



## Protecting freedom, safeguarding European law and values

### ERGA Work Programme 2020

#### A. Introduction

The European Regulators Group for Audiovisual Media Services (ERGA) is an advisory group for the European Commission in terms of the application of the Audiovisual Media Service Directive (AVMSD) and all related audiovisual media issues.

As ERGA points out in its 'Statement of Purpose' 2019: „ERGA members wholeheartedly endorse the core democratic, economic, social and cultural values and objectives enshrined in Directive 2010/13/EU as amended by Directive (EU) 2018/1808. [...] ERGA assists the European Commission in implementing the EU audiovisual regulatory framework. It provides opinions on request of the Commission and sheds light on upcoming regulatory issues. By doing so, ERGA contributes to a better functioning of the internal market for audiovisual media and guarantees that the abovementioned values can continue to be safeguarded, particularly in the online environment.”

This ERGA Work Programme is designed to define the priorities and structure the work of ERGA for the year 2020 to ensure efficient work and beneficial outcome. It is expected to build on the work of ERGA in 2018 und 2019 and develop it further also with a view to new areas which have not been discussed yet.

The European media reality is constantly changing. Thereby, it is also facing ever new challenges. In particular, globalization is leading to an increasingly interconnected world. This may bring many advantages – such as easier networking, international trade and cooperation, exchange of experience and knowledge etc.

However, it also bears risks for the European internal market for audiovisual media services. In this regard, several clear trends have emerged over the past few years. Recent elections have been characterised by the interference of foreign actors disseminating disinformation and manipulating individuals and the general public through targeted disinformation campaigns protected by the anonymity of the internet. Growing competition from large international media companies and the increasingly complex interaction with large platforms put the European and national media markets under significant strain. At the same time, national regulators find it difficult to enforce national and European audiovisual media regulation in cross-border cases,

in particular against non-EU companies. Given the huge availability of content in the online environment, the lack of mechanisms to ensure adequate findability for content of public interest and for diversity in the field of automatized personalization of content, also raise concerns. These trends may have serious detrimental effects on cultural diversity and on the level of protection of viewers in the Member States. Such a listing of only a few challenges demonstrates how diverse the threats can be for the internal audiovisual media market.

National Regulatory Authorities (NRAs), which are entrusted with the enforcement of rules set out in the AVMS Directive, repeatedly encounter obstacles in their daily endeavour to protect European values. The implementation of the AVMS Directive in 2020 will lay the foundation for the future work of ERGA in this field and requires ERGA Members to intensify the enforcement of rules, especially in cross-border situations. Given the country of origin principle on which the AVMS Directive is based and in view of the global nature of online players, increased co-operation is needed to safeguard the Digital Single Market for audiovisual services and strengthen it in times of ever-increasing globalization.

Not less important is the area of disinformation. Prior to the European elections in 2019, it turned out that various actors were trying to influence elections or public discourse by deliberately spreading false or manipulated information.<sup>1</sup> This is not just a problem in the context of European elections – national elections are also affected by this phenomenon, which in turn can have an impact on European debates. In addition, disinformation in the context of elections is currently the most prominent topic, but not limited to this area. Environmental protection, immigration, housing shortage etc. – all currently discussed topics are potentially subject to disinformation campaigns. These experiences have clearly shown that the problem of disinformation, whether by private individuals or by state actors, by European or non-European players, jeopardize the common values of the European Union.

Apart from this, there is a continuous necessity to further accompany the implementation of the new AVMS Directive. Especially, it is important to elaborate recommendations for measures safeguarding the prominence of content of general interest, prominence of European content on on-demand services, and also address in this context the broader issue of non-discriminatory access to platforms of all audiovisual media content. In the digital age, platform operators are gaining more and more power in terms of content visibility and can in fact be accountable for the public's opinion-forming, especially through rankings and personalization. Therefore, it is increasingly important that European and public interest content is prominent and accessible and that audiovisual media content finds access to users on non-discriminatory terms.

