

SPEECH BY MADELEINE DE COCK BUNING
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Ladies and gentlemen,

Ever since the dawn of mankind, people have created and used media. Our ancestors painted pictures on cave walls and carved symbols into stones. Today, we tweet our opinions to the world and comment on video's posted by strangers. While the content of our communication has changed over time, our need to share and connect has not.

What has also changed is the technologies with which we communicate. Charcoal drawings and clay tablets have given way to interconnected devices and talk of 5G networks that could live stream virtual reality. Our age is one in which distance and borders are disappearing, the world's knowledge is at our fingertips and we can share anything with anyone.

One of our challenges now is to balance what is possible with what is permissible. What are the rules and responsibilities of digital media? How do we create a level playing field for true innovation and economic growth of the AV-sector in Europe while protecting both freedom of information and vulnerable consumers? And how do we ensure that what we agree remains relevant as technology continues to change so rapidly?

The proposed new audiovisual media services directive seeks to provide an answer to these and other crucial questions. It is the result of a long process in which many stakeholders were consulted and much thought was put in to the present and future of our media landscape. I am proud that ERGA has contributed to this process, particularly around issues such as the protection of minors, territorial jurisdiction and the independence of media regulators.

But we also put a lot of thought into how the new media directive should be applied across the EU member states. First of all by surveying the use of codes of conducts and other instruments of co-regulation, which will see the industry work closely with

national governments on future-proof regulations. Although the revision process is still ongoing, we expect self-regulation and especially co-regulation to become more important.

Second of all, ERGA has advocated for strong independent regulators, which will ensure that the enforcement of the directive will be impartial and effective and the playing field remains level for the industry. We also believe that every member state needs regulations and regulators that do justice to their local culture and market. And as we know the current and future AVMS Directive is underpinned by the principle of minimum-harmonization and there is room for more detailed or stricter rules on a national level.

At the same time, if regulations and their enforcement differ too much between member states, the creation of a level playing field and a single digital market is challenged. Member States have struggled to define Video on Demand services, which could result in some countries regulating them while others do not. Some countries defined and elaborated on issues of prominence with respect to European works in Video on Demand, like our colleagues of the CSA in Belgium, while others did not. More consistency and alignment in the application of important provisions will be in the interest of both consumers and European media companies.

ERGA is in a position to remedy this, by bridging the gap between the national and European media landscape. We are here to support the European Commission with our knowledge and expertise on the practical application of the directive and to exchange best practices between regulators in order to strengthen their individual functioning. This has been our official remit from the moment the European Commission established us in 2014.

In these three years, ERGA has proven its value to the Commission and the wider media industry. We have, for example, published in-depth reports into the protection of minors, territorial jurisdiction and the independence of national regulators across Europe. Our observations and conclusions could provide the Commission further insight in actual trends and important issues. By doing so we aim to contribute to regulations, practical application and oversight policies which are future-proof and

consistent. The media companies in the converged media value chain operate across many different distribution platforms, technical devices, different legal domains and jurisdictions. Therefore it has become even more important than before that regulation but also its practical application is genuinely future-proof and provides optimal clarity and legal certainty. This not only because it may be beneficial to their business models but also because it can contribute to an environment where technical innovations such as the further development of future proof tools for audiences can flourish.

This year ERGA has a focus on a number of important areas. We are, for example, creating a digital media toolkit, which gathers existing digital oversight tools, best practices and experiences from our members. In addition we are sharing best practices regarding the protection of minors, self-regulation and co-regulation.

Such co-operation is terribly valuable. In the area of co-regulation, for example, ERGA members are exploring initiatives that will encourage the creation of a level playing field. In Germany, for example, where every state has its own media regulator, all regional regulators have worked together to advise vloggers on how to make commercial use of their videos in a transparent, honest and responsible way. This triggered a public debate in Germany that ultimately benefited regulators, consumers and businesses. This example also shows how important it is to consult all stakeholders.

ERGA intends to continue sharing such good practices so regulators can learn from each other and improve the quality of their regulation and oversight. This will lead to more transparent and future-proof oversight and regulation and to a more consistent application of European legislation. Consumer and media industry alike will benefit from a more level playing field.

In other words, ladies and gentlemen, the new audiovisual media services directive needs a strong ERGA, just as ERGA and our members need a directive that can safeguard their important work. And the one the thing we need the most, is the independence of regulators. In our report on the independence of national regulatory

authorities, ERGA advises the Commission to set six clear minimum standards for all Member States.

- First, regulators will be independent from public authorities and the private sector.
- Second, regulators will be accountable and transparent, for example by having transparent consultation procedures and publicly available decisions.
- Third, regulators will have the power to take autonomous decisions and,
- Fourth, they will have adequate enforcement powers. These powers should be handled autonomously, but also in line with fair, transparent and non-discriminatory published procedures.
- Fifth, regulators, will have sufficient human and financial resources to carry out their work and be able to freely allocate their budgets.
- And finally, there will be open and transparent procedures for the nomination and appointment of board members and their dismissal will be based on transparent and objective grounds.

ERGA was pleased to see that most of our advice has been incorporated into the draft-proposal directive. The current directive lacks many of the safeguards we need and as a result, in too many countries the provisions remain empty shells and too many national regulatory authorities struggle to protect their independence.

This issue was also addressed in recent studies commissioned by the European Commission, such as INDIREG and RADAR. These studies also showed that normative rules alone cannot safeguard independence and that we also should pay attention to factors dealing with de-facto independence such as the age of a regulator, the respect for accountability principles, and the ability to cope with pressures and post-election vulnerabilities. And while consultations are important, they can also be hijacked by some powerful lobby groups that can interfere, delay or even block decisions. With all of this in mind, we have established an ERGA Academia that will develop the capabilities and board effectivity of regulators.

These aspects are important. It seems at times as if the discussion around independence is rather abstract, but we should not forget that independence serves a practical purpose that impacts all of us. Independence means a regulator's decisions are objective, impartial, consistent and expertly made, which in turn means Europe's media industry can enjoy a level playing field, the media can function at their best and vulnerable groups can be protected.

With that in mind, it's good to critically evaluate the great many amendments that have been made to the proposed directive. While some of them are useful, some are not in the interest of Europe's level playing field and pluriform media landscape. I hope and trust that the trilogue will take these and other issues into account as it begins to negotiate a final proposal.

I also hope that the final proposal will swiftly be adopted, ideally during the Estonian chairmanship of the European Union in the second half of this year. Technology is developing so quickly and the market changing so rapidly, that we urgently need an up-to-date directive that can guide us in the years to come.

Furthermore, the current environment is such that our key European values such as freedom of media are under pressure from various quarters. We need strong and independent media regulators that will ensure that the media can remain critical and pluriform. In countries such as Greece, Poland and Romania we are seeing that this is not a given.

Ladies and gentlemen,

Our ancestors lived in a world that was far simpler from ours. They followed the rhythm of the seasons and abided by the laws of nature, and never needed a media directive. Our world, however, has become infinitely more complex and fast-paced, and we need the clarity and security of harmonized regulations and independent regulators. This will create a level playing field that can accommodate the fast pace of technological innovation, the innovative ability of the media industry and the rights and needs of all of us as consumers. ERGA and its members remain firmly committed to contributing to this. Thank you.