



## **ERGA proposals for EMFA amendments art.7-16**

Following the adoption of its [position on the EMFA proposal](#) in November 2022, ERGA has developed a first set of proposals for amendments regarding articles 7 to 16 of the EMFA.

These proposed amendments cover key priorities for ERGA and are the concrete translation of the ERGA position on the relevant sections of the EMFA proposal. ERGA will continue its analysis and will develop proposals for amendments on other major provisions of EMFA proposal.

## PART I – articles 7 to 12

EMFA proposal	ERGA draft amendments	Comments / rationale
<p style="text-align: center;"><b>Chapter III</b></p> <p style="text-align: center;"><b>Framework for regulatory cooperation and a well-functioning internal market for media services</b></p> <p style="text-align: center;"><b>Section 1</b></p> <p style="text-align: center;"><b>Independent media authorities</b></p>		
<p style="text-align: center;"><i>Article 7</i></p> <p style="text-align: center;">National regulatory authorities or bodies</p>		
<p>1. The national regulatory authorities or bodies referred to in Article 30 of Directive 2010/13/EU shall be responsible for the application of Chapter III of this Regulation.</p>		
<p>2. The national regulatory authorities or bodies shall be subject to the requirements set out in Article 30 of Directive 2010/13/EU in relation to the exercise of the tasks assigned to them by this Regulation.</p>		
<p>3. Member States shall ensure that the national regulatory authorities or bodies have adequate financial, human and technical resources to carry out their tasks under this Regulation.</p>	<p>3. Member States shall ensure that <b><i>the financial, human and technical resources of</i></b> the national regulatory authorities or bodies <b><i>are adequately and sufficiently sized and increased to allow the national regulatory authorities or bodies have adequate financial, human and technical resources</i></b> to carry out <b><i>the new tasks conferred on them by</i></b> this Regulation. <b><i>The organisational and functional autonomy of the national regulatory authorities or bodies shall be guaranteed.</i></b></p>	<p>ERGA position on EMFA:</p> <p><i>J. ERGA also notes that EMFA reiterates the AVMSD requirement for adequate financial, human and technical resources. However, following the (almost) finalized AVMSD transposition across the EU, it appears that this requirement pursuant to article 30 AVMSD has not necessarily led to increased and sufficient resources for all NRAs despite a clear increase in competences, tasks and workload.</i></p>
	<p><b><i>3a. Within one year after the entry into application of this Regulation pursuant to Article 28(2), the Commission shall assess the implementation of this Article. To this end, Members States shall send all relevant information to the Commission upon its request.</i></b></p>	<p>ERGA position on EMFA:</p> <p><i>J. (...) Given the extensive number of new missions and tasks for the European Board for Media Services, and therefore for the NRAs, it is crucial that EMFA provides for a stronger and more binding language for Member States to ensure an effectively</i></p>

		<i>appropriate level of resources enabling NRAs to carry out these new missions.</i>
<p>4. Where needed for carrying out their tasks under this Regulation, the national regulatory authorities or bodies shall have appropriate powers of investigation, with regard to the conduct of natural or legal persons to which Chapter III applies.</p> <p>Those powers shall include in particular the power to request such persons to provide, within a reasonable time period, information that is proportionate and necessary for carrying out the tasks under Chapter III; the request can also be addressed to any other person that, for purposes related to their trade, business or profession, may reasonably be in possession of the information needed.</p>		
<p><b>Section 2</b></p> <p><b>European Board for Media Services</b></p>		
<p><i>Article 8</i></p> <p>European Board for Media Services</p>		
<p>1. The European Board for Media Services ('the Board') is established.</p>		
<p>2. The Board shall replace and succeed the European Regulators Group for Audiovisual Media Services (ERGA) established by Directive 2010/13/EU.</p>		
<p><i>Article 9</i></p> <p><i>Independence of the Board</i></p> <p>The Board shall act in full independence when performing its tasks or exercising its powers. In particular, the Board shall, in the performance of its tasks or the exercise of its powers, neither seek nor take instructions from any government, institution, person or body. This shall not affect the competences of the Commission or the national regulatory authorities or bodies in conformity with this Regulation.</p>	<p><i>Article 9</i></p> <p>Independence of the Board</p> <p>The Board shall act in full independence when performing its tasks or exercising its powers. In particular, the Board shall, in the performance of its tasks or the exercise of its powers, neither seek nor take instructions from any government, <b>national or European</b> institution, person or body. This shall not affect the competences of the Commission, <b>pursuant to article 17 of the Treaty on European Union</b>, or the national regulatory authorities or bodies in conformity with this Regulation.</p>	<p>ERGA position on EMFA:</p> <p><i>K. Those basic but fundamental preconditions are unfortunately not met in the EMFA proposal. While EMFA strengthens the role of ERGA in the form of the Board and reinforces its secretariat, the independence of the Board formulated in article 9 is contradicted in practice by several provisions contained in the following articles on the internal functioning of the Board, the secretariat and the Board's tasks. The effective independence of the Board, which is constituted by national media regulators - who are indeed independent from private and public influences at national level - is essential to ensure the proper application of this Regulation. ERGA therefore urges the co-legislators to ensure that the wording of article 9 fully reflects the independence both of the Board and the national regulatory authorities which it sets out to guarantee, and</i></p>

		<p><i>preserves this independence from any institution, including from the European Commission.</i></p> <p>Moreover, the reference to art.17 of the TEU allows to clarify that the independence of the Board is without prejudice to the role of the Commission as guardian of the Treaties and the EU law.</p>
<p><i>Article 10</i></p> <p>Structure of the Board</p>		
<p>1. The Board shall be composed of representatives of national regulatory authorities or bodies referred to in Article 30 of Directive 2010/13/EU.</p>	<p>1. The Board shall be composed of <b>high-level</b> representatives of national regulatory authorities or bodies referred to in Article 30 of Directive 2010/13/EU</p>	<p>In order to give a high profile to the Board and allow it to fulfill the important missions pursuant to EMFA, it is crucial to ensure that the Board be composed of high-level members.</p>
<p>2. Each member of the Board shall have one vote.</p>		
<p>3. Where a Member State has more than one national regulatory authority or body, those regulatory authorities or bodies shall coordinate with each other as necessary and appoint a joint representative which shall exercise the right to vote.</p>		
<p>4. The Board shall be represented by its Chair. The Board shall elect a Chair from amongst its members by a two-thirds majority of its members with voting rights. The term of office of the Chair shall be two years.</p>	<p>4. The Board shall be represented by its Chair. <b>The Board shall elect a Chair from amongst its members.</b> The Board shall also elect a <b>Steering Group from amongst its members. The Steering Group shall consist of a Chair, a Vice-Chair and 3 other members, including the outgoing Chair. The Chair and the other members of the Steering Group shall be elected by a two-thirds majority of the Board's members with voting rights.</b> The term of office of the Chair shall be of <del>two years, one year, renewable once.</del> <b>The Board's Rules of procedure shall specify the roles, the tasks and the procedures for the appointment of the members of the Steering Group.</b></p>	<p>This amendment allow to build on the current ERGA internal governance based on a Chair and a Board composed of 5 members (Chair included).</p> <p>Moreover, as stated in the ERGA position:</p> <p><i>M. The 2-year period for the Chair's term duration, while providing stability and supporting mid-term planning, may be too long and resource-intensive. This could in particular impede smaller regulators from accessing the Chairmanship. ERGA suggests that the duration of the Chair's term should, rather than being set in the regulation, be adopted by the Board in its rules of procedure.</i></p>
<p>5. The Commission shall designate a representative to the Board. The representative of the Commission shall participate in all activities and meetings of the Board, without voting rights. The Chair of the Board shall keep the Commission informed about the ongoing and planned activities of the Board. The Board shall consult the Commission in preparation of its work programme and main deliverables.</p>	<p>5. The Commission shall designate a representative to the Board. The representative of the Commission shall participate in <del>all the</del> activities and meetings of the Board, without voting rights. The Chair of the Board shall keep the Commission informed about the ongoing and planned activities of the Board. The Board shall <b>seek the views of consult</b>—the Commission, in preparation of its work programme and main deliverables. <b>The Board may seek the views of other interested parties.</b></p>	<p>ERGA position:</p> <p><i>L. The Board should be able to decide autonomously on its internal functioning, without agreement or coordination with the Commission (rules of procedure, work programme, main deliverables, invitation of experts to meetings).</i></p>

