



# Media regulatory authorities and the challenges of cooperation

**IRIS *Plus***

A joint publication  
of the European Audiovisual Observatory and the EPRA  
published in the IRIS *Plus* Series



**IRIS Plus 2021-2**

**Media regulatory authorities and the challenges of cooperation**

European Audiovisual Observatory, Strasbourg, 2021

ISSN 2079-1062

ISBN 978-92-871-9180-9 (print version)

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**Cover layout** – ALTRAN, France

Please quote this publication as

Cabrera Blázquez F.J., Denis G., Machet E., McNulty B., *Media regulatory authorities and the challenges of cooperation*, IRIS Plus, European Audiovisual Observatory, Strasbourg, December 2021

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# Media regulatory authorities and the challenges of cooperation

Francisco Javier Cabrera Blázquez, Géraldine Denis, Emmanuelle Machet,  
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# Foreword

NRAs are the guardians of freedom of expression and pluralism in broadcast and online media. They perform their duties by interpreting and implementing rules, and balancing interests, as reflected in their regulatory, monitoring, and sanctioning activities. And given their importance, these fundamental roles must be placed in the hands of an institution that bows to no one – neither the government nor private third parties. Only then is it guaranteed that decisions affecting media freedom and pluralism, as the twin pillars of democratic systems based on the rule of law, are made without taking into consideration any spurious interests, and that those affected by such decisions (broadcasters, VOD services, VSPs but also citizens) can trust them.

However, as explained in a recent IRIS Special on the independence of media regulatory authorities in Europe,<sup>1</sup> *de jure* independence does not always coincide with *de facto* independence. Several recent studies have also highlighted instances of public and private interference in the ownership, management or operation of media outlets, as well as a lack of media pluralism safeguards, including online.

As it happens, safeguarding media freedom and pluralism in the Internal Market are precisely the objectives of the upcoming European Freedom Act announced by the European Commission – one initial step being the launch of a wide-ranging public consultation on 22 January 2022, which will be open until 21 March.<sup>2</sup> Worth highlighting in this particular context is that the envisaged instrument aims to address the issue of a reinforced, structured cooperation between media NRAs in the European Union, as one of the remedies for safeguarding media freedom and pluralism.

The hard truth is that media NRAs have faced unprecedented challenges in recent years, notably due to the complexification of the media ecosystem and the changing nature of regulation. Regulators must adapt to numerous technological, market-related, and legislative changes, taking over new tasks and responsibilities, and even develop new approaches to regulation, including self- and co-regulation, so that they remain relevant and effective in an online environment. Given the far-reaching changes in the political climate in Europe, the market power of global players and the increasing lack of citizens' trust, this may not be an easy task everywhere.

All these factors explain why cooperation between media NRAs in Europe – and with other regulators from adjacent sectors – is vital.

Indeed, cooperation between media NRAs has come to play a central role in the implementation of the current audiovisual legal framework at national and transnational level, most notably in the Audiovisual Media Services Directive. In the online sphere, cooperation and coordination will be more important than ever for the sake of coherence

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<sup>1</sup> <https://rm.coe.int/the-independence-of-media-regulatory-authorities-in-europe/168097e504>.

<sup>2</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13206-Safeguarding-media-freedom-in-the-EU-new-rules/public-consultation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13206-Safeguarding-media-freedom-in-the-EU-new-rules/public-consultation_en).

and efficiency; the Digital Services Act will no doubt act as an accelerator. This need for increased coordination is illustrated by the manifold, multilevel fora of cooperation that have emerged over the years in Europe – and continue to emerge

This publication provides a snapshot – in a state of flux – of the various issues at stake in this respect, and is the fruit of intense cooperation between the European Audiovisual Observatory and the European Platform of Regulatory Authorities (EPRA). Several NRA representatives contributed to the drafting, and we would like to thank them all very warmly for having shared their experiences with us. In alphabetical order: Raphaël Honoré (Arcom, France), Georges Jacoby, Carole Kickert and Loredana Rinaldis (ALIA, Luxembourg), Persa Lampropoulou (ESR, Greece), Kateřina Lojíková (RRTV, Czech Republic), Lewis McQuarrie (Ofcom, UK), Deborah Molloy (BAI, Ireland), Rebecca Parman (MPRT, Sweden).

Strasbourg, December 2021

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# 1. Setting the scene

## 1.1. A contrasting picture: The heterogeneity of media NRAs across Europe

This chapter aims to set the scene by highlighting the vast heterogeneity that characterises national regulatory authorities in the field of audiovisual media in Europe (media NRAs).

This brief overview makes no claim to comprehensiveness and is no accurate reflection of the complexity of the topics covered. The following chapters provide more granularity about the underlying legal framework and existing networks.

Media regulatory authorities regularly feature in the publications of the European Audiovisual Observatory. Most recently, IRIS Special 2019-1 provided insight and several case studies on the independence of media regulatory authorities in Europe.<sup>3</sup> Other publications by the European Audiovisual Observatory have also documented the evolution of media supervision further to the changing media landscape.<sup>4</sup> In 2006, an IRIS Special<sup>5</sup> devoted a specific chapter to the “Co-ordination and Co-operation between Regulatory Authorities in the Field of Broadcasting”. Fast forward 15 years, and a whole publication is now mostly dedicated to this topic. This clearly reflects the central role that cooperation between media NRAs has come to play in the implementation of the current audiovisual legal framework at national and transnational level, most notably in the Audiovisual Media Services Directive (AVMS Directive).<sup>6</sup> In more general terms, the need for reinforced cooperation and coordination between media NRAs, and between various authorities from adjacent regulatory sectors, stems from the growing complexity of the media ecosystem and the gradual extension of regulation to the online sphere with

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<sup>3</sup> Cappello M. (ed.), “The independence of media regulatory authorities in Europe”, IRIS Special, European Audiovisual Observatory, Strasbourg, 2019,

<https://rm.coe.int/the-independence-of-media-regulatory-authorities-in-europe/168097e504>.

