



ERGA's views on the future priorities for media policy

The European Regulators Group for Audiovisual Media Services (ERGA) brings together heads or high-level representatives of national independent regulatory bodies in the field of audiovisual services. The national regulatory bodies oversee the implementation of the EU's Audiovisual Media Services Directive (AVMSD) and soon the European Media Freedom Act (EMFA). ERGA advises the Commission in these matters. You can find further information on ERGA's activity [here](#).

Whilst looking forward to the transition of ERGA into the new European Board for Media Services (EBMS) under the EMFA and a newly provided pluriannual strategy under this new structure, ERGA presents some issues to be addressed by the new European institutions and in the discussions around the Unions' priorities for the next legislature. ERGA's recommendations are based on ERGA's experiences and its work during the last legislative term. Consequently, ERGA advises the European institutions to consider legislative action ("legislative recommendations") as well as monitoring and/or enforcement activities ("non-legislative suggestions").

As a general remark and overarching principle, ERGA would like to stress that the current Audiovisual Media Services Directive (AVMSD) is the cornerstone of audiovisual media regulation in the European Union. This major legislative instrument is - despite the evolving media landscape and evolving media consumption patterns - still very much relevant and needed. In case the directive is revised in the near future, ERGA is ready to contribute with its longstanding expertise and experience of AVMSD implementation in order to suggest concrete specific improvements which should be made to this framework, some of which are already mentioned in this paper.

Executive Summary

To support the aim to **ensure free and pluralistic media markets**, ERGA recommends the following adaptations:

- ❖ **Legislative recommendation 1:** The Commission may foster a more streamlined framework for general interest services under Art. 7a AVMSD, including the possibility for Member States to enforce their national prominence regimes on user interfaces and/or media platforms in line with the applicable EU law. In addition, as part of the review of the AVMSD, a constructive debate should be undertaken on how to better implement the obligations on European works.
- ❖ **Legislative recommendation 2:** If the AVMSD is revised, the Commission may keep in mind the need for a level-playing field as regards all kinds of audiovisual media content independently of its way of distribution.
- ❖ **Non-legislative suggestion 1:** A future monitoring of the effectiveness of the measures taken to ensure media plurality online, particularly through the mechanisms established by Art. 18 and 19 EMFA, may be taken into account by the European institutions, for a further refinement of the regime.

To support the aim to **protect Europeans from information manipulation and disinformation**, ERGA recommends the following adaptations:

- ❖ **Legislative recommendation 3:** ERGA advises the re-consideration of the jurisdiction criteria related to the satellite distribution under Art. 2 par. 4 AVMSD. This adaptation should aim to allow Member States to take measures against third-country media services providers more effectively, when their only anchoring in the single market is the company organising the distribution. Such adaption should complement the regime under Art. 17 EMFA.

- ❖ **Non-legislative suggestion 2:** The European Commission, together with the European Board for Digital Services, is advised to ensure the effective application of the current self- and co-regulatory framework against disinformation, including the use of tools that foster a resilient media literate society. Particularly, it should be closely assessed whether platforms meet their commitments. The current risk-based approach should be fully applied to be able to analyse its effectiveness. Enhanced regulatory instruments might be considered if the current framework of self- and co-regulation does not result in proper compliance by platforms.

To support the aim of **ensuring a safe online media landscape for users and children**, ERGA recommends the following legislative adaptations:

- ❖ **Legislative recommendation 4:** For the regulation of audiovisual media content, both online and offline, AVMSD is the main European media regulatory instrument. The European institutions should, if the AVMSD is revised, ensure that the interplay with the DSA is clarified when it comes to VSPs. For this purpose, the DSA should continue to be considered complementary to the AVMSD and it should be assessed whether there is a need for additional or updated rules that should apply to VSPs.
- ❖ **Legislative recommendation 5:** ERGA asks the future Commission, whilst keeping in mind the enormous potential of new technologies for market players, to ensure that such technologies do not create new risks for EU citizens. Therefore, the European AI legislation needs to reflect the risks that the use of such technologies may pose for media freedom and plurality. A media-specific approach might be relevant if the vulnerability of these values rises amid the use of AI or other technological evolutions impacting the media sector.

To support the aim to **ensure a complementary enforcement regime**, ERGA recommends the following actions:

- ❖ **Non-legislative suggestion 3:** The smooth and complementary application of the DSA and the AVMSD, without prejudice to other EU legislation such as EMFA and the E-Commerce Directive (ECD), must be guaranteed. A continuation of a cooperative approach is needed to effectively perform regulatory action under both legal instruments. The complementary nature of the DSA and media law in the Member States deriving from the provisions of the AVMSD needs to materialise, where relevant, for instance when assessing possibly illegal practices and/or content.
- ❖ **Legislative recommendation 6:** ERGA strongly supports the European Unions' commitment to the country-of-origin principle, the cornerstone of the European cross-border regulation system. While supporting this principle, ERGA recommends further alignment and clarification of the AVMSD and the ECD that provide for procedures allowing a derogation of the country-of-origin principle for VSPs.

