



Report on the Implementation of the ERGA Memorandum of Understanding in 2022

Background

Based on a voluntary commitment of ERGA members, the objective of ERGA's Memorandum of Understanding¹ (MoU) is to establish effective cooperation mechanisms to support the implementation of the AVMS Directive², in particular as regards cross-border cases. The MoU, adopted by ERGA in December 2020, creates a common framework under which ERGA members provide each other with mutual assistance and exchange of information for more effective enforcement of fundamental values in cross-border cases.

As stated in the ERGA's work programme for 2022³, the year was dedicated to strengthening cooperation in cross-border cases as one of ERGA's key strategic priorities for 2020-2023. It was specifically aimed at fulfilling one of ERGA's core commitments, which is to promote common regulatory approaches and effective cooperation between its members as well as with stakeholders.

The main aim of this Action Group was to follow up on and closely supervise the enforcement of measures foreseen by the MoU with an eye on emerging cross-border cases, as well as on the potential need for improvement in cooperation. This would include potential updates to the register on national financial schemes under Article 13(2) of the AVMSD, established pursuant to the MoU.

In this second year of gathering experience with the MoU, the Action Group assessed which parts of the MoU worked well in practice and where, on the contrary, some difficulties as regards its practical application arose.

The Action Group specifically monitored the application of the MoU, as regards:

- Requests for information;
- Requests for mutual assistance;

¹ https://erga-online.eu/wp-content/uploads/2020/12/ERGA_Memorandum_of_Understanding_adopted_03-12-2020_l.pdf

² <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32010L0013>

³ <https://erga-online.eu/wp-content/uploads/2021/08/ERGA-Work-Programme-2022-as-adopted.pdf>

- Requests for accelerated mutual assistance;
- Cooperation in respect of Article 28b AVMSD;
- Cooperation in respect of Article 13(2) AVMSD;
- Use of the standard form.

In doing so, the Action Group gathered the records of the steps that NRAs have taken to implement the MoU and maintained records of the nature and number of requests for cooperation according to the MoU.

Developments

The Action Group kept the list of Single Point of Contacts (SPOCs) in each member NRA pursuant to section 2.1. of the MoU in the Digital European Toolkit (hereinafter DET – an online forum/space for ERGA members) up-to-date and available to every member of the group.

As stated in section 2.2.2.3. of the MoU, the Action Group also had started to gather in 2021 details of national financial contribution schemes (pursuant to Article 13(2) AVMSD) based on the information (where available) provided by individual NRAs. This data was then compiled into a simple overview table with a purpose to serve as a simple signpost for individual NRAs when researching data on financial contributions. For the data to be available 24/7, it was uploaded and became part of the growing repository of up-to-date information in the DET.

As stated in Section 3.2. of the MoU, a list of mediators was gathered in 2021 for the possible needs of assistance in the resolution of any differences between the NRAs. The list of mediators is also a part of the library of the DET and, since its creation, was neither used nor amended.

Pursuant to Section 3.3.2.e of the MoU, a standard form developed in 2021 became a way for smoother and more efficient cooperation between NRAs. As proved by its exemplary usage by the members, it serves also as an efficient data collection tool to evaluate and improve the functioning of the MoU.

Developments in the individual cases or other issues connected were discussed thoroughly during the meeting of the group in October 2022. It has come to light that this common sharing of information is quite helpful in keeping every NRA in sync as to the trends in this specific sector, as well as facilitating smoother, more transparent cooperation and exchange of best practices within the group. This work should continue to explore ways to refine its processes and procedures to ensure it supports the implementation of the MoU as effectively as possible. This shall be done under the umbrella of Subgroup 1 as stated in the ERGA work programme 2023.⁴

From 4th November 2021 till 10th October 2022 (the monitoring period for this report), 60 requests for either information, assistance or both were exchanged (see Tables I and II below). 30 of these requests were requests for mutual assistance (including 6 requests which were simultaneously marked also as requests for information - which are included in table II as requests for assistance, mainly for clarity as the requests forms are being divided for statistical purposes on the base of the first marker in them). The other 30 were information requests. Out of all requests, 42 were completed/answered, while 18

⁴ <https://erga-online.eu/wp-content/uploads/2022/09/2022-09-15-ERGA-Work-Programme-2023-as-adopted.pdf>

requests remain pending in different stages of completion (e.g. with regard to the difficulty of the assistance/information requested).