<p>6. The Board, in agreement with the Commission, may invite experts and observers to attend its meetings.</p>	<p><b>6-a. The Board, in consultation with the Commission, may designate permanent observers from amongst national regulatory authorities with competence in the media field, coming from non-EU countries which have entered into agreements with the Union to that effect. The observers shall not have voting rights.</b></p> <p>6. The Board, <del>on a case-by-case basis, in agreement with the Commission,</del> may invite experts <del>and observers</del> to attend its meetings.</p>	<p>idem</p>
<p>7. The Board shall take decisions by a two-thirds majority of its members with voting rights.</p>		
<p>8. The Board shall adopt its rules of procedure by a two-thirds majority of its members with voting rights in agreement with the Commission.</p>	<p>8. The Board shall adopt its rules of procedure by a two-thirds majority of its members with voting rights in <del>agreement</del> <b>consultation</b> with the Commission.</p>	<p>idem</p>
<p style="text-align: center;"><i>Article 11</i> Secretariat of the Board</p>	<p style="text-align: center;"><i>Article 11</i> <del>Secretariat</del> <b>Bureau</b> of the Board</p>	
<p>1. The Board shall have a secretariat, which shall be provided by the Commission.</p>	<p>1. The Board shall <del>have a secretariat, which shall be provided by the Commission.</del> <b>be supported by an independent bureau.</b></p>	<p>ERGA position: N. <i>It is difficult to achieve a real independence of the Board with a secretariat that is provided by and reports to the Commission and not to the Board itself. To this effect, the most effective solution, by far, would be to create a fully and effectively independent structure relying on the network of national media regulators, and supply it with adequate resources (e.g. such as the BEREC office for the telecom sector).</i></p>
	<p><b>2. The Bureau of the European Board for Media Services ('Bureau') is hereby established as a body with legal personality.</b></p>	<p>idem</p>
<p>2. The main task of the secretariat shall be to contribute to the execution of the tasks of the Board laid down in this Regulation and in Directive 2010/13/EU.</p>	<p><del>2</del> <b>3.</b> The main task of the <del>secretariat</del> <b>Bureau</b> shall be to contribute to the execution of the tasks of the Board laid down in this Regulation and in Directive 2010/13/EU.</p>	<p>ERGA position: O. <i>Given the extensive new mission of the Board compared to ERGA (in terms of topics covered and missions, including drafting opinions on those new topics), it is essential for the Board to be relying on a strong secretariat, which shall be able to support not only the activity of the Board itself, but also to provide mutualised support for the NRAs. However, the set-up proposed in EMFA does not seem to be sufficient in this regard. Hence the importance of significantly higher resources for the</i></p>

		<i>Board and also at national level for NRAs in order to allow them to carry out their new tasks and contribute effectively to the missions of the Board.</i>
3. The secretariat shall provide administrative and organisational support to the activities of the Board. The secretariat shall also assist the Board in carrying out its tasks.	<del>3-4. The <b>secretariat-Bureau</b> shall <b>also</b> provide administrative and organisational support to the activities of the Board. <b>The secretariat shall also assist the Board in carrying out its tasks.</b></del>	idem
<p style="text-align: center;"><i>Article 12</i></p> <p style="text-align: center;">Tasks of the Board</p> <p>Without prejudice to the powers granted to the Commission by the Treaties, the Board shall promote the effective and consistent application of this Regulation and of national rules implementing Directive 2010/13/EU throughout the Union. The Board shall:</p>		
(a) support the Commission, through technical expertise, in ensuring the correct application of this Regulation and the consistent implementation of Directive 2010/13/EU across all Member States, without prejudice to the tasks of national regulatory authorities or bodies;		
(b) promote cooperation and the effective exchange of information, experience and best practices between the national regulatory authorities or bodies on the application of the Union and national rules applicable to media services, including this Regulation and Directive 2010/13/EU, in particular as regards Articles 3, 4 and 7 of that Directive;		
(c) advise the Commission, where requested by it, on regulatory, technical or practical aspects pertinent to the consistent application of this Regulation and implementation of Directive 2010/13/EU as well as all on other matters related to media services within its competence. Where the Commission requests advice or opinions from the Board, it may indicate a time limit, taking into account the urgency of the matter;	(c) advise the Commission, <b>on the Board's own initiative or</b> where requested by <b>the Commission</b> , on regulatory, technical or practical aspects pertinent to the consistent application of this Regulation and implementation of Directive 2010/13/EU as well as all on other matters related to media services within its competence. Where the Commission requests advice or opinions from the Board, it may indicate a time limit, taking into account the urgency of the matter;	<p>ERGA position:</p> <p><i>P. (...) as stated in article 9 of the EMFA proposal, the Board is supposed to be an independent body and therefore should have the ability to carry out its diverse missions with the necessary autonomy. It is therefore inappropriate that the EMFA only or mainly provides for tasks of the Board to be executed either "in agreement with" or "at the request of the Commission". It cannot be acceptable for a group of national media regulators, who at national level act in full independence from any public or private influence, to be functioning only in reaction to the Commission or with its agreement.</i></p> <p><i>It is therefore of utmost importance that the European Board for Medias Services, as a truly independent body, shall always have the possibility to act at its own initiative as well, and to adopt documents without having to seek any external</i></p>

		<p>agreement. Hence ERGA proposes to amend article 12 as follows:</p> <ul style="list-style-type: none"> <li>• Mentions of “at the request of the Commission” should be replaced with “on its own initiative or at the request of the Commission”;</li> <li>• References to “in agreement with the Commission” should be deleted.</li> </ul>
(d) when requested by the Commission, provide opinions on the technical and factual issues that arise with regard to Article 2(5c), Article 3(2) and (3), Article 4(4), point (c) and Article 28a(7) of Directive 2010/13/EU;		idem
<p>(e) in agreement with the Commission, draw up opinions with respect to:</p> <ul style="list-style-type: none"> <li>(i) requests for cooperation and mutual assistance between national regulatory authorities or bodies, in accordance with Article 13(7) of this Regulation;</li> <li>(ii) requests for enforcement measures in case of disagreement between the requesting authority or body and the requested authority or body regarding the actions recommended pursuant to Article 14(4) of this Regulation;</li> <li>(iii) national measures concerning media service providers established outside of the Union, in accordance with Article 16(2) of this Regulation;</li> </ul>	<p>(e) <del>in agreement with the Commission</del>, draw up opinions with respect to:</p> <ul style="list-style-type: none"> <li>(i) requests for cooperation (<b>exchange of information and/or</b> mutual assistance) between national regulatory authorities or bodies, in accordance with Article 13(7) of this Regulation;</li> <li>(ii) requests for enforcement measures in case of disagreement between the requesting authority or body and the requested authority or body regarding the actions recommended pursuant to Article 14(4) of this Regulation;</li> <li>(iii) national measures concerning media service providers established outside of the Union, in accordance with Article 16(2) of this Regulation;</li> </ul>	idem
<p>(f) upon request of the Commission, draw up opinions with respect to:</p> <ul style="list-style-type: none"> <li>(i) national measures which are likely to affect the functioning of the internal market for media services, in accordance with Article 20(4) of this Regulation;</li> <li>(ii) media market concentrations which are likely to affect the functioning of the internal market for media services, in accordance with Article 22(1) of this Regulation;</li> </ul>	<p>(f) <b>on its own initiative or</b> upon request of the Commission, draw up opinions with respect to:</p> <ul style="list-style-type: none"> <li>(i) national measures which are likely to affect the functioning of the internal market for media services, in accordance with Article 20(4) of this Regulation;</li> <li>(ii) media market concentrations which are likely to affect the functioning of the internal market for media services, in accordance with Article 22(1) of this Regulation;</li> </ul>	idem
(g) draw up opinions on draft national opinions or decisions assessing the impact on media pluralism and editorial independence of a notifiable media market concentration where such a concentration may affect the functioning of the internal market, in accordance with Article 21(5) of this Regulation;		