1. How to ensure free and pluralistic media markets:

News content and services of general interest are merit goods. Their economic success is not outweighing the positive impact they have on our societies. Especially in a market that is significantly competing for the attention of the user. The findability and discoverability of European audiovisual content is a matter of cultural diversity. Increased cultural diversity helps to reinforce freedom of expression, free opinion forming and access to reliable information. Findability is key in today's information environment, especially for media and news content online. Media markets are in a constant state of change and digitalisation will keep bringing innovation and will continue to produce various new kinds of communication and information services with audiovisual media content. These market changes lead to the fact that offers which are not only particularly valuable but also particularly important for the formation of public opinion are more difficult to find within the broad variety of offers. This development is further reinforced by algorithmic techniques used to present content online.

In order to bring more balance to the market and to allow European works and audiovisual services of general interest to stand out, the Audiovisual Media Services Directive introduced measures to encourage the production,

promotion and distribution of European works and to allow Member States to adopt rules on prominence of general interest services. In practice, this resulted in a wide variety of ways that Member States implemented and enforced such measures (for instance regarding the practical assessment of prominence measures).¹ Further, the DSA has introduced safeguards to media freedom and plurality as enshrined in the Charter.

All these initiatives show the willingness of the Union to ensure a free and pluralistic media market. The next legislature will show whether the new rules lead to a level-playing field on digital media markets. For instance, the adopted national rules transposing Article 7a AVMSD and their state of implementation vary largely between Member States. Without prejudice to the guidelines to be developed by the Commission under Art. 16 EMFA, a review of possible limitations to the effectiveness of the Member States' measures in the current European framework might be considered. In addition, concerning the promotion of European works under Article 13 of the AVMSD, reflections have been ongoing regarding the exact definition of European work within and outside of ERGA². These discussions highlight the need to better reflect the diverse and evolving nature of the European audiovisual content. Furthermore, there is a growing debate of a potential expansion of the scope of the European works obligations to encompass a wider range of services in order to adapt to changing audiovisual consumption practices. The possible positive effects contributing to a more balanced and inclusive media market may be assessed by the relevant players.

Legislative recommendation 1: The Commission may foster a more streamlined framework for general interest services under Art. 7a AVMSD, including the possibility for Member States to enforce their national prominence regimes on user interfaces and/or media platforms in line with the applicable EU law. In addition, as part of the review of the AVMSD, a constructive debate should be undertaken on how to better implement the obligations on European works.

Moreover, with the European Media Freedom Act, the Commission introduced common standards for free and pluralistic media markets. The Commission particularly aims to support media outlets who face a system of double control on online platforms. Offerings by media service providers usually fall under national regulatory requirements.

Legislative recommendation 2: If the AVMSD is revised, the Commission should consider the need for a level-playing field regarding all kinds of audiovisual media content, regardless of its method of distribution.

Moreover, they also need to adhere to the terms and conditions of online platforms as they are essential ways of distribution in modern media landscapes. With the introduction of Articles 18 and 19 EMFA, the Union took steps to ensure that reputable media benefit from an additional safeguard regarding the moderation of their content by designated very large online platforms based on their terms of service. The specificity of the media sector is thus confirmed by this additional safeguard introduced by EMFA.

Non-legislative suggestion 1: A future monitoring of the effectiveness of the measures taken to ensure media plurality online, particularly through the mechanisms established by Art. 18 and 19 EMFA, may be taken into account by the European institutions, for a further refinement of the regime.

A precondition for the proper application of media law across the Union and strengthening of free and pluralistic media markets is the independent oversight. In view of the transition of ERGA into the EBMS, ERGA further notes the need for appropriate and reinforced structures and resources at the EBMS secretariat. New regulatory tasks, including for instance the opinions of the Board, will result in a considerable increase of the workload at the European level as compared to ERGA. Hence, there is a need for the EBMS to be supported by a well-functioning secretariat.

2. How to protect Europeans from information manipulation and disinformation:

Recent but established new ways of distribution, targeting and manipulating information have emerged in the digital world. Under the upcoming legislative mandate, work should continue to provide Europeans with a

¹ <https://erga-online.eu/wp-content/uploads/2023/12/ERGA-SG1-Report-2023-on-Article-131-and-132-final-version-for-publication.pdf>

² <https://erga-online.eu/wp-content/uploads/2024/03/ERGA-SG1-ToR-2024-adopted.pdf>
<https://erga-online.eu/wp-content/uploads/2023/12/ERGA-SG1-Report-2023-on-Article-131-and-132-final-version-for-publication.pdf>

framework to counter both state-controlled media attempts and manipulative techniques for spreading messages online.

