

RULES OF PROCEDURE OF THE EUROPEAN REGULATORS GROUP FOR AUDIOVISUAL MEDIA SERVICES

THE EUROPEAN REGULATORS GROUP FOR AUDIOVISUAL MEDIA SERVICES,

Having regard to Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities (hereinafter ‘the Directive’), as amended by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018,

Having regard to the Commission Decision of 3 February 2014 establishing the Group¹ (hereinafter ‘the Commission Decision’),

Having regard to the horizontal rules on the creation and operation of expert groups (hereinafter ‘the horizontal rules’)²,

Acknowledging that, in line with the horizontal rules, the decisions and actions concerning, in particular, the organisation and operation of the group (such as setting up subgroups or convening meetings) as well as external communication and engagement (such as public statements) shall be taken in concertation with the Commission,

Having regard to ERGA Rules of Procedure as modified on 9 November 2017, in particular Article 20 thereof,

HAS ADOPTED THE FOLLOWING RULES OF PROCEDURE:

Article 1

Membership

1. Members of the European Regulators Group for Audiovisual Media Services (hereinafter ‘the group’) shall comprise independent national regulatory authorities of EU Member States in the field of audiovisual media services, represented by the heads or by nominated high level representatives of the national regulatory body with primary responsibility for overseeing audiovisual media services, or in cases where there is no national regulatory body by other representatives as chosen through their procedures.

The EFTA States that are party to the EEA³ shall participate fully in the group, except for the right to vote⁴.

¹ C(2014) 462 final

² C(2016) 3301 final

³ Agreement on the European Economic Area, OJ L 1 of 3.1.1994 p. 3.

⁴ Decision of the EEA Joint Committee No 192/2014

The European Commission and an EFTA Surveillance Authority representative shall attend the meetings and take part in the discussion, without voting rights, and shall be represented at an appropriate level.

2. Each regulatory body shall also appoint a second high level representative, who shall be empowered to exercise the responsibilities of the member.
3. Each Member State shall inform the Commission of the names of the national bodies through its Permanent Representation.
4. Without prejudice to paragraphs 1 and 2 above, each member decides on the composition and size of its delegation – which shall not normally exceed 3 people – and informs the secretariat of the group thereof via a dedicated mailbox of the group. However, the reimbursement of travel expenses by the Commission is limited to one person per delegation. Each member shall have only one vote.
5. A member may, in exceptional circumstances, represent a maximum of one other member as proxy. The member of the group that is represented must inform the secretariat of the group thereof in writing.

Article 2

Observers and Experts

1. Organisations and public entities other than Member States' authorities may be granted an observer status, in compliance with the horizontal rules, by direct invitation. Member States' authorities shall be understood at national, regional, or local level in accordance with Article 7.2(d) of the Commission's horizontal rules.
2. In particular, the Commission may grant observer status to public authorities of candidate countries and EFTA States that are not party to the EEA, as well as organizations, including European Platform of Regulatory Authority (EPRA)⁵ and the European Audiovisual Observatory (EAO)⁶.
3. If so requested by the European Parliament, the Commission may also invite European Parliament's experts to attend the meetings⁷.
4. Organisation and public entities appointed as observers shall nominate their representatives. No more than two persons shall represent each observer.
5. Observers and their representatives may be permitted by the Chair to take part in the discussions of the group and provide expertise. However, they shall not have voting rights and shall not participate in the formulation of recommendations or advice of the group.

⁵ <http://www.epra.org>

⁶ <http://www.obs.coe.int>

⁷ Framework Agreement on relations between the European Parliament and the European Commission, point 15 and Annex 1 (OJ L 304 20.11.2010, p.47)

6. Following a proposal by the group, or at its own initiative, the Commission may invite experts with specific expertise with respect to a subject matter on the agenda to take part in the work of the group or sub-groups on an ad hoc basis.

Experts shall withdraw when the group moves to a vote.

