



DATED

3 December 2020

MEMORANDUM OF UNDERSTANDING

between

**THE NATIONAL REGULATORY AUTHORITY MEMBERS
OF THE
EUROPEAN REGULATORS GROUP FOR AUDIOVISUAL MEDIA
SERVICES**

THIS MEMORANDUM OF UNDERSTANDING IS ENTERED INTO BETWEEN:

The national independent regulatory bodies in the field of audiovisual media services who are members of the European Regulators Group for Audiovisual Media Services, each being a “Participant” to this Memorandum of Understanding and together the “Participants”.

INTRODUCTION:

- (A) Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (the “**AVMS Directive**”) is the key piece of EU legislation governing the provision of audiovisual media services.
- (B) The AVMS Directive was revised by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending 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 (taken in conjunction with the AVMS Directive, the “**Revised AVMS Directive**”) to reflect the significant developments that have emerged with the convergence of television and internet services.
- (C) Pursuant to the Revised AVMS Directive, each Member State is tasked with designating an independent national regulatory authority, body or both (herein referred to as a “**National Regulatory Authority**” or “**NRA**”) for ensuring that the implementation of the Revised AVMS Directive is carried out effectively. The Revised AVMS Directive established the European Regulators Group for Audiovisual Media Services (“**ERGA**”), the membership of which is composed of representatives of the NRAs established across the Member States of the European Union. The NRAs from Iceland, Liechtenstein, and Norway fully participate in ERGA, except for the right to vote.
- (D) As part of its role under the Revised AVMS Directive including pursuant to Recital 56 thereof, the function of ERGA (and, by extension, the NRAs) is to ensure the consistent implementation of the Revised AVMS Directive and to facilitate cooperation amongst the NRAs and between the NRAs and the Commission in this regard.

- (E) Article 30b of the Revised AVMS Directive bestows upon ERGA the task of exchanging experience and best practices on the application of the regulatory framework for audiovisual media services and Article 30b(3)(c) tasks ERGA with cooperating, and providing its members, with the information necessary for the application of this Directive.
- (F) Further, the ERGA statement of purpose (the “**Statement of Purpose**”) highlights ERGA members’ commitment to advance the values enshrined in the AVMS Directive (e.g. freedom of expression, the protection of minors, human dignity, cultural diversity, plurality and diversity of opinions). It outlines the resulting responsibility on ERGA’s members to cooperate for the purpose of the application of the Revised AVMS Directive and to develop frameworks to bolster such cooperation, as well as detailing the proposed form of memorandums of understanding which NRAs would apply on a voluntary basis to enable such cooperation between NRAs.
- (G) In line with the specific roles for the NRAs envisaged by the Revised AVMS Directive and the Statement of Purpose, this Memorandum of Understanding (“**MoU**”) sets out a framework for collaboration and information exchange between these NRAs as Participants to this MoU in order to resolve practical issues arising from the implementation of the Revised AVMS Directive in a consistent manner. Moreover, it lays down mechanisms to enable the exchange of information, experience, and best practice on the application of the regulatory framework for audiovisual media services and video-sharing platforms. This MoU is thus entered into by the Participants in furtherance of their common interest in implementing the Revised AVMS Directive and considering all associated matters in this context.
- (H) Further, the Participants to this MoU share mutual values, interests, and communities, and have cooperated for many years on an *ad hoc* basis. The Participants now wish to enhance and widen their cooperation within an institutional framework and now enter into this MoU to capture the objectives of the Revised AVMS Directive.
- (I) This MoU ensures respect for the objectives of media pluralism, cultural and linguistic diversity, consumer protection, accessibility, non-discrimination, the proper functioning of the internal market and the promotion of fair competition as enshrined in Article 30(2) of the Revised AVMS Directive.
- (J) The Participants to this MoU commit to acting in good faith in their dealings with each other.

- (K) The Participants wish to record the basis on which they will collaborate with each other and this MoU therefore sets out the Participants' objectives, the principles of cooperation that will apply between the Participants and the matters in respect of which such cooperation will apply.
- (L) ERGA has enabled the development of this MoU, and the Participants envisage that ERGA will continue to serve as a forum of exchange on matters related to the MoU. A dedicated ERGA Action Group, to be established pursuant to this MoU and the ERGA Rules of Procedure, shall assist in its implementation.
- (M) This MoU shall respect the value of trust between the Participants and, while aiming to bring informal cooperation to its fullest potential, the MoU does not alter existing competencies of the Participants or create new ones that would affect the institutional framework in their respective Member States.

The Participants hereby agree as follows:

DEFINITIONS:

In addition to those terms already defined in the Introduction Section, the following terms shall have the following meanings in this MoU:

“Acknowledge” means to provide confirmation to another NRA that their Request for Cooperation has been received and is being processed, without prejudice to how the particulars of that request might be resolved.

“Business Day” means the working hours of the receiving NRA on the calendar day in which a Request for Cooperation is received. If a Request for Cooperation is received outside the Receiving NRA's working hours, it shall be deemed to be received when the Receiving NRA's next Business Day commences. National Holidays within the Receiving NRA's Member State shall not be regarded as a Business Day.

“Enforcement” means cooperation between NRAs on matters which relate to the enforcement of existing rules in place in respect of services falling within the scope of the Revised AVMS Directive.

“Exceptional Importance” means a matter declared to be of exceptional importance by an NRA and which may be judged as such by reference to reasonably objective criteria. A matter of Exceptional Importance need not be a matter of the Public Interest. For example, it may be a matter of exceptional strategic importance to an

NRA (to be objectively ascertained as such), but which is not generally known to the general public.

“Implementation” means cooperation between NRAs on different issues including, for example, the offer of assistance by one NRA to another NRA in the implementation of some aspect of the Revised AVMS Directive, or the work between NRAs to agree a common approach to a regulatory issue.

“Legitimate Interest” means a situation where (i) an NRA has a legitimate basis (for example, and without limitation, a basis in law, including national law, a strong connection with an agency, body or class of individuals linked to the Member State of the Requesting NRA) to request cooperation on a relevant matter, and (ii) this legitimate basis is sufficient and appropriate, in particular in light of the Common Interests of the Participants to this MoU as set out under Section 1.1. of this MoU, to trigger a request from a Requesting NRA to a Receiving NRA for cooperation including in respect of the provision of information in the Receiving NRA’s control.