<p>(h) assist the Commission in drawing up guidelines with respect to:</p> <ul style="list-style-type: none"> <li>(i) the application of this Regulation and of the national rules implementing Directive 2010/13, in accordance with Article 15(2) of this Regulation.</li> <li>(ii) factors to be taken into account when applying the criteria for assessing the impact of media market concentrations, in accordance with Article 21(3) of this Regulation;</li> <li>(iii) the application of Articles 23(1), (2) and (3) pursuant to Article 23(4) of this Regulation</li> </ul>		
<p>(i) upon request of at least one of the concerned authorities, mediate in the case of disagreements between national regulatory authorities or bodies, in accordance with Article 14(3) of this Regulation;</p>		
<p>(j) foster cooperation on technical standards related to digital signals and the design of devices or user interfaces, in accordance with Article 15(4) of this Regulation;</p>		
<p>(k) coordinate national measures related to the dissemination of or access to content of media service providers established outside of the Union that target audiences in the Union, where their activities prejudice or present a serious and grave risk of prejudice to public security and defence, in accordance with Article 16(1) of this Regulation;</p>		
<p>(l) organise a structured dialogue between providers of very large online platforms, representatives of media service providers and of civil society, and report on its results to the Commission, in accordance with Article 18 of this Regulation;</p>		
<p>(m) foster the exchange of best practices related to the deployment of audience measurement systems, in accordance with Article 23(5) of this Regulation.</p>		



	<p><i>(n) In so far as necessary in order to achieve the objectives set out in this Regulation and carry out its tasks, and without prejudice to the competences of the Member States and the institutions of the Union, the Board, in consultation with the Commission, may cooperate with competent Union bodies, offices, agencies and advisory groups, with competent authorities of third countries and with international organisations.</i></p> <p><i>To that end, the Board may, subject to prior approval by the Commission, establish working arrangements.</i></p>	<p>In line with the ERGA position (point L : <i>The Board should be able to decide autonomously on its internal functioning, without agreement or coordination with the Commission (rules of procedure, work programme, main deliverables, invitation of experts to meetings)</i>), it is proposed here to ensure that the Board will have the capacity to cooperate with other institutions.</p>
<p>RECITALS</p>		
<p>(22) Independent national regulatory authorities or bodies are key for the proper application of media law across the Union. National regulatory authorities or bodies referred to in Article 30 of Directive 2010/13/EU are best placed to ensure the correct application of the requirements related to regulatory cooperation and a well-functioning market for media services, envisaged in Chapter III of this Regulation. In order to ensure a consistent application of this Regulation and other Union media law, it is necessary to set up an independent advisory body at Union level gathering such authorities or bodies and coordinating their actions. The European Regulators Group for Audiovisual Media Services (ERGA), established by Directive 2010/13/EU, has been essential in promoting the consistent implementation of that Directive. The European Board for Media Services ('the Board') should therefore build on ERGA and replace it. This requires a targeted amendment of Directive 2010/13/EU to delete its Article 30b, which establishes ERGA, and to replace references to ERGA and its tasks as a consequence. The amendment of Directive 2010/13/EU by this Regulation is justified in this case as it is limited to a provision which does not need to be transposed by Member States and is addressed to the institutions of the Union.</p>	<p>(22) Independent national regulatory authorities or bodies are key for the proper application of media law across the Union. National regulatory authorities or bodies referred to in Article 30 of Directive 2010/13/EU are best placed to ensure the correct application of the requirements related to regulatory cooperation and a well-functioning market for media services, envisaged in Chapter III of this Regulation. <b><i>Therefore, given the importance and the extensive nature of the new tasks conferred by this Regulation to these authorities, directly or indirectly, it is of utmost importance to ensure that the financial, human and technical resources of the national regulatory authorities or bodies are adequately and sufficiently increased. In this sense, Member States could make use of national resources coming from the auctioning of the spectrum, the digital dividend or the introduction of a levy on regulated entities. Member States should also provide the Commission with all relevant information concerning the increase of financial, human and technical resources. Moreover, within the framework of the applicable public function, and budgetary regulations, the NRA should have full authority over the recruitment and management of the staff, who should be hired under clear and transparent rules. The capacity over the management of the staff should include autonomy to decide the required profile, qualification, expertise, and other human resources features, including salary and retribution, with independence from other public bodies. The NRA should also have full autonomy and decision-making control in terms of management of internal structure, organization, and procedures for the effective performance of</i></b></p>	<p>ERGA position:</p> <p>J. <i>ERGA also notes that EMFA reiterates the AVMSD requirement for adequate financial, human and technical resources. However, following the (almost) finalized AVMSD transposition across the EU, it appears that this requirement pursuant to article 30 AVMSD has not necessarily led to increased and sufficient resources for all NRAs despite a clear increase in competences, tasks and workload. Given the extensive number of new missions and tasks for the European Board for Media Services, and therefore for the NRAs, it is crucial that EMFA provides for a stronger and more binding language for Member States to ensure an effectively appropriate level of resources enabling NRAs to carry out these new missions. Furthermore, in this sense, a recital could give examples of possible sources of funding for NRAs (e.g. auctioning of the spectrum or of the digital dividend, levy on regulated entities, etc.).</i></p> <p><i>EMFA should also further strengthen the safeguards of Article 30 AVMSD (in both article 7 of EMFA and corresponding recitals) on the necessary requirements for NRAs to ensure their effective independence, including regarding the full operational autonomy to manage their financial and human resources.</i></p> <p>K. <i>Those basic but fundamental preconditions are unfortunately not met in the EMFA proposal. While EMFA strengthens the role of ERGA in the form of the Board and reinforces its secretariat, the independence of the Board formulated in article 9 is contradicted in practice by several provisions contained in the following articles on the internal functioning of the Board, the</i></p>

