

<b>Subgroup 1 – 2020 Terms of Reference (ToR)</b>	
<b>Name of Subgroup 1 (SG 1)</b>	Strengthening the Digital Single Market by enforcing European rules and values in the online environment
<b>SG Co-Chairs, NRA</b>	Celene Craig, BAI (Ireland) Frédéric Bokobza, CSA (France)
<b>Background</b>	<p>Strengthening cooperation in cross-border cases is one of ERGA's key strategic priorities for the period 2020-2023. It is specifically aimed at fulfilling one of ERGA's core commitments, which is 'to promote common regulatory approaches and effective cooperation between its members as well as with stakeholders'<sup>1</sup>.</p> <p>In 2018, the <i>ERGA Analysis &amp; Discussion Paper on the revised AVMSD</i><sup>2</sup> already identified a number of areas (the material scope of the Directive, the co-regulation of video-sharing platforms, the implementation of cross-border financial contributions, the geographical establishment of services, etc.) where cooperation between ERGA members would be necessary in order to achieve an efficient and consistent implementation of the new rules.</p> <p>Furthermore, the 2019 <i>ERGA Report on the Implementation of the Revised AVMS Directive</i> provided some ideas about what forms this cross-border cooperation could take in various cases<sup>3</sup>. The recommendations of the report shall now be materialized in the form of one or several memorandum(s) of understanding (MoUs) which would, for each case identified, help set up a common framework under which ERGA members could provide each other mutual assistance and exchange of information.</p> <p>Finally, while the new European Commission is taking office and starting to steer some reflection about the publicly announced 'Digital Services Act'-package, this Subgroup shall also contribute with relevant advice, based on the experience of its members, on how the existing rules may be improved in the future.</p>
<b>Subgroup scope and purpose</b>	<p>As outlined above, the Subgroup's general purpose is threefold:</p> <ol style="list-style-type: none"> <li>1. Workstream/Deliverable 1: to develop one or several MoUs providing concrete guidance on how some cross-border cases (see examples below) could be addressed through informal cooperation<sup>4</sup>;</li> <li>2. Workstream/Deliverable 2: to produce a principle-based paper setting out ERGA's views about EU future online content regulation;</li> <li>3. Workstream/Deliverable 3: to organise a workshop about the challenges of Vloggers regulation and issue a report thereabout.</li> </ol>

<sup>1</sup> ERGA 2019 Statement of Purpose, page 1

<sup>2</sup> The 'ERGA Analysis & Discussion Paper to contribute to the consistent implementation of the revised Audiovisual Media Services Directive' (2018).

<sup>3</sup> See in particular Annex 2 ('VSPs under the revised AVMS Directive') and 3 ('Concrete Mechanisms of Regulation') of the ERGA 2019 Report 'Implementation of the revised AVMS Directive'

<sup>4</sup> 'Informal cooperation' is meant as opposed to the formal cooperation procedures foreseen under e.g. Article 3 and 4 of the revised AVMS Directive.

## 1. Memorandum(s) of Understanding (MoUs)

The overall aim of the MoU(s) is to facilitate an effective fulfilment of the regulatory objectives of the revised AVMS Directive and of national legal acts transposing the provisions of the Directive into national legislation

In developing MoUs, and as set out in the ERGA 2020 Work Programme, the Subgroup will seek to address the challenges relating to the cross-border enforcement of some provisions of the revised AVMS Directive. As part of this work, the Subgroup will need to address situations for which the AVMSD does not necessarily provide clear guidance (as opposed to Article 3 of the Directive for instance) about how the NRAs concerned are expected to cooperate. It will also consider how the provisions set out in Article 30a (3) of the revised AVMS Directive may be further specified to this end.

Furthermore, the Subgroup may also consider the benefits of specifying co-operation arrangements within MoU(s), which further strengthen collaboration between NRAs across all stages of the regulatory process in the implementation of the Directive. Such matters could include for example co-operation in the development of Codes or exploring the potential development of priority complainant schemes.

MoUs are a way to formalize non-legally binding commitments and are designed to express a convergence of will between the signatories<sup>5</sup>. The objective of developing MoUs shall be to lay down general standards of mutual assistance, procedures for exchange of information (e.g. practical solutions to confidentially collect and share financial data between NRAs for the purpose of implementing Article 13.2, where appropriate), as well as, where appropriate, all the relevant means of cooperation (notification and alert mechanism, contact points, deadlines, post-enforcement monitoring/communication, etc.) which appear to be necessary for the purpose of enforcing some specific provisions of the AVMSD (for instance, Articles 28a and 28b of Directive 2010/13/EU<sup>6</sup> regarding video-sharing platforms and Article 13(2) of the same Directive regarding the implementation of cross-border financial contributions to the production of European works) and, more generally, in order to ensure that fundamental European values are protected, particularly in the online environment.