“Mutual Assistance” means the dedication of resources (human, technical, etc.) to provide practical assistance to another NRA in the resolution of a matter, beyond the mere provision of information.

“Outcomes” means the overall result of the cooperation requested, irrespective of the particular means through which this is reached. These are the underlying reasons why a Request for Cooperation has been initiated by a Requesting NRA in a particular context.

“Public Interest” means a matter relating to the welfare or well-being of the general public or society in any given EU Member State. A matter may become a matter of the public interest where it has, or has had, a large impact on the public within the relevant jurisdiction or is the subject of significant debate or controversy.

“Receiving NRA” means an NRA that has received a request for cooperation from a Requesting NRA pursuant to one or more of the mechanisms described in further detail in Part 2 of this MoU.

“Requesting NRA” means an NRA that has initiated a request for cooperation from a Receiving NRA pursuant to one or more of the mechanisms described in further detail in Part 2 of this MoU.

“Requests for Cooperation” means all requests for information and requests for mutual assistance pursuant to Part 2 of this MoU.

“Utmost Speed” means the time taken to perform an action where such time means the action in question is performed as quickly as is reasonably possible.

“Without Undue Delay” means the time taken to perform an action where such time is not excessive or unwarranted by reference to the objective to be achieved by the action in question.

PART 1: OBJECTIVES AND PRINCIPLES OF COOPERATION

1.1 Common Interests of the Participants to the MoU

The Participants to this MoU share a number of common interests as designated NRAs (and, accordingly, members of ERGA) under the Revised AVMS Directive. In this regard, the Participants note and acknowledge the following shared list of common interests (which is non-exhaustive and without limitation):

- 1.1.1. Implementation of the Revised AVMS Directive and consideration of all associated matters in this context;
- 1.1.2. Ensuring respect for the objectives of media pluralism, cultural diversity, the protection of audiences (in particular, the protection of minors), the promotion of freedom of expression, the proper functioning of the internal market and the promotion of fair competition;
- 1.1.3. Endeavouring to ensure a high level of consumer protection in their Member State's audiovisual media services and the possibility to provisionally restrict the freedom to provide services in line with consumer protection provided that such restrictions are justified, proportionate and necessary;
- 1.1.4. Endeavouring to respect and protect human dignity and to tackle audiovisual content containing incitement to violence or hatred directed against a group or a member of a group and containing any public provocation to commit a terrorist offence, observing that measures taken for these purposes shall be necessary and proportionate and respect the rights and observe the principles set out in the Charter of Fundamental Rights of the European Union;
- 1.1.5. Exchanging experience and best practices with other NRAs on the application of the regulatory framework for audiovisual media services, including on accessibility and media literacy;
- 1.1.6. Functioning as independent bodies exercising statutory authority pursuant to the revised AVMS Directive; and
- 1.1.7. Cooperating and providing other NRAs with the information necessary for the application of the Revised AVMS Directive.

1.2 Objectives of the MoU

This MoU has been entered into by the Participants as a result of the recommendations set down in the ERGA establishment documents to create a Memorandum of Understanding to assist in the implementation of the Revised AVMS Directive. In this context, this MoU has the following non-exhaustive list of key objectives for the Participants:

- 1.2.1. To strengthen cooperation between NRAs in order to achieve a consistent and effective implementation of the Revised AVMS Directive;
- 1.2.2. To set out a framework to permit collaboration and information exchange between the Participants as NRAs in order to resolve practical issues arising from the implementation of the Revised AVMS Directive in a consistent manner and to enable the exchange of experience and best practice on the application of the regulatory framework for audiovisual media services;
- 1.2.3. To establish the basis upon which Participants as NRAs will collaborate with each other and set out the Participants' objectives, the principles of cooperation that will apply between the Participants and the matters in respect of which such cooperation will apply;
- 1.2.4. To seek to address the challenges relating to the cross-border enforcement of certain provisions of the Revised AVMS Directive and, in particular, to seek to address situations for which the Revised AVMS Directive does not provide formal guidance about how the NRAs concerned are expected to cooperate with respect to enforcement;
- 1.2.5. To help to address particular challenges arising from the Enforcement of the Revised AVMS Directive in an online context;
- 1.2.6. To demonstrate that the NRAs as members of ERGA are committed to their objectives as set out in the Revised AVMS Directive with importance being placed on the shared objective of facilitating information sharing to achieve the proper and consistent implementation of the Revised AVMS Directive;
- 1.2.7. To set out specifically and clearly the scope and the parameters in which there will be co-operation and to set out the agreed procedure for facilitating information exchange and common courses of action between the Participants as NRAs; and
- 1.2.8. To set out specifically and clearly how the MoU will be administered in terms of reports, reviews, mediation, and related matters.

1.3 Principles of Cooperation between the Participants

Common interests and similar objectives have brought the Participants together to agree to this MoU. To ensure the Participants' cooperation as NRAs, and that such efforts are as effective as possible in a wide range of circumstances, the Participants agree to abide by the spirit and import of the cooperation principles outlined in this Section 1.3.

These principles are intended to guide the interpretation of the implementation of this MoU and the extent of the Participants' commitments in this regard. These principles should also be used by NRAs as a guide to assess their responsibilities to other

NRAs in the day-to-day operation of the framework of cooperation envisaged by this MoU.

1.3.1. Principle 1: Commitment to the Promotion of Values of the AVMS Directive

NRAs agree that they will promote the objectives and values of the revised AVMS Directive in their conduct under this MoU. NRAs recognise that their commitment to these objectives and values brings them together in solidarity with other NRAs in the effective implementation of the AVMSD.

1.3.2. Principle 2: Commitment to Recognising NRA's Interests

NRAs agree that within the framework of cooperation envisaged by this MoU they will recognise each other's interests, and that each NRA has an interest in ensuring the best possible protection for the residents of their respective Member States.

1.3.3. Principle 3: Commitment to Acting Transparently and in Good Faith

NRAs agree that they owe each other a responsibility to act transparently and in good faith. NRAs recognise that they should seek to understand each other's interests and communicate honestly and respectfully about issues they might have.