	<p><b>their duties and the effective exercise of their powers. Without prejudice to national budgetary rules and procedures, NRAs should have allocated a separated annual budget. Member states should ensure that national authorities are granted full autonomy in the spending of the allocated budget for the purpose of carrying out their duties. Any control on the budget of the NRAs should be exercised in a transparent manner. Annual accounts of regulatory Authorities should have an ex post control by an independent auditor, and should be made public.</b></p>	<p>secretariat and the Board's tasks. The effective independence of the Board, which is constituted by national media regulators - who are indeed independent from private and public influences at national level - is essential to ensure the proper application of this Regulation. ERGA therefore urges the co-legislators to ensure that the wording of article 9 fully reflects the independence both of the Board and the national regulatory authorities which it sets out to guarantee, and preserves this independence from any institution, including from the European Commission (see below, articles 11 and 12).</p>
	<p><b>(22a)</b> In order to ensure a consistent application of this Regulation and other Union media law, it is necessary to set up an independent advisory body at Union level gathering such authorities or bodies and coordinating their actions. The European Regulators Group for Audiovisual Media Services (ERGA), established by Directive 2010/13/EU, has been essential in promoting the consistent implementation of that Directive. The European Board for Media Services ('the Board') should therefore build on ERGA and replace it. This requires a targeted amendment of Directive 2010/13/EU to delete its Article 30b, which establishes ERGA, and to replace references to ERGA and its tasks as a consequence. The amendment of Directive 2010/13/EU by this Regulation is justified in this case as it is limited to a provision which does not need to be transposed by Member States and is addressed to the institutions of the Union.</p>	<p>(moved from rec.22)</p>
<p>(23) The Board should bring together senior representatives of the national regulatory authorities or bodies referred to in Article 30 of Directive 2010/13/EU, appointed by such authorities or bodies. In cases where Member States have several relevant regulatory authorities or bodies, including at regional level, a joint representative should be chosen through appropriate procedures and the voting right should remain limited to one representative per Member State. This should not affect the possibility for the other national regulatory authorities or bodies to participate, as appropriate, in the meetings of the Board. The Board should also have the possibility to invite to attend its meetings, in agreement with the Commission, experts and observers, including in particular regulatory authorities or bodies from candidate countries, potential candidate countries, EEA countries, or ad hoc delegates from other competent national authorities. Due to the sensitivity of the media sector and following the practice of</p>	<p>(23) The Board should bring together senior representatives of the national regulatory authorities or bodies referred to in Article 30 of Directive 2010/13/EU, appointed by such authorities or bodies. In cases where Member States have several relevant regulatory authorities or bodies, including at regional level, a joint representative should be chosen through appropriate procedures and the voting right should remain limited to one representative per Member State. This should not affect the possibility for the other national regulatory authorities or bodies to participate, as appropriate, in the meetings of the Board. The Board should also have the possibility to invite, <b>on a case-by-case basis, external experts to attend its meetings. The Board, in consultation with the Commission, should have the possibility to designate permanent observers, in agreement with the Commission, experts and observers,</b> including in particular regulatory authorities or bodies from candidate countries, potential</p>	<p>ERGA position:</p> <p>P. (...) as stated in article 9 of the EMFA proposal, the Board is supposed to be an independent body and therefore should have the ability to carry out its diverse missions with the necessary autonomy. It is therefore inappropriate that the EMFA only or mainly provides for tasks of the Board to be executed either "in agreement with" or "at the request of the Commission". It cannot be acceptable for a group of national media regulators, who at national level act in full independence from any public or private influence, to be functioning only in reaction to the Commission or with its agreement. (...) References to "in agreement with the Commission" should be deleted.</p>

<p>ERGA decisions in accordance with its rules of procedure, the Board should adopt its decisions on the basis of a two-thirds majority of the votes.</p>	<p>candidate countries, EEA countries, or <b>to invite</b> ad hoc delegates from other competent national authorities. Due to the sensitivity of the media sector and following the practice of ERGA decisions in accordance with its rules of procedure, the Board should adopt its decisions on the basis of a two-thirds majority of the votes.</p>	
<p>(24) Without prejudice to the powers granted to the Commission by the Treaties, it is essential that the Commission and the Board work and cooperate closely. In particular, the Board should actively support the Commission in its tasks of ensuring the consistent application of this Regulation and of the national rules implementing Directive 2010/13/EU. For that purpose, the Board should in particular advise and assist the Commission on regulatory, technical or practical aspects pertinent to the application of Union law, promote cooperation and the effective exchange of information, experience and best practices and draw up opinions in agreement with the Commission or upon its request in the cases envisaged by this Regulation. In order to effectively fulfil its tasks, the Board should be able to rely on the expertise and human resources of a secretariat provided by the Commission. The Commission secretariat should provide administrative and organisational support to the Board, and help the Board in carrying out its tasks.</p>	<p>(24) Without prejudice to the powers granted to the Commission by the Treaties, it is essential that the Commission and the Board work and cooperate closely. In particular, the Board should actively support the Commission in its tasks of ensuring the consistent application of this Regulation and of the national rules implementing Directive 2010/13/EU. For that purpose, the Board should in particular advise and assist the Commission on regulatory, technical or practical aspects pertinent to the application of Union law, promote cooperation and the effective exchange of information, experience and best practices and draw up opinions <b>on its own initiative or in agreement with</b> upon the Commission's <del>or upon its</del> request in the cases envisaged by this Regulation. In order to effectively <b>and independently</b> fulfil its tasks, the Board should be able to rely on the expertise and human resources of a <b>body of the Union having legal personality, an independent Bureau dedicated to the Board. secretariat provided by the Commission.</b> <del>The Bureau of the European Board for Media Services Commission secretariat</del> should provide administrative and organisational support to the Board, and help the Board in carrying out its tasks.</p>	<p>ERGA position:</p> <p><i>N. It is difficult to achieve a real independence of the Board with a secretariat that is provided by and reports to the Commission and not to the Board itself. To this effect, the most effective solution, by far, would be to create a fully and effectively independent structure relying on the network of national media regulators, and supply it with adequate resources (e.g. such as the BEREC office for the telecom sector).</i></p> <p>and</p> <p><i>P. (...) as stated in article 9 of the EMFA proposal, the Board is supposed to be an independent body and therefore should have the ability to carry out its diverse missions with the necessary autonomy. It is therefore inappropriate that the EMFA only or mainly provides for tasks of the Board to be executed either "in agreement with" or "at the request of the Commission". It cannot be acceptable for a group of national media regulators, who at national level act in full independence from any public or private influence, to be functioning only in reaction to the Commission or with its agreement. (...) References to "in agreement with the Commission" should be deleted.</i></p>

## PART II – articles 13 to 15

EMFA proposal	ERGA draft amendments	Comments / rationale
<p align="center"><b>Section 3</b> <b>Regulatory cooperation and convergence</b></p>		
<p align="center"><i>Article 13</i> Structured cooperation</p>		
<p>1. A national regulatory authority or body may request ('requesting authority') cooperation or mutual assistance at any time from one or more national regulatory authorities or bodies ('requested authorities') for the purposes of exchange of information or taking measures relevant for the consistent and effective application of this Regulation or the national measures implementing Directive 2010/13/EU.</p>	<p>1. A national regulatory authority or body may request ('requesting authority') cooperation (<b><i>exchange of information and/or</i></b> mutual assistance) at any time from one or more national regulatory authorities or bodies ('requested authorities') for the purposes of exchange of information or taking measures relevant for the consistent and effective application of this Regulation or the national measures implementing Directive 2010/13/EU.</p>	
<p>2. Where a national regulatory authority or body considers that there is a serious and grave risk of prejudice to the functioning of the internal market for media services or a serious and grave risk of prejudice to public security and defence, it may request other national regulatory authorities or bodies to provide accelerated cooperation or mutual assistance, while ensuring compliance with fundamental rights, in particular freedom of expression.</p>		
<p>3. Requests for cooperation or mutual assistance, including accelerated cooperation or mutual assistance, shall contain all the necessary information, including the purpose of and reasons for it.</p>	<p>3. Requests for cooperation (<b><i>exchange of information and/or</i></b> or mutual assistance), including accelerated cooperation or mutual assistance, shall contain all the necessary information, including the purpose of and reasons for it, <b><i>as specified in the Board's Rules of procedure.</i></b></p>	<p>ERGA position:</p> <p><i>Q. The present EMFA provision institutionalizes the ERGA MoU and allows for the broadening of the reach of the MoU by securing the involvement of all ERGA members. It also presents the advantage of providing more legal certainty, predictability and robustness by making the cooperation more substantive.</i></p> <p><i>However, ERGA advocates for EMFA to only inscribe the principles and broad objectives of the MoU, and leave the definition of details and modalities to the future Board and its members, in order for the scheme to be better suited to operational needs and more future-proof. ERGA</i></p>