Such developments, if not properly managed and regulated, might seriously jeopardize the European Digital Single Market and plurality, diversity and democracy in the European Union. A consistent approach is therefore needed to ensure the effective application of the European audiovisual framework and safeguard its underlying democratic values. Therefore, the following three Subgroups are proposed:

- Strengthening the Digital Single Market by enforcing European values/rules in the online environment
- Disinformation
- Ensuring prominence and non-discriminatory access of audiovisual media content to all platforms

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<sup>1</sup> European Commission (2018): JOINT COMMUNICATION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS - Action Plan against Disinformation, p. 3.

In general, the structure of each Subgroup will reflect both major tasks of ERGA, i.e. providing technical expertise to the Commission, as well as exchanging experiences and best practices. The former task will be secured by an in-depth assessment of the relevant challenges resulting in concise and solution-oriented recommendation papers. The latter task will be approached by the organisation of workshops (with or without external speakers) realized within the different Subgroups.

## B. Subgroups 2020

### I. Strengthening the Digital Single Market by enforcing European rules and values in the online environment [SG1]

Building on ERGA's work in Subgroup 3 of 2019 and in accordance with the ERGA Statement of Purpose developed in 2019, the aim of ERGA's work in 2020 should be to promote and strengthen cooperation between Member States in cross-border cases by working out concrete solutions to cross-border challenges, both emerging from the implementation of the AVMS Directive and, beyond that framework, to other cases where fundamental European values are at stake. As specified in the Statement of Purpose *„this strategic objective outlines ERGA members' task to cooperate for the purpose of the application of the AVMS Directive. The 2018 ERGA Analysis & Discussion Paper on the revised AVMS Directive has highlighted several areas where cooperation between NRAs would need to be strengthened in order to achieve a consistent and effective implementation. The extension of the material scope of the Directive to video-sharing platforms, the identification of the services under the jurisdiction of Member States, the provisions relating to the cross-border financing of European works, etc. have cross-border implications, which call on NRAs to develop relevant frameworks of cooperation. They could, for example, take the form of memorandums of understanding which NRAs would apply on a voluntary basis“.*

Especially in areas where the AVMSD and its implementation into national law does not provide a sufficient guideline for NRAs to act on their part, special guidelines on cooperation should be put in place to facilitate the enforcement of the rules in cross-border cases. A consistent approach is needed to such issues to effectively protect viewers and cope with the challenges to the European internal market coming from the increasing role of global players' in an online environment.

In an increasingly global market such co-operation among NRAs is not only important with regard to European cross-border cases, but in particular also in cross-border cases involving non-EU countries.

The aim of this Subgroup is to develop concrete solutions to make the handling of cross-border cases future-proof, and to exchange best practices on such cases, inter alia by means of an expert workshop. It includes procedural improvements among NRAs, in particular by putting in place the proposed Memorandum of Understanding foreseen by the final report of Subgroup 3 in 2019. In addition, with the aim to continue to provide a forward-looking review and advice to the European Commission (Strategic Priority n°3 of the Statement of Purpose), the Subgroup will encourage and support the thoughts of the European Commission regarding the Digital Services Act and will in particular provide technical expertise in the context of a revision of the regulatory framework of the e-Commerce Directive, building upon the recently revised AVMSD as it is currently being transposed and implemented in Member States.

## II. Disinformation [SG2]

This subgroup is supposed to continue the work of ERGA in 2019 on Disinformation. It would build on the results and conclusions drawn from the monitoring carried out by ERGA Members after the 2019 EU elections and at the end of 2019. This work needs to proceed and focus on further action to combat disinformation effectively.

In this light, it is proposed to divide the Subgroup into two workstreams:

- Based on the permanent monitoring of national legislation in Member States, the ERGA authorities shall analyse and elaborate on the notion of disinformation by summarizing and sorting the different kinds of understandings and definitions of the phenomenon. The ERGA *Report of the activities carried out to assist the European Commission in the intermediate monitoring of the Code of practice on disinformation* published in June 2019 showed that the definitions used by the European Commission, Member States and platforms for the different phenomena of disinformation deviate and should be further clarified in order to ensure a consistent approach.
- ERGA will continue to assist the Commission in tackling the dissemination of disinformation, building upon the ERGA monitoring conducted in 2019, and suggest next steps to effectively address the weaknesses revealed by the monitoring. It is important to analyse the result carefully and to determine whether policies implemented by the platforms under the 2018 Code of Practice against Disinformation have been effective. It will also be important to examine whether the commitments under the Code are sufficient or whether additional actions, including measures of a regulatory nature, should be envisaged. Based on the experience gained through the monitoring activities, this second part could focus on supporting the Commission in strengthening the effectiveness of the Code especially by exploring possible co-regulatory measures. ERGA should assist the European Commission to the best of its abilities in developing effective methods of combating disinformation, as the European Commission's support in matters related to audiovisual media services is one of ERGA's core tasks.

