Subgroup 3 – 2019 Terms of Reference (ToR)	
Name of Subgroup	Implementation of the revised AVMS Directive
SG Chair, NRA	Tobias Schmid, DLM (Germany)
Background	In 2018, an ERGA Subgroup focused on several aspects of the application of the revised AVMS Directive: the enforcement of relevant rules in the online environment, measures for supporting European works and territorial jurisdiction. This has led to the preparation of a thorough analysis and discussion paper that has been published in November 2018[1]. However, it is important to further this exercise in relation to other areas of the revised AVMS Directive that have not been dealt with within the past Subgroup. In this context, the year 2019 offers a unique opportunity for discussions amongst the NRAs that may contribute to the ongoing transposition process at the individual national levels.
Subgroup scope and purpose	Considering the numerous aspects that are still to be discussed in the revised AVMSD and wider implications in the audiovisual media field, the Subgroup is intended to accompany the implementation of the revised AVMS Directive with a particular focus on the revised material rules for audiovisual media services and on the revised material scope (i.e. the inclusion of video-sharing platforms). Also, the Subgroup should analyse concrete mechanisms of regulation in a converged media environment, including responsibilities of the various service providers in the online environment. In this vein, the Subgroup's work should be guided by - the principle that a **consistent and timely transposition of the AVMS Directive** into national legal frameworks is necessary for a sustainable media environment in Europe, and would contribute to facilitate the subsequent enforcement of the rules by NRAs. - the assumption that **co-operation between regulatory authorities is an indispensable** tool for effective enforcement of relevant audiovisual media laws - the aim to **create awareness for convergent media regulation** across Europe Considering the width of these areas, three Taskforces are established under the umbrella of this Subgroup. The individual topics to be addressed are divided along the following lines: - **Taskforce 1: Changes to the material *rules* for audiovisual media services** This taskforce should elaborate on the revised material rules, in particular consumer protection (the rules on audiovisual commercial communications), protection of minors and incitement to violence or hatred, accessibility, findability, signal

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	integrity and independence of regulatory authorities. • **Taskforce 2: Changes to the material *scope* – the inclusion of video-sharing platforms** This Taskforce should analyse the new provisions relating to video-sharing platforms, having a particular view on the nature and purposes of the measures to be implemented by VSPs, on the questions to be considered by NRAs in the setting up of co-regulatory regimes, as well as possible principles for an effective monitoring of VSPs by NRAs; • **Taskforce 3: Concrete mechanisms of regulation** This Taskforce should explore the mechanisms of regulation depending on areas and services regulated (strong vs. soft approach; regulation exclusively by NRA vs. co- and self-regulation), enforcement of relevant rules and cross-border cooperation between regulators, possible cooperation of ERGA members and possible future framework for exchanges of ERGA itself with relevant authorities on European and national level from other areas (competition, telecommunication, data protection, consumers, public prosecutors, etc.) and responsibilities of providers.
Taskforces purpose(s)	**Taskforce 1: Changes to the material rules for audiovisual media services** *Co-Chairs: Agcom (Italy), SPBA (Sweden)* For all topics within the remit of this Taskforce, the following aspects should be addressed: - The meaning of the amendments compared to the previous rules - Presentation of and elaboration on already existing approaches of NRAs to monitor and enforce the respective rules - Development of proposals for effective implementation of the respective rules Core messages could be: - A consequent and practice-oriented design of law is necessary for a consistent application and enforcement of the rules by regulatory authorities - Independence of regulatory authorities is a fundamental element of a functioning European media sector In order to secure adequate treatment of the various topics within this Taskforce, they should be dealt with on a step-by-step basis. Assuming that the Taskforce will organize three meetings throughout the year, each of them could have different focus points. - One meeting for protection of minors and incitement to hatred; - One meeting for accessibility, findability, signal integrity and independence of regulatory authorities; - One meeting for audiovisual commercial communications. These focus points are not meant as to exclude discussions on the other topics within the remit of this Taskforce. As output, the Taskforce aims at producing an overview document containing a few pages for each of the topics addressed.

Taskforce 2: Changes to the material scope – the inclusion of video-sharing platforms

Chair: CSA (France)

Building upon the ERGA 2018 Analysis and Discussion Paper on the revised AVMS Directive, and on the report issued by ERGA Subgroup on self and co-regulation in 2018[2] this Taskforce should focus on the provisions set out under Article 28b of the revised Directive and in particular address the following issues:
- What sort of parameters would be helpful in order for regulators to identify VSPs, in accordance with the definition provided in the revised Directive?
- What is the regulators' and VSP providers' current approach to the public interest objectives at stake (protection of minors and consumers, protection against hatred, etc.)? Do NRAs have fitting experience with similar obligations from other areas (e.g. the NetzDG in Germany)?
- The nature of the measures/obligations incumbent upon VSP service providers; the principles and mechanisms allowing NRAs to assess the 'appropriateness' of the measures taken by VSPs, including the handling of users' complaints. Where appropriate, the necessary cooperation with other national regulatory authorities.

This work-stream would primarily aim at reviewing the current measures put in place by VSP providers and regulators in order to analyse to what degree these measures already meet the requirements of the new AVMS Directive or what needs to be done/changed to ensure compliance. It would also lead to identifying areas where cooperation between regulators would be necessary in order to reach a manageable and consistent regulation of VSPs, in particular when it comes to assessing the 'appropriateness' of the measures in place and the out of court handling of disputes between users and VSPs.

