

Subgroup 1 – 2022 Terms of Reference (ToR)	
Name of Subgroup 1 (SG 1)	Consistent implementation and enforcement of the AVMSD framework
SG Chair	Francesca Pellicanò, AGCOM (Italy)
Background	<p>Ensuring a smooth and coherent implementation of the revised AVMSD has been a key topic in ERGA’s work program since its adoption in 2018, constituting one of its core commitments, as clearly expressed in the Statement of purpose¹. The Subgroup 1 of 2021 laid the groundwork for the 2022 work programme, with the aim of strengthening cooperation and supporting regulators in their new roles and tasks deriving from the revised AVMSD framework.</p> <p>ERGA’s work programme for 2022 builds on the solid foundation of the work accomplished during 2021, stating that: <i>“Building on the work and the guidance documents produced within Subgroup 1 in 2021, notably as regards new obligations for audiovisual media service providers and video-sharing platforms, the prominence of general interest content, Article 13 prominence rules on European works, and the application of advertising standards to vloggers, ERGA will provide analysis and develop recommendations, in particular on the following topics:</i></p> <ul style="list-style-type: none"> - <i>monitoring compliance by video-sharing platforms with the measures to be adopted under Article 28b AVMSD and assessment of the effectiveness of such measures;</i> - <i>exploring how algorithms / recommendation systems could ensure the appropriate prominence of audiovisual media services of general interest (Article 7a) as well as the prominence of European works (Article 13(1)).</i> <p><i>In addition, subgroup 1 will take on any potential topics related to the implementation of the AVMSD that may arise during the remainder of 2022 (e.g., as regards issues related to the protection of minors or the cross-border dissemination of content from third-country services).</i></p> <p><i>Against this background, ERGA will liaise with relevant stakeholders, associations and regulators’ groups, including EPRA, with a view to exchanging on the Subgroup’s proposed solutions for achieving the above objectives.”</i></p>
Subgroup scope and purpose	<p>The work of the Subgroup will reflect the two-folded approach issued in the work programme, focusing on the main two mentioned aspects:</p> <p>The task of <i>“Monitoring compliance by video-sharing platforms with the measures to be adopted under Article 28b AVMSD and assessment of the effectiveness of such measures”</i> will apply the guidance² produced by the Subgroup in 2021. As noted in last year’s report, the implementation of Article 28b may prove to be complex because not only may each EU Member State have transposed the obligations in a different manner, but also because</p>

¹ [ERGA-2019-02 Statement-of-Purpose-adopted.pdf \(erga-online.eu\)](#) “ERGA promotes common regulatory approaches and effective cooperation between its members as well as with stakeholders. It also facilitates the development of an integrated ‘regulatory culture’, where knowledge, best practices and experiences are judiciously disseminated to inspire NRAs in the achievement of their duties at national level.

² The ERGA Report on [Guidance and recommendations concerning implementation of Article 28b](#)

video-sharing platforms (VSPs) may decide to implement these obligations differently. There will therefore likely be more than “one right answer” to determining whether a measure taken by a VSP according to Article 28b is appropriate. Consequently, NRAs may require a certain margin of discretion in this matter, for example based on the nature of the VSP and its past conduct. Measures adopted by one platform may be more effective than measures adopted by another platform and differences between the technical features made available by platforms may require different approaches. For these reasons, within both the activities to be carried out and the respective report (deliverable 1), the Subgroup will also include the key differences in national approaches to implement the VSP provisions. This could also concern efforts related to fostering self/co-regulation and the role of cooperation between NRAs in this regard.

Specific and relevant aspects of the VSPs regulation could be discussed during a workshop concerning the implementation of Article 28b with a special focus on media literacy, protection of minors and audiovisual commercial communications and fostering self/co-regulatory solutions in this regard. The workshop should also aim to discuss the role of cooperation between NRAs. It would inform the group’s work on deliverable 1.

The second main topic will be « *exploring how algorithms / recommendation systems could ensure the appropriate prominence of audiovisual media services of general interest (Article 7a) as well as the prominence of European works (Article 13(1))* ».

Last year’s work on both topics was marked by the relatively small number of national transpositions in place regarding the services of general interest (Article 7a), and the limited activities carried out by NRAs to conclude a first cycle of monitoring of the actual impact of prominence tools for promoting European works (Article 13(1)). Therefore, it was concluded it was too soon to determine which tools were the most efficient to ensure the prominence of European works in a post transposition environment. It could be relevant to update the data since more NRAs have now completed or are currently completing the first monitoring/control process, allowing the Subgroup to gather crucial information and to get an updated overview of the actual effectiveness of algorithms and recommendations systems to secure prominence for both purposes of Articles 7a and 13(1).

Moreover, the Subgroup will serve as a platform to discuss experiences and debate broader issues around the implementation of the revised AVMSD, where relevant. This may also include the possibility of extending its focus to any potential topics related to the implementation of the AVMSD (e.g. issues related to the protection of minors or the cross-border dissemination of content from third-country services), that may arise during the remainder of 2022, as foreseen by the work programme.