## III. Ensuring prominence and non-discriminatory access of audiovisual media content to all platforms [SG3]

The current media environment offers a variety of information of different quality. The kind of information users see first therefore has a big impact on their educational, informational or entertainment experience. One way to ensure that quality information makes it to the user, especially if it has a public value, is for it to be given the necessary prominence.

For example, this has been recognised by Article 7a of the AVMS-Directive, which gives Member States the possibility to “take measures to ensure the appropriate prominence of audiovisual media services of general interest.” Ensuring prominence of content is also an integral part of new obligations imposed on on-demand services in the context of promotion of European works under Article 13(1) of the Directive.<sup>2</sup>

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<sup>2</sup> This topic was addressed in the 2018 ‘ERGA Analysis and Discussion Paper to contribute to the consistent implementation of the revised AVMS Directive’ but further discussion was considered necessary. For example, proposal 20 of the Paper suggested that ERGA could “develop internal guidance, based on concrete examples, in order to facilitate the practical understanding of the concept of ‘prominence’”. It was further noted that “this exercise could involve the participation of industry experts, in particular with a view to identifying the most effective measures and strategies taken to ensure prominence of European works”. Collaboration with the EFADs was suggested too (proposal n°32).

However, in a media environment, in which platforms are increasingly gaining power, this is not sufficient. It is, therefore, crucial for Member States to implement measures safeguarding the visibility of European and public value content and address, from a broader perspective, the issue non-discriminatory access of users to all types of media content.

Therefore, the new Subgroup 3 shall use the outcome of the previous work done by ERGA to drive forward the best practice exchange of NRAs concerning accessibility issues of content providers.

One of the tasks of this Subgroup should be to gather different kinds of measures that the different Member States are intending to implement for example in the transposition of Article 7a AVMSD. This should enable the development of a best practice approach, e.g. by means of a workshop, in order to strive for a high degree of harmonization when implementing such measures as regards audiovisual media services. With regard to services active in the online environment, the Subgroup could as complementary action exchange information on national measures taken or envisaged to ensure that audiovisual media content of public value (both of a commercial and public service nature) receives proper prominence on such platforms. The Subgroup should also further explore the concept of 'appropriate prominence' referred to in Article 13(1) of the revised AVMS Directive in line with the abovementioned recommendations.

### C. Action and Working Groups

The coming year could serve to analyse both the structure and the outcome so far of the **Digital European Toolkit**. The aim should be to set up the DET in a way that makes it as useful as possible for its Members. This could include a survey querying the ERGA Members opinion on the relevance and efficiency of the DET to ensure that it is fit for its purpose.

Main subject of the 2020 **ERGA Academy** could be a meta discussion involving the ERGA Board on a most efficient co-ordination of responsibilities and a reasonable allocation of workflows between ERGA and EPRA. The aim of this approach is to enhance the synergies of both groups and to avoid duplication of work.

As a follow-up development of the 2019 subgroup on **gender diversity**, an action group could be set with the aim to illustrate the produced report on industry led good practices. Along these lines, interviews of several national stakeholders could be conducted to explain how best initiatives have been implemented and, for instance, which obstacles they had to overcome. The objective would clearly be to share key success factors and practical tools to ensuring the optimal spreading of gender diversity initiatives.

Beside the deliverables of the formal subgroups and action groups, the 2020 ERGA work program will have to anticipate and integrate the changes in the workload that will be generated by the possible opinion requests from the European Commission. Among these changes, the Group should develop an operational plan further specifying all the internal steps (gathering of information, appointment of drafters, template for the draft opinion, etc.) which must be taken prior to the actual drafting of opinions. This work should be carried out in the frame of an ad-hoc working group, with the objective to finalise the plan and have it adopted by ERGA before the deadline for the transposition of the revised AVMS Directive.