Article 3

Tasks

As defined in Article 30b(3) of the Directive, the group's task shall be:

- a) to provide technical expertise to the Commission:
 - in its task to ensure a consistent implementation of the Directive in all Member States;
 - on matters related to audiovisual media services within its competence;
- b) to exchange experience and best practices on the application of the regulatory framework for audiovisual media services, including on accessibility and media literacy;
- c) to cooperate and provide its members with the information necessary for the application of the Directive, in particular as regards its Articles 3, 4 and 7;
- d) to give opinions, when requested by the Commission, on the technical and factual aspects of the issues pursuant to Article 2(5c), Article 3(2) and (3), point (c) of Article 4(4) and Article 28a(7) of the Directive.

Article 4

Chair

1. In accordance with the Commission Decision, the group shall be chaired by one of its members for a period of 12 months. Members of the group shall also appoint one vice-chair and up to three additional members of the Board for the same period.
2. The chair and the vice-chair can be re-elected once for a maximum period of 12 months.
3. Nominations for election as Board members and for election as chair and vice-chair shall be submitted to the secretariat no later than 28 days before the date of the meeting at which the election will take place.

In the case foreseen under Article 4(2), the chair and the vice-chair must submit their intention to be re-elected to the secretariat no later than the 15th of September.

The secretariat will circulate the list of candidates according to the rules defined in Article 6. The chair and the vice-chair shall each be elected with 2/3 majority of all members.

A request for a secret ballot can be made by at least two voting members present.

4. Before serving his/her term as chair for one year, the chair shall first serve at least one year as vice-chair, with the exception of the case foreseen under Article 4(5).

Every year, the group shall appoint the chair for the following year as well as up to four additional members of the Board according to the selection procedure described in Article 5(2) and (3). The group shall elect the vice-chair from among the members of the Board, except the chair.

5. In the event of resignation or permanent incapacity of the chair or of the vice-chair, a new member of the Board may be elected, according to the rules defined in Article 5(2) and (3). A new chair and/or vice-chair shall be elected thereafter from among the members of the Board without delay for the remainder of the term of office of the person to be replaced. In the event of resignation or permanent incapacity of a Board member, who is neither the chair nor the vice-chair, a new member of the Board may be elected in accordance with the procedure foreseen under Article 5(2) and (3).

Article 5

ERGA Board

1. The members of the ERGA Board are the chair, the vice-chair and up to three additional members from among the members with voting rights.
2. The diversity of the Group membership should as much as possible be reflected in the composition of the Board, in particular with regard to gender balance. Candidacies from members with no prior experience in the Board should be encouraged.
3. Candidates to join the Board shall be supported by at least two other members.
4. The elected Board members are the candidates who have obtained the most votes.
5. The secretariat shall inform the Group about the dates and attend Board meetings. It shall provide the minutes of the meetings without undue delay. Upon invitation from the chair, other members may be invited to attend Board meetings. In particular, other members shall be involved if the agenda includes any issue which may have an impact on the engagement or representation in ERGA of the corresponding member.
6. The ERGA Board shall have the following tasks:
 - (a) to present and promote the Group's achievements in public events and in the media;
 - (b) in relation to other issues, to propose and, provided that the Group expresses explicit agreement pursuant to Article 11 or 12, to issue public statements, such as press releases, on behalf of ERGA;
 - (c) to prepare a first outline of the annual work programme in accordance with the procedure foreseen under Article 14;
 - (d) to manage the activities of the ERGA Academy and supervise relationships with external stakeholders;
 - (e) to appoint the members of the expert subgroup referred to under Article 13(2);

- (f) to report to members about the effective functioning of the Group and take initiatives to address identified issues;
 - (g) to report to the Group about the actions taken pursuant to the achievement of task (a) and (d).
7. Within the Board, the chair and the vice-chair are particularly entitled to take responsibility for the tasks set out under paragraph 6(a) and 6(c).

Article 6

Secretariat

1. The Commission shall provide secretarial support for the group, including the Contact Network and the Board and any sub-groups created under Article 5(5) of the Commission Decision and Article 13 of the Rules of Procedure.
2. The secretariat of the group shall ensure document management and access. It shall also ensure the management of a dedicated website.
3. The secretariat shall be responsible for the tasks assigned to it under Article 18 of the rules of procedure.