		<i>therefore considers that it would be more appropriate to provide the details of the new cooperation scheme (such as, e.g., number of calendar days for addressing requests) in the Media Board's Rules of Procedures for instance, to be decided and adopted by the Board.</i>
<p>4. The requested authority may refuse to address the request only in the following cases:</p> <p>(a) it is not competent for the subject matter of the request or for the measures it is requested to take;</p> <p>(b) execution of the request would infringe this Regulation, Directive 2010/13/EU or other Union legislation or Member State law compliant with Union law to which the requested authority is subject.</p> <p>The requested authority shall provide reasons for any refusal to address a request.</p>	<p>4. The requested authority may refuse to address the request only in the following cases:</p> <p>(a) it is not competent for the subject matter of the request or for the measures it is requested to take;</p> <p>(b) execution of the request would infringe this Regulation, Directive 2010/13/EU or other Union legislation or Member State law compliant with Union law to which the requested authority is subject.</p> <p><b>(c) the request was not duly justified and proportionate.</b></p> <p>The requested authority shall provide reasons for any refusal to address a request.</p>	
<p>5. The requested authority shall inform the requesting authority of the results achieved or of the progress of the measures taken in response to the request.</p>		
<p>6. The requested authority shall do its utmost to address and reply to the request without undue delay. The requested authority shall provide intermediary results within the period of 14 calendar days from the receipt of the request, with subsequent regular updates on the progress of execution of the request. In case of requests for accelerated cooperation or mutual assistance, the requested authority shall address and reply to the request within 14 calendar days.</p>	<p>6. The requested authority shall do its utmost to address and reply to the request without undue delay. <del>The requested authority shall provide intermediary results within the period of 14 calendar days from the receipt of the request, with subsequent regular updates on the progress of execution of the request. In case of requests for accelerated cooperation or mutual assistance, the requested authority shall address and reply to the request within 14 calendar days.</del> <b>Further details on the procedure of the structured cooperation, including the rights and obligations of the parties as well as the deadlines to be respected, shall be defined in the Board's rules of procedure.</b></p>	idem
<p>7. Where the requesting authority does not consider the measures taken by the requested authority to be sufficient to address and reply to its request, it shall inform the requested authority without undue delay, explaining the reasons for its position. If the requested authority does not agree with that position, or if the requested authority's reaction is missing, either authority may refer the matter to the Board. Within 14 calendar days from the receipt of that referral, the Board shall issue, in agreement with the Commission, an opinion on the</p>	<p>7. Where the requesting authority does not consider the measures taken by the requested authority to be sufficient to address and reply to its request, it shall inform the requested authority without undue delay, explaining the reasons for its position. If the requested authority does not agree with that position, or if the requested authority's reaction is missing, either authority may refer the matter to the Board. <b>Within a time period to be defined in the Boards' rules of procedure 14 calendar days</b> from the receipt of that referral, the Board</p>	idem

<p>matter, including recommended actions. The requested authority shall do its utmost to take into account the opinion of the Board.</p>	<p>shall issue, <del><i>in consultation-agreement</i></del> with the Commission <b>where deemed relevant</b>, an opinion on the matter, including recommended actions. The requested authority shall do its utmost to take into account the opinion of the Board.</p>	
<p style="text-align: center;"><i>Article 14</i></p> <p style="text-align: center;"><i>Requests for enforcement of obligations by video-sharing platforms</i></p>		
<p>1. Without prejudice to Article 3 of Directive 2000/31/EC, a national regulatory authority or body may request another national regulatory authority or body to take necessary and proportionate actions for the effective enforcement of the obligations imposed on video-sharing platforms under Article 28b of Directive 2010/13/EU.</p>		
<p>2. The requested national authority or body shall, without undue delay and within 30 calendar days, inform the requesting national authority or body about the actions taken or planned pursuant to paragraph 1.</p>	<p>2. The requested national authority or body shall, without undue delay and within <b>a maximum time period to be defined in the Boards' rules of procedure 30-calendar days</b>, inform the requesting national authority or body about the actions taken or planned pursuant to paragraph 1, <b>or justify the reasons for which action was not taken.</b></p>	<p>ERGA position:</p> <p>S. (...) ERGA considers that it would be more appropriate for EMFA to only inscribe the principles and broad objectives, and leave the definition of details and modalities to the future Board. ERGA therefore suggests to provide the details of the new cooperation scheme in the Media Board's Rules of Procedures for instance, to be decided and adopted by the Board.</p> <p>T. Without prejudice to the country-of-origin principle and NRAs' independence, ERGA would suggest to amend article 14(3) in order to go beyond just planning actions and make it binding for the requested authority to take action and report on it. or justify the reasons for which action was not taken.</p>
<p>3. In the event of a disagreement between the requesting national authority or body and the requested authority or body regarding actions taken pursuant to paragraph 1, either authority or body may refer the matter to the Board for mediation in view of finding an amicable solution.</p>	<p>3. In the event of a disagreement between the requesting national authority or body and the requested authority or body regarding actions taken <b>or planned, or a refusal to take action</b>, pursuant to paragraph 1, either authority or body may refer the matter to the Board for mediation in view of finding an amicable solution.</p>	<p>ERGA position:</p> <p>T. Without prejudice to the country-of-origin principle and NRAs' independence, ERGA would suggest to amend article 14(3) in order to go beyond just planning actions and make it binding for the requested authority to take action and report on it. or justify the reasons for which action was not taken.</p>
<p>4. If no amicable solution has been found following mediation by the Board, the requesting national authority or body or the requested national authority or body may request the Board to issue an opinion on the matter. In its opinion the Board shall assess whether the requested authority or body has</p>	<p>4. If no amicable solution has been found following mediation by the Board, the requesting national authority or body or the requested national authority or body may request the Board to issue an opinion on the matter. In its opinion the Board shall assess whether the requested</p>	