1.3.4. Principle 4: Commitment to Effective and Efficient Cooperation

NRAs agree to cooperate in a way that achieves the objectives envisaged by this MoU efficiently and effectively. NRAs also recognise that Requests for Cooperation may create a resource burden for regulators, and that regulators may need to tailor the allocation of resources to cooperation efforts to address issues of greater concern.

1.3.5. Principle 5: Commitment to Promote and Respect the Rule of Law

NRAs agree that they must promote and respect the Rule of Law. NRAs agree that they will act proportionately in any exercise of their powers pursuant to this MoU and that they will have regard and respect for fundamental rights.

1.3.6. Principle 6: Commitment to Recognising Limitations to Cooperation

NRAs recognise that regulatory competencies may differ between Member States and that their primary commitments will be to the fulfilment of obligations to which they are formally bound. NRAs agree to the obligations outlined in this MoU to the extent that genuine limitations do not inhibit them from fulfilling those obligations (e.g. resource, legal or competency constraints). In particular, this is the case when an NRA is subject to an obligation to ensure the security of information (e.g. data

protection obligations, an obligation to prevent the disclosure of commercially sensitive information).

1.3.7. Principle 7: Commitment to Recognition of the Country of Origin Principle

NRAs recognise that the Country of Origin Principle is pivotal for the effective functioning of the European Union's single market and that each Member State is entitled to transpose the Revised AVMS Directive in a manner that it deems most appropriate for its jurisdiction. NRAs understand the need to respect other NRAs' decisions made on an independent basis and pursuant to their national legal framework and national traditions and that NRAs may, in certain limited cases and subject to the conditions set out in the Revised AVMS Directive, lawfully derogate from the Country of Origin Principle.

1.3.8. Principle 8: Commitment to Progressive Implementation and Improvement

NRAs agree that they should implement the cooperation arrangements envisaged by this MoU progressively and Without Undue Delay.

1.3.9. Principle 9: Commitment to Acting Reasonably

NRAs agree to act reasonably at all times when cooperating pursuant to this MoU and to act in a manner that is consistent with this MoU's cooperation principles at all times.

PART 2: AREAS OF COOPERATION

This Part 2 of the MoU sets out mechanisms of cooperation and areas of cooperation that NRAs commit to implement and support. Each NRA commits to cooperate with other NRAs in the manner outlined in this Part 2 and to do so in a manner consistent with the cooperation principles outlined in Section 1.3 of this MoU.

2.1. General Framework for Cooperation

2.1.1 Single Point of Contact (SPOC)

2.1.1.1. Each NRA agrees to establish and maintain a single point of contact ("**SPOC**") to receive Requests for Cooperation.

2.1.1.2. Each NRA shall ensure that their SPOC is adequately resourced, including through the provision of sufficient staff, to discharge its functions pursuant to this MoU.

- 2.1.1.3. Within each NRA, the SPOC shall be responsible for making available to other NRAs up to date information about the competences and powers of the regulatory authority and about relevant national legislation upon request.
- 2.1.1.4. A Requesting NRA shall initiate a Request for Cooperation by contacting a Receiving NRA's SPOC via email. The requesting NRA shall indicate clearly and using plain language that the subject-matter of its communication is a Request for Cooperation.
- 2.1.1.5. A Receiving NRA shall acknowledge a Request for Cooperation by email on the same business day in which it is received.
- 2.1.1.6. NRAs agree to make available contact details for their SPOCs in the register envisioned in Part 3 of this MoU. NRAs agree to keep this information up to date at all times.
- 2.1.1.7. NRAs agree to ensure staff appointed to maintain their SPOC can attend regular meetings of SPOCs, as may be required by ERGA from time to time (see sub-section 3.1.5).

2.1.2 Requests for Information

- 2.1.2.1 NRAs commit to sharing information relevant to the Implementation and Enforcement of the Revised AVMS Directive with other NRAs upon receipt of a request to do so from another NRA in the manner specified in this sub-section 2.1.2.
- 2.1.2.2 Requesting NRAs may make requests for information pursuant to this MoU where they have:
 - (a) a Legitimate Interest in procuring the information sought;
 - (b) the procurement of the information is likely to materially benefit the furtherance of that Legitimate Interest; and
 - (c) the Requesting NRA has reasonable grounds to believe the Receiving NRA will be able to provide the information sought.
- 2.1.2.3 Requests for information may cover a broad range of Implementation and Enforcement matters related to the Revised AVMS Directive. Without prejudice to the generality of the matters that such requests may relate to, it is envisaged that this mechanism might ordinarily be used by Requesting NRAs to request:

- (a) Information about a service provider established within the Receiving NRA's jurisdiction (e.g. in order to establish whether it is targeting audiences in the territory of the Requesting NRA);
- (b) Information maintained by the Receiving NRA pursuant to Articles 2(5)(b) and 28a(6) of the Directive;
- (c) Information necessary for the application of Articles 3 and 4 of the Directive as provided in Article 30a(1);
- (d) Information about services relevant to the calculation of financial contributions envisaged in Article 13(2) of the Directive (see also specific cooperation arrangements under sub-section 2.2.2. of this MoU); or
- (e) Information about matters relating to the Implementation and Enforcement of Article 28b of the Directive (see also specific cooperation arrangements under sub-section 2.2.1. of this MoU).

2.1.2.4. A request to share information shall be formulated in a manner which is clear to the Receiving NRA's satisfaction. In particular, the fact that a request for information is being made pursuant to this MoU shall be made unambiguously clear in the context of any such request. Requests to share information shall include, at a minimum:

- (a) a clear description of the information being sought;
- (b) a citation of the relevant Articles of the Revised AVMS Directive to which the request relates, where relevant;
- (c) an outline of the Requesting NRA's Legitimate Interest in making the request; and
- (d) an outline of the Requesting NRA's desired Outcomes from making the request.

