ERGA Work Programme 2019 proposal

Introduction

The European Regulators Group for Audiovisual Media Services (ERGA) advises the European Commission on a consistent application of the Audiovisual Media Services Directive (AVMSD or Directive) and other matters related to audiovisual media services within the competence of the European Commission. ERGA also encourages the exchange of experiences and good practices between the regulatory authorities.

The Work Programme of ERGA is a strategic document that defines the activities of ERGA throughout the year. It should provide ERGA's members with clear guidance on ERGA's work and priorities for 2019 and reflect changes introduced by the revised AVMSD (pending the required formal steps). The work programme should also respond to the selected strategic challenges posed by a dynamic and changing audiovisual media sector.

The year 2019 presents for ERGA an important step forward due to its formalised role in the new article establishing ERGA with an updated list of tasks. At the same time, 2019 presents a unique opportunity to look at the arising questions regarding the implementation of the revised AVMSD, some of which were already discussed by ERGA throughout 2018. This should help the Group to be in a good position to provide advice to the European Commission with its technical expertise and, if asked from the individual national regulatory authorities, to the national legislators also in the light of the ongoing transposition phase.

After five years – from the adoption of the decision of the European Commission to formally establishing ERGA – this is the right moment also to look back and reflect on the functioning of ERGA and how it could be made more effective and relevant. At the same time, a look into the future should focus on the new tasks specifically laid down in the revised AVMSD. To accomplish these statutory duties, ERGA should strive to strengthen the network and work towards a further professionalisation of its activities within the remits of the revised Directive.

This proposed work programme is taking into account the issues on which ERGA may be requested by the Commission to give an expert opinion, but also leaves enough room to exchange views and best practices about the relevant topics that are of high interest for audiovisual media regulatory authorities in Europe. The four proposed workstreams are designed as a framework of ERGA´s main activities in the following year.

- Media plurality – to continue the assessment beyond internal media plurality;
- Future of ERGA – to explore how could ERGA work better in the post-revision period;
- Implementation of the revised AVMSD – to continue the exploration of the revised text;
- Gender diversity – to serve as a forum for NRAs exchanges and dialogue with the industry.

Besides these four workstreams, there is a need to transform the current workstream on Exchange of experience/best practices, which included two sub-streams: ERGA Academy and Digital European Toolkit (DET). The change would foresee the creation of smaller but permanent *Action groups* that would flexibly deal with the issues related to these two areas.

Subgroups 2019

1. Media Plurality

This subgroup would be a continuation of the work of Subgroup 1 in 2018 that looked at what measures the NRAs have already at their disposal in the area of internal media plurality and of the current challenges, including the phenomenon of disinformation. The resulting report provided an overview catalogue of the available measures and at the same time looked forward to identify existing challenges and possible approaches.

In 2019, the Subgroup would build on this work, with the possibility to deepen some aspects of internal media plurality, especially in the context of the upcoming EU elections, and also explore other topics in the wider area of media plurality. Possible topics include external plurality in order to complete the 2018 report by looking at available measures as transparency of media ownership, rules on media concentration must carry and must offer. ERGA will seek to exchange information with researchers working in this field. At the same time, the work in 2018 made it clear that disinformation in the context of media plurality remains a very topical subject that is constantly evolving with some, as indicated in the 2018 report, planned changes in the approaches at the national levels. That is why building on the basic work in 2018 this topic could be explored further and in more detail to enable ERGA to stay relevant in the currently ongoing debate.

2. Future of ERGA

The formal recognition and reinforcement of ERGA's role in the new AVMSD is a turning point in the development of the Group and calls on the need to launch a self-reflection exercise with the aim of making proposals for possible changes in the functioning of ERGA in the future. The institutionalisation of ERGA de facto coincides with an increasing number and larger scale of challenges, which NRAs will have to face, in particular as a result of the adoption of a revised AVMSD and its subsequent implementation. The Group, therefore, acknowledges the need to adapt its functioning, as defined in its Rules of Procedure and Internal guidelines on the operation at working levels, to its new role.

The work of the subgroup on the future of ERGA would build on the work already done in the context of the Subgroup 3 2018 report and based on the discussions that have been undertaken at various levels of ERGA in the second half of 2018. On the one hand, the Subgroup could look at the new tasks and changes in the revised AVMSD that would require ERGA to adapt its internal procedures and working methods. On the other hand, it could also look at possibilities for ERGA to better distribute the workload; to plan its work more long-term and at the same time increase its responsiveness; to be more inclusive and open; to facilitate cooperation between its members, to better communicate externally; and to be a relevant contributor to wider public debates on media regulation.

3. Implementation of the revised AVMS Directive

In 2018, Subgroup 3 focused on several aspects of the application of the revised AVMSD: enforcement of relevant rules in the online environment, measures for supporting European works and territorial jurisdiction. This has led to the preparation of a thorough report. However, it is important to further this exercise to other areas of the revised AVMSD. In this context, 2019 offers a unique

opportunity for the results of the discussions amongst the NRAs may contribute to the ongoing transposition process at the individual national levels.

Considering the numerous aspects that are still to be discussed in the revised AVMSD and wider implications in the audiovisual media field, the Subgroup is intended to accompany the implementation of the revised AVMS Directive with a particular focus on the revised material rules and the revised material scope (i.e. the inclusion of video-sharing platforms). Also, the Subgroup should analyse concrete mechanisms of regulation in a converged media environment, including responsibilities of diverse service providers in the online environment.