<p>complied with a request referred to in paragraph 1. If the Board considers that the requested authority has not complied with such a request, the Board shall recommend actions to comply with the request. The Board shall issue its opinion, in agreement with the Commission, without undue delay.</p>	<p>authority or body has complied with a request referred to in paragraph 1. If the Board considers that the requested authority has not complied with such a request, <b>but shall do so</b>, the Board shall recommend actions to comply with the request. The Board shall issue its opinion, <b>in-agreement consultation with the Commission,-where deemed relevant</b>, without undue delay.</p>	
<p>5. The requested national authority or body shall, without undue delay and within 30 calendar days at the latest from the receipt of the opinion referred to in paragraph 4, inform the Board, the Commission and the requesting authority or body of the actions taken or planned in relation to the opinion.</p>	<p>5. The requested national authority or body shall, without undue delay and within <b>a maximum time period to be defined in the Board's rules of procedure 30 calendar days at the latest</b> from the receipt of the opinion referred to in paragraph 4, inform the Board, the Commission and the requesting authority or body of the actions taken or planned in relation to the opinion.</p>	<p>ERGA position: S. (...) ERGA considers that it would be more appropriate for EMFA to only inscribe the principles and broad objectives, and leave the definition of details and modalities to the future Board. ERGA therefore suggests to provide the details of the new cooperation scheme in the Media Board's Rules of Procedures for instance, to be decided and adopted by the Board.</p>
<p style="text-align: center;"><i>Article 15</i> Guidance on media regulation matters</p>		
<p>1. The Board shall foster the exchange of best practices among the national regulatory authorities or bodies, consulting stakeholders, where appropriate, and in close cooperation with the Commission, on regulatory, technical or practical aspects pertinent to the consistent and effective application of this Regulation and of the national rules implementing Directive 2010/13/EU.</p>		
<p>2. Where the Commission issues guidelines related to the application of this Regulation or the national rules implementing Directive 2010/13/EU, the Board shall assist it by providing expertise on regulatory, technical or practical aspects, as regards in particular:</p> <ul style="list-style-type: none"> <li>(a) the appropriate prominence of audiovisual media services of general interest under Article 7a of Directive 2010/13/EU;</li> <li>(b) making information accessible on the ownership structure of media service providers, as provided under Article 5(2) of Directive 2010/13/EU.</li> </ul>		
<p>3. The Commission may issue an opinion on any matter related to the application of this Regulation and of the national rules implementing Directive 2010/13/EU. The</p>	<p>3. The Commission, <b>assisted by the Board</b>, may issue an opinion on any matter related to the application of this Regulation and of the national rules implementing Directive</p>	<p>In line with ERGA position to be able to act on its own initiative and the EMFA mission given to the Board to assist the Commission in par.2 above, it is proposed here</p>

Board shall assist the Commission in this regard, where requested.	2010/13/EU. <del>The Board shall assist the Commission in this regard, where requested.</del>	that the Commission shall issue its opinions after consulting the Board.
4. The Board shall foster cooperation between media service providers, standardisation bodies or any other relevant stakeholders in order to facilitate the development of technical standards related to digital signals or design of devices or user interfaces controlling or managing access to and use of audiovisual media services.		
<b>RECITALS</b>		
(25) Regulatory cooperation between independent media regulatory authorities or bodies is essential to make the internal market for media services function properly. However, Directive 2010/13/EU does not provide for a structured cooperation framework for national regulatory authorities or bodies. Since the revision of the EU framework for audiovisual media services by Directive 2018/1808/EU of the European Parliament and of the Council, which extended its scope to video-sharing platforms, there has been an ever-increasing need for close cooperation among national regulatory authorities or bodies, in particular to resolve cross-border cases. Such a need is also justified in view of the new challenges in the EU media environment that this Regulation seeks to address, including by entrusting national regulatory authorities or bodies with new tasks.		
(26) To ensure the effective enforcement of Union media law, to prevent the possible circumvention of the applicable media rules by rogue media service providers and to avoid the raising of additional barriers in the internal market for media services, it is essential to provide for a clear, legally binding framework for national regulatory authorities or bodies to cooperate effectively and efficiently.	(26) <b><i>Aware of these challenges, the European Regulators' Group for Audiovisual Media Services adopted in 2020 a Memorandum of Understanding, a voluntary framework for cooperation to strengthen cross-border enforcement of media rules on audiovisual media services and video-sharing platforms. Building on this voluntary framework, in order to</i></b> <del>To</del> ensure the <b><i>comprehensive and</i></b> effective enforcement of Union media law, to prevent the possible circumvention of the applicable media rules by rogue media service providers and to avoid the raising of additional barriers in the internal market for media services, it is essential to provide for a clear, legally binding framework for national regulatory authorities or bodies to cooperate effectively and efficiently.	In order to provide additional background information on the ERGA Memorandum of Understanding.
(27) Due to the pan-European nature of video-sharing platforms, national regulatory authorities or bodies need to have a dedicated tool to protect viewers of video-sharing	(27) Due to the pan-European nature of video-sharing platforms, national regulatory authorities or bodies need to have a dedicated tool to protect viewers of video-sharing	ERGA position: <i>T. Without prejudice to the country-of-origin principle and NRAs' independence, ERGA would suggest to amend</i>



<p>platform services from certain illegal and harmful content, including commercial communications. In particular, a mechanism is needed to allow any relevant national regulatory authority or body to request its peers to take necessary and proportionate actions to ensure enforcement of obligations under this Article by video-sharing platform providers. In case the use of such mechanism does not lead to an amicable solution, the freedom to provide information society services from another Member State can only be restricted if the conditions set out in Article 3 of Directive 2000/31/EC of the European Parliament and of the Council are met and following the procedure set out therein.</p>	<p>platform services from certain illegal and harmful content, including commercial communications. In particular, <b>and without prejudice to the country-of-origin principle</b>, a mechanism is needed to allow any relevant national regulatory authority or body to request its peers to take necessary and proportionate actions to ensure enforcement of obligations under this Article by video-sharing platform providers. In case the use of such mechanism does not lead to an amicable solution, the freedom to provide information society services from another Member State can only be restricted if the conditions set out in Article 3 of Directive 2000/31/EC of the European Parliament and of the Council are met and following the procedure set out therein.</p>	<p><i>article 14(3) in order to go beyond just planning actions and make it binding for the requested authority to take action and report on it. or justify the reasons for which action was not taken.</i></p>
<p>(28) Ensuring a consistent regulatory practice regarding this Regulation and Directive 2010/13/EU is essential. For this purpose, and to contribute to ensuring a convergent implementation of EU media law, the Commission may issue guidelines on matters covered by both this Regulation and Directive 2010/13/EU when needed. When deciding to issue guidelines, the Commission should consider in particular regulatory issues affecting a significant number of Member States or those with a cross-border element. This is the case in particular for national measures taken under Article 7a of Directive 2010/13/EU on the appropriate prominence of audiovisual media services of general interest. In view of the abundance of information and the increasing use of digital means to access the media, it is important to ensure prominence for content of general interest, in order to help achieving a level playing field in the internal market and compliance with the fundamental right to receive information under Article 11 of the Charter of Fundamental Rights of the Union. Given the possible impact of the national measures taken under Article 7a on the functioning of the internal media market, guidelines by the Commission would be important to achieve legal certainty in this field. It would also be useful to provide guidance on national measures taken under Article 5(2) of Directive 2010/13/EU with a view to ensuring the public availability of accessible, accurate and up-to-date information related to media ownership. In the process of preparing its guidelines, the Commission should be assisted by the Board. The Board should in particular share with the Commission its regulatory, technical and practical</p>		

expertise regarding the areas and topics covered by the respective guidelines.		
(29) In order to ensure a level playing field in the provision of diverse audiovisual media services in the face of technological developments in the internal market, it is necessary to find common technical prescriptions for devices controlling or managing access to and use of audiovisual media services or carrying digital signals conveying the audiovisual content from source to destination. In this context, it is important to avoid diverging technical standards creating barriers and additional costs for the industry and consumers while encouraging solutions to implement existing obligations concerning audiovisual media services.		