A Receiving NRA may additionally require the Requesting NRA to provide:

- (e) an outline of how the Requesting NRA believes the request will materially benefit the furtherance of their stated Legitimate Interest;
- (f) an outline of the Requesting NRA's desired timing for the response of the Receiving NRA to the extent that this may be relevant to the information being requested in any given instance;
- (g) an indication of the form that the information might be provided in by the Receiving NRA in response to the Requesting NRA; or
- (h) any other information the Receiving NRA might reasonably require in the circumstances in order to process the request.

- 2.1.2.5. Requesting NRAs agree to clarify any of the particulars of a request for information Without Undue Delay upon receipt of a reasonable request to do so by the Receiving NRA. NRAs may agree to vary a request for information by mutual consent as may be required.
- 2.1.2.6. Receiving NRAs shall comply with requests to share information Without Undue Delay.
- 2.1.2.7. Requesting NRAs and Receiving NRAs agree to work together to address any request for information in a way which ensures the delivery of the information sought, having regard to the specified Outcomes of the request and both NRAs' respective interests, as well as the Common Interests of the Participants to this MoU as set out under Section 1.1 of this MoU.
- 2.1.2.8. A Receiving NRA may require the particulars of a request for information to be provided by written means at any time.
- 2.1.2.9. In the event a Receiving NRA is unable to comply with a request to share information or any of the particulars of such a request, the Receiving NRA shall provide the Requesting NRA with clear reasons why this is the case Without Undue Delay.

2.1.3 Requests for Mutual Assistance

- 2.1.3.1. NRAs agree to provide mutual assistance to other NRAs in the Implementation and Enforcement of the Revised AVMS Directive upon receipt of a request to do so in the manner specified in this sub-section.
- 2.1.3.2. Requesting NRAs may make requests for mutual assistance where:
 - (a) an Implementation or Enforcement matter relating to the Revised AVMS Directive has arisen within the Requesting NRA's jurisdiction or has affected residents of its jurisdiction;
 - (b) the Requesting NRA has a Legitimate Interest in the resolution of the matter;
 - (c) the mutual assistance requested is likely to materially benefit the furtherance of that Legitimate Interest; and
 - (d) the Requesting NRA has reasonable grounds to believe the Receiving NRA will be able to assist in the resolution of the matter.
- 2.1.3.3. Requests for mutual assistance shall specify the form of mutual assistance requested from the Receiving NRA. The form of assistance

requested shall be reasonable, and, without prejudice to the generality of the form it might take, may include:

- (a) Assistance in the enforcement of rules against a service provider; or
- (b) A request to provide practical assistance in some aspect of the implementation of the Revised AVMS Directive.

2.1.3.4. Requests for mutual assistance may relate to any field coordinated by the Revised AVMS Directive for which the Receiving NRA has jurisdiction within its Member State. For the avoidance of doubt, this may include, but is not limited to, the following Articles of the revised AVMS Directive:

- (a) Jurisdiction issues (Articles 2 and 28a);
- (b) Matters relating to freedom of reception and cases of circumvention (Articles 3 and 4);
- (c) Cases where cross-border harm might arise (including, without limitation, Articles 6, 6a, 9-11 and 19-24);
- (d) Matters relating to Accessibility (Article 7);
- (e) Matters relating to the implementation and enforcement of cross-border financial contributions (Article 13(2)) (See also specific cooperation arrangements envisaged in this MoU under sub-section 2.2.2.); or
- (f) Matters relating to the Implementation and Enforcement of Articles 28a and 28b (Video-Sharing Platform Services) (see also specific cooperation arrangements envisaged in this MoU under sub-section 2.2.1).

NRAs may agree to cooperate on issues that fall outside of the scope of the fields co-ordinated by the Revised AVMS Directive for which the Receiving NRA has been assigned competency.

2.1.3.5. A request for mutual assistance shall be formulated in a manner which is clear to the Receiving NRA's satisfaction. In particular, the fact that a request for mutual assistance is being made pursuant to this MoU shall be made unambiguously clear. It shall include at a minimum:

- (a) a clear description of the subject-matter (i.e. the Implementation or Enforcement matter relating to the Revised AVMS Directive which has arisen for the Requesting NRA and/or has affected residents of its jurisdiction);
- (b) a clear description of the form of mutual assistance being sought, pursuant to sub-section 2.1.3.3 above;
- (c) a citation of the Articles of the Revised AVMS Directive to which the request relates;

- (d) an outline of the Requesting NRA's Legitimate Interest in making the request; and
- (e) an outline of the Requesting NRA's desired Outcomes from making the request.

A Receiving NRA may additionally require the Requesting NRA to provide:

- (f) an outline of how the NRA believes the mutual assistance requested will materially benefit them in the furtherance of that Legitimate Interest;
- (g) an outline of when it would be helpful for mutual assistance to commence, and for the matter to be resolved; or
- (h) any other information the Receiving NRA might reasonably require in the circumstances in order to process the request.

2.1.3.6. Requesting NRAs agree to clarify any of the particulars of a request for mutual assistance Without Undue Delay upon receipt of a reasonable request to do so by the Receiving NRA. NRAs may agree to vary a request for mutual assistance by mutual consent as may be required.

2.1.3.7. Requesting NRAs and Receiving NRAs agree to work together to resolve any request for mutual assistance in a way which ensures the delivery of the mutual assistance sought, having regard to the specified Outcomes of the request and both NRAs' respective interests, as well as the Common Interests of the Participants to this MoU as set out under Section 1.1. of this MoU. Both agree to act in a manner consistent with the cooperation principles outlined in Section 1.3. of this MoU at all times.

2.1.3.8. Receiving NRAs agree to process requests for mutual assistance Without Undue Delay, being particularly cognisant of circumstances where delay may cause or prolong a harm taking place. A Receiving NRA shall provide the Requesting NRA with regular updates on how the matter is progressing.

2.1.3.9. A Receiving NRA may require the particulars of a request for mutual assistance to be furnished through email at any time.

2.1.3.10. In the event that a Receiving NRA is unable to comply with a request for mutual assistance or is unable to comply with all of the particulars of such a request, in accordance with the principle of good faith, the Receiving NRA shall provide the Requesting NRA with clear reasons why this is the case.

2.1.3.11. Where reasonable, a Requesting NRA shall assist a Receiving NRA in the handling of a request for mutual assistance and such assistance might include, without limitation, the sharing of human resources or the sharing of specific knowledge, information and research.