This latter category of pending requests includes the following cases:

- With or without indicated deadline (which may or may not have elapsed)
- With or without an update on the progress by the receiving NRA
- With or without acknowledgement of receipt pursuant to the MoU

For the purposes of this Report, we count each standard form or a “memo” of such a question existing or an e-mail conversation as one unit.

Table I: Overview of cases under the MoU (from 4th November 2021 till 10th October 2022)

Requests for information

Type of request (based on the categories used in the standard form)	Number of requests (standard forms)	Number of requests completed
A1) Information maintained by the Receiving NRA pursuant to Articles 2(5)(b) and 28a(6) of the Directive	2	0
A2) Information necessary for the application of Articles 3 and 4 of the Directive as provided in Article 30a(1) and in particular information concerning the activities of a provider according to Article 30a(3)	0	0
A3) Information about services relevant to the calculation of financial contributions pursuant to Article 13(2)	4	3
A4) Information about matters relating to the Implementation and Enforcement of Article 28b	1	1
A5) General information and/or advice (e.g. on regulatory or legal matters within the Receiving NRA’s jurisdiction, best practice in regulatory matters, accessibility issues, market data, decisions, etc	19	14
A6) Information related to a previous request submitted by the receiving NRA	0	0
A7) Other ⁵	4	4
Total number of cases	30	22

⁵ This category includes requests which did not have specification of any kind and/or were known about only from fragment bilateral communications.

Table II: Overview of cases under the MoU (from 4th November 2021 till 10th October 2022)

Requests for assistance

Type of request (based on the categories used in the standard form)	Number of Requests (standard forms)	Number of Requests completed
B1) Jurisdiction issues (Articles 2 and 28a)	0	0
B2) Matters relating to freedom of reception and cases of circumvention (Articles 3 and 4)	0	0
B3) Cases where cross-border harm might arise (including, without limitation, Articles 6, 6a, 9-11 and 19-24)	12	9
B4) Matters relating to Accessibility (Article 7)	0	0
B5) Matters relating to the implementation and enforcement of cross-border financial contributions (Article 13(2))	0	0
B6) Matters relating to the Implementation and Enforcement of Article 28b (Video-Sharing Platform Services)	1	0
B7) Other ⁶	2	0
Not identified ⁷	9	7
A4) Information about matters relating to the Implementation and Enforcement of Article 28b	5	4
A7) Other ⁸	1	0
Total number of cases	30	20

Only slightly more than half of the total queries were answered to the satisfaction of the requesting NRA. Overall, 15 out of all ERGA members actively used the standard form. The total number of recipients of requests cannot be easily quantified, as some of the requests were targeted at all members. At the same time, it is important to note that some requests were made without using the standard form, and some were made without informing the SPOC network. While the use of the standard form is not strictly mandatory under the MoU, it would certainly benefit all members in view of future cross-border cooperation to see complete statistics concerning all kinds of cooperation.

Even though there is a slight lack of consistency in how NRAs choose to use or not to use the standard form, the statistical data itself presents valuable improvement showing that the members use the standard form more often and more comfortably compared to last year.

The Action Group set up a repository of basic data concerning financial contributions (Article 13(2) of the AVMS Directive) as envisioned in section 2.2.2. of the MoU for making cross-border data sharing even more effective and conveniently faster for its members. The Action Group developed a datasheet holding all the information concerning financial contributions made available by NRAs. The data compiled in the overview table were then cross-checked against data collected by the European Audiovisual Observatory. A representative of the European Audiovisual Observatory presented their

⁶ This category includes requests which did not have specifications of any kind and/or were known about only from fragment bilateral communications.

⁷ Request lacking any identification.

⁸ Categories A4 and A7 are included in table II. Requests for assistance, because they were marked simultaneously as requests for assistance and for information.

own table concerning the same topic (Article 13(2) of the AVMS Directive) in the Action Group meeting in October 2022. This presentation was well received and proved helpful to all members.

It should be noted that even though Action Group 1 could have collected detailed data on Article 13(2) of the AVMS Directive by itself, it would have potentially limited added value for the members as such data already exist in the European Audiovisual Observatory Report and the members themselves prefer to use the standard form when the need for a specific question regarding this topic arises under their jurisdiction.