Furthermore, in light of the conclusions of ERGA's 2019 *Report on the Implementation of the Revised AVMS Directive*, the MoU(s) shall also find appropriate ways to facilitate the identification of service providers, in particular online service providers. Such a mechanism should allow for a quick determination of their place of establishment in the EU, which is the starting point of any cross-border cooperation for the enforcement of the abovementioned rules.

<sup>5</sup> N.B. Without prejudice to the formal tasks and competences of ERGA and keeping in mind that the Country of Origin principle is one of the cornerstones of the AVMSD, MoUs can be put into practice without requiring any legislative change or endorsement.

<sup>6</sup> As amended by Directive (EU) 2018/1808

## **2. ERGA Paper on the future of EU online content regulation**

In addition, with the aim to continue to provide for a forward-looking review and advice<sup>7</sup>, ERGA members shall encourage and support the European Commission's strategic reflection regarding the Digital Services Act-package (DSA-package). To this end, the Subgroup will serve as a facilitator and a catalyst for gathering expertise and ideas rather than providing ready-made solutions.

The Subgroup will elaborate a concise paper setting out i) the key challenges – relating but not limited to the AVMS Directive - which any future EU legislation in the field of online content regulation should seek to address and ii) how the DSA-package may help in this regard. The exact scope of the paper shall be determined by the members of the Subgroup but could include developments about, inter alia, the material scope of the online content regulation within the DSA-package, the categories of services covered, the role of ERGA, territorial jurisdiction issues, etc.

In order to provide for a timely contribution to the Commission's strategic reflection regarding the DSA-package, this document shall be adopted at the June plenary session. If deemed appropriate, it may be complemented by an additional short paper based on the experience gained in the elaboration of the MoU(s).

## **3. Expert workshop about the challenges of Vlogger regulation**

The expert workshop will seek to identify and address some of the potentially challenging issues concerning the regulation of Vloggers providing content on video-sharing platforms (VSPs).

The speakers will cover topics such as the inclusion of "short videos" in the definition of audiovisual programmes, the provision of real-time linear services, the role of VSPs, or how to apply the obligations set out in the revised AVMS Directive (protection of minors, commercial communications, etc.) in relation to such content. The workshop will also explore national regulatory approaches - with special attention to the mechanisms used by regulators to make Vloggers aware of the regulation and to how to ensure compliance – and how NRAs should cooperate in those specific situations.

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<sup>7</sup> ERGA 2019 Statement of Purpose, 3<sup>rd</sup> Strategic Priority ('Forward-looking review of the media regulatory framework: monitoring market developments and potential regulatory challenges affecting the media environment'), page 4

## Subgroup 1 Deliverables

<b>Deliverable 1</b>	<b>Deliverable type</b>	Memorandum(s) of Understanding
	<b>Deliverable title</b>	(To be decided)
	<b>Due date</b>	December 2020, plenary meeting
	<b>Publication</b>	Yes
<b>Deliverable 2</b>	<b>Deliverable type</b>	a. Paper on the future of EU online content regulation b. [Optional] Additional paper setting out mechanisms for effective cooperation
	<b>Deliverable title</b>	(To be decided)
	<b>Due date</b>	a. June 2020, plenary meeting b. [Optional] December 2020, plenary meeting
	<b>Publication</b>	Yes
<b>Deliverable 3</b>	<b>Deliverable type</b>	Expert workshop about the challenges of Vlogger regulation
	<b>Deliverable title</b>	(To be decided)
	<b>Due date</b>	September/October 2020
	<b>Publication</b>	Yes (activity report)

## Allocated Resources SG1

<b>Drafters</b>  <b>Members</b>  <b>Observers</b>	<u>Co-Chairs:</u> BAI (Ireland) and CSA (France)
KommAustria (Austria)	
CSA (Belgium)	
RRTV (Czech Republic)	
DLM (Germany)	
ESR (Greece)	
NMHH (Hungary)	
AGCOM (Italy)	
RVR (Slovakia)	
CNMC (Spain) – <b>Leader for the Expert Workshop</b> ( <i>Workstream 3</i> )	
VRM (Belgium)	
CEM (Bulgaria)	
TTJA (Estonia)	
AEM (Croatia)	
NEPLP (Latvia)	
ALIA (Luxemburg)	
RTK (Lithuania)	
BA (Malta)	
CvdM (Netherlands)	
KRITT (Poland)	
ERC (Portugal)	
MPRT (Sweden)	
AKOS (Slovenia)	
Fjölmiðlanefnd (Iceland)*	
Medietilsynet (Norway)*	
AVMU (North Macedonia)	
RTUK (Turkey)	

