

Subgroup 2 Terms of Reference for 2020

Name of Subgroup (SG)	Media plurality – Disinformation
SG Chair, NRA	Lubos Kuklis –The Council for Broadcasting and Retransmission of Slovak Republic (CBR)
Workstream leaders, NRA	<p>Workstream 1 - Notions of disinformation and related concepts: Marcel Betzel – Commissariaat voor de Media (CvDM)</p> <p>Workstream 2 - Monitoring of Code of Practice on Disinformation: Francesco Sciacchitano - Autorità per le Garanzie nelle Comunicazioni (AGCOM)</p>
Background	<p>Ensuring media pluralism remains a key focus across the EU as the rapidly evolving digital environment continues to cause significant disruption to the established media landscape and raises concerns about the quality and accuracy of political discourse. As reflected in the revised AVMSD, the scope of the media landscape is changing, and this presents particular issues in the assessment of challenges to media plurality at a Member State and EU level.</p> <p>As identified in the ERGA 2020 Work Programme “prior to the European elections in 2019, it turned out that various actors were trying to influence elections or public discourse by deliberately spreading false or manipulated information. This is not just a problem in the context of European elections – national elections are also affected by this phenomenon, which in turn can have an impact on European debates. In addition, disinformation in the context of elections is currently the most prominent topic, but the disinformation problem is not limited to this area. Environmental protection, health, immigration, housing shortage etc. – all currently discussed topics are potentially subject to disinformation campaigns. These experiences have clearly shown that the problem of disinformation, whether by private individuals or by state actors, by European or non-European players, jeopardizes the common values of the European Union.”</p> <p>The proliferation of disinformation, guided by profit-oriented and/or political purposes, that is accompanying the recent outbreak of, and response to, COVID-19, is another example how the information manipulation strategies pose serious threats to the formation of public opinion and of how important debunking such news can be to protect the democratic values and counter the attempts to incite hatred and violence.</p> <p>These and other concerns over the veracity of news and information being distributed to EU citizens through online platforms have prompted action at a national and international level. This is reflected in the EU Code of Practice on Disinformation (“Code”) and the related EU Action Plan against Disinformation (“Action Plan”).¹ Pillar 3 of the Action Plan identified a role for ERGA in assisting the Commission to monitor the implementation of the commitments given by signatories to the Code and to assess the overall effectiveness of the Code. These activities were a priority for the Subgroup in 2019 and will continue to be so in 2020.</p> <p>Taking this into account, ERGA has decided to continue the work in the area of media plurality and in particular on Disinformation in 2020. It would build on the previous actions by ERGA in this area:</p> <ul style="list-style-type: none"> - In 2018 this ERGA Subgroup produced a report² that focused on instruments available to regulators to ensure internal plurality in their relevant media environments and possible challenges (including an initial work in the area of disinformation).

¹ https://ec.europa.eu/commission/publications/action-plan-disinformation-commission-contribution-european-council-13-14-december-2018_en

² <http://erga-online.eu/wp-content/uploads/2019/01/ERGA-2018-07-SG1-Report-on-internal-plurality-LQ.pdf>