Finally, there were no disagreements requiring to activate the list of mediators. This fact illustrates the usefulness of the MoU and the efficiency and clarity of processes it brings to cross-border cooperation.

Challenges

While implementing the MoU and its provisions, as mentioned above, no major challenges were met due to the excellent cooperation of all members of the Action Group. However, it should be noted that only slightly over half of the requests for cooperation monitored were fully completed to the mutual satisfaction of the requesting and receiving NRAs. This may notably be explained by the voluntary nature of the MoU.

In addition, the Action Group encountered a small number of minor difficulties, which is to be expected as it shows that the members are even more actively using the MoU.

The issue which kept arising throughout the previous monitoring period (not making full use of the standardized form) subsided as the members got more comfortable and efficient in using the standard form. During the Action Group 1 meeting in October, it became apparent that there are instances where it still feels too formal a way of communicating and therefore, members prefer to solve cross-border issues via informal e-mail exchange.

Another minor issue was not fully using the form itself. For example, one requesting NRA categorized its form as a request for assistance and simultaneously chose a topic from categories meant for requests for information. When studying the text of the request, it became apparent that the form was incorrectly marked as the requesting NRA needed to receive information and asked the requested member's assistance as well. Even though using the form is not mandatory, it would create clearer statistics to mark both applicable categories of requests.

Another issue the group became aware of when monitoring the cooperation under the MoU, was receiving only a fragment of ongoing bilateral communication between NRAs (e.g. the leadership of the Action Group received only an acknowledgement pursuant to 2.1.1.5. of the MoU, or partial e-mail conversation, but not the actual original standardized form). This particular issue will need to be further monitored and analysed as these inconsistencies in statistical data may hinder further perfecting of the cross-border cooperation under the MoU.

The discussion in the group's October meeting also showed that it may prove beneficial to share general data on cross-border cooperation per annum submitted by each individual member.

Another minor issue encountered by the Action Group was not specifically the absence of knowledge of the DET but the lack of engagement with the tool itself by the members. This only showed how useful it could be if it would be used on a more regular basis. As the different lists, forms and data sheets developed, it became apparent that members would greatly benefit from regular usage of such

an online space, which could serve even better as a live view into the cross-border cooperation space not only for rudimentary statistics but also for the members to see how cooperation requests develop.

Suggestions/amendments

As the Action Group concentrated on facilitating and improving the cooperation between its members, collecting and maintaining relevant data as envisaged by the MoU, there are currently no specific suggestions to amend the MoU as such. Suggestions to amend the MoU would ideally be explored as part of a strategic deliberative process in accordance with the ERGA Rules of Procedure, if needed in the future.

We suggest making better use of the DET as it proved and will prove in the future an efficient way to store up-to-date data available for all members a, e.g. by serving an online tool that would give insight into the replies of all ERGA members to a specific request for information (as suggested in the meeting of the Action Group 1 in October). The year 2023 would be ideal for exploring how to increase the use of the DET online space. However, for requests for assistance, due to the possible confidential nature of the information, this may need to be handled differently.

As using the SPOC network with the standard form is not mandatory, it would be helpful to discuss sharing general cross-border cooperation data per annum submitted by each individual member for the purposes of perfecting and smoothing cross-border cooperation in the future.

Summary

Overall, the second year of cooperation under the MoU, as well as the work of the Action Group in 2022 can be described as positive, especially in times that proved how essential cross-border cooperation is for ERGA members. Nonetheless, work on the MoU is still in progress. As pointed out above, the MoU remains a voluntary framework whose future may only be perfected. In this regard, specifically the newly proposed European Media Freedom Act will play a key role regarding the cooperation of media regulators.

The Action Group evaluated the reasons behind the lack of consistent usage of the SPOC network and standard form and tried to offer feasible solutions.

The Action Group noted again with satisfaction that there was no need to make use of the list of mediators as no divergent opinions between the members have arisen.

The year 2022 was focused on strengthening cooperation in cross-border cases and specifically aimed at fulfilling one of ERGA's core commitments, which is to promote common regulatory approaches and effective cooperation between its members as well as with stakeholders. The coming year of 2023 promises to be fruitful as the work on the MoU will become part of ERGA Subgroup 1 bundling connecting issues under one umbrella.