**PART III – article 16**

EMFA proposal	ERGA draft amendments	Comments / rationale
<p style="text-align: center;"><i>Article 16</i></p> <p style="text-align: center;"><i>Coordination of measures concerning media service providers established outside the Union</i></p>	<p style="text-align: center;"><i>Article 16</i></p> <p style="text-align: center;"><i>Coordination of measures concerning media service providers <del>established</del> originating from outside the Union</i></p>	<p>In order to effectively address all the issues encountered relating to media services under influence or control of third countries, the scope of this provision should be widened (to go beyond just the services established outside of the EU) and the provision itself substantially completed.</p> <p>ERGA position:</p> <p><i>ERGA therefore welcomes the EMFA proposal, which does include specific provisions to tackle these challenges. In light of recent ERGA discussions on this very matter, ERGA believes article 16 should be improved, clarified and strengthened in order to provide effective solutions to the problems faced:</i></p> <p><i>U. This article (starting from its very title) only applies to media services providers that are accessible in the EU without having an establishment in any of the EU Member States. This case presents clear challenges in terms of jurisdiction and therefore in terms of means at disposal of media regulators to tackle them. However, this provision should cover a wider range of problematic media service providers which are effectively under the influence or control of third countries state authorities, and notably those with an EU establishment following the different criteria stipulated in AVMSD article 2.</i></p>
<p>1. The Board shall coordinate measures by national regulatory authorities or bodies related to the dissemination of or access to media services provided by media service providers established outside the Union that target audiences in the Union where, inter alia in view of the control that may be exercised by third countries over them, such media services prejudice or present a serious and grave risk of prejudice to public security and defence.</p>	<p>1. The Board shall <b>facilitate the cooperation between <del>coordinate measures by</del></b> national regulatory authorities or bodies related to the dissemination of or access to media services provided by media service providers <b>established originating from</b> outside the Union that, <b>irrespective of the means of distribution or access, target or reach</b> audiences in the Union where, inter alia in view of the <b>nature of the</b> control that may be exercised by third countries over them, such media services prejudice or present a serious and grave risk of prejudice to public security, <b>including the safeguarding of national security</b> and defence, <b>or public health, or where their</b></p>	<p>The amendments proposed here allow this paragraph to meaningfully cover the challenges and problems created by media services providers which are originating from outside of the EU and for which a cooperation between NRAs would be relevant and bring added value.</p> <p>The problematic situations which would trigger this provisions are completed with aspects related to risks to public health, incitement to hatred or terrorist attacks, as they justify a cooperation between NRAs and an eventual coordination of measures.</p>

	<p><b>programs include incitement to violence or hatred or public provocation to commit a terrorist offence.</b></p>	
	<p><b>1a. Regarding media services provided by media service providers established outside of the Union, at the request of a minimum number of Board members to be defined in the Board’s Rules of procedure, the Board may issue an opinion on the coordination of measures.</b></p>	<p>The involvement of the Board (an opinion on the coordination of measures) should not be automatic and therefore should be supported by a request of a minimum number of Board members.</p> <p>ERGA position:</p> <p>W. <i>The coordination by the Board of national measures should be better circumscribed in order to limit the Board’s involvement in any national measure against media providers under influence or control of 3rd countries. While noting that the opinion of the Board on the coordination would require in any case a two-thirds majority of its members, it could therefore be envisaged that the Board only gets involved in coordination when the issue is raised by a certain number of national regulatory authorities (more than one - to be defined by the Board in its Rules of Procedure). This would help to avoid the Board being referred to in cases with limited or no cross-border nature.</i></p> <p>X. <i>According to the Charter of fundamental rights and other international legal texts, freedom of expression is a core value in democratic societies. Therefore, the ban of media outlets must be a measure of last resort, be subject to a proper legal procedure and be duly justified and necessary. This provision is supposed to be triggered only in cases of “serious and grave risk of prejudice to public security and defence”. As the interpretation of “public security” could be subject to divergent, sometimes narrow interpretations, it should be considered to clarify it (e.g. in a recital) and/or extend the triggering conditions of the provision also to exceptional circumstances related to grave risk to public health (so as to align it with the DSA crisis response mechanism), as well as potentially to other risks mentioned in the AVMSD, such as incitement to hatred and intention/call to commit a terrorist attack.</i></p>
	<p><b>1b. Without prejudice to the possibility of a direct request from the national regulatory authority or body of a country of destination to the competent national regulatory authority or body pursuant to art.13(2) of this Regulation, where an audiovisual media service provider originating from outside the Union falls under the territorial jurisdiction of an EU Member State according to Article 2 of Directive 2010/13/EU</b></p>	<p>This new paragraph is introduced in order to provide for a provision in EMFA which will specifically address the issue of the problematic media services under influence/control of 3<sup>rd</sup> countries which fall under the jurisdiction of an EU Member State (pursuant to art.2 AVMSD, either through establishment or technical – satellite – criteria) and for</p>

	<p><b><i>and without prejudice to the procedures foreseen under article 3 of this Directive, a national regulatory authority or body of a country of destination may request the Board to issue an opinion inviting the authorities or bodies of the competent Member State to take appropriate measures against the media service provider.</i></b></p> <p><b><i>The requests from the national regulatory authority or body of a country of destination to the competent the national regulatory authority or body which are addressed to the Board shall contain all the necessary information, including at least the original decision of the national regulatory authority or body of a country of destination accompanied by a translation to a commonly agreed language, as well as the necessary evidence underlying that decision such as recordings.</i></b></p> <p><b><i>The involvement of the Board shall be triggered following a request of a minimum number of Board members to be defined in the Board's Rules of procedure together with the relevant processes.</i></b></p> <p><b><i>When preparing its opinion, the Board shall confirm that the following conditions are met:</i></b></p> <p><b><i>(i) there is substantiated evidence that the audiovisual media service is prejudicing or presenting a serious and grave risk of prejudice to public security, including the safeguarding of national security and defence, public health or the content of the audiovisual media service provider manifestly, seriously and gravely infringes article 6(1) of Directive 2010/13/EU.</i></b></p> <p><b><i>(ii) the audiovisual media service is prejudicing or presenting a serious and grave risk of prejudice for several Member States or the Union.</i></b></p>	<p>which a reinforced cooperation between regulators is needed.</p> <p>This proposal is without prejudice to the provisions of art.3 AVMSD on the derogatory measures which are completed by this paragraph to the extent that, without prejudice to the country-of-origin principle, the competent authority might be invited to take measures (as opposed to art.3 AVMSD, which only foresees the derogation to the freedom of reception by the Member State of destination only.</p> <p>The problematic situations which would trigger this provision are completed, in line with art. 3 and 6 AVMSD, with aspects related to risks to public health, incitement to hatred or terrorist attacks, as they justify an enhanced cooperation between regulators, the involvement of the Board and even eventual measures to be taken by the competent NRA.</p> <p>The enhanced cooperation foreseen under this paragraph starts with the identification of a problem by the NRA of destination, which requests the Board to take an opinion (where the risks need to be confirmed as well as their cross-border nature) in which the Board could invite the competent NRA to take measures. (NB: The involvement of the Board should not be automatic and therefore should be supported by a request of a minimum number of Board members).</p> <p>ERGA position:</p> <p><i>Z. When it comes to media providers established in the EU (pursuant to AVMSD article 2), the following approach could be foreseen in EMFA in order to mobilise the NRA of the country of establishment: when a Member State or an NRA identifies a severe violation by a foreign media service provider (pursuant to AVMSD articles 3(2), 3(3) or 6(1)), it may request the territorially competent authority to take appropriate actions, provided that this request is supported by a certain number of national regulatory authorities (more than one - to be defined by the Board in its Rules of Procedure).</i></p>
	<p><b><i>1c. The coordination of measures and the opinions of the Board shall be without prejudice to the competence and responsibility of the Member States to assess the risks and threats to their public security and national defence, which</i></b></p>	