<sup>4</sup> See notably: “IRIS Plus 2001-4: Media supervision on the threshold of the 21st century - structure and powers of regulatory authorities in the era of convergence”, <https://rm.coe.int/1680783377>.

<sup>5</sup> Nikoltchev S., (ed.), “IRIS Special: Audiovisual Media Services without Frontiers - Implementing the Rules”, European Audiovisual Observatory, Strasbourg, 2006,

<https://rm.coe.int/iris-spe-2006-2-en-optim-pdf/16807834a1>.

<sup>6</sup> Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>.



emerging legal frameworks covering online platforms and dealing with online harms. As a result of the – still ongoing – implementation of the AVMS Directive, the range of duties of most media regulatory authorities in the EU will expand to designing co-regulatory regimes in which the media NRAs assess the appropriateness of measures taken by video-sharing platforms. The draft Digital Services Act (DSA) is also likely to extend the competences of media NRAs, both at national and European level, by granting them a role to play in the enforcement of duty of care and transparency obligations applicable to content platforms such as social networks. At the national level, several countries, such as the UK<sup>7</sup> and Ireland,<sup>8</sup> are introducing ambitious legal reforms to tackle harmful content online and envisage granting new responsibilities to media NRAs to protect children and vulnerable people when they are online.

## 1.2. Diversity in terms of structure and resources

The independent media regulatory authority is a success story and gradually became the default model to regulate audiovisual media in Europe. Appearing in the 1980s along with the decline of public service monopolies, the model spread rapidly across Europe, the latest media NRAs being established in Luxembourg and Spain in 2013. Media regulatory authorities are a product of their national audiovisual landscapes, shaped by different legal traditions and history, and are thus very diverse. Several comparative studies, including the above-mentioned IRIS Special 2019-1, have already pointed out the diversity in their formal structure, competences, and powers, and also how differently they operate in practice.

Indeed, great diversity can be observed as regards the structure of media NRAs. As an example, in federal countries such as Germany or Belgium, broadcasting is in the remit of federal states, thus creating a plurality of regional regulatory bodies.

More generally, the resources of media regulatory authorities in terms of staffing and budget, as well as funding sources, also vary greatly across Europe. As shown in the tables below, the majority of media NRAs in Europe are small to middle-sized organisations, predominantly funded by state budget.

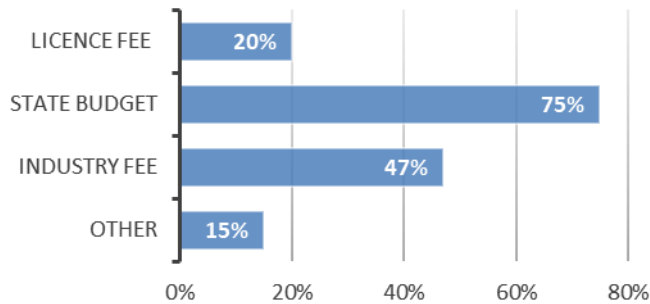
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<sup>7</sup> Draft Online Safety Bill, Department for Digital, Culture, Media & Sport, <https://www.gov.uk/government/publications/draft-online-safety-bill>;

<sup>8</sup> Online Safety and Media Regulation Bill, <https://www.gov.ie/en/publication/d8e4c-online-safety-and-media-regulation-bill/>

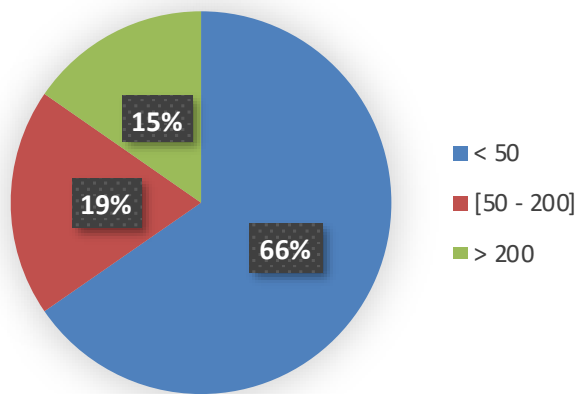


**Figure 1. Typology of funding mechanisms<sup>9</sup>**



Source: EPRA research (53 EPRA members)

**Figure 2. Number of staff of media NRAs<sup>10</sup>**



Source: EPRA research (53 EPRA members)

### 1.3. Diversity in terms of powers and competences

Looking at the traditional typology of powers (the administration of the media sector, including the awarding of licences/notifications or the imposition of sanctions, and the supervisory and rule-making functions), the heterogeneity of the powers of the media NRAs can be remarked upon. Most media regulatory authorities are entitled to award licences while some may only make recommendations addressed to the relevant ministry. Some media NRAs are rather complaint-driven while others rely heavily on monitoring. The power of drawing up binding rules and codes of practice is not shared by all media regulatory authorities in Europe.

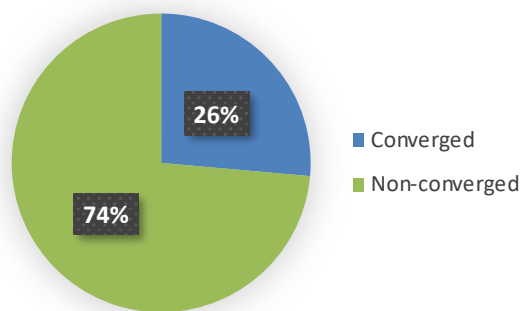
<sup>9</sup> 38% NRAs have mixed funding.

<sup>10</sup> >200: mostly converged NRAs.