	<ul style="list-style-type: none"> - Over the year 2019 ERGA has been supporting the European Commission in monitoring the implementation of the commitments made by the signatories under the Code of Practice on Disinformation. The monitoring of the implementation of the Code by ERGA was carried out in two phases. <ul style="list-style-type: none"> • In its first phase, the monitoring aimed at verifying the fulfilment of the signatories' commitments to the protection of the integrity of the electoral processes that have been implemented prior to the EU elections (pillar B of the Code of Practice). The first monitoring results carried out in 16 EU Member States showed in an ERGA Report³ (accompanied by a statement⁴) that progress has been achieved by the platforms, but at the same time pointed to some crucial shortcomings. • In the second phase, the activity of the Subgroup focused on all of the pillars of the Code. Again based on national monitoring reports of ERGA members (with a possibility to focus on selected pillars of the Code based on capacities or occurrence of relevant elections during the monitoring period) ERGA provided a report⁵ of the monitoring exercise (again accompanied by a public statement⁶) to the Commission. The aim was to feed into a comprehensive assessment of the implementation of the commitments of all the five pillars of the Code after an initial 12-month period. The report also included a number of recommendations aimed at improving the quality of the NRAs' monitoring activities and the efficiency of the code and of the fight against online disinformation. - The Subgroup also addressed the topic of external plurality, and organised an ERGA Academy Strategic Session in December 2019 on the topic „External Media Plurality – New Challenges for Regulation“.
Subgroup scope and purpose	<p>This Subgroup is supposed to continue and build upon the results of the work of ERGA in 2019 on disinformation. It has been decided in the ERGA Work Programme, adopted by ERGA Plenary in December 2019, that “this work needs to proceed and focus on further action to combat disinformation effectively.”</p> <p>The work of this Subgroup is to be divided into two Workstreams (while making the use of possible synergies and cooperation):</p> <ul style="list-style-type: none"> - WS1 - Notions of disinformation and related concepts: “Based on the permanent monitoring of national legislation in the Member States, the ERGA authorities shall analyze the notion of disinformation by summarizing and sorting the different kinds of understandings and definitions of the phenomenon.” Also given that the previous work of ERGA showed that “the definitions used by the European Commission, Member States and platforms for the different phenomena of disinformation deviate and should be further clarified in order to ensure a consistent approach.” - WS2 - Monitoring of Code of Practice on Disinformation: “ERGA will continue to assist the Commission in the monitoring of the Code of Practice, building upon the ERGA monitoring conducted in 2019, and suggest next steps to effectively address the weaknesses revealed by the monitoring” and also extends its scope to the challenges posed by the extraordinary situation of the COVID 19. - The SubGroup will also continue to provide a platform for ERGA members to exchange experiences and discuss broader issues around media plurality and related current research projects (whenever relevant inviting external experts, including academia). A specific workshop could be organized or a case study for another ERGA event could be provided.

³ http://erga-online.eu/wp-content/uploads/2019/06/ERGA-2019-06_Report-intermediate-monitoring-Code-of-Practice-on-disinformation.pdf

⁴ http://erga-online.eu/wp-content/uploads/2019/06/ERGA-2019-05_Statement_ERGA_work_on_disinformation-adopted1.pdf

⁵ TBA

⁶ TBA

WS1 - Notion of disinformation

In the Workstream "Notions of disinformation and related concepts," the ERGA members will identify and analyse the different notions of disinformation and related concepts such as misinformation, fake news, fake accounts, social bots, propaganda, coordinated inauthentic behaviour, political advertising, issue-based advertising and violations of journalistic due diligence which are not all direct forms of misinformation but more context-related factors. This **study can be carried out by:**

1. **Comparing the legislation** (with a specific emphasis on media legislation) **in place** in the different EU Member States (including whenever relevant existing case law and court cases and also the current legislative actions as a result of COVID-19 epidemic situation). But bearing in mind that - as an ERGA report already demonstrated - most national legal frameworks do not address the issue of disinformation and do not include related definitions (although there are more common concepts such as political advertising, electoral campaign, online campaign, campaign periods etc.) and elaborations such comparative study alone would not provide sufficient data and context. This analysis can provide important insights on the different forms of disinformation mentioned above. In that respect also legal definitions and other provisions dealing with the phenomenon of disinformation will have to be explored. Legislation dealing with illegal content such as incitement to hatred (i.e. provisions in criminal law and penal codes) could also be taken into account but only when it would provide further relevant data for our comparative analysis. This part of the work might rely on a limited questionnaire that will build on the results gathered in the context of the 2018 ERGA report on internal media plurality.
2. Looking at the **definitions used by the different actors:** Member States, civic society organizations, statistical information and other public institutions, fact-checkers and of course the industry, not necessarily limited to the platforms but also media outlets, publishers, journalistic associations and press councils. In that respect relevant codes and policies of platforms and other players can be examined.
3. Complementing the study by an **academic component**. Over the last years in and outside Europe, many academics examined actual phenomena such as disinformation, fake news, filter bubbles and echo chambers. Only in the case such research would also address issues dealing with notions of disinformation and related concepts and would provide further context it could be incorporated in our study.

