

ERGA WORK PROGRAMME

2015

Introduction

The year 2014 has been dedicated to the launch of the ERGA and to the production of its first operational results, with the aim to give the Group a solid framework to initiate collective thinking and carry out its tasks in the future.

The ERGA Work Programme 2015 does not modify the orientations adopted in 2014 and will build on last year's activities. It offers a continuation of the work already achieved and a logical development of the issues that came out of the outputs produced by the three sub-groups. Thus, the ERGA will benefit from the first results achieved by the Group over 2014 and will take a step to the next level to go in-depth into the topics.

It also aims at completing the analysis of the current regulatory framework at EU level in the field of audiovisual media services, within the prospect of the modification of its instruments, the process of which will start at the beginning of 2015 with the launch of the REFIT (Regulatory Fitness and Performance) exercise for the AVMS directive. Building on the suggestions that arose during the consultation process led among the Members in spring 2014, the issue of territorial jurisdiction in the EU context has been added as a new topic. Consequently, this work programme for 2015 consists of both the continuation of the works initiated in 2014 and the proposal of a new work item.

The ERGA annual work programme for 2015 will therefore encompass the following two main subjects:

- **the independence of audiovisual regulatory authorities (I);**
- **the evolution of the European regulatory framework in a converged media age, through the issues of material jurisdiction, territorial jurisdiction and protection of minors (II).**

I. The independence of audiovisual regulatory authorities

As a continuation of the works achieved in 2014, the purpose of this subgroup in 2015 will be to carry out an in-depth analysis of the notion of independence applied to audiovisual regulatory authorities.

Independence is a key value, which is shared by the European regulators of audiovisual media services and on which all their missions are based. The concept of independence of the regulators at EU level is already well developed and implemented in other areas, such as the telecommunications, postal and energy sectors. In the audiovisual sector, it is enshrined in

article 30 of the 2010/13/EU Directive on Audiovisual Media Services (AVMSD), according to which “*Member States shall take appropriate measures to provide each other and the Commission with the information necessary for the application of this Directive, [...] in particular through their competent independent regulatory bodies*”. However, this notion is understood differently depending on the countries. The subgroup will draw together the work already done by EPRA, academics, the Council of the European Union – inviting the Member States “to ensure the independence of their audiovisual regulatory authorities”¹ – the European Commission – through its consultation on the Independence of media regulators – the Council of Europe and others, in order to produce common conclusions on the subject. This will allow each authority to share the logic underlying its regulatory model and to express how their conception of independence connects with the other major common values, such as freedom of expression, media pluralism, respect for ethics or the fight against discriminations, against incitements to hatred and violence.

The subgroup will carry out a fact-finding exercise aiming at collecting relevant information and data about different national institutional set-ups, focusing on independence features as well as on other relevant aspects that may influence such features. In parallel, the subgroup will review the work already done in this field and cooperate with all relevant institutions, organisations and academics. It will also carry out an analysis of other regulated sectors and of the related regulators’ institutional remits, in respect of their independence prerogatives in the light of the relevant EU legislation. This work would allow order to identify possible common features of the concept of independence at EU level and to assess them against the specificities of the national approaches to the audiovisual sector.

Deliverable n°1: analysis report and comments on the way to strengthen the independence of audiovisual media services regulatory bodies (end of 2015)

II. Adapting the EU regulatory instruments to a convergent audiovisual world

In 2015, the Group will go further in-depth **with its analysis of the current regulatory framework at EU level**. For its second year of activity of ERGA, the focus will be on three topics: **the issues of material jurisdiction, territorial jurisdiction and protection of minors**. Besides the two existing subgroups – one on material jurisdiction, the other on protection of minors – a third one will be set up to carry out an in-depth analysis of the territorial scope issue.

Thus, three subgroups will have the remit to carry out a prospective analysis on the reassessment of the European regulatory instruments in the field of audiovisual media services, with a focus on **the issues of material jurisdiction, territorial jurisdiction and protection of minors**:

- 1) **Addressing the question of material jurisdiction in a convergent audiovisual world:** the emergence of new potential “gatekeepers” in the audiovisual value chain requires reflection on the notion of content distribution and on the possible extension

¹ Council conclusions on media freedom and pluralism in the digital environment – Education, Youth, Culture and Sport Council meeting , 25-26 November 2013.

of the scope of the AVMS directive. The development of television through ADSL networks, the use of on-line audiovisual services and of connected devices has led to a considerable increase of the number of intermediaries between media services providers and consumers. Whereas they do not necessarily have editorial responsibility for the content they carry, they are now players of significance in the audiovisual landscape. This has prompted the need to reflect on the implications of these developments in terms of, for example, accessibility and “discoverability” of content, protection of minors, quality, diversity, and plurality of programming, content funding, competition and choice, issues of privacy and data protection. It is all the more relevant to tackle these subjects at the European level given the growing cross-border nature of distribution of audiovisual media services.

The subgroup will build on the scoping paper it produced in 2014, with the aim to produce an in-depth study of the topic, along with conclusions on the common issues and lines of thinking shared by the members on the adaptation of the current regulatory framework.

Deliverable n°2: Common conclusions on the adaptation of the current regulatory framework (End 2015)

- 2) **Tackling the issue of territorial jurisdiction in the EU context:** the “Television Without Frontiers” directive, then the AVMS directive, have enshrined the country of origin principle at the heart of the regulation with a view to the creation of the internal market. The implementation of this principle has granted the audiovisual media services providers with the legal security they need to develop services that are now available across national borders. Differences in the implementation of the AVMS directive among the Member States, along with asymmetries on taxation, call for a reflection on territorial jurisdiction at EU level and on the opportunity to modify the regulatory provisions in force.

Moreover, within the course of the regulators’ practice, the implementation of the current regulatory framework has shown the limits of the provisions on territorial jurisdiction as they are foreseen in the AVMS directive, concerning services originating from third-countries. Within the prospect of the review of the European legal instruments, it seems especially appropriate to launch a reflection work on the best way to provide for an efficient mechanism of conflict resolution as regards territorial jurisdiction, in order to avoid any legal vacuum on that matter.

The subgroup will start by drafting a detailed discussion paper, which shall make proposals for scoping the work, outlining the context, the problem definition, and the particular questions to be explored, including planned milestones and outputs for an in-depth analysis, which shall start later during the year.

Deliverable n°3: Detailed discussion paper (April 2015)

Deliverable n°4: Common conclusions on the adaptation of the current regulatory framework (End 2015)

- 3) **Dealing with the issue of protecting the minors in a converged environment:** protecting minors is one of the core missions of the audiovisual regulators, shared by all the members. In a converged era, the proliferation of different screens and devices makes it more and more difficult to ensure an appropriate level of protection. Shifts have been observed in the use of media by consumers, and particularly by minors, including growing demand for on-demand services on the Internet. If these recent technological developments offer many opportunities for the young audiences, they also imply new challenges regarding their protection. The AVMS directive sets out a framework of rules to address the challenge of protecting minors on both linear and non-linear services. However, it may not completely guarantee the appropriate level of protection needed in a fully converged audiovisual world. That is why it would be useful for ERGA to discuss possible evolutions of the current regulatory framework and how self- and co-regulation initiatives could complement this approach. The subgroup could draw together the work already done by the members, EPRA, academics, the European Audiovisual Observatory and others, in order to produce common conclusions on the subject.

Deliverable n°5: Common conclusions on an adequate system for the protection of minors in a converged world (End 2015)