With regards to competence, and despite regularly occurring heated national debates on the pros and cons of establishing a converged, single structure to regulate the entire communications sector, the great majority of media regulatory authorities in Europe remain mainly in charge of regulating broadcast media including on-demand services, while a separate independent body is tasked with the regulation of telecommunications and often the postal sector. The existence of a single regulatory structure does not however necessarily imply a joint regulatory approach, especially in the absence of common regulatory frameworks. Recently, the debate appears to have shifted from a dogmatic viewpoint focused on structure to a pragmatic approach favouring constructive dialogue and cooperation between the various sectoral authorities (or departments) to ensure compliance with regulatory goals independently of the type of chosen structure.<sup>11</sup>

**Figure 3. Non-converged / Converged NRAs**



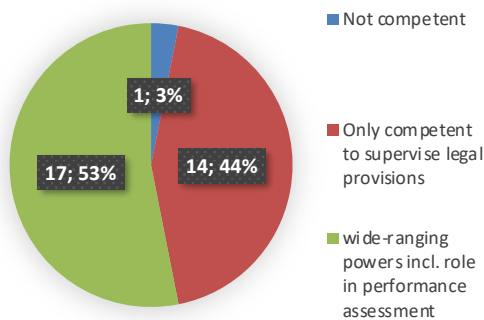
Source: EPRA research 2020 (53 EPRA members)

The regulation of public service media (PSM) is another interesting case study. As a rule, media NRAs supervise the implementation of the general legal provisions stemming from the AVMS Directive by public media players. They do not have competence to set the amount of the PSM's budget, nor can they take measures in terms of strategic direction, editorial decision-making or audience reach. As such, media NRAs have only limited possibilities to directly influence developments in these key challenges for PSM.<sup>12</sup> However, over recent years, there has been a clear trend towards reinforcement of the powers of media regulatory authorities with regard to the assessment of PSM performance.

<sup>11</sup> See Chapter 5 for more information on horizontal, cross-sectoral regulatory cooperation.

<sup>12</sup> Studer S., "Public service and public interest content in the digital age: the role of regulators", Comparative Background document, Final public version of 29 March 2019, <https://www.epra.org/attachments/comparative-paper-public-service-and-public-interest-content-in-the-digital-age-the-role-of-regulators>

Figure 4. PSM supervision: Competence of NRAs



Source: EPRA research 2019 (32 EPRA members)

## 1.4. Diversity in terms of functioning aspects: Independence and accountability

IRIS *Special* 2019-1 documented the great heterogeneity of media NRAs in view of functioning aspects based on a selection of nine European countries. This notably covered issues of independence and accountability as well as enforcement and compliance strategies. The independence of media NRAs is particularly important “because it contributes to the broader objective of media independence, which is in itself an essential component of democracy”.<sup>13</sup> There is a clear causal interplay between independence, transparency, accountability, and efficiency of media regulatory authorities. As noted earlier, media NRAs are formally established as independent national authorities. In addition, Article 30 of the revised AVMS Directive introduced a detailed provision not only requiring member states to designate one or more independent regulatory authorities, but also specifying some of the requirements and substantive safeguards to guarantee their independence – also including “adequate financial and human resources and enforcement powers”. However, the INDIREG<sup>14</sup> and RADAR<sup>15</sup> studies on the independence of media NRAs, along with further academic research,<sup>16</sup> have made clear that *de jure* independence does not always coincide with factual, *de facto* independence. *De facto* independence is shaped by a complex chain of aspects, from statutory provisions granting independence to behavioural patterns demonstrating independence and policy decisions. It is an acquired property, the building of which requires time and effort, and an enabling overall context.

<sup>13</sup> Cappello M. (ed.), “The independence of media regulatory authorities in Europe”, IRIS *Special*, European Audiovisual Observatory, Strasbourg, 2019, <https://rm.coe.int/the-independence-of-media-regulatory-authorities-in-europe/168097e504>.

<sup>14</sup> INDIREG study, 2011, <https://www.indireg.eu/>

<sup>15</sup> AVMS-RADAR study, 2015), <https://op.europa.eu/en/publication-detail/-/publication/b6e4a837-8775-11e5-b8b7-01aa75ed71a1>

<sup>16</sup> “The regulatory independence of audiovisual media regulators: A cross-national comparative analysis”, *European Journal of Communication*, pp. 1-20, 2018).



Building on the introduction of mandatory provisions in the AVMS Directive on the independence of media NRAs, regulators will have to foster a real culture of independence – at arm’s length from both political and market forces – to support the independence of media players under their jurisdiction. Given the far-reaching changes in the political climate in Europe and the market power of global players, this may not be an easy task everywhere. The European Media Freedom Act announced for 2022 is likely to give fresh prominence to debates around the independence of regulators and the subjects of their regulation.<sup>17</sup> Yet, for all their differences, media regulatory authorities in Europe do share common values and key regulatory objectives, such as fostering pluralism and media freedom.

Media regulators also all face critical challenges and dilemmas in relation to the rapidly changing media ecosystem, and the necessary process of rethinking media regulation so that it remains relevant and effective in an online environment.<sup>18</sup>

Combined, these two factors explain why cooperation between media NRAs – and with other regulators from adjacent sectors – is nothing less than vital and has been blooming. This is apparent in the manifold, multilevel fora of cooperation that have emerged over the years and are described in the following chapters.

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<sup>17</sup> See Chapter 2 of this publication.

<sup>18</sup> The challenges that regulators face are described in Chapter 5.





## 2. International legal framework

### 2.1. Council of Europe

The Council of Europe has a longstanding tradition of recognising the importance of independent media regulatory authorities. Probably its most prominent effort on this issue is the Committee of Ministers' Recommendation on the independence and functions of regulatory authorities for the broadcasting sector.<sup>19</sup> According to this legal instrument, member states should establish independent regulatory authorities for the broadcasting sector and include provisions in their legislation and measures in their policies entrusting regulatory authorities for the broadcasting sector with powers that enable them to fulfil their missions in an effective, independent, and transparent manner. These regulatory authorities should be protected against any interference, in particular by political forces or economic interests. In this regard, the procedure for appointing the members of these organisations should be transparent. The Recommendation also requests that specific rules be defined with regard to the following points:

- incompatibility, in order to avoid that regulatory authorities are under the influence of political powers, or that the members of regulatory authorities exercise functions or hold interests in enterprises or other organisations in the media or related sectors;
- the power to dismiss members of regulatory authorities so as to avoid that dismissal be used as a means of political pressure;
- financing, to allow regulatory authorities to carry out their functions fully and independently, and to avoid that the public authorities use their financial decision-making power to interfere with the independence of regulatory authorities.