The work of the Workstream aims to identify **relevant elements and characteristics of notions of disinformation and related concepts** and will comprise several steps such as but not necessarily limited to a description of the different potential forms of disinformation and a differentiation between these different concepts. The aim is to provide clear definitions to ensure optimal guidance to all actors (especially to the European and national legislator) involved and **contribute to more consistency and uniformity within the national approaches**.

This Workstream will be led by Commissariaat voor de Media Netherlands.

WS2 - Monitoring of Code of Practice on Disinformation

ERGA will **continue to assist the Commission** in tackling the monitoring of the Code of Practice at national level, building upon the ERGA monitoring conducted in 2019, and **suggest next steps to effectively address the weaknesses** revealed by the monitoring. In line with the results and the proposals presented in both ERGA Reports on disinformation and with the 2020 ERGA Work Programme, the ERGA WS2 will assist the EU Commission in trying, as much as possible, to **put in practice the recommendations of the 2019 Report on disinformation**. ERGA will also extend its scope to conduct an assessment on how platforms react to the challenges posed by the **COVID-19 pandemic in this** extraordinary situation. In particular, the ERGA WS2 will:

1. cooperate with the EU Commission in **requesting the Code's signatories to make available the data monitoring tools** and the information needed (mainly at national level) to improve the quality of the NRAs' monitoring activities. The structure of these data repositories should be proposed by ERGA and by the Commission and should be similar for each platform.
2. assess whether policies implemented by the platforms under the Code of Practice on Disinformation online have been effective, by **using the Country specific information** provided by the platforms (see the previous paragraph). In order to avoid the same problems encountered during the past monitoring activities any further **monitoring will be put in place only if the requested data/tools are provided by the platforms** in a timely manner and with the structure proposed by ERGA.
3. **draft recommendations** aimed at: improving media literacy campaigns, improving and harmonizing the reactions to consumers complaints and flagging and improving and rationalizing the relationship between platforms-fact checkers.
4. **analyze the Code's commitments and compare the way the platforms implement them; propose recommendations** aimed at harmonizing their implementation and increasing their efficiency.
5. develop effective methods of combating disinformation by **recommending to the Commission improved regulatory (i.e. co-regulatory) tools including:**
 - formulating specific obligations for the platforms based on the defined policy objectives (e.g. labelling and demoting fact-checked content, excluding such content from recommender systems and deleting illegal content),
 - defining necessary tools for the NRAs (e.g. information transparency and/or sanctions),
 - exploring cooperation's with organizations dealing with fact checking on national level and the European Digital Media Observatory.

In addition Subgroup will extend its scope to conduct an assessment on how platforms react to the challenges posed by the COVID 19 pandemic. The assessment should "put a particular focus on the platforms' measures to identify, control and prevent the dissemination of fake, misleading or incorrect information on medical treatments and the disease as such, the way it is spreading as well as measures taken by governments and NRAs."

The Subgroup in consultation with the Commission will develop and implement a plan to support the Commission in its work during 2020, by looking at the above-mentioned areas of focus.

This Workstream will be led by AGCOM Italy.

Reports

The output is expected to be separate reports that will cover areas addressed by the SubGroup and both of its Workstreams above. These might be accompanied by ERGA statements if necessary.

For WS1, the structure and content of the reports will be determined by the topics covered.

WS2 will submit 2 separate reports:

- the first report might include the summary of the activities carried out to push the platforms to make available new monitoring tools recommendations governing the relationship between the platforms and the fact-checkers and ways to harmonize the implementation of the commitments, as well as the recommendations aimed at increasing the transparency and harmonizing the platforms' reactions to consumers complaints and flagging.
- the second report might include a summary of possible further monitoring activities carried out (provided that the platforms make available the newly

	requested tools and Country specific information) and the recommendations aimed at improving the media literacy campaigns in each Country.
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Deliverables

Deliverable 1

Deliverable type	Report
Deliverable title	ERGA report to support the European Commission in assessing the overall effectiveness of the Code and setting out and implementing the next steps.
Due date	Plenary meeting in December 2020 (with a possible short intermediary report on the activities as of June 2020)
Public consultation	No
Publication	Yes