2.1.4. REQUESTS FOR ACCELERATED MUTUAL ASSISTANCE

2.1.4.1. A Requesting NRA may specify that a request for mutual assistance is an **“Accelerated Request for Mutual Assistance”** where:

- (a) the resolution of the matter requires a high degree of urgency by virtue of the severity, immediacy or scale of harm that might be caused, or is being caused, by a failure to resolve it;
- (b) the matter concerned is one of significant Public Interest in the Member State in which the Requesting NRA is established; or
- (c) the resolution of the matter concerned is of Exceptional Importance to the Requesting NRA.

2.1.4.2. When processing requests for Accelerated Mutual Assistance, Receiving NRAs shall:

- (a) take all reasonable endeavours to progress the request at the Utmost Speed;
- (b) make a representative or representatives of the Receiving NRA available to provide timely updates on the progression of the request to the Requesting NRA;
- (c) respond on the same business day to any queries received by the Requesting NRA in respect of the request; and
- (d) specifically facilitate contact on the matters through phone or video conference, where that would assist the Requesting NRA.

2.1.4.3. An Accelerated Request for Mutual Assistance shall be made being particularly cognisant of the principles of cooperation outlined in Section 1.3. of this MoU.

2.1.4.4. For the avoidance of doubt, the fact that an Accelerated Request for Mutual Assistance is being made pursuant to this MoU shall be made unambiguously clear in the context of any such request.

2.1.4.5. In recognition of the urgency at which an Accelerated Request for Mutual Assistance will need to be progressed, the conditions relating to the making of such a request, as detailed in this MoU, do not need to be complied with by a Requesting NRA if, in its reasonable view, that would give rise to any form of additional delay. In this context, a request by a

Requesting NRA will subsequently be updated Without Undue Delay to comply with all relevant conditions when it is reasonable for the Requesting NRA to do so.

- 2.1.4.6. Requesting NRAs and Receiving NRAs may agree by mutual consent to vary a request for Accelerated Mutual Assistance and opt to follow the ordinary procedures for Mutual Assistance instead.

2.2. SPECIFIC COOPERATION ARRANGEMENTS

The following two sub-sections of this MoU, “Cooperation in Respect of Article 28b” (sub-section 2.2.1.) and “Cooperation in Respect of Article 13(2)” (sub-section 2.2.2), outline additional specific cooperation arrangements which are intended to function in parallel with and complement the General Framework for Cooperation of this MoU (Section 2.1).

2.2.1. COOPERATION IN RESPECT OF ARTICLE 28b

Article 28b of the Revised AVMS Directive requires EU Member States to ensure that video-sharing platform services (“VSPS”) established within their jurisdiction take appropriate measures in respect of certain kinds of harmful and illegal content. Within this sub-section, NRAs commit to:

- Reaching a common understanding of certain matters arising under Article 28b based on the developments outlined under points 2.2.1.1 and 2.2.1.2 below;
- A common recognition of some of the implications of Article 28b for cooperation; and
- Additional specific cooperation arrangements in respect of Article 28b.

2.2.1.1. The Participants to this MoU understand:

- (a) That Article 28b of the Revised AVMS Directive requires EU Member States to ensure that video-sharing platform services take appropriate measures to protect minors from content that might impair their physical, mental or moral development and protect the general public from audiovisual content which constitutes an incitement to violence or hatred as well as content the dissemination of which constitutes a criminal offence under EU law. Under this Article, Member States are also obliged to ensure that video-sharing platform services under their jurisdiction comply with EU qualitative standards on audiovisual commercial communications;
- (b) That the form of the measures that video-sharing platforms must take, as appropriate, are prescribed in Article 28b.3 of the Revised AVMS Directive, and comprise, among other things, service features such as parental control mechanisms, flagging mechanisms, reporting mechanisms and age

verification mechanisms, and a requirement to make content moderation decisions in a manner aligned with national rules transposing the Revised AVMS Directive;

- (c) That national regulatory systems transposing Article 28b must ensure that the measures described in Article 28b.3 are implemented by video-sharing platforms appropriately and proportionately, rather than in an absolute or uniform way. This reflects the need to balance various considerations described in the first two sub-paragraphs of Article 28b.3 and to ensure regulation functions appropriately in the different contexts and for the different services to which Article 28b may be applicable;
- (d) That without prejudice to each Member State's competency to transpose the Revised AVMS Directive in a manner most appropriate to its jurisdiction, Article 28b generally requires Member States to regulate video-sharing platform services at the "macro" level. Rather than focusing on specific cases of harmful or illegal content present on such services, regulators responsible for overseeing video-sharing platforms services must ensure they are compliant with the requirements set out in Article 28b from a systemic perspective;
- (e) That consistent with the E-Commerce Directive (*Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market*), the existence of content of a harmful or illegal nature on a service is not, as a principle, indicative of the failure of a video-sharing platform service to take appropriate measures in respect of that content under Article 28b, nor of the relevant NRA to ensure that such appropriate measures are taken; and
- (f) That the provisions of Article 28b function in a harmonious and complementary way to regulation in the Revised AVMS Directive applicable to audiovisual media services.

2.2.1.2. The Participants to this MoU recognise:

- (a) That NRAs across the European Union single market can bring significant insight, expertise, and experience to bear on issues that arise in respect of VSPS, particularly where they have a national character or arise through content in a language not spoken in the country of origin;
- (b) That due to the pan-European nature of many VSPS, pan-European systems of cooperation among regulators can bring significant added value to NRAs implementing and enforcing Article 28b;
- (c) That the novelty of Article 28b means NRAs can benefit significantly from sharing knowledge, resources, and their experiences with one another, and they should do so where possible;

- (d) That significant synergy can be unlocked by the regulators of VSPS and national regulatory authorities responsible for “audiovisual media services provided over video-sharing platforms services” (“AVMS-over-VSP”) working together to develop solutions to some of the challenges they face; and
 - (e) That by virtue of the scale of content present on VSPS, cooperation efforts can provide the most value where they are focused at the “macro” level and target large scale issues of significant Public Interest.
- 2.2.1.3. The Participants to this MoU therefore agree to the specific cooperation arrangements in respect of VSPS outlined in this sub-section, where to do so would be:
- **Justified** having regard to the Common Interests of the Participants to the MoU (Section 1.1) and the Objectives of this MoU (Section 1.2), including by having particular regard to situations where to cooperate in the manner envisioned would promote the **Public Interest**; and
 - **Consistent** with this MoU’s **cooperation principles** outlined in Section 1.3, having particular regard to any limitations to cooperation that may be relevant pursuant to Principle 6, and the reasonableness of such measures Pursuant to Principle 9.