Furthermore, the Recommendation lays down a number of principles concerning the powers and areas of responsibility of the regulatory authorities, such as powers regarding regulation, granting licences, and monitoring adherence to commitments and obligations on the part of broadcasters. The Recommendation also lists a number of principles concerning the responsibility of the regulatory authorities to the public.

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<sup>19</sup> Recommendation Rec (2000) 23 of the Committee of Ministers to Member States on the independence and functions of regulatory authorities for the broadcasting sector (adopted by the Committee of Ministers on 20 December 2000 at the 735 meeting of the Ministers' Deputies), <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804e0322&format=native>.



Eight years later, the Committee of Ministers adopted a Declaration on the independence and functions of regulatory authorities for the broadcasting sector.<sup>20</sup> Its Preamble notes that the guidelines of Rec(2000)23 and its underlying principles were not “fully respected in law and/or in practice” in all member states of the Council of Europe. A ‘culture of independence’, where members of regulatory authorities in the broadcasting sector affirm and exercise their independence and all members of society, public authorities and other relevant players including the media, respect the independence of the regulatory authorities, is essential to independent broadcasting regulation. The Declaration highlights new challenges to the regulation of the broadcasting landscape resulting from concentration in the broadcasting sector and technological developments in broadcasting, in particular digital broadcasting. It calls on member states to:

- implement Recommendation Rec(2000)23, with particular reference to the guidelines appended thereto, and having regard to the opportunities and challenges brought about by political, economic, and technological changes in Europe;
- provide the legal, political, financial, technical, and other means necessary to ensure the independent functioning of broadcasting regulatory authorities, so as to remove risks of political or economic interference;
- disseminate widely the declaration and bring it to the attention of the relevant authorities, the media and of broadcasting regulatory authorities in particular, as well as to that of other interested professional and business players;

It also invites broadcasting regulatory authorities to:

- be conscious of their particular role in a democratic society and their importance in creating a diverse and pluralist broadcasting landscape;
- ensure the independent and transparent allocation of broadcasting licences and monitoring of broadcasters in the public interest;
- contribute to the entrenchment of a ‘culture of independence’ and, in this context, develop and respect guidelines that guarantee their own independence and that of their members;
- make a commitment to transparency, effectiveness, and accountability;

Finally, it invites civil society and the media to contribute actively to the ‘culture of independence’ by monitoring closely the independence of these authorities, bringing to the attention of the public good examples of independent broadcasting regulation as well as infringements on regulators’ independence.

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<sup>20</sup> Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector (Adopted by the Committee of Ministers on 26 March 2008 at the 1022nd meeting of the Ministers’ Deputies), [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016805d3c1e](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d3c1e).



Other legal instruments adopted by the Committee of Ministers and the Parliamentary Assembly deal with particular aspects of their remit.<sup>21</sup>

The Council of Europe promotes standards through numerous cooperation activities in member states and partner countries with a focus on strengthening media freedom and supporting the independence and efficient functioning of NRAs.<sup>22</sup> It also regularly participates in the meetings of regional platforms and networks of cooperation between regulatory authorities such as the European Platform of Regulatory Authorities (EPRA), the Mediterranean Network of Regulatory Authorities (MNRA), and the Network of French-speaking media regulatory authorities (REFRAM).<sup>23</sup>

## 2.2. European Union

### 2.2.1. Audiovisual Media Services Directive<sup>24</sup>

#### 2.2.1.1. The regulation of audiovisual media services

The Audiovisual Media Services Directive (AVMSD)<sup>25</sup> governs EU-wide coordination of national legislation on all audiovisual media, from TV broadcasts to on-demand services and, since its revision in 2018, video-sharing platforms.

The AVMSD governs EU-wide coordination of national legislation in the following areas:

- general principles;
- incitement to hatred;
- accessibility for people with disabilities;
- principles of jurisdiction;
- major events;

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<sup>21</sup> See in particular the Recommendation CM/Rec(2018)1 of the Committee of Ministers to Member States on media pluralism and transparency of media ownership (Adopted by the Committee of Ministers on 7 March 2018 at the 1309th meeting of the Ministers' Deputies),

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680790e13](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680790e13).

<sup>22</sup> See Council of Europe, "Media Regulatory Authorities", <https://rm.coe.int/leaflet-regulatory-authorities-en/168079cede>.

<sup>23</sup> See Chapter 4 of this publication.

<sup>24</sup> For more in-depth information on the development of EU legislation concerning NRAs see Cappello M. (ed.), *The independence of media regulatory authorities in Europe*, IRIS Special, European Audiovisual Observatory, Strasbourg, 2019,

<https://rm.coe.int/the-independence-of-media-regulatory-authorities-in-europe/168097e504>.

<sup>25</sup> Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive; codified version; (text with EEA relevance), <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32010L0013>.



- promotion and distribution of European Works;
- commercial communications;
- protection of minors.

