Roberto Viola – Director General of DG CNECT thanked ERGA members for their work and contribution to the revision of the AVMSD.

He also gave an overview of the **state of play on the AVMSD review**. He mentioned that the co-legislators (Council and Parliament) work schedule is very intense. The Maltese Presidency plans to adopt a General Approach by May 2017.

He stressed that ERGA is an advisor of the European institutions, independent from Member States and the EC. He also underlined that its competences do not overlap with the competences of the Contact Committee which is a policy advice body.

Summarising the areas under consideration, he referred to the provisions on the independence of regulators as one of the key points in the revised AVMSD which is strongly backed by the Council and the EP. He also described the debate as regards the issue of video-sharing platforms, with discussions on what kind of services should be covered and what kind of measures should be applied by them.

He mentioned that there is also discussion on self and co-regulation, maximum harmonisation for the video sharing platforms and the extension of advertising rules to video sharing platforms. As regards advertising rules some MS would like to completely liberalise the rules while others would like to have stricter limits. The rules on protection of minors are largely undisputed.

He further explained that as regards the promotion of European works, opinions are also split in the Council. Several countries remain sceptical towards mandatory quotas for VoD services, while others support the quotas.

On accessibility there seems to be unanimity among MS that the accessibility rules should be taken out of the European Accessibility Act and put back in the AVMSD. The same approach is followed by the Council and the EP.

Mr Viola also gave an overview of the process in the European Parliament. He mentioned that the CULT Committee will adopt its opinion on 22 March. Trilogues should start either just before summer or after the summer and this means that the agreement should be reached before the end of the year.

As regards the amendments to the Commission's proposal - the changes on independence and ERGA have been toned down, also due to ERGA's Chair intervention. Therefore, there is now support for independence of regulators and the role of ERGA, which is a big progress with respect to the initial report of September 2016.

He further explained that the final Report by CULT Committee will most probably introduce amendments with respect to video-sharing platforms, advertising and protection of minors; and possibly also promotion of EU works.

After the speech of Mr Viola, some regulators expressed their concerns about ERGA's role and the diminishing of ERGA's current competences. Mr Viola reassured them that the Commission will continue to defend the role of ERGA and independent regulators throughout the legislative procedure.

### **Inspirational Intermezzo**

Mr. Tobias Schmid (Commissioner for European Affairs of the German State Media Authorities) made a presentation on the Guidelines released by German regulatory authorities, concerning the advertising in social media in Germany with a focus on the strategic aspects.

Responding to the questions, he confirmed that the rules were not set by the regulatory authorities. By adopting guidelines, the regulatory authorities aimed at explaining them to the public. They strive to make the rules effective by being in a direct dialogue with the industry and relying on the public to put pressure on the sector to adopt the guidelines.

## **6. Terms of Reference of the ERGA Subgroups**

### **6a. Terms of Reference Subgroup on Exchanging Good Practices [ERGA (2017) 05]**

Damir Hajduk (AEM SI) described the main objectives of the subgroup, i.e. upgrade of CIRCABC and development of the ERGA Academy. He also presented the results of the survey on the functioning and expectations as to the improvements of the CIRCABC, which was run just before the plenary meeting.

#### Upgrade of CIRCABC

The survey showed that the main problems with the current DET were the searchability and the language. The value of content and fast tracking of documents were considered to be the most important functionalities of the system, while uploading videos, a mobile version of the system or the distribution of the news were considered to be of lesser importance.

Damir Hajduk confirmed that since December 2016 CIRCABC is fully searchable and he suggested the creation of task forces who will tag the documents and include a description in English in order to improve searchability and user friendliness.

It was announced that the system will be presented at the autumn plenary.

#### ERGA Academy

Damir Hajduk explained that ERGA Academy will be launched in order to support the exchange of experiences and knowledge both at the heads and expert level. As regards the format of ERGA Academy, he considered that an ad hoc round table, webinars and study visits would be the most appropriate formats. With respect to study visits, he believed that the majority of NRAs have budgets for academic purposes which could be used for this purpose.

Concerning the topics of ERGA Academy, the majority of members opted for the topic "Technology and Trends" but some would like to have more clarity on the concept of the ERGA Academy. It was also stated that some topics are also dealt with by EPRA and duplication should be avoided. This topic will be discussed in more detail at the next meeting of the ERGA subgroup, to be held on 23 of March.