Article 7

Agenda

1. The secretariat shall draw up the agenda under the responsibility of the chair and send it to the members of the group.

The secretariat, in consultation with the chair, shall put an item proposed by at least five members, on the Agenda of the next meeting.
2. The agenda shall be adopted by the group at the start of the meeting. Upon request from a member or the Commission's representative, the chair may decide to add an item to the agenda.
3. Immediately after the meeting the chair may prepare a press release or other public communication on the activities of the group for the secretariat to upload on the group's website.

Article 8

Meetings

1. Meetings of the group are convened by the chair, either on its own initiative, or at the request of a simple majority of members.
2. Quorum necessary for meetings shall be achieved when at least 2/3 of all voting members are present or represented by proxy. The written proxy shall be submitted to the chair at the beginning of the meeting and shall be recorded in the minutes.

3. At each meeting, the secretariat shall draw up, under the responsibility of the Chair, an attendance list also specifying, where appropriate, the organisations, Member States' authorities or other public entities to which the participants belong.⁸
4. Minutes on the discussion on each point on the agenda and on the opinions delivered by the group shall be meaningful and completed. Minutes shall be drafted by the secretariat under the responsibility of the chair. The secretariat shall distribute the draft minutes of the meeting in the shortest time possible.

Participants shall have the possibility to comment no later than 10 working days after receiving the draft minutes.
5. Joint meetings of the group with other groups may be convened to discuss matters falling within their respective areas of responsibility.

Article 9

Documentation to be sent to group Members

1. The secretariat, in agreement with the chair, shall send the invitation to the meeting to the group members no later than 30 calendar days before the date of the meeting.

The draft agenda shall be sent to the group members no later than 14 calendar days before the date of the meeting.
2. The secretariat shall send documents, on which the group is consulted, to the group members no later than 14 calendar days before the date of the meeting.
3. In urgent or exceptional cases, the secretariat, in agreement with the chair or at the request of the group, may shorten time limits for sending the documentation, mentioned in paragraphs 1 and 2 of this Article, as necessary.

Article 10

Types of acts

1. In relation to its tasks as defined in Article 30b(3) of the Directive, the Group shall in particular:
 - (a) issue opinions, recommendations and reports;
 - (b) issue, opinions and reports, in order for the Commission to prepare its position vis-a- vis the Council or the European Parliament;
 - (c) in justified cases, in order to advise the Commission, issue consultation documents, in order to collect necessary information from market participants, consumers and end- users.

⁸ The names of the representatives of organisations, Member States' authorities or other public entities may be included only subject to their prior freely given, specific, informed and unambiguous consent, in compliance with Article 3(15) and Article 7 of Regulation 2018/1725.

2. The Group may also adopt public statements, such as press releases. Where their aim is different than merely promoting the Group's existing work, such acts may only be adopted if the members express their explicit agreement pursuant to Article 12.
3. Neither the members nor the Commission are bound by the acts defined in the previous paragraph, but shall take the utmost account of such documents.
4. In assisting the Commission, the group shall take due account of the principles of better regulation as prescribed by the Commission, in particular in the Communication of the Commission on Better regulation for Growth and Jobs in the European Union.⁹

Article 11

Decision making procedure

1. The group shall adopt acts defined in the previous Article by consensus, or if not possible, on the basis of 2/3 majority of the votes, each member having one vote. In addition to the possibility to attach dissenting opinions, any member has the right to include its individual views as an annex in the opinions, recommendations and reports adopted by the group.
2. A request for secret ballot can be made by at least two voting members present and supported by a majority of members.
3. If a member of the group so requests, an adoption can be postponed if the documents relating to a specific agenda point have not been sent to the members within the timeframe laid down in Article 9(2) and (3).

However, at the proposal of the chair or at the request of any other member of the group, the group may decide by a simple majority voting of members to keep this point on the agenda because of the urgency of the matter.

4. If the group has not decided within the timeframe laid down by the chair, the latter may extend this period, except in cases of urgency, no longer than until the end of the next meeting. If necessary, the written procedure provided for in Article 12 may be applied.

