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Digital Services Act: independent supervision and strong cooperation are key

The European Regulators Group for Audiovisual Media Services (ERGA) published its [latest position paper](#), as the legislative work on the Digital Services Act (DSA) now enters in the final phase of the trilogue negotiations. Overall, ERGA welcomes the approach proposed by the co-legislators to further strengthen EU citizen's fundamental rights and freedoms in the online environment. ERGA also supports numerous and significant amendments proposed by the Council and the Parliament to this crucial piece of legislation.

ERGA welcomes the special consideration for the freedom of media and pluralism which according to the Council should be taken into account by very large online platforms and search engines (VLOPSEs) when implementing their terms and conditions. At the same time, as already stated in [its 2021 report](#), ERGA highlights that private companies should not have the exclusive competence to decide on content regulation, and in particular should not operate in full and with unsupervised discretion when implementing their terms and conditions. ERGA also applauds the concrete proposals to better protect online users and especially minors, which have been put forward by both co-legislators as well as the proposed overall greater accountability and stricter obligations for VLOPSEs, considering them relevant and very much needed given the VLOPSEs size, impact and potential risks. Among these concrete proposals, it is worthwhile mentioning the adapted interface design in order not to deceive minors, the Parliament proposes, which bans minors' profiling for targeted ads and amplification techniques, more transparency and intelligibility of terms & conditions, or increased rights in order for users to make informed choices in relation to their personal data and consent for advertising purposes, as well as an alternative access to the service if the user refuses to give consent.

Furthermore, from a regulators' perspective, ERGA fully supports the Council proposal to remove the trade secrets exemption in the access to online platforms' data by regulators, which ERGA hopes will be secured during the trilogues. Access to information about the design, logic and functioning of algorithms, including training datasets, is equally crucial to ensure the effective enforcement of the DSA. Moreover, the calls for appropriate human and financial resources, as well as the necessary independence of DSCs and other competent authorities are absolutely fundamental from the perspective of ERGA members. Overall, cross-border cooperation will be essential and in this light, ERGA welcomes the Council proposal, which while preserving the country-of-origin principle, foresees an enhanced role for the Digital Services Coordinator (DSCs) and the relevant competent authorities of the country of destination. ERGA further

supports ensuring consistency with existing bilateral enforcement mechanisms including ERGA's Memorandum of Understanding in order to facilitate effective bilateral cross-border enforcement.

However, at this stage of the legislative procedure, ERGA urges co-legislators to consider certain relevant improvements that should be introduced to the text of the DSA, notably regarding the role and missions of regulators. The main one is certainly linked to the necessity of involving ERGA and its members in the Commission's work when it comes to its exclusive competence over VLOPSEs, should it be confirmed. The same approach should apply to the eventual guidelines the Commission could develop to clarify the DSA interplay with other legislative acts, including the AVMS Directive. This would help bringing the perspective and expertise of independent media regulators, as well as taking into account the national specificities and experience in the supervision of VLOPSEs. ERGA and national media regulators could also contribute to the assessment of systemic risks and mitigating measures in order to ensure a proper respect of fundamental rights and the protection of citizens in the online environment. In this sense and in light of the tragic events in Ukraine, ERGA urges co-legislators to further explore the articles related to the systemic risks of VLOPSEs, especially considering the unintended functioning of the service that may lead to polarisation and amplification of illegal content or of content negatively affecting fundamental rights and values.

« Independent supervision, an active role of media regulators and enhanced cooperation between them at ERGA level are key aspects to ensure an effective implementation of the DSA as well as the achievement of its goals. The DSA represents the most important opportunity for Europe to create a safe online environment and affirm its European digital sovereignty. We cannot miss this chance », concluded ERGA Chair Karim Ibourki.

About ERGA:

The European Regulators Group for Audiovisual Media Services (ERGA) consists of the national regulatory authorities in the field of audiovisual media services. ERGA advises the European Commission and facilitates cooperation between the regulatory bodies in the EU. Mr Karim Ibourki, President of the Belgian CSA (Conseil supérieur de l'audiovisuel) is the current Chairperson of ERGA.