The Participants to this MoU commit:

- 2.2.1.3.1 To consult closely with other NRAs in the development of regulatory frameworks giving effect to Article 28b within their jurisdiction where appropriate.
- 2.2.1.3.2 To keep other NRAs up to date with material developments regarding legislation or case law affecting the regulation of VSPS within their jurisdiction where appropriate.
- 2.2.1.3.3 To explore the possibility of developing specific complaints mechanisms in respect of VSPS to be utilised by NRAs where these may provide added value.
- 2.2.1.3.4 To provide specific mutual assistance to regulators of VSPS upon receipt of requests to do so. Without prejudice to the generality of the form that such assistance might take, this could include:
 - contributing to the development of codes and rules governing standards and practices to be observed by VSPS (including, or specifically relating to, VSPS);
 - offering input into issues of a national, cultural or linguistic character that have arisen on VSPS;
 - providing assistance through the translation of materials;

- helping in the assessment process of the appropriateness of the measures taken in accordance with Article 28b.3 by sharing information NRAs have collected within their jurisdiction; or
 - contributing to performance assessments for such services.
- 2.2.1.3.5 To submit Requests for Cooperation in respect of specific VSPS for which Requests for Cooperation are likely to be very frequently made, only where:
- the relevant matter is a significant issue by reference to an objective analysis, including its capacity to cause actual or potential harm on a large scale as identified by the Requesting NRA; and
 - the matter concerned is one of significant Public Interest in the Requesting NRA's Member State.
- 2.2.1.3.6 To assist regulators responsible for regulating AVMS-over-VSP by encouraging VSPS to take measures to:
- foster links between AVMS-over-VSP and their respective NRAs; and
 - share information relevant to the regulation of such services with their respective NRAs.

2.2.2. COOPERATION IN RESPECT OF ARTICLE 13(2)

Article 13(2) of the Revised AVMS Directive allows EU Member States to impose levies on audiovisual media services established outside of their jurisdiction. Within this sub-section, NRAs commit to:

- (a) Reaching a common understanding of certain matters arising under Article 13(2) based on the developments outlined under point 2.2.2.1 and 2.2.2.2 below;
- (b) A common recognition of some of the implications of Article 13(2) for cooperation; and
- (c) The delivery of specific cooperation mechanisms in respect of Article 13(2).

2.2.2.1. The Participants to this MoU understand:

- (a) That Article 13(2) of the Revised AVMS Directive provides Member States with the possibility to require audiovisual media service providers under their jurisdiction, as well as providers established in other Member States but targeting audiences in their territory, to contribute

financially to the production of European works through multiple forms (direct investments, levies payable to a fund, acquisition of rights in European works);

- (b) That any Member State who wishes to avail itself of the possibility recognised in Article 13(2) and apply to an audiovisual media service provider established in the territory of another Member State obligations concerning financial contributions to the promotion of European works must be able to demonstrate that audiences in its territory are targeted by that service provider, having due consideration for the indicators referred to in Recital 38 of the Revised AVMS Directive;
- (c) That financial contributions imposed on targeting service providers established in another Member State shall be proportionate, non-discriminatory, and be calculated solely on the basis of revenues generated in the targeted Member State; and
- (d) That, because the Revised AVMS Directive acknowledges a direct link between financial obligations and a Member State's cultural policy, Article 13(2) – unlike other provisions of the Revised AVMS Directive – recognises that a Member State is allowed to impose such financial obligations on media service providers established in another Member State. As a result, any targeted Member State which avails itself of the possibility provided for in Article 13(2) has the competence to determine, in accordance with EU law, the details of Implementation and Enforcement of such national rules by a national regulatory authority in respect of foreign-based audiovisual media services targeting audiences in their territory.

2.2.2.2. The Participants to this MoU recognise:

- (a) That the implementation of financial contributions envisaged in Article 13(2) is primarily a subject-matter for the NRAs in the Member States which have decided to avail themselves of the possibility to apply cross-border financial obligations. However, all NRAs have a common interest in being aware of the financial obligations services under their jurisdiction may be subject to in other Member States;
- (b) That the implementation of financial contributions by targeted Member States raises specific challenges for regulators and audiovisual media service providers alike as the latter might have to comply with the rules of several EU Member States at the same time, depending both on their location and on which countries their services are targeting. Further, financial schemes applicable to audiovisual media service providers may vary between Member States;

- (c) That a prerequisite to an effective implementation of financial contributions by targeted Member States is having readily accessible and accurate information about a service provider's activities, including about whether it is targeting audiences in another territory and the revenue it generates in that territory;
- (d) That, in accordance with Article 13(2), the NRA in the targeted Member State is the one responsible for the administration of financial contributions to the funding of European works when such funding obligations are applied to service providers targeting the territory of its Member State from another Member State;
- (e) That the NRA in the Member State of establishment – irrespective of whether a similar scheme is foreseen under its national law and/or if it is responsible to enforce such obligations on a domestic level - might be able to provide assistance given the insight and experience it has accumulated in engaging with the services under its jurisdiction and as the authority responsible to enforce different obligations provided by the Revised AVMS Directive. It is also worth noting that the regulator in the Member State where the service is established may hold information on the investments made in European works (*i.e.* direct contributions to the production and acquisition of rights), as well as levies paid to national funds; and
- (f) That without prejudice to the competence of the NRA in the targeted Member State to engage with foreign-based service providers directly, appropriate information-sharing and cooperation arrangements between regulators have therefore the potential to alleviate some service providers' burden of having to declare their revenues, investments, and levies paid in multiple countries.