ERGA welcomes the initiatives taken by the Union during the last legislative period via the introduction of the Strengthened Code of Practice on Disinformation, the DSA's risk mitigation regime³, the AI Act and the Regulation on the transparency and targeting of political advertising and the mechanism aimed at media services from outside the Union in Art. 17 EMFA.

Whilst article 17 of the EMFA should help with the cooperation between regulators when acting against media service providers from third countries, when such media services prejudice or present a serious and grave risk of prejudice to public security.⁴ In addition, according to the analysis carried out by ERGA as well as ERGA members' experience, it appears that the framework of the AVMSD, in particular Art. 2 para. 4, contains a few shortcomings when it comes to procedural effectiveness.⁵ ERGA thereby recommends reconsidering the jurisdictional criteria in relation to the treatment of services originating from outside the Union.

Legislative recommendation 3: ERGA advises the re-consideration of the jurisdiction criteria related to the satellite distribution under Art. 2 par. 4 AVMSD. This adaptation should aim to allow Member States to take measures against third-country media services providers more effectively, when their only anchoring in the single market is the company organising the distribution. Such adaption should complement the regime under Art. 17 EMFA.

Since July 2022, ERGA has actively participated in all activities and meetings of the Permanent Task-Force under the Strengthened Code of Practice on Disinformation ("the Code") and made important contributions through a series of recommendations on the implementation and monitoring of the Code.⁶ Moreover, when combating disinformation, media literacy stands as a cornerstone in navigating the complexities of the digital age. ERGA underscores the significance of media literacy as a fundamental tool in empowering individuals to navigate the digital landscape with discernment, fortifying the defences of democratic discourse and societal resilience against contemporary threats in the information ecosystem.

Finally, it is recommended to consider the improvements made by the platforms applying the Code, as well as those areas of the Code's appliance where platforms are not effective enough. In the context of platform regulation, the Commission is well advised to scrutinise attempts by VLOPs to counter manipulative tactics, techniques, and procedures (TTPs) aimed at manipulating the information space and to scrutinise them in the context of platform regulation. Once the Code becomes a code of conduct under Article 45 of the DSA, the Commission and the European Board for Digital Services may keep monitoring the Code's effects closely and take further steps under the DSA in case of non-compliance.

Non-legislative suggestion 2: The European Commission, in collaboration with the European Board for Digital Services, is advised to ensure the effective application of the current self- and co-regulatory framework against disinformation, including the use of tools ensuring a resilient media-literate society. Particularly, it should be closely assessed whether platforms meet their commitments. The current risk-based approach should be fully applied to be able to analyse its effectiveness. Enhanced regulatory instruments might be considered if the current framework of self- and co-regulation does not result in proper compliance by platforms.

3. A safe online media landscape for users and children:

The AVMSD is a cornerstone of European media law - also for the online sphere. Nevertheless, Europe needs a framework allowing the most effective oversight online possible. This is not only a matter of the free internal market but, above all, a matter of ensuring free, safe, pluralistic, and democratic societies, including protections for children in the online ecosystem.

The regulation and supervision of vloggers as audio-visual media services under the AVMSD has been an important focus of ERGA for several years. The various analyses prepared by ERGA have shown that there is a need for a common understanding of what is meant by "vloggers" and "vlogger channels", as well as what requirements should be placed on these services. This could further be reached through a continuing best practices exchange and further guidance to be supported by ERGA's experiences.

³ See DSA guidelines on elections.

⁴ <https://erga-online.eu/wp-content/uploads/2022/11/EMFA-ERGA-draft-position-adopted-2022.11.25.pdf>

⁵ <https://erga-online.eu/wp-content/uploads/2023/12/ERGA-SG1-Report-2023-Cross-Border-final-version-for-publication.pdf>

⁶ https://erga-online.eu/wp-content/uploads/2023/07/ERGA-SG3-report-CoP_June-2023_as-adopted.pdf

In the last legislative period, the Member States have made significant progress in the regulation of online-services, and particularly VSPs. To ensure effective implementation of the rules applicable to VSPs, further guidance could be considered to address the appropriateness and effectiveness of measures taken by VSPs.

