

Subgroup 1 – 2021 Terms of Reference (ToR)	
Name of Subgroup 1 (SG 1)	Consistent implementation and enforcement of the new AVMSD framework
SG Chair	Giulio Votano - AGCOM (Italy)
Background	<p>Ensuring a smooth and coherent implementation of the revised AVMSD has been a key topic in ERGA's work programme since its adoption in 2018, constituting one its core commitments, as clearly expressed in the Statement of purpose¹.</p> <p>The crucial date of 19 September 2020 has passed by and, as Member States are concluding the national transpositions, regulators face the application of the new provisions and the deep impact they will be having on their day-by-day activities.</p> <p>With this in mind, and to support regulators in their new roles and tasks, ERGA's work programme for 2021 starts where it left off last year to ensure a smooth and consistent implementation and enforcement of the revised AVMSD.</p> <p>In order to guarantee a harmonized applicative approach, the work programme for 2021 states that <i>"ERGA will keep track on how implementation occurs across the European Union."</i></p> <p><i>The focus of the work will be of a very analytical nature, focusing on how NRAs are:</i></p> <ul style="list-style-type: none"> - <i>dealing with the new obligations for audiovisual media service providers and video-sharing platforms;</i> - <i>enhancing the regulatory framework for media services by regulatory practice;</i> - <i>interpreting their role and competences in an ever-increasing digital world.</i> <p><i>In order to ensure a coherent implementation of the Directive, ERGA will issue guidance on the interpretation of certain complex new provisions of the revised AVMSD, notably in the area of video-sharing platforms and questions around the concrete nature of vloggers, signal integrity and accessibility."</i></p> <p>The 2019 report on the <i>"Implementation of the revised AVMS Directive"</i>² and the 2018 <i>"ERGA Analysis & Discussion Paper on the revised AVMSD"</i>³ already identified a number of critical issues (the material scope of the Directive, the provisions on video-sharing platforms, the implementation of cross-border financial contributions, the geographical establishment of services, etc.) where cooperation between ERGA members would be necessary in order to achieve an efficient and consistent implementation of the new rules.</p>

¹ [ERGA-2019-02_Statement-of-Purpose-adopted.pdf \(erga-online.eu\)](#) "ERGA promotes common regulatory approaches and effective cooperation between its members as well as with stakeholders. It also facilitates the development of an integrated 'regulatory culture', where knowledge, best practices and experiences are judiciously disseminated to inspire NRAs in the achievement of their duties at national level.

² [ERGA_2019_SG3_Report-1.pdf \(erga-online.eu\)](#).

³ The 2018 ERGA Analysis & Discussion Paper to contribute to the consistent implementation of the revised Audiovisual Media Services Directive' (2018).

<p>Subgroup scope and purpose</p>	<p>Based on the work carried out by ERGA Subgroup 3 in 2019 and Subgroups 1 and 3 in 2020, in line with the ERGA 2021 Work Programme, the proposals this Subgroup intends to make will seek to achieve the key objectives identified below.</p> <p>Building upon the work already conducted by ERGA in the last two years and following the path of 2019's SG3, this Subgroup will focus on the implementation of Article 28b, from the specific perspective of the responsibility of the platforms in applying the required measures and the role and tasks demanded to NRAs. This could include taking into consideration similar paradigms that already exist among NRAs in different regulatory fields (e.g. AGCOM's Regulation in the field of copyright protection on online platforms) to determine possible approaches or useful elements to be borrowed.</p> <p>In terms of the substance of Article 28b, SG1 should produce guidance on consistent approaches to appropriateness of the measures to be taken by platforms and the redress options envisaged. This will be an important deliverable to be produced under the direct responsibility of the Chair.</p> <p>Throughout the process, the Subgroup will keep on constituting a platform to discuss experiences and debating broader issues around the implementation of the new framework and related matters, involving, whenever deemed useful or appropriate, external experts, stakeholders and/or academics.</p> <p>A specific workshop involving experts, stakeholders and academics could be envisaged among the SG deliverables.</p> <p>Given the peculiar situation we are all living in due to the pandemic, the Subgroup meetings will, for the moment, take place online.</p> <p>Considering the width and complexity of the issues, some tasks are assigned to two Workstreams in order to meet the goals of this Subgroup. The individual topics to be addressed are distributed according to the following lines of activity:</p> <p>Workstream 1 – Best practice exchange: Analysis of implementing national measures</p> <p>Workstream 1 will have as its main focus an exchange on the national transpositions and their direct impact on regulators' activities and the measures taken to ensure a full and coherent application. Moreover, this Workstream will focus on the concrete steps taken to have the implementing national measures up and running, the classification of the existing regulatory approaches and their consistency across Member States, as well as gathering data from the regulators regarding their new obligations and the new scope of their tasks to have a clear idea of the status quo.</p> <p>In particular, Workstream 1 is expected to continue exchanging best practices on the new rules on the prominence of general interest content (Article 7a), continuing the work started by ERGA Subgroup 3 in 2020, and the scope and exceptions concerning the new signal integrity rules (Article 7b) in view of encouraging common approaches. Furthermore, the Workstream will focus on the new rules on accessibility (Article 7), examining how to facilitate a common understanding of 'proportionate' measures.</p>
--	--