2.2.2.3. The Participants to this MoU therefore agree to the specific cooperation arrangements in respect of Article 13(2) outlined in this sub-section, where to do so would be both:

- **Justified** having regard to the Common Interests of the Participants to the MoU (Section 1.1) and the Objectives of this MoU (Section 1.2). This is likely to be the case in the following scenarios:
 - in order for the regulator in the targeted Member State to determine whether a foreign-based service provider might be subject to financial obligations based on knowledge of the revenues it generates by targeting audiences in the territory of its Member State;

- where appropriate, in order for the regulator in the targeted Member State to calculate the level of financial contribution based on the sole revenues generated by foreign-based service providers in the territory of its Member State and therefore to avoid the risk of double imposition;
 - in order for the regulator in the targeted Member State to ensure that the financial contribution imposed on foreign-based service providers is not discriminatory and disproportionate when compared to the rules with which domestic service providers have to comply; or
 - in order for both regulators to be able to check whether the information declared by a given service provider about the investments made in European works, as well as the levies paid to national funds, are in line with its obligations in the respective Member States.
- **Consistent** with this MoU's **cooperation principles** outlined in Article 1.3, including by having regard to any genuine limitations to cooperation that may be relevant in the context of the exchange of information (see also sub-section 4.1.2).

The Participants to this MoU commit:

- 2.2.2.3.1. To share the details of financial contributions schemes applicable to audiovisual media service providers established in their territory and those targeting their audiences while established in another Member State's territory, within a centralised register.
- 2.2.2.3.2. Where appropriate and justified for the abovementioned purposes, NRAs in the Member States where the service provider is established, upon request from the NRAs in the targeted Member States, agree to collect and store information about the revenues these services generate in the EU; and/or the investments they make in European works and the levies they pay to national funds in their country of establishment.
- 2.2.2.3.3. In accordance with the procedure for 'Requests for Information' laid down in this MoU (see sub-section 2.1.2), NRAs in the Member States where the targeting service provider is established agree to share with the requesting NRA the accounting information they have collected directly, or indirectly through assistance of another regulatory authority or body, which is relevant to the country of the Requesting NRA.
- 2.2.2.3.4. When such information is shared with the Requesting NRA, confidentiality must be ensured at all stages through an appropriate

protocol. In case the initial information provided was not accurate or complete, NRAs in the Member States where the service provider is established shall undertake best efforts to respond to the request of the Requesting NRA.

- 2.2.2.3.5. NRAs in the targeted Member States agree to share their legal and economic assessments of how a service established outside of their jurisdiction is deemed liable to pay financial contributions to the funding of European works. The information should be transmitted to the SPOC of the NRA in the Member State where the service provider is established. It should provide for, at least and without limitation, the following information:
- (a) a brief account of the applicable rules;
 - (b) the level of the financial contribution imposed; and
 - (c) where appropriate, an account of how the financial obligations imposed in the Member State of establishment have been taken into account.
- 2.2.2.3.6. To share with the NRA in the Member State where the service provider is established any assessment according to which a service has failed to comply with its financial obligations pursuant to the national law of the targeted Member State and, where relevant, what regulatory actions might be taken, including any sanction it may be exposed to as a result.
- 2.2.2.3.7. To work together to develop a common declaration form for media service providers within their jurisdiction laying down the accounting information which service providers are required to share with national regulatory authorities in order to determine annual turnover of relevant service providers. In developing such a form, NRAs should aim to ensure the collection of information that might be required by other NRAs to enforce the relevant levies on the service, drawing reference from the central register. The form should require service providers to break down their overall revenues per country and be accompanied by a statement from a chartered accountant certifying that the information is accurate.
- 2.2.2.3.8. NRAs will endeavour, to the maximum extent possible, to align the cycle of any funding schemes, in particular for the purpose of checking service providers' compliance with their investment obligations.

PART 3: ADMINISTRATION OF THE MOU

3.1 REPORTING

- 3.1.1. The Participants shall share information about their implementation of this MoU with the dedicated ERGA Action Group. A report about the implementation of the MoU shall be made by the Action Group at each ERGA plenary meeting.
- 3.1.2. NRAs shall maintain records of the steps they have taken to implement this MoU.
- 3.1.3. NRAs' SPOC shall maintain records of the nature and number of Requests for Cooperation they receive pursuant to this MoU and general information relating to such requests.
- 3.1.4. To the extent possible, NRAs' SPOC shall also endeavour to maintain records of other matters which are likely to assist in the administration and further development of this MoU. Such records may include, without limitation:
 - (a) Records generated pursuant to specific cooperation arrangements implemented in respect of Article 28b of the Revised AVMS Directive; and
 - (b) Records generated pursuant to specific cooperation arrangements implemented in respect of Article 13(2) of the Revised AVMS Directive.
- 3.1.5. NRAs agree to share their views and experiences with one-another and with ERGA on how this MoU has functioned, and to contribute constructively to its future development. Informal meetings between the NRAs' SPOCs shall take place on a quarterly basis.

3.2 MEDIATION

- 3.2.1. When cooperating together, NRAs will be required to interpret and apply the contents of this MoU in a variety of different circumstances. Where NRAs encounter any challenges while cooperating they shall endeavour to resolve their differences amicably.
- 3.2.2. To assist in the resolution of any differences that arise between NRAs when cooperating pursuant to this MoU, NRAs may agree to avail of the mediation process outlined in this Section. In this case, the NRAs shall inform ERGA about launching of the mediation procedure, as well as of its results.

- 3.2.3. A pool of mediators shall be made available from ERGA to assist NRAs in resolving any such differences. Mediators appointed to the pool by ERGA shall be a member of staff of an ERGA NRA of appropriate seniority, and that person shall:
- (a) Be familiar with ERGA and how it operates;
 - (b) Experienced in the application and interpretation of the Revised AVMS Directive; and
 - (c) To the extent possible, experienced in exercising negotiation/mediation.
- 3.2.4. Where NRAs in dispute have agreed to mediation, they shall select a mediator from the pool prepared by ERGA by mutual consent and work together constructively with that mediator to resolve the matter.
- 3.2.5. Mediation carried out pursuant to this MoU shall be facilitative, conciliatory, and impartial. Its goal shall be to achieve a resolution of the matter concerned agreeable to both Participants, having regard to both of their interests and the objectives of this MoU.
- 3.2.6. A report on the outcomes of mediation shall be prepared by the mediator in consultation with both Participants and made available to the dedicated ERGA Action Group.