### 2.2.1.2. Independence of NRAs

In its original (codified) version of 2010, the AVMSD provides in its Article 30 that member states must take “appropriate measures to provide each other and the Commission with the information necessary for the application of this Directive, in particular Articles 2, 3 and 4, in particular through their competent independent regulatory bodies”. Recital 94 AVMSD adds that member states “are free to choose the appropriate instruments according to their legal traditions and established structures, and, in particular, the form of their competent independent regulatory bodies, in order to be able to carry out their work in implementing this Directive impartially and transparently”. Close cooperation between NRAs and the Commission is deemed necessary to ensure the correct application of this Directive. Furthermore, close cooperation between member states and between their NRAs is necessary with regard to the impact which broadcasters established in one member state might have on another member state. In the case of licensing procedures where more than one member state is concerned, it is considered desirable that contacts between the respective bodies take place before such licences are granted (Recital 95 AVMSD).

On 14 November 2018, a revised version of the AVMSD was adopted.<sup>26</sup> A new Article 30 introduced a detailed obligation for member states to “designate one or more national regulatory authorities, bodies, or both” that “are legally distinct from the government and functionally independent of their respective governments and of any other public or private body” [...] “without prejudice to the possibility for Member States to set up regulators having oversight over different sectors”. Such NRAs must “exercise their powers impartially and transparently and in accordance with the objectives of this Directive”, they must not “seek or take instructions from any other body in relation to the exercise of the tasks”, but this must not “prevent supervision in accordance with national constitutional law”. Furthermore, their competences and powers, as well as the ways of making them accountable must be clearly defined in law, and they must have adequate financial and human resources and enforcement powers to carry out their functions effectively and to contribute to the work of ERGA (see *infra*). Member states must ensure that national regulatory authorities or bodies are provided with their own annual budgets, which must be made public.

Paragraph 5 of Article 30 AVMSD obliges member states to lay down the conditions and the procedures for the appointment and dismissal of the heads of NRAs or the members of the collegiate body fulfilling that function, including the duration of the

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<sup>26</sup> Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32018L1808>.



mandate. Such procedures must be transparent, non-discriminatory and guarantee the requisite degree of independence. The head of an NRA or the members of the collegiate body fulfilling that function within an NRA may be dismissed if they no longer fulfil the conditions required for the performance of their duties. A dismissal decision must be duly justified, subject to prior notification, and made available to the public.

According to paragraph 6 of Article 30 AVMSD, appeal mechanisms against NRA decisions must be effective, and the appeal body must be independent of the parties involved in the appeal. Pending the outcome of the appeal, NRA decisions stand, unless interim measures are granted in accordance with national law.

### 2.2.1.3. Cooperation between NRAs

Cooperation between regulatory bodies is crucial in the convergent environment.<sup>27</sup> This conviction is reflected in Article 30a of the revised AVMSD, which regulates in more detail the obligation for member states or NRAs to take appropriate measures to provide each other and the Commission with the information necessary for the application of the AVMSD. In the case of an NRA receiving information from a media service provider under their jurisdiction that it will provide a service wholly or mostly directed at the audience of another member state, the NRA in the member state having jurisdiction must inform the NRA of the targeted member state. Also, if the NRA of a member state whose territory is targeted by a media service provider under the jurisdiction of another member state sends a request concerning the activities of that provider to the NRA of the member state having jurisdiction over it, the latter NRA must do its utmost to address the request within two months, without prejudice to stricter time limits applicable pursuant to the Directive. When requested, the regulatory authority or body of the targeted member state must provide any information to the regulatory authority or body of the member state having jurisdiction that may assist it in addressing the request.

### 2.2.1.4. European Regulators Group for Audiovisual Media Services

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 media services, to advise the European Commission on the implementation of the AVMSD.<sup>28</sup>

Art. 30 of the 2010 version of the AVMSD only required the cooperation of the “competent independent regulatory bodies”.<sup>29</sup> However, the independent High-Level

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<sup>27</sup> See press release of the European Commission, “Commission establishes a European Regulators Group for Audiovisual Media Services”, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_14\\_101](https://ec.europa.eu/commission/presscorner/detail/en/IP_14_101).

<sup>28</sup> [https://erga-online.eu/?page\\_id=7](https://erga-online.eu/?page_id=7).

<sup>29</sup> A High-Level Group of Regulatory Authorities has been meeting informally on an annual basis at the invitation of the European Commission since 2003, see [https://www.epra.org/news\\_items/new-eu-group-of-regulators-of-audiovisual-media-services-established](https://www.epra.org/news_items/new-eu-group-of-regulators-of-audiovisual-media-services-established).



Group (HLG) on Media Freedom and Pluralism noted in its 2013 report<sup>30</sup> that there was a need for some degree of harmonisation in defining the composition and role of regulators, and recommended that a network of national audiovisual regulatory authorities be created, on the model of the one created by the electronic communication framework. According to the HLG, this would help in sharing common good practices and set quality standards. All regulators must be independent, with appointments made in a transparent manner, with all appropriate checks and balances.

On 3 February 2014, the European Commission adopted a Decision on establishing the ERGA.<sup>31</sup> In this Decision, the Commission considered that a coherent application of Directive 2010/13/EU in all member states was essential to achieve the successful development of an internal market for audiovisual media services notably in view of increased cross-border distribution and the regulatory challenges linked to on-demand services. In this regard, it was crucial to facilitate a closer and more regular cooperation between the competent independent regulatory bodies of the member states and the Commission.

The Commission's Decision set the objectives for the Group as follows:

- to advise and assist the Commission, in its work to ensure a consistent implementation in all member states of the regulatory framework for audiovisual media services;
- to assist and advise the Commission, as to any matter related to audiovisual media services within the Commission's competence. If justified in order to advise the Commission on certain issues, the Group may consult market participants, consumers and end-users in order to collect the necessary information;
- to provide for an exchange of experience and good practice as to the application of a regulatory framework for audiovisual media services;
- to cooperate and provide its members with the information necessary for the application of the Directive 2010/13/EU, as provided for in its Article 30, in particular as regards Articles 2, 3 and 4 thereof.

The role of ERGA was enhanced by the revised AVMSD. According to its Article 30b, ERGA “shall be composed of representatives of national regulatory authorities or bodies in the field of audiovisual media services with primary responsibility for overseeing audiovisual media services, or where there is no national regulatory authority or body, by other representatives as chosen through their procedures”. It also indicated that a European Commission representative must participate in ERGA meetings.