	<i>may be posed by media services originating from outside the EU.</i>	
2. The Board, in agreement with the Commission, may issue opinions on appropriate national measures under paragraph 1. All competent national authorities, including the national regulatory authorities or bodies, shall do their utmost to take into account the opinions of the Board.	<del><b>2. The Board, in agreement with the Commission, may issue opinions on appropriate national measures under paragraph 1.</b></del> All competent national authorities, including the national regulatory authorities or bodies, shall do their utmost to take into account the opinions of the Board <b>issued according to paragraph 1a and 1b.</b> <b>The competent authority or body shall provide reasons for any refusal to undertake the recommended actions.</b>	Reformulation proposed as the opinions by the Board are mentioned directly in both par.1 and 1a.
	<b>3. When taking a decision regarding the jurisdiction (inter alia through licensing or registration) over an audiovisual media service provider originating from outside of the Union, the competent regulatory authority or body shall, without prejudice to the national legislation, do its utmost to take into account a set of basic principle-based criteria concerning the service and the service provider to be developed by the Board.</b>	ERGA position : CC. <i>This provision should be further developed as regards some basic, common criteria for the assessment of problematic services (content, ownership, lack of editorial independence from the state etc.) including regarding the entry on the EU market. This would facilitate mutual recognition of decisions (subject to their compatibility with EU and national law) and enhanced cooperation where justified.</i>
	<b>4. Member States shall ensure that, when relevant, national regulatory authorities or bodies, when deciding to take action against a media service provider originating from outside of the Union, have the legal basis to take into account:</b>  <b>(i) a decision taken against that provider by a national regulatory authority or body from another Member State, and/or</b>  <b>(ii) an opinion of the Board relating to that provider and taken on the grounds of this article</b>	In order to secure the “effet utile” of the provisions stipulated above, it is necessary to ensure NRAs have the relevant legal basis to act. ERGA position : BB. <i>In order to guarantee the effective enforceability of this provision, it should include a call for Member States to reflect it in the national law in order to ensure that NRAs are provided with a capacity to take action based on other NRAs’ measures and the opinion of the Board.</i>
<b>RECITALS</b>		
(30) Regulatory authorities or bodies referred to in Article 30 of Directive 2010/13/EU have specific practical expertise that allows them to effectively balance the interests of the providers and recipients of media services while ensuring the respect for the freedom of expression. This is key in particular when it comes to protecting the internal market from activities of media service providers established outside the Union that target audiences in the Union where, inter alia in view of the control that may be exercised by third countries	(30) Regulatory authorities or bodies referred to in Article 30 of Directive 2010/13/EU have specific practical expertise that allows them to effectively balance the interests of the providers and recipients of media services while ensuring the respect for the freedom of expression. This is key in particular when it comes to protecting the internal market from activities of media service providers <b>originating from</b> outside the Union <b>(either established outside of the EU, established outside of the EU but under jurisdiction of an EU Member State through</b>	See comments for art.16.1

<p>over them, they may prejudice or pose risks of prejudice to public security and defence. In this regard, the coordination between national regulatory authorities or bodies to face together possible public security and defence threats stemming from such media services needs to be strengthened and given a legal framework to ensure the effectiveness and possible coordination of the national measures adopted in line with Union media legislation. In order to ensure that media services suspended in certain Member States under Article 3(3) and 3(5) of Directive 2010/13/EU do not continue to be provided via satellite or other means in those Member States, a mechanism of accelerated mutual cooperation and assistance should also be available to guarantee the 'effet utile' of the relevant national measures, in compliance with Union law. Additionally, it is necessary to coordinate the national measures that may be adopted to counter public security and defence threats by media services established outside of the Union and targeting audiences in the Union, including the possibility for the Board, in agreement with the Commission, to issue opinions on such measures, as appropriate. In this regard, risks to public security and defence need to be assessed with a view to all relevant factual and legal elements, at national and European level. This is without prejudice to the competence of the Union under Article 215 of the Treaty on the Functioning of the European Union.</p>	<p><b><i>the Directive 2010/13/EU satellite criteria or established in the EU), irrespective of the means of distribution or access, that target or reach audiences in the Union where, inter alia in view of the control that may be exercised by third countries State authorities over them, they may prejudice or pose risks of prejudice to public security, including the safeguarding of national security and defence, public health, or where their programs include incitement to violence or hatred or public provocation to commit a terrorist offence.</i></b> In this regard, the <del>coordination cooperation</del> between national regulatory authorities or bodies to face together possible <del>public security and defence</del> threats stemming from such media services needs to be strengthened and given a legal framework to ensure the effectiveness and possible coordination of the national measures adopted in line with Union media legislation. <del>In order to ensure that media services suspended in certain Member States under Article 3(3) and 3(5) of Directive 2010/13/EU do not continue to be provided via satellite or other means in those Member States, a mechanism of accelerated mutual cooperation and assistance should also be available to guarantee the 'effet utile' of the relevant national measures, in compliance with Union law. Additionally, it is necessary to coordinate the national measures that may be adopted to counter public security and defence threats by media services established outside of the Union and targeting audiences in the Union, including the possibility for the Board, in agreement with the Commission, to issue opinions on such measures, as appropriate. In this regard, risks to public security and defence need to be assessed with a view to all relevant factual and legal elements, at national and European level. This is without prejudice to the competence of the Union under Article 215 of the Treaty on the Functioning of the European Union.</del></p>	
	<p><b><i>(30a) In the case of audiovisual media services providers under jurisdiction of EU Member States pursuant to Article 2 of Directive 2010/13/EU, in order to ensure that audiovisual media services suspended in certain Member States under Article 3(3) and 3(5) of Directive 2010/13/EU do not continue to be provided via satellite or other means in those Member States, a mechanism of accelerated mutual cooperation and assistance, pursuant to an opinion of the Board, should also be available to guarantee the 'effet utile' of the relevant national measures, in compliance with Union law. Following the request of the authority or body from another Member State, the</i></b></p>	<p>See comments for art.16.1a</p>

	<p><b>competent national authority or body could be invited by the opinion of the Board to undertake certain measures, where the threats mentioned above are proven and are prejudicing or presenting a serious and grave risk of prejudice for several Member States or the Union.</b> In this regard, risks to public security and defence need to be assessed with a view to all relevant factual and legal elements, at national and European level.</p> <p>This is without prejudice to the competence of the Union under Article 215 of the Treaty on the Functioning of the European Union.</p>	
	<p><b>(30b) As any measures limiting the freedom of media and of speech can only be envisaged in highly exceptional and justified cases, the implication of the Board should be limited to what is strictly necessary and therefore should be triggered following a request of a minimum number of Board members to be defined in the Board's Rules of procedure. Once adopted, the opinions of the Board should be taken into utmost account by the national regulatory authorities or bodies concerned.</b></p>	<p>See comments for art.16.2</p>
	<p><b>(30c) In order to foster the coherence of decisions and facilitate the eventual cooperation between national regulatory authorities or bodies, the Board should develop a set of basic criteria on the service provider and the service provided. Those criteria should be used by national regulatory authorities or bodies, when a media service provider originating from outside of the Union seeks jurisdiction in one of the Member States, or when it is already under the jurisdiction of a Member State. The criteria should inter alia cover content, ownership, economic and financial connections, editorial independence or lack thereof from the third country state and should allow relevant authorities or bodies to identify, and if needed prevent, the entry into the EU market, of media service providers which present a serious and grave risk of prejudice to public security and defence, public health, or where their programs contain incitement to violence or hatred or public provocation to commit a terrorist offence.</b></p>	<p>See comments for art.16.3</p>