The DSA establishes a set of horizontal obligations related to all illegal and harmful online content on all platforms. In addition, under the DSA, VLOPSEs must take appropriate measures to mitigate risks such as disinformation, harms to vulnerable groups, and other societal harms. In contrast, the AVMSD proposes a more targeted framework against specific categories of illegal and harmful content available on video sharing platforms, regardless their size, hence the DSA complements the AVMSD.

Moreover, and more specifically regarding the protection of minors, ERGA as a member of the Commission's taskforce on age verification, will continue providing its expertise in this field to the Commission. ERGA supports the underlying collaborative approach recognising the current frameworks' division of competences.

Therefore, it must be noted that only the combination of national measures and measures on Union level can result in an effective protection of users and the youth online. It is necessary for the functioning of the DSA that sector-specific authorities take measures against concrete illegal actions and content.

ERGA therefore recommends that, in the event of a possible revision of the AVMSD, the Commission should in principle retain the more specific regulation of VSPs provided for in the Directive (namely Art. 28a and 28b), while also ensuring a smooth parallel application to the DSA.

Legislative recommendation 4: For the regulation of audiovisual media content, both online and offline, AVMSD is the main European media regulatory instrument. The European institutions should, if the AVMSD is revised, ensure that the interplay with the DSA is clarified when it comes to VSPs. For this purpose, DSA should continue to be considered as complementary to the AVMSD and it should be assessed whether there is a need for additional or updated rules that should apply to VSPs.

After all, the European Media sector faces unprecedented challenges regarding new and emerging technologies. However, technologies such as generative AI and virtual production can bring not only risks, but also new opportunities. Finally, we support a balanced approach to artificial intelligence, including sector-specific requirements for the media.

Legislative recommendation 5: ERGA asks the future Commission, whilst keeping in mind the enormous potential of new technologies for market players, to ensure that such technologies do not create new risks for EU citizens. Therefore, the European AI legislation needs to reflect the risks that the use of AI may pose for media freedom and plurality. A media-specific approach might be relevant if the vulnerability of these values rises amid the use of AI or other technological evolutions having an impact on the media sector.

4. Ensuring a complementary enforcement regime:

In the last legislature, the Union adopted the DSA. With this new horizontal regulation, a new need for coordination in regulating online services has arisen. ERGA and the Commission have already shown their commitment towards an efficient collaboration via informal common principles to allow a smooth exchange of information.

The DSA establishes a regulatory framework concretely foreseeing a division of competences between the Commission and competent national regulatory authorities, as designated by the Member States pursuant to the DSA. The DSA imposes due diligence obligations on providers of online intermediaries, including online platforms, concerning illegal content, which is defined in both national and EU law. Thus, national regulatory authorities assess whether a content is illegal or not in line with their competence. National regulators may contribute to the identification of systemic risks due to their expertise in enforcing sector-specific regulations that address illegal and harmful content on video-sharing platforms. An eventual aggregation of such concrete infringements of the national law established in the Member States would contribute to systemic risks' supervision and then infringements by VLOPs. When dealing with considerations that touch upon the freedom of expression, independent oversight is particularly essential. Therefore, sector-specific EU law and more detailed national provisions must be enforced effectively to complement the DSA.

Cross-border enforcement in the media realm was significantly strengthened in the past years. In a first step, ERGA created a Memorandum of Understanding towards a better coordination and exchange of information for a more effective cross-border oversight. With the DSA, new bilateral and European cross-border mechanisms for the implementation of the DSA were introduced. Moreover, EMFA institutionalised the MoU and further provides cross-border cooperation mechanisms.

Non-legislative suggestion 3: The smooth complementary application of the DSA and the AVMSD, without prejudice to other EU legislation, such as EMFA and the E-Commerce Directive (ECD), must be guaranteed. A continuation of a cooperative approach is needed to effectively perform regulatory action under both legal instruments. The complementary nature of the media law in the Member States deriving from the provisions of the AVMSD needs to materialise, where relevant, for instance when assessing possibly illegal practices and/or content.

While, overall, bilateral cooperation mechanisms are, in most cases, an effective way of cross-border regulatory processes, it became apparent from the analysis done by ERGA that there are some remaining issues when it comes to the proper application of certain provisions of the AVMSD.⁷ Specifically, such issues concern challenges when applying the ECDs and the AVMSDs cross-border procedures to online media services.

Legislative recommendation 6: ERGA strongly supports the European Unions' commitment to the country-of-origin principle, the cornerstone of the European cross-border regulation system. While supporting this principle, ERGA recommends further alignment and clarification of the AVMSD and the ECD that provide for procedures allowing a derogation of the country-of-origin principle for VSPs.

⁷ <https://erga-online.eu/wp-content/uploads/2023/12/ERGA-SG1-Report-2023-Cross-Border-final-version-for-publication.pdf>