Article 30b(3) lists ERGA's tasks:

- to provide technical expertise to the Commission:

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<sup>30</sup> High-Level Group on Media Freedom and Pluralism, Report, “A free and pluralistic media to sustain European democracy”, 2013, [https://ec.europa.eu/information\\_society/media\\_taskforce/doc/pluralism/hlg/hlg\\_final\\_report.pdf](https://ec.europa.eu/information_society/media_taskforce/doc/pluralism/hlg/hlg_final_report.pdf).

<sup>31</sup> Commission Decision of 3 February 2014 on establishing the European Regulators Group for Audiovisual Media Services, C(2014) 462 final, [http://erga-online.eu/wp-content/uploads/2016/10/Decision\\_2014\\_en.pdf](http://erga-online.eu/wp-content/uploads/2016/10/Decision_2014_en.pdf).



- in its task to ensure a consistent implementation of this Directive in all member states;
- on matters related to audiovisual media services within its competence;
- to exchange experience and best practices on the application of the regulatory framework for audiovisual media services, including on accessibility and media literacy;
- to cooperate and provide its members with the information necessary for the application of this Directive, in particular as regards Articles 3, 4 and 7;
- to give opinions, when requested by the Commission, on the technical and factual aspects of the issues pursuant to Article 2(5c), Article 3(2) and (3), point (c) of Article 4(4) and Article 28a(7).

To fulfil these tasks, ERGA issues documents such as opinions, reports, statements, and recommendations. Such documents represent ERGA's independent opinion and are made publicly available once adopted.

A new Article 33 provides for the Commission's monitoring of member states' application of the AVMSD. The Commission must keep the Contact Committee and ERGA duly informed of the others' work and activities. Furthermore, the Commission must ensure that information received from member states on any measure that they have taken in the fields coordinated by the AVMSD is communicated to the Contact Committee and ERGA.<sup>32</sup>

## 2.2.2. The Digital Services Act package

### 2.2.2.1. The regulation of online services

The liability of online services is regulated at European level by quite an old legal instrument: Directive 2000/31/EC of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (the e-commerce Directive).<sup>33</sup> Given the venerable age of the e-commerce Directive, the European Union has introduced exceptions to the regulatory framework of online services with a.o. two legal instruments, which deal with specific aspects of the issue:

- The revision of the AVMSD extended the directive's scope to cover video-sharing platforms (VSPs);

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<sup>32</sup> For the work of ERGA promoting cooperation between NRAs see Chapter 4 of this publication.

<sup>33</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce), <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32000L0031>.



- Article 17 of the Directive on Copyright in the Single Market<sup>34</sup> (DSM) introduced new obligations for online content sharing platforms (OCSPs).

In 2019, the European Commission launched the process for the adoption of a more comprehensive regulatory package, the so-called Digital Services Act package (DSA). Following a public consultation,<sup>35</sup> which ran from 2 June to 8 September 2020 and aimed at informing the Commission's proposals for a Digital Services Act and a Digital Markets Act, two new Regulation proposals,<sup>36</sup> the Digital Services Act<sup>37</sup> and the Digital Market Act,<sup>38</sup> were published on 15 December 2020. These proposals aim at modernising the current legal framework for digital services including social media, online marketplaces, and other online platforms that operate in the European Union. In particular, the Digital Services Act (DSA) provides rules framing the responsibilities of digital services to address the risks faced by their users and to protect their rights. The legal obligations aim also at ensuring a modern system of cooperation for the supervision of platforms and guaranteeing effective enforcement.<sup>39</sup>

The DSA sets horizontal rules covering all services and all types of illegal content, including goods or services, and therefore complements sector-specific legislation, such as the AVMSD. This implies that media regulators will be involved in the cooperation mechanisms that will be set up for the aspects falling under their remit, even if it is still unclear how this will look in practice.

Chapter IV of the DSA deals with the implementation and enforcement of this Regulation. It lays down provisions concerning national competent authorities, and introduces the role of Digital Services Coordinators, which are the primary national authorities designated by the member states for the consistent application of this Regulation. It also creates the European Board for Digital Services (the "Board"), an independent advisory group of Digital Services Coordinators. The DSA also provides for the establishment by the Commission of a reliable and secure information-sharing system supporting communications between DSCs, the Board and the Commission.

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<sup>34</sup> Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (Text with EEA relevance.), <https://eur-lex.europa.eu/eli/dir/2019/790/oj>.

<sup>35</sup> For more information see "Summary Report on the open public consultation on the Digital Services Act Package", <https://digital-strategy.ec.europa.eu/en/summary-report-open-public-consultation-digital-services-act-package>.

<sup>36</sup> <https://ec.europa.eu/digital-single-market/en/digital-services-act-package>.

<sup>37</sup> Proposal for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC, COM/2020/825 final, <https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1608117147218&uri=COM%3A2020%3A825%3AFIN>.

<sup>38</sup> Proposal for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act), COM/2020/842 final, <https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1608116887159&uri=COM%3A2020%3A842%3AFIN>.

<sup>39</sup> For more information on the Digital Services Act package see Cappello M. (ed.), *Unravelling the Digital Services Act package*, IRIS Special, European Audiovisual Observatory, Strasbourg, 2021, <https://rm.coe.int/iris-special-2021-01en-dsa-package/1680a43e45>.





### 2.2.2.2. Digital Services Coordinators

Article 38 DSA requires member states to designate one or more competent authorities as responsible for the application and enforcement of the DSA. One of these competent authorities will have to be designated as their Digital Services Coordinator (DSC), which shall be responsible for all matters relating to application and enforcement of the DSA in that member state, unless the member state concerned has assigned certain specific tasks or sectors to other competent authorities. The DSC shall in any event be responsible for ensuring coordination at national level in respect of those matters and for contributing to the effective and consistent application and enforcement of the DSA throughout the Union.