In this regard, given the relevance of the topic of vloggers and the interest in the report ERGA adopted last year³, the Subgroup will continue the work on specific questions concerning the vloggers’ regulation, including a focus on commercial communications. To this end, it will produce a report/recommendation on the topic.

In conducting its activities, the Subgroup may identify potential gaps in the implementation with a view to gather empirical evidence that might be useful to feed the future debate on media regulation (e.g., with regard to differences

³ The ERGA Report “[Analysis and recommendations concerning the regulation of vloggers](#)”

	<p>in implementing Article 28b, as mentioned above). This could also relate to the usage of self/co-regulatory solutions.</p> <p>The Subgroup will be involving, whenever deemed useful or appropriate, relevant stakeholders, associations and regulators' groups, including EPRA. It will also liaise with the other ERGA Subgroups and Action Group, when necessary.</p> <p>As for the deliverables, as summarised in the section below, given the wide range of the covered topics and the ambitious work programme, and to make sure to meet the purposes of the ERGA work programme and the expectations on the outcomes, all deliverables of this Subgroup will be as concise and brief as possible. They will mainly concentrate on concrete outcomes (i.e. statements, assessments, proposals, recommendations), will not contain generic elaborations and will focus on clear, straight-to-the-point key messages.</p> <p>The drafters will concentrate their efforts on the assigned topics, gathering data from the Subgroup Members also by directly approaching NRAs, where deemed useful. Members will be consulted and are welcome to actively share information and relevant case studies. An active and fruitful exchange of opinions will be encouraged in order to take into account all relevant views and experiences.</p> <p>The editorial responsibility for each deliverable will lie with the respective lead drafters.</p>
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Subgroup 1 Deliverables

Deliverable 1	Deliverable type	Report on measures adopted by VSPs pursuant to Article 28b AVMSD, the assessment of their practical application and effectiveness, the key differences in national approaches, the fostering of self/co-regulation and the role of cooperation between NRAs.
	Deliverable title	(To be decided)
	Due date	End of working year (Report)
	Publication	Yes
Deliverable 2	Deliverable type	Workshop concerning the implementation of Article 28b with a special focus on media literacy, protection of minors and audiovisual commercial communications
	Deliverable title	(To be decided)
	Due date	September
	Publication	Materials and conclusions of the workshop will contribute to the report under Deliverable 1
Deliverable 3	Deliverable type	Guidance/analysis concerning the effectiveness of algorithms and recommendation systems in ensuring the appropriate prominence of audiovisual media services of general interest (Article 7a) and the prominence of European works (Article 13(1)).
	Deliverable title	(To be decided)
	Due date	End of working year
	Publication	Yes
Deliverable 4	Deliverable type	Analysis and recommendations on vloggers and commercial communications
	Deliverable title	(To be decided)
	Due date	End of working year
	Publication	Yes

Allocated Resources SG1

<p>Drafters</p> <p>Members</p> <p>Observers</p>	<p><u>Chair</u>: Francesca Pellicanò AGCOM (Italy)</p>
<p>KommAustria (Austria) DLM (Germany) CvdM (Netherlands) RVR (Slovakia)</p>	
<p>CSA/Medienrat/VRM (Belgium) CEM (Bulgaria) AEM (Croatia) CRTA (Cyprus) RRTV (Czechia) TTJA (Estonia) TRAFICOM (Finland) Arcom (France) NCRTV (Greece) NMHH (Hungary) BAI (Ireland) NEPLP (Latvia) RTK (Lithuania) ALIA (Luxembourg) BA (Malta) KRRiT (Poland) ERC (Portugal) NAC (Romania) CNMC (Spain) AKOS (Slovenia) MPRT (Sweden) IMC (Iceland)* NMA (Norway)*</p>	
<p>OFCOM (Switzerland) AEM (Montenegro) AVMU (North Macedonia) RTUK (Turkey)</p>	

* Without voting rights (Article 1 of the ERGA Rules of Procedure)

Workflow for Subgroup 1 (internal and external milestones)

Date	Action/deliverable	Internal Subgroup only, drafters	External CN, Plenary, Publication
2022			
February/March	<p>1st SG1 meeting. Kick-off meeting to outline the proposed methodology. Organization of the work between the drafters. Agreement on the planned activities and deliverables. Division of tasks among the drafters of the Subgroup.</p>	All SG members	
February/March	Drafters' meeting	Drafters	
April/May	2nd SG meeting.	All SG members	
17 May	<p>CN meeting Presentation and discussion of the draft structure and main principles of the deliverables</p>	Chair	CN
21 June	<p>ERGA plenary meeting. Presentation, discussion, and agreement on the draft structure of deliverables</p>	Chair	Plenary
June-July	Drafters' meeting	Drafters	
End September/October	<p>3rd SG1 meeting. Finalization of deliverables</p>	All members	
September (Date tbd)	Workshop for deliverable 2		
10 November	<p>CN meeting Presentation and discussion of deliverables.</p>	Chair	CN
1 December	<p>ERGA plenary meeting Adoption of deliverables</p>	Chair	Plenary
End of working year	Publication of deliverables on ERGA's website		Publication