	<p>Workstream 2 – Technical expertise: Interpreting and providing guidance on the most complex new provisions</p> <p>The Subgroup is also expected to issue guidance on the interpretation of certain complex new provisions and their application. A specific guidance will be produced in two distinct areas:</p> <p>Firstly, workstream 2 will focus on the consistent application of the revised AVMSD (and in particular its advertising standards) to vloggers (following up on the previous work of ERGA Subgroup 1 in 2020) and strive i.a. to provide clear criteria for the qualification of vloggers as audiovisual media services.</p> <p>Secondly, it will also strive to provide guidance for the coherent application of the new rules on the prominence of European works (Article 13(1)), continuing the work of ERGA Subgroup 3 in 2020.</p>
--	---

Subgroup 1 Deliverables

Given the wide range of the covered topics and the ambitious work programme, and to make sure to actually meet the purposes of the ERGA work programme and the expectations on the outcomes, all deliverables of this Subgroup (SG) and its Workstreams (WSs) will be as concise and brief as possible. They will mainly concentrate on concrete outcomes (i.e. statements, assessments, proposals, recommendations), will not contain generic elaborations and will focus on clear, straight-to-the-point key messages.

The drafters will concentrate their efforts on the assigned topics, gathering data from the SG Members also by directly approaching NRAs, where deemed useful. Members will be consulted, and they are welcome to actively spread information and case studies. An active and fruitful exchange of opinions is strongly encouraged in order to take into account all the relevant views and experiences.

The editorial responsibility for each deliverable lies with the respective WS Chairs.

Deliverable 1	Deliverable type	Overview document on the exchange of best practices regarding Articles 7, 7a and 7b in the context of Workstream 1
	Deliverable title	(To be decided)
	Due date	End of working year
	Publication	Yes
Deliverable 2	Deliverable type	Guidance/analysis and recommendations concerning regulation of vloggers and Article 13(1) produced in Workstream 2
	Deliverable title	(To be decided)
	Due date	End of working year
	Publication	Yes
Deliverable 3	Deliverable type	Expert and stakeholder workshop about the interpretation of the new provisions of AVSMD on the responsibility of VSPs and competences of NRAs.
	Deliverable title	(To be decided)
	Due date	September 2021
	Publication	Yes
Deliverable 4	Deliverable type	Guidance and recommendations concerning implementation of Article 28b
	Deliverable title	(To be decided)
	Due date	End of working year
	Publication	Yes
Deliverable 5	Deliverable type	Final Report of the Subgroup
	Deliverable title	(to be decided)
	Due date	End of the year
	Publication	Yes

Allocated Resources SG1

Drafters Members Observers	<u>Chair:</u> Giulio Votano, AGCOM (Italy)
CvdM (Netherlands) RVR (Slovakia)	
KommAustria (Austria) CSA, VRM and Medienrat (Belgium) CEM (Bulgaria) RRTV (Czechia) DLM (Germany) TTJA (Estonia) CNMC (Spain) TRAFICOM (Finland) CSA (France) NCRTV (Greece) AEM (Croatia) NMHH (Hungary) BAI (Ireland) RTK (Lithuania) ALIA (Luxembourg) NEPLP (Latvia) BA (Malta) KRRiT (Poland) ERC (Portugal) MPRT (Sweden) AKOS (Slovenia) NMA (Norway)*	
CRA (Bosnia and Herzegovina) OFCOM (Switzerland) AAAVMS (North Macedonia) RTUK (Turkey)	

* Without voting rights (Article 1 of the ERGA Rules of Procedure)

Workflow for Subgroup 1 (internal and external milestones)

Date	Action/deliverable	Internal (Subgroup and/ or Workstreams only)	External CN, Plenary, Publication
2020/2021			
December 2020	Receive feedback on the first draft Terms of Reference (ToR)		Board
December 2020	ToR: written adoption procedure		CN/Plenary
January	1st SG1 meeting. Kick-off meeting to outline the proposed methodology and WSs. Organization of the work between the SG and the WSs. Agreement on the planned activities and deliverables of the WSs. Division of tasks among the drafters of the Subgroup.	All members	
February	1st WS meeting	All WS members	Board
April	2nd WS meeting	All WS members	
6 May	CN meeting Presentation and discussion of the draft structure and main principles of the deliverables	Chair	CN
1 June	ERGA plenary meeting Presentation, discussion, and agreement on the draft structure of deliverables	Chair	Plenary
June- July	3rd WS meeting	All WS Members	
September (TBD)	Workshop with experts, stakeholders and academics (deliverable 4)	All members	public
End September	2nd SG1 meeting Finalization of deliverables	All members	
10 November	CN meeting Presentation and discussion of deliverables.	Chair	CN
2 December	ERGA plenary meeting Adoption of deliverables	Chair	Plenary