At EU level, DSCs shall cooperate with each other, other national competent authorities, the Board and the Commission, without prejudice to the possibility for member states to provide for regular exchanges of views with other authorities where relevant for the performance of the tasks of those other authorities and of the DSC. Their role will be notably relevant in the handling of cross-sectoral and cross-border issues for administrative and coordination purposes.

The DSA does not mention which sectoral authorities will be involved, which means that at national level, the key aspect will be the competence and expertise of the authorities involved, among them media NRAs. ERGA has expressed a certain scepticism with regard to this kind of governance, pointing to the need to provide more clarity as to the division of competences among potentially involved authorities.<sup>40</sup> DSCs must perform their tasks under the DSA in an impartial, transparent and timely manner and must have adequate technical, financial, and human resources to carry out their tasks. They must act with complete independence, free from any external influence, whether direct or indirect, and must neither seek nor take instructions from any other public authority or any private party (Article 39 DSA).

According to Article 41 DSA, DSCs shall have a set of investigation<sup>41</sup> and enforcement powers.<sup>42</sup> DSCs shall also have, in respect of providers of intermediary

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<sup>40</sup> ERGA statement of 29 March 2021 on the European Commission's proposals for a Digital Services Act (DSA) and a Digital Markets Act (DMA), [https://erga-online.eu/wp-content/uploads/2021/03/ERGA-DSA-DMA-Statement\\_29032021.pdf](https://erga-online.eu/wp-content/uploads/2021/03/ERGA-DSA-DMA-Statement_29032021.pdf).

<sup>41</sup> According to Article 41(1) DSA, DSCs shall have at least the following investigation powers:

- the power to require those providers, as well as any other persons acting for purposes related to their trade, business, craft or profession that may reasonably be aware of information relating to a suspected infringement of the DSA, including, organisations performing the audits referred to in Articles 28 and 50(3), to provide such information within a reasonable time period;
- the power to carry out on-site inspections of any premises that those providers or those persons use for purposes related to their trade, business, craft or profession, or to request other public authorities to do so, in order to examine, seize, take or obtain copies of information relating to a suspected infringement in any form, irrespective of the storage medium;
- the power to ask any member of staff or representative of those providers or those persons to give explanations in respect of any information relating to a suspected infringement and to record the answers.

<sup>42</sup> According to Article 41 (2) DSA, DSCs shall have at least the following enforcement powers:



services under the jurisdiction of their member state, where all other powers pursuant to this Article to bring about the cessation of an infringement have been exhausted, the infringement persists and causes serious harm which cannot be avoided through the exercise of other powers available under Union or national law, the power to require intermediaries to adopt an action plan with the necessary measures for the termination of the infringements and, ultimately, to request the intervention of judicial authorities.<sup>43</sup>

Any measure ordered must be proportionate to the nature, gravity, recurrence and duration of the infringement, without unduly restricting access to lawful information by recipients of the service concerned. The restriction shall be for a period of four weeks, subject to the possibility for the competent judicial authority, in its order, to allow the DSC to extend that period for further periods of the same lengths, subject to a maximum number of extensions set by that judicial authority.

Measures taken by the DSCs in the exercise of their powers must be effective, dissuasive and proportionate, having regard, in particular, to the nature, gravity, recurrence and duration of the infringement or suspected infringement to which those measures relate, as well as the economic, technical and operational capacity of the provider of the intermediary services concerned where relevant. Member states must ensure that any exercise of their powers is subject to adequate safeguards laid down in the applicable national law in conformity with the Charter of Fundamental Rights of the European Union<sup>44</sup> and with the general principles of Union law. In particular, those measures shall only be taken in accordance with the right to respect for private life and the rights of defence, including the rights to be heard and of access to the file, and subject to the right to an effective judicial remedy of all affected parties.

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- the power to accept the commitments offered by those providers in relation to their compliance with the DSA and to make those commitments binding;
  - the power to order the cessation of infringements and, where appropriate, to impose remedies proportionate to the infringement and necessary to bring the infringement effectively to an end;
  - the power to impose fines in accordance with Article 42 for failure to comply with the DSA, including with any of the orders issued pursuant to paragraph 1;
  - the power to impose a periodic penalty payment in accordance with Article 42 to ensure that an infringement is terminated in compliance with an order issued pursuant to point (b) of this paragraph or for failure to comply with any of the orders issued pursuant to paragraph 1;
  - the power to adopt interim measures to avoid the risk of serious harm.

<sup>43</sup> According to Article 41(3) DSA, DSCs shall also have the power to take the following measures:

- require the management body of the providers, within a reasonable time period, to examine the situation, adopt and submit an action plan setting out the necessary measures to terminate the infringement, ensure that the provider takes those measures, and report on the measures taken;
- where the DSC considers that the provider has not sufficiently complied with the requirements of the first indent, that the infringement persists and causes serious harm, and that the infringement entails a serious criminal offence involving a threat to the life or safety of persons, request the competent judicial authority of that member state to order the temporary restriction of access of recipients of the service concerned by the infringement or, only where that is not technically feasible, to the online interface of the provider of intermediary services on which the infringement takes place.

<sup>44</sup> Charter of Fundamental Rights of the European Union,  
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>.



DSCs must draw up an annual report on their activities under the DSA. They must make the annual reports available to the public, and must communicate them to the Commission and to the Board (Article 44 DSA).