\*Without voting rights, according to Article 1 of the ERGA Rules of Procedure

**Workflow for Subgroup 1 (internal and external milestones)**

Date	Action/deliverable	Internal Subgroup only	External CN, Plenary, Publication
<b>2020</b>			
20 - 24 January	Receive feedback on the first draft Terms of Reference (ToR)	Co-Chairs	Board
4 – 18 February	ToR: written adoption procedure (1 <sup>st</sup> step: consultation)		CN/Plenary
24 February – 2 March	ToR: written adoption procedure (2 <sup>nd</sup> step: electronic vote)		Plenary
2 March	<p><b>1<sup>st</sup> SG1 meeting.</b></p> <p>Kick-off meeting to outline the proposed methodology and workstreams. Division of tasks among the drafters of the Subgroup.</p> <p><i>Workstream 1:</i> presentation of the draft structure of the MoU + definition of the areas of cooperation to be addressed</p> <p><i>Workstream 2:</i> presentation of a draft qualitative survey</p>	All members	
March	<p><i>Workstream 1:</i> drafting of the structure and main principles of the MoU(s) in consultation with drafters</p> <p><i>Workstream 2:</i> roll-out of the qualitative survey</p>	Co-chairs and drafters	
April	<p><i>Workstream 1:</i> feedback from SG1 members on the draft structure and main principles of the MoU(s)</p> <p><i>Workstream 2:</i></p> <ul style="list-style-type: none"> <li>- Analysis of the results of the survey + drafting of the conclusions of the Paper (deliverable 2a.)</li> <li>- Discussion at <b>Board meeting</b></li> </ul>	Co-chairs and drafters All members	Board
Early May (tbc)	<p><b>2<sup>nd</sup> SG1 meeting.</b></p> <p><i>Workstream 1:</i> presentation and discussion of the draft structure and main principles of the MoU(s) + test run</p> <p><i>Workstream 2:</i> discussion and agreement about the main findings of the analysis and the draft conclusions (deliverable 2a.)</p>	All members	

Date	Action/deliverable	Internal Subgroup only	External CN, Plenary, Publication
<b>2020</b>			
13 May	<p><b>CN meeting.</b></p> <p><i>Workstream 1:</i> Presentation and discussion of the draft structure and main principles of the MoU(s)</p> <p><i>Workstream 2:</i> Presentation and discussion on the proposed Paper on the future of EU online content regulation (deliverable 2a.)</p>	Co-chairs	CN
4 June	<p><b>ERGA plenary meeting.</b></p> <p><i>Workstream 1:</i> Presentation, discussion and agreement on the draft structure and main principles of the MoU(s)</p> <p><i>Workstream 2:</i> Presentation and adoption on the proposed Paper on the future of EU online content regulation (deliverable 2a.)</p>	Co-chairs	Plenary
September/ October	<p><b>3<sup>rd</sup> SG1 meeting.</b></p> <p><i>Workstream 1:</i> Presentation and discussion of the draft MoU(s) (deliverable 1)</p> <p><i>Workstream 2:</i> [Optional] Presentation and discussion of the draft Additional paper (deliverable 2b.)</p> <p><i>Workstream 3:</i> Expert workshop about the challenges of Vlogger regulation (deliverable 3)</p>	All members	
Mid-November	<p><b>CN meeting.</b></p> <p><i>Workstream 1:</i> Presentation and discussion of the draft MoU(s) (deliverable 1)</p> <p><i>Workstream 2:</i> [Optional] Presentation and discussion of the draft Additional paper (deliverable 2b.)</p> <p><i>Workstream 3:</i> Presentation and discussion about the workshop activity report (deliverable 3)</p>	Co-chairs	CN
Beginning of December	<p><b>ERGA plenary meeting.</b></p> <p><i>Workstream 1:</i> Presentation, discussion and adoption of the MoU(s) (deliverable 1)</p> <p><i>Workstream 2:</i> [Optional] Presentation, discussion and adoption of the draft Additional paper (deliverable 2b.)</p> <p><i>Workstream 3:</i> Presentation, discussion and adoption of the workshop activity report (deliverable 3)</p>	Co-chairs	Plenary