Article 12

Written procedure

1. If necessary and justified, any acts or documents of ERGA may be adopted by a written procedure. To this end, the secretariat, in agreement with the chair, shall send the members of the group the documents(s) on which the group is being consulted.
2. The minimum period which must be given for comments to be submitted is 14 calendar days, except in the exceptional case of justified urgency where the time-limit is two working days. Urgency may, for instance, be justified when the group has to adopt the type of acts referred to in Article 10(2). Such a case of justified urgency shall be explained when launching a written procedure.

⁹ COM (2005)97 of 16.3.2005

3. The chair, if applicable with the support of the chair of a sub-group, shall process the comments and prepare a final version of the document(s) within seven calendar days after the deadline for submitting comments. In case of justified urgency, the time-limit for processing comments and preparing a final version of the document(s) is one working day.
4. The secretariat will send the document(s) to the members of the group to put it to a vote. The acts are adopted if a 2/3 of the members have expressed their explicit agreement within a deadline which must not be less than seven calendar days, except in case of justified urgency where the time-limit is two working days.
5. A full report on the outcome of the procedure will be made available to members of the group. The report will indicate in particular:
 - (a) The detailed results of the voting (i.e., number of votes cast – specifying the number of negative and positive votes and abstentions); and
 - (b) The remarks and reservations of group members upon their request.
6. However, if a simple majority of group members requests that the proposed document be examined at a group meeting, the written procedure shall be terminated without result and the chair shall convene a meeting of the group as soon as possible.

Article 13

Fast track adoption procedure

1. In relation to its task as defined in Article 30b(3)(d) of the Directive, the group shall set up an expert subgroup (hereafter ‘the expert subgroup’) on an ad hoc basis. The expert subgroup shall be disbanded as soon as the opinion is delivered or abandoned.
2. The elected Board shall be responsible to appoint the members of the expert subgroup on a transparent basis. It shall be composed of three experts from the members who are not the national regulatory authorities of the EU Member States involved in the matter.
3. When the Commission requests the group to deliver an opinion pursuant to Article 2(5c), or Article 28a(7), of the Directive, the expert subgroup shall be responsible to issue a first draft.
4. The expert subgroup members shall ensure that the draft opinion:
 - (a) provides for a factual description of the issues at stake;
 - (b) takes into consideration any relevant documents shared with the members of the expert subgroup by the national regulatory authorities of the EU Member States involved in the matter;
 - (c) is submitted to the Contact Network within seven working days from the Commission’s formal request.

5. The members of the Contact network shall have no less than three working days to share their comments with the members of the expert subgroup. The exact deadline shall be specified by the members of the expert subgroup.
6. After having processed all the comments received, the expert subgroup shall provide an updated draft opinion no later than 12 working days from the Commission's request.
The secretariat will send the document to put it to an electronic vote. The draft opinion is adopted by the group if, within no less than three working days:
 - (a) a simple majority of members have expressed their explicit agreement and;
 - (b) one-third of members have not expressed their explicit disagreement.
7. A full report on the outcome of the procedure will be made available to members of the group by the secretariat immediately after the deadline. The report shall indicate in particular:
 - (a) the detailed results of the voting (i.e. number of votes cast – specifying the number of negative and positive votes and abstentions); and
 - (b) the remarks and reservations of group members, if any.
8. Should the draft opinion not be adopted in the first place, the expert subgroup shall amend the document before a new vote takes place.

Article 14

Annual Work Programme

1. The drafting of the Work Programme of the group shall be initiated by the Board.
2. With the aim of achieving the goals of the group's multi-annual strategic priorities, as laid out in ERGA Statement of Purpose, the first outline of the annual Work Programme shall set out the main workstreams, under which more detailed activities and topics will be proposed by the members of the group upon receipt of the document, as well as, where appropriate, their expected timeline.
The first outline of the annual Work Programme shall be shared with members no later than 15 working days ahead of the first Contact Network meeting of the year.
3. Following a first discussion within the Contact Network, and after having considered all inputs, the incoming chair shall put forward a draft Work Programme before the members of the group at the first plenary meeting of the year.
Having taken into account the comments expressed by members during the plenary discussion, the document shall then be finalised by the Board and be approved no later than 15 September every year, according to the provisions set out under Article 12 of these rules of procedure.
4. Once approved by the members, the draft Annual Work Programme shall be published.