3.3 ROLE OF THE ERGA ACTION GROUP

- 3.3.1. A dedicated ERGA Action Group ('AG') shall be established according to the ERGA Rules of Procedure for the purpose of facilitating the implementation of the MoU. It shall be composed of SPOCs established by NRAs.
- 3.3.2. As outlined in this MoU, and under the supervision of the ERGA Board, the ERGA AG, shall be responsible for:
- (a) Maintaining the register of SPOCs pursuant to Section 2.1;
 - (b) Maintaining the register about the details of national financial schemes pursuant to point 2.2.2.3.1 based on the information (where available) provided by NRAs;
 - (c) Setting up quarterly meetings of the national SPOCs to exchange their views on the implementation of the MoU;

- (d) Collecting information from national SPOCs and reporting to the ERGA plenary about the implementation of the MoU as envisioned in Section 3.1;
- (e) Where appropriate, developing standard forms to be used by the Participants in the MoU in the context of the general and specific cooperation frameworks envisioned in this MoU;
- (f) Making recommendations about how to amend the MoU in order to address challenges identified by the Participants; and
- (g) Maintaining a list of mediators to be used by NRAs.

3.4 LANGUAGE VERSIONS

- 3.4.1. The working language of this MoU is English and communications between the Participants pursuant to this MoU are expected to take place in English, unless otherwise agreed by the relevant Participants.
- 3.4.2. Should there be any discrepancy or difference between the English version of this MoU and any translation, the version in the English language shall prevail.

3.5 TERM, TERMINATION AND SUSPENSION OF COMMITMENTS

- 3.5.1. This MoU shall enter into force upon adoption by ERGA members at their plenary meeting and shall be of indefinite duration. Unless an NRA member of ERGA specifically elects to opt out of this MoU, it is envisaged that all NRA members of ERGA shall be, and remain at all times, Participants to the MoU.
- 3.5.2. Save as expressly provided in this MoU, no variation or modification to this MoU is in any way effective unless duly authorised by ERGA in accordance with its Rules of Procedure and effected in writing.
- 3.5.3. This MoU may be terminated in circumstances where the Participants to this MoU decide to replace, substitute, or otherwise terminate this MoU by way of written agreement.
- 3.5.4. Notwithstanding the foregoing, should a Participant elect out of the MoU during the term of this MoU, it may do so upon providing one (1) month's notice in writing to the other Participants. This MoU will continue in force thereafter between the remaining Participants (until such time as it is terminated in accordance with its terms).

- 3.5.5. A Participant's commitments under this MoU will be suspended where an NRA's statutory functions are changed in law (national or otherwise), insofar as that change of law affects such Participant's commitments under this MoU. Insofar as any change of law does not affect such Participant's commitments under this MoU, the Participant's commitments under this MoU will remain unchanged and in force.

PART 4: ADDITIONAL MATTERS

4.1. COMPATIBILITY AND RESPECT FOR NATIONAL AND EU LEGISLATION

- 4.1.1. The Participants shall comply with all relevant national and EU legislation in the exchange of information pursuant to this MoU which will include, but not be limited to, adhering to all relevant data protection legislation (including *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)* in relation to any information exchanged.
- 4.1.2. Where a Participant is obliged to disclose information that may have been obtained through interactions under this MoU to the public pursuant to national legislation (e.g., freedom of information legislation), the Participant receiving such a request will endeavour to inform and consult with any other Participant who may be affected by such disclosure prior to responding to such a request. For the avoidance of doubt, this provision does not in any way affect a Participant's statutory duty to disclosure such information, where relevant.

4.2. INTELLECTUAL PROPERTY

- 4.2.1. The Participants to this MoU understand that they shall not use the information exchanged pursuant to this MoU for any purpose other than in furtherance of the objectives that this MoU seeks to achieve.
- 4.2.2. No provision of this MoU shall be construed as transferring any right to use any intellectual property owned by any of the other Participants, and the Participants' respective intellectual property rights shall remain exclusively owned by them.

4.2.3. All materials owned by one Participant and used for the purposes of this MoU shall remain the property of that Participant, unless the owning Participant decides otherwise. In this case, the transfer of ownership shall be in accordance with the Participants' rules, policies, and procedures governing the transfer of ownership.

4.3. CONFIDENTIALITY

All Participants to this MoU shall keep all communications shared for the purposes of the MoU confidential at all times and require its agents and advisors to take similar measures. For the avoidance of doubt, such communications shall remain confidential save where a Participant is obliged by law to disclose information relating to this MoU including in accordance with sub-section 4.2.1 of this MoU.

4.4. STATUS OF THIS MOU

The Participants accept that this MoU is not intended to be legally binding, and no legal obligations or legal rights shall arise between the Participants out, or as a result, of this MoU. This MoU is also not intended to, nor shall it be deemed to, establish any partnership, agency relationship or joint venture between the Participants.

4.5. CHARGES AND COSTS

Except as otherwise provided, the Participants shall bear their own costs and expenses incurred in complying with their obligations under this MoU. All Participants shall remain liable for any losses or liabilities incurred due to their own actions. The Participants shall each be responsible for their own staff and other personnel or subcontractors and shall defend, indemnify, and hold each other Participant harmless with respect to any claims or liabilities arising in connection with their respective activities under this MoU, or any claim brought by any third parties arising as a result of any negligent act or wilful omission by their respective staff, other personnel or subcontractors.

4.6. MORE DETAILED OR ADDITIONAL COOPERATION ARRANGEMENTS

In their bilateral relations, the Participants may agree more detailed or additional cooperation arrangements within the framework of cooperation envisioned by this MoU.

PART 5: FINAL PROVISIONS

5.1. FINAL PROVISIONS

The Participants acknowledge that this MoU may continue to evolve and develop over time. However, it is agreed that this MoU may only be amended pursuant to the ERGA Rules of Procedure. Any relevant matter falling outside the scope of the specific provisions in this MoU will be settled by the Participants in a manner consistent with the objectives of the MoU and favourable to continued good relations.