Considering the width of these areas, it is proposed to establish a maximum of **three task forces** under the umbrella of this subgroup. The numerous individual topics are proposed to be divided along the following lines:
- Taskforce 1: Changes to the material rules for audiovisual media services – including the relevant definitions and covering topics, such as consumer protection (in particular the rules on audiovisual commercial communications), protection of minors, incitement to violence or hatred, accessibility, findability and signal integrity;
- Taskforce 2: Changes to the material scope – the inclusion of video-sharing platforms: with a focus on the nature of measures to be implemented by VSPs with a particular focus on co-regulation, as well as possible principles for an effective monitoring of VSPs by NRAs;
- Taskforce 3: Concrete mechanisms of regulation – exploring the mechanisms of regulation depending on areas and services regulated (strong vs. soft approach; statutory vs. co- and self-regulation), enforcement of relevant rules and cross-border cooperation between regulators, possible cooperation of ERGA members and exchanges of ERGA itself with relevant authorities on European and national level from other areas (competition, telecommunication, public prosecutors, etc.) and responsibilities of providers.

4. Gender diversity

One of the topics still unexplored by ERGA is the area of gender diversity, which is increasingly being discussed at various national and international forums. Looking closer at this topic would enable ERGA to stay relevant in this debate and at the same time highlight and possibly foster the activities of the NRAs and industry in this area. The 2006 Recommendation on the protection of minors and human dignity in the European audiovisual and online information services[1] calls on the industry to combat such discrimination and to promote a diversified and realistic picture of the skills and potential of men and women in society. The revised AVMSD includes certain provisions in order to ensure that both audiovisual media services and commercial communications do not contain any incitement to violence or hatred based on gender or that audiovisual commercial communications do not include or promote such discrimination.

This workstream could have the advantage of being able to increase the Group's cooperation with EPRA[2], which has done a pioneering work[3] in this area. The report underlines a common willingness shared by the European regulators to collaborate further on gender equality issue. Three areas of development to implement this collaboration were identified: Coordinating the production and

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[1] 2006 Recommendation on the protection of minors and human dignity and on the right of reply in relation to the competitiveness of the European audiovisual and on-line information services industry (2006/952/EC) https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32006H0952

[2] European Platform of Regulatory Authorities

[3] For example, the EPRA Working group's II Comparative background paper from 2018 entitled "Achieving greater diversity in broadcasting – special focus on gender; benefits and best practices approach" highlights some differences between national contexts as regards the treatment of gender equality.

publishing comprehensive, consistent and streamlined reports and data; sharing more extensively the experience gained and lessons learned, among others on the implementation of the provisions included in the Directive covering gender discrimination and on the promotion on gender representation; providing guidance to support NRAs to develop a framework for regulatory activities on gender.

Along these lines, an ERGA subgroup on gender diversity could be established to increase knowledge about how NRAs implement AVSMD provisions to combat gender discrimination and on the measures taken to promote gender diversity in audiovisual media. This could be done through combining information/data gathering with good practices. With regards to data gathering, the ERGA subgroup could develop and pilot a framework for compiling and fostering the implementation of good practices initiatives. A possible focus could also be to exchange the experience of audiovisual media services with a view to ensure a fair representation of genders on screen and in the audiovisual media industry when applying the revised AVMSD. It would be up to the various European regulatory authorities to relay concrete initiatives of the local stakeholders in their territorial jurisdiction, which can be considered as successful according to their own evaluation.

Once they are assessed and relayed, the initiatives could be centralised on the ERGA Digital European Toolkit (DET), an internet platform of European good practices. They could be structured by thematic, accompanied by interviews of the audiovisual media services managers who developed them, or technical data on their implementation, etc. The ultimate objective is to initiate a fundamental paradigm change towards gender equality by sharing experience and disseminating constructive ideas.

Action groups

Besides the above mentioned four workstreams, there is a proposal to transform the current workstream on Exchange of experience/best practices into smaller, but permanent Action groups – ERGA Academy and Digital European Toolkit – which would continue with their work.

1. Online knowledge base

The Digital European Toolkit (DET) has been further enhanced in 2018 (as a platform and its functionality but also with the updates of the uploaded content). The editorial board of the DET was established as well as the network of the national editors. This structure would be organically followed, in 2019, with the recognition of the editorial board as a permanent action group.

2. ERGA Academy

The year 2018 saw a busy activity of the ERGA Academy through its lectures, strategy sessions, workshop and initiation of the expertise pool. Regulators may to use this tool to improve their understanding, oversight, monitoring and enforcement. The ERGA Academy aims to empower NRAs on an individual and collective level.

As a permanent action group, the Academy would be in a close liaise with the Board of ERGA and the chairs of the Subgroups. The activities undertaken by the ERGA Academy in 2019 would be in line with the main topics undertaken by appropriate Subgroups, but would remain open to ad-hoc suggestions by the Members or the European Commission.

Terms of Reference

The proposals above are for consideration by the Plenary (drawing upon the discussions at the level of the Board and Contact Network). ERGA will be able to decide on the more specific themes and the expected outcomes of the new subgroups, and their timetables, in the Terms of Reference. These will be drafted by the future subgroup chairs, in close cooperation with the ERGA chair and vice-chairs. The Terms of Reference are expected to be adopted through a written procedure until the end of 2018 to enable the timely start of the work of these activities already from the beginning of 2019.

Terms of Reference