

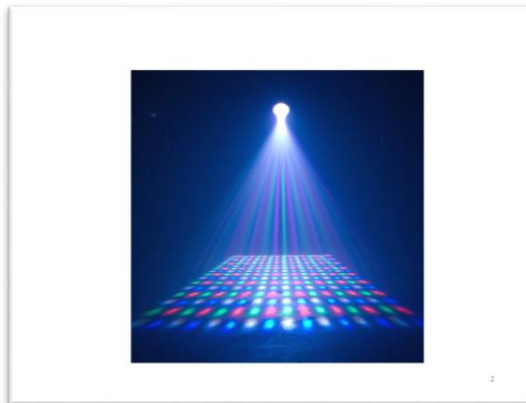
INTRODUCTION BY MADELEINE DE COCK BUNING
AVMSD Revision debate, EP Office, Barcelona, 21 APRIL 2017

Ladies and gentlemen,

First of all, please allow me to thank the representative office of the European Parliament in Barcelona for the kind invitation. And let me also congratulate you for the excellent timing. We are just a few days before the vote in the EP CULT Committee on the AVMS Directive proposal. It is clear that we are in Barcelona! The city of football legend Johan Cruyff. He taught us that everything is about good sense of timing...

ERGA: who are we?

As regulators we neither create laws nor set policies. That is the sole domain of the European Commission, the European Parliament and Member States. As regulators we are responsible for the practical application of the Directive. That is a relatively small, but important task clearly distinctive from other European committees such as the Contact Committee.



National media regulators united in ERGA have a unique, real-time view of how the Directive is applied within and across member states. ERGA members directly pick up signals from the media industry and viewers, observe obstacles and identify good practices. We can pool these insights and translate them into practical recommendations for the European legislators, but also into tools that improve application, monitoring and enforcement.

The peer-to-peer network we have created within ERGA and the sharing of knowledge will help us to further level up the quality of our work and expand our expertise. For this purpose we have launched a Digital European Toolkit, in which regulators exchange existing documents and templates that may be useful for all of us. The toolkit frees national regulators from the need to reinvent the wheel. We have furthermore established the ERGA Academia. This is a coordination mechanism within ERGA that facilitates easier exchange of experiences offline. For example by organising working visits and providing peer help and inspiration for further levelling up the quality of regulators throughout Europe.

This expertise is valuable because of the speed at which change occurs, especially in the field of audio-visual media. Technological innovation, consumption patterns and commercial services are evolving more rapidly than the regulations that govern them. Regulations that are too specific and restrictive will quickly become out-dated, leaving viewers unprotected and blocking innovation for stakeholders. Self-regulation and co-regulation can be an alternative to technology specific top down regulation. It can be more flexible, more future proof while it is at the same time more likely to be embraced by stakeholders in the field. Seems ideal. However such self-regulation and co-regulation need appropriate guarantees to avoid levels of over- or under protection.



Self- and co-regulation

EU and national legislators increasingly embrace co-regulation as a future-proof answer to technological convergence. Also the proposal for the revised Directive contains general regulations that leave space for self-regulation and co-regulation. Co-regulation is flexible and makes stakeholders co-owner of their own standards. However, backstop powers are required in order to prevent window dressing. After all, the system is as strong as its weakest link. Several NRAs have ample experience with co-regulatory systems.

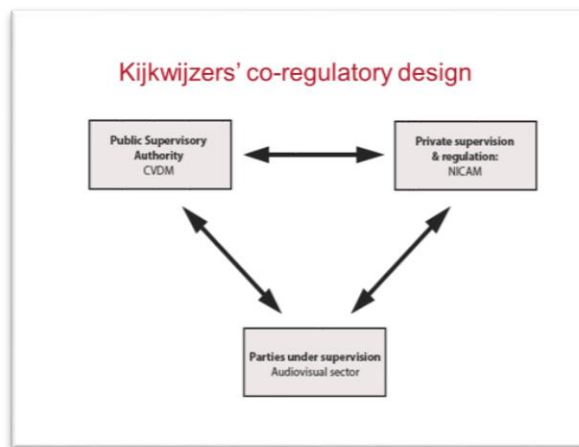
In *The ERGA Report on the Protection of Minors in a Converged Environment*, published in January 2016, ERGA-members identified the following minimum requirements of a co-regulatory system:

- Arrange for a high level of organization and low administrative burden
- Arrange for quick decisions on complaints
- Take account of cultural differences built into the system
- Alignment of public and private interests
- Provide for constitutional guarantees
- Build in checks and balances, dealing with potential non-compliance and over-design
- Guarantee the basic principles of good regulation
- Create an evaluation mechanism

ERGA continues to explore the concept of self-and co-regulation. A new subgroup established under our work programme for 2017 identifies critical success factors for co-regulation in the field of AV media. The outcomes of this important exercise will inspire and contribute to better designed systems.

Local examples of good co-regulation

Meanwhile several ERGA members are already exploring initiatives in the domain of co-regulation that will encourage the creation of a level playing field. In Germany 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 consumers and businesses. This example also shows how important it is to consult all stakeholders involved.



In my own country, the Netherlands, programmes that can be seriously harmful to children are under the direct supervision of the Dutch Media Authority (CvdM), whereas potentially harmful media content is subject to a co-regulatory regime. This system is based on a tripartite structure including the Netherlands Institute for the Classification of Audiovisual Media (NICAM), which is the acknowledged classification self-regulatory body. Public service media and private media that intend to broadcast linear audiovisual content are legally obliged to join NICAM. NICAM is responsible for the classification system and provides for a consumer complaints mechanism. The quality of the classification is supervised by the CvdM, avoiding window dressing. Transparency, validity, reliability, consistency and flexibility have proven to be key factors of the success of *Kijkwijzer*. NICAM's power to impose sanctions to its members and the fact that it is under meta-supervision by an independent regulatory authority are also important features of the system which contribute to its effectiveness.

Transparent and future-proof oversight

Consumer and media industry alike will benefit from a more level playing field. 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 that both regulation and its practical application are future-proof and provide optimal clarity and legal certainty. This is beneficial to business models and contributes to environments where technical innovations such as future proof tools for audiences can flourish.

Sharing experiences will contribute to efficiently operating NRAs

By sharing good practices that are objective and effective we can secure audio-visual media policy goals; the diversity of media and the protection of minors against harmful content. It also leads to a more uniform application of the Directive and a reduced need for costly infringement procedures.

At the same time, national regulators retain complete autonomy and control when it comes to enforcing. The new proposed Directive and ERGA's role in it does not change that. National regulators are important in Europe because cultural differences exist between member states. ERGA simply connects national regulators to enable a more effective and efficient implementation of the Directive.

This will contribute to further development of the digital single market but – and I cannot stress this enough – also respect the national specifics and cultural differences. There is no one size fits all solution. So the last thing we would pretend is to become a pan-European regulator.

Independence from governments, media industry and also European Commission

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,. Independence not only from government, the media industry but also from the European Commission.

There is a need for a clear and strong mandate which was laid down in the original legislative proposal. Also for our independence towards the Commission, it is important that Member States ensure that national regulators have adequate financial and human resources to participate in and contribute to ERGA.

Ladies and Gentlemen, I come to a conclusion.

Technology is developing so quickly and the market is changing so rapidly, that we urgently need an up-to-date directive that can guide us in the years to come. At the same time, the needs and interests of stakeholders in the rapidly changing media landscape should be balanced, room should be offered for economic growth and innovation. Safeguards for European values like freedom of speech and democracy should be given. And society should be protected from harmful content and incitement to hatred across linear and non-linear media. It is clear the EP is fully aware of both the urgency and the importance of today's subject. We have great faith in the European Parliament to play its important role, also during its vote next week. Be assured that both ERGA and the NRAs from their respective roles will be there to foster and protect what is so valuable - and vulnerable at the same time - to all of us: independent and diverse audio-visual media as cornerstones under our democracy.