Article 15

Sub-groups

1. The group may set up one or several sub-groups, in order to examine a specific question on the basis of the Work Programme endorsed by the plenary meeting of the group pursuant to the procedure foreseen under Article 14 of these Rules of Procedure. The group may also decide to set up additional sub-groups on ad hoc basis.

Sub-groups shall operate in compliance with the Commission's horizontal rules on expert groups and shall report to the group. Such groups shall be disbanded as soon as their mandate is fulfilled.

2. Sub-groups shall be composed of experts from the members and can also include observers. The meeting of the sub-groups can also be open to external participants, on an ad hoc basis.

Whenever a sub-group is set up, members of the group shall decide on its composition and leadership. Following an open and transparent call for interest, subgroup chairs shall be appointed via electronic vote no later than 15 October every year. Subgroups may only be chaired by one of the members. In case of competing candidacies, the matter may be brought up to the Contact Network before the electronic vote takes place.

3. Once elected subgroup chairs are responsible to draft the terms of reference of the subgroup.

The draft terms of reference shall be adopted by the members of the group before the end of each year preceding that to which they relate.

Article 16

Contact Network

1. The group may set up a Contact Network of representatives of all members and observers, coordinated by a representative of the chair of the group, to facilitate coordination of proposals to be considered by the meeting of the group.

The Contact Network shall, inter alia, be consulted whenever the Commission requests the group to deliver an opinion in accordance with the tasks defined in Article 30b(3)(d) of the Directive.

2. In some cases, the Contact Network can also act as a platform for exchange of information and for cooperation, to support the tasks defined in Article 30b(b) and (c) of the Directive.
3. Where possible, the Contact Network will operate virtually, through electronic contact.

Article 17

Correspondence

1. External correspondence relating to the group shall be addressed to the Commission (secretariat), for the attention of the chair of the group.
2. Correspondence for group members shall be sent directly, if possible by e-mail, to the person designated for this purpose by the regulatory body.

Article 18

Access to documents

Applications for access to documents held by the expert group will be handled in accordance with Regulation (EC) No 1049/2001¹⁰ and detailed rules for its application¹¹.

Article 19

Transparency

1. The group and sub-groups shall be registered on the Register of expert groups.
2. As concerns the group and sub-groups composition, the following data shall be published on the Register of expert groups:
 - (a) the name of Member States' authorities;
 - (b) the name of observers.
3. The Commission shall make available all relevant documents, including the agendas, the minutes and the participants' submissions, either on the Register of expert groups or via a link from the Register to a dedicated website where this information can be found.

Access to dedicated websites shall not be submitted to user registration or any other restriction. In particular, the Commission shall publish the agenda and other relevant background documents in due time ahead of the meeting, followed by timely publication of minutes. Exceptions to publication shall only be foreseen where it is deemed that disclosure of a document would undermine the protection of a public or private interest as defined in Article 4 of Regulation (EC) No 1049/2001.

Article 20

Confidentiality of deliberations

1. The group's deliberations shall be confidential.
2. The group may, by a simple majority of its members, decide to open its deliberations to the public.

¹⁰ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

¹¹ Commission Decision 2001/937 of 5.12.2001. OJ L 345 of 29.12.2001, p. 94.

Article 21

Protection of personal data

All processing of personal data for the purposes of these rules of procedure shall be in accordance with Regulation (EU) 2018/1725¹².

Article 22

Amendment of the Rules of Procedure

The group may amend its rules of procedure by consensus or, in absence of consensus, by 2/3 majority vote. Any amendments are subject to the approval of the Commission.

Article 23

Transitional provisions

By way of derogation from Article 4(3), candidates for the election to the Board, vice-chair and chair of the group for 2020 shall submit their application at the last plenary meeting of 2019, during which the elections will take place.

Article 24

Entry into force

These rules of procedure shall take effect on the day of their endorsement by the European Regulators Group for Audiovisual Media Services.

¹² Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) N) 45/2001 and Decision No 1247/2002/EC.