Deliverable 2

Deliverable type	Recommendations
Deliverable title	One or several sets of recommendations of ERGA accompanying the report of WS2 in selected areas (including in areas of media literacy, consumers complaints/flagging mechanisms, the relationship between platforms and fact-checkers and ways to harmonize the implementation of the appropriate possible co and self-regulatory measures).
Due date	Plenary meeting in December 2020 (with a possibility to prioritize recommendations in a certain areas to be adopted in June 2020)
Public consultation	No
Publication	Yes

Deliverable 3

Deliverable type	Report
Deliverable title	ERGA report on notions of disinformation and related concepts
Due date	Plenary meeting in December 2020
Public consultation	No
Publication	Yes

Deliverable 4

Deliverable type	Workshop
Deliverable title	Organization of an ERGA workshop or provision of a case study for an ERGA workshop to exchange experiences and discuss broader issues.
Due date	Second half of 2020
Public consultation	No
Publication	Yes

Allocated Resources Work-stream 1

Active members (drafters)	CVDM Netherlands, AGCOM Italy, CBR Slovakia, NMHH Hungary, NCRTV Greece, BAI Ireland
Members	KommAustria Austria, CSA and VRM Belgium, CEM Bulgaria, OFCOM Switzerland (TBC), RRTV Czech Republic, DLM Germany, TTJA Estonia, CNMC Spain, CSA France, AEM Croatia, ALIA Luxembourg, NEPLPADOME Latvia (TBC), RTK Lithuania, BA Malta, KRRiT Poland, ERC Portugal, MPRT Sweden, AKOS Slovenia, Medietilsynet Norway, AVMU Northern Macedonia, IMC Iceland, RTUK Turkey

Allocated Resources Work-stream 2

Active members (drafters)	AGCOM Italy, CVDM Netherlands, CBR Slovakia, NMHH Hungary, KRRiT Poland NCRTV Greece, BAI Ireland
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Members	CSA and VRM Belgium, CEM Bulgaria, RRTV Czech Republic, DLM Germany, TTJA Estonia, CNMC Spain, CSA France, AEM Croatia, ALIA Luxembourg, NEPLPADOME Latvia (TBC), RTK Lithuania, BA Malta, ERC Portugal, MPRT Sweden, AKOS Slovenia, Medietilsynet Norway, AVMU Northern Macedonia, IMC Iceland
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Workflow (internal and external milestones)

Date	Action / deliverable	Internal Subgroup only	External Board, CN, Plenary, Publication
Year 2020			
January	Preparation of draft Terms of Reference	Chair and Leaders of the work streams	Board
January	ERGA Board-meeting	Chair and Leaders of the workstreams	Board
February 19 th	Meeting of the Subgroup - Receive feedback on the draft ToR	Chair/Active Members/ Members	SG
February 20 th	Meeting of Workstreams1/2	Leaders of workstreams /Active Members/ Members	WS1/2
February/March	Updated draft ToR based on SG members' comments	Chair and Leaders of the workstreams	CN/Plenary
April	Written adoption procedure	Chair and Leaders of the workstreams	CN/Plenary
April 30 th	Meeting of the Subgroup	Chair and Leaders of the workstreams/Active Members/Members	SG/WS1/2
May /June	Meeting of Subgroup and Workstreams	Chair of task force /Active Members/ Members	SG/WS1/2
June	Report to Plenary	Chair/Active Members	Plenary
September	Meeting of the Active Members	Chair/Active Members	SG/WS1/2
September/October	Possible ERGA workshop or provision of a case study for an ERGA workshop to exchange experiences and discuss broader issues.	Chair/Active Members/ Members	SG
October	Meeting of Subgroup to finalize outcomes and plenary reports	Chair/Active Members/ Members	SG
October	Report to CN	Chair and Leaders of the workstreams	CN
November	Report to Plenary	Chair and Leaders of the workstreams	Plenary
December	Publication on an external webpage	Chair	Secretariat