Damir's presentation was followed by a discussion on whom ERGA Academy should target (heads of NRAs or rather experts) and who would cover the costs of the ERGA Academy activities. It was agreed that the program should be run by ERGA itself or by professionals who are willing to offer their services for free. The level of representation would depend on the activity and thus for most activities, such as twining, webinars, it would involve experts, while for other activities, such as presentations by high level speakers, it would involve heads of the NRAs.

The Terms of Reference were approved unanimously.

#### **6b. Terms of Reference Subgroup on Protection of Minors [ERGA (2017) 06]**

Lubos Kuklis (CBR SK) presented the Terms of Reference of the subgroup on the Protection of Minors. He explained that, as a follow up to the just adopted Report, the subgroup will work on the preparation of a workshop on existing practices in protection of minors in the audiovisual media. Building on the knowledge from the Workshop, it will produce a good practices guide.

Some members asked for more information on the companies which will be invited to the workshop (size of companies, possibility of involvement of OTT services). Lubos Kuklis confirmed that they will try to involve all the people that could make a valid contribution, such as media that replied to the questionnaire, academics and OTTs.

The Chair noted that they should be careful about whom they invite, arguing that the companies will volunteer because they will see a chance for lobbying. However, it is important to keep a balance and not lean on one side without taking into consideration other actors, such as consumer organisations.

The Terms of Reference were adopted unanimously.

#### **6c. Terms of Reference Subgroup on Preparing for Self- and Co-Regulation [ERGA (2017) 07]**

Oli Bird (Ofcom UK) presented the Terms of Reference of the subgroup on Self- and Co-Regulation. They envisage three phases: 1. Knowledge-gathering and survey; 2. Report and discussion and 3. Recommendations. The deliverable of the subgroup will be a Report presented to the autumn plenary for adoption.

Terms of Reference were adopted unanimously.

#### **6d. Terms of Reference Subgroup on Future-proofing ERGA [ERGA (2017) 08]**

On behalf of the Chair of this subgroup - Mrs. Benedetta Liberatore (AGCOM IT) - Mr. Antonello de Tommaso presented the Terms of Reference. He explained that the aim of the subgroup is twofold: to identify possible improvements to ERGA's current operation and function and to deal with any technical request by the Commission in relation to subjects covered by the AVMSD review.

Following the presentation, Ofcom suggested that it is important for the members to follow the legislative process closely and suggested that the sub-group would inform the whole group on a regular basis of the latest developments. The Chair agreed with the importance of exchanging information.

The Terms of Reference were adopted unanimously.

## **7. Information from EPRA**

Mrs Celene Craig – EPRA Chair described the recent EPRA activities. She mentioned that EPRA Work Program for the period 2017-2019 will be presented to the EPRA members at the meeting in May, in Edinburgh. The key themes of the program will be the use of the digital age (behaviour of millennials, etc.) and the challenges of digital disruption (impact of personalized directives on diversity). In addition, two other groups will focus on media literacy and licensing and authorization procedures. Other ad-hoc groups will focus on the future of the radio and the relationship between the citizen and regulators.

She also mentioned that after the May meeting in Edinburgh, EPRA will meet in Vienna and Luxemburg. She also announced that during the May meeting EPRA will elect a new board, where Mr Damir Hajduk, currently at the EPRA Board, will step down.

EPRA noted ERGA's initiative of cooperation and will respond to it. She mentioned that EPRA was established with the core purpose of sharing best practices and experiences, therefore a structured dialogue between ERGA and EPRA is welcome to avoid overlaps between their activities.

The Chair announced that a first meeting has already been planned in order to discuss the further steps of cooperation.

## **8. AOB**

Under this point, Liechtenstein noted that the JCD to Commission Decision of 3.2.2014 (establishing ERGA) foresees that «*The EFTA States shall participate fully in the European Group for Audiovisual Services, except for the right to vote*». Given that, they should be able to participate in the ERGA discussions in order to be fully informed about the ongoing procedures. At the same time the ERGA Rules of Procedure do not seem to reflect this. The Commission recognised that it is necessary to amend the ERGA rules of procedure in order to address this issue.

The ERGA chair thanked everyone for their contributions and closed the meeting.