Taskforce 3: Concrete mechanisms of regulation

Chair: DLM (Germany)

This Taskforce will explore concrete mechanisms of regulation and enforcement. It will mainly consist of the following four blocks:

1. **Exploring the mechanisms of regulation depending on areas and services regulated**

This point mainly consists of a benchmarking exercise based on experiences from NRAs involved and building upon existing work done within ERGA so far:
- Which areas and fundamental values are suited for which kind of regulation?
- Where is statutory regulation needed to ensure effective enforcement? What potential role can co- and self-regulatory systems play?
- Where does a strong approach towards regulatory intervention prevail over a soft approach and vice versa (i.e. where are traditional, one-directional regulatory actions necessary, and

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[2] *A Framework for Effective Co-regulation of Video Sharing Platforms [ERGA (2018) 10]*

	where might regulators be required to use more inclusive forms of regulation)? **2. Enforcement of relevant rules and cross-border cooperation between regulators** This part is meant to continue and concretize the work of Taskforce 1 of Subgroup 3 in 2018: - Further development of the "case matrix" and identification of concrete use cases - Concretization of the conclusions of the Working Paper, including their implementation **3. Cooperation of ERGA members and exchanges of ERGA with relevant authorities** This aspect is intended to develop possible future frameworks for cooperation between relevant authorities in the media environment: - Exchange of experiences (e.g. the German project *"Enforcing instead of only deleting"*) - Developing recommendations for NRAs to interact with other national authorities from other areas (competition, telecommunication, public prosecutors, etc.) - Elaboration on interacting possibilities of ERGA itself with other bodies at European level with the aim of strengthening informal relationships and mutual access to information (in line with what will be developed in this regard by Subgroup 2) **4. Responsibilities of providers** This last aspect should widen the view of NRAs to generally focus on liabilities of service providers that are part of the audiovisual value chain: - Analyse responsibilities of service providers on the internet (starting from the AVMS Directive and the expanded scope of application) - Develop possible options to foster compliance with media law on the internet ("enforcing"-approach, access to information by NRAs, obligations for service providers)

Deliverables

All deliverables of this Subgroup and its Taskforces will be as concise and brief as possible. They will mainly concentrate on concrete outcomes (i.e. statements, assessments, proposals, recommendations) and will not contain generic elaborations.

Where experience from other NRAs is deemed helpful, they will be approached individually. However, the methods will not include gathering specific data and information from NRAs via stereotype questionnaires. Instead, active Taskforce members (i.e. "drafters") will be encouraged to conduct initial drafting exercises on specific topics along questions and aspects defined in these Terms of Reference. These first works will of course be consulted across the respective Taskforce members in order to take into account all relevant views. The editorial responsibility for each deliverable lies with the respective TF Chairs.

Deliverables of SG3 and its Taskforces	**Deliverable 1: Overview document of Taskforce 1** • <u>Objective</u>: Give an overview on changes to the material rules for audiovisual media services of the AVMS Directive and possible approaches to emerging difficulties; including proposals for practice-orientated design of the relevant rules • <u>Due date</u>: End of the working year • <u>Publication</u>: yes

	Deliverable 2: Paper of Taskforce 2
	
	• <u>Objective</u>: Give recommendations to help NRAs:
	   o Build up an effective methodology to identify VSPs, in accordance with the definition provided in the AVMS Directive and with due regard to the work of the Commission in drafting the Guidelines of Recital 5
	   o Design effective co-regulatory schemes in which they assess the 'appropriateness' of the measures taken by VSPs
	• <u>Due date</u>: End of the working year
	• <u>Publication</u>: yes

	Deliverable 3: Recommendation paper of Taskforce 3 • <u>Objective</u>: Give recommendations on concrete mechanisms of regulation in a converging media environment, including a broader range of service providers on the internet. • <u>Due date</u>: End of the working year • <u>Publication</u>: yes
	Deliverable 4: Workshop of the Subgroup "Future of Audiovisual Media Regulation" • <u>Objective</u>: Discuss interim results of the Taskforces and elaborate on challenges for regulation and possible solutions, also with a view on VSPs. • <u>Method</u>: The Workshop will involve NRAs and external speakers (from EU institutions and industry) • <u>Date</u>: September 2019 Possibly organised together with Subgroup 1 to incorporate media plurality aspects.
	(Overarching) Deliverable 5: Final Report of the Subgroup • <u>Objective</u>: Summarize results of the taskforces and give over-arching statements • <u>Due date</u>: End of the working year • <u>Publication</u>: yes

Work flow for Subgroup 3 (internal and external milestones)[3]

Date	Action / Deliverable	Internal (Subgroup and/ or Taskforce only)	External (Board, Contact Network or Plenary, Public)
9 to 18 January	SG members to comment on draft ToR	Chair/drafters/members	
23 January	Start of written procedure for adoption of ToR First step: Consultation	Chair	
29 January	First meeting of the SG Organization of the work between the SG and the TFs. Agreement on the planned activities and deliverables of the TFs.	Chair/SG members	
30 January	First meeting of TF 1	Chair/TF members	
6 February	First meeting of TF 2	Chair/TF members	
7 February	First meeting of TF 3	Chair/TF members	
11 February (tbc)	Written procedure for adoption of ToR Second step: Electronic Vote	Chair	Plenary
April	Second meetings of all three TFs	Chair/TF members	
May	Contact network	Chair	Contact Network
June (tbc)	ERGA plenary meeting	Chair	Plenary
Beginning September	Third meetings of all three TFs	Chair/TF members	
Mid-September	Workshop (Deliverable 4)	Chair/SG members	Public
Beginning October	Second (final) SG Meeting	Chair/SG and TF	

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[3] The number and format of meetings depend on general budgetary conditions.

Date	Action / Deliverable	Internal (Subgroup and/ or Taskforce only)	External (Board, Contact Network or Plenary, Public)
	Finalisation of Deliverables	members	
End October	Contact Network Meeting	Chair	Contact Network
End November	Plenary meeting Adoption of the Deliverables	Chair	Plenary