### 2.2.2.3. European Board for Digital Services

The DSA will establish the European Board for Digital Services (the “Board”), an independent advisory group of DSCs on the supervision of providers of intermediary services. While cooperation mechanisms already exist in the media field and are handled within sector-specific networks such as EPRA and ERGA, the Board envisaged by the DSA appears to have as main scope of intervention more strategic and cross-cutting issues. According to Article 47 DSA, the Board shall advise the DSCs and the European Commission to achieve the following objectives:

- contributing to the consistent application of the DSA and effective cooperation of the DSCs and the Commission with regard to matters covered by the DSA;
- coordinating and contributing to guidance and analysis of the Commission and DSCs and other competent authorities on emerging issues across the internal market with regard to matters covered by the DSA;
- assisting the DSCs and the Commission in the supervision of very large online platforms.

The Board shall be chaired by the Commission and composed of the DSCs represented by high-level officials. Where provided for by national law, other competent authorities entrusted with specific operational responsibilities for the application and enforcement of the DSA alongside the Digital Services Coordinator may participate in the Board. Further national authorities may be invited to the meetings, where the issues discussed are of relevance for them (Article 48 DSA).

According to Article 49 DSA, the tasks of the Board will be the following:

- support the coordination of joint investigations;
- support the competent authorities in the analysis of reports and results of audits of very large online platforms to be transmitted pursuant to the DSA;
- issue opinions, recommendations or advice to DSCs in accordance with the DSA;
- advise the Commission to take the measures referred to in Article 51 DSA and, where requested by the Commission, adopt opinions on draft Commission measures concerning very large online platforms in accordance with the DSA;
- support and promote the development and implementation of European standards, guidelines, reports, templates and codes of conduct as provided for in the DSA, as well as the identification of emerging issues, with regard to matters covered by the DSA.



#### 2.2.2.4. Cooperation between regulators

A complex horizontal and pyramidal framework like the DSA will require robust cross-border and cross-sectoral coordination schemes, implying substantial structural collaboration between media regulators and authorities from adjacent regulatory sectors.

##### 2.2.2.4.1. Cross-border cooperation

The DSA puts special emphasis on cross-border cooperation between DSCs. According to Article 43 DSA, complaints lodged by users with the DSC of the member state where the recipient resides or is established shall be assessed by the DSC of the recipient and, where appropriate, transmitted to the DSC of establishment. Where the complaint falls under the responsibility of another competent authority in its member state, the Digital Service Coordinator receiving the complaint shall transmit it to that authority. Moreover, in the case of a DSC having reasons to suspect that a service provider not under its jurisdiction infringed the DSA, it shall request the DSC of establishment to assess the matter and take the necessary investigatory and enforcement measures to ensure compliance with the DSA (Article 45 DSA). In infringing cases involving at least three member states, the Board may recommend the DSC of establishment to assess the matter and take the necessary investigatory and enforcement measures to ensure compliance with the DSA.

The DSC of establishment must take into utmost account the request or recommendation and may request additional information when necessary. It will then have to provide an assessment of the infringement without undue delay and in any event not later than two months following receipt of the request or recommendation, and an explanation of any investigatory or enforcement measures taken or envisaged. In case of delay or of disagreement with the assessment, the DSC that sent the request or the Board may refer the matter to the Commission, which will assess the matter within three months following referral having consulted the DSC of establishment and, unless it referred the matter itself, the Board. If the Commission concludes that the assessment or the investigatory or enforcement measures taken or envisaged are incompatible with the DSA, it shall request the DSC of establishment to further assess the matter and take the necessary investigatory or enforcement measures to ensure compliance with the DSA, and to inform it about those measures taken within two months from that request.

According to Article 46 DSA, DSCs may participate in joint investigations concerning providers of intermediary services operating in several member states with regard to matters covered by the DSA. These joint investigations may be coordinated with the support of the Board. The participating DSCs must make the results of the joint investigations available to other DSCs, the Commission and the Board through the system provided for in Article 67 DSA.

Where a DSC of establishment has reasons to suspect that a very large online platform infringed the DSA, it may request the Commission to take the necessary investigatory and enforcement measures to ensure compliance with the DSA (Article 47 DSA, see below).



#### 2.2.2.4.2. The need for substantial cooperation

The proposed regulation stresses the need to take into account all the potential negative impacts of the dissemination of illegal content and the online business industry on fundamental rights. The DSA acknowledges, for instance, the large range of systemic risks generated by online advertising (Recital 52) or by very large platforms' activities with regard to private life, freedom of expression and information, the rights of the child, the protection of public health, civic discourse, or also electoral processes and public security.<sup>45</sup> More generally, competent authorities, when enforcing DSA rules – in order to act against illegal content, appoint trusted flaggers, analyse platform reports or assess the mitigation measures or action plan proposed to tackle those risks – would be required to achieve a fair balance between the rights and interests involved, including freedom of expression and information, and freedom or pluralism of the media, as underlined in Recital 105 of the proposal.

Such a broad scope of rights and interests at stake will inevitably require gathering a broad range of expertise, traditionally residing in distinct regulatory actors.

#### 2.2.2.4.3. The need for structural cooperation

The Commission, underlining the horizontal range of obligations of the DSA, emphasises the need for the DSC to coordinate and cooperate with all (other) competent national authorities.<sup>46</sup> To apply and enforce the proposed rules, each member state would have the discretion to appoint one or several competent authorities with specific supervisory or enforcement tasks (such as, for instance, the electronic communications regulators, the media regulator or the consumer protection authority).<sup>47</sup> The role of the DSC (which would likely be one of those authorities) would be to coordinate and ensure cooperation between all (other) competent national authorities, and to act as a single point of contact.<sup>48</sup>

Structural cooperation mechanisms are likely to be required for efficient enforcement of the regulation, to ensure a smooth channel of communication between competent authorities. This could involve all relevant national authorities being required to inform the DSC of the acts and decisions they implement.

The draft DSA and the questions that it raises have already prompted some regulators to set up working groups or forums gathering authorities from adjacent sectors to address those challenges.<sup>49</sup> In any case, this proposal is likely to act as an accelerator for the nascent cross-sectoral cooperation between regulators.

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<sup>45</sup> Article 26 of the DSA: all these risks must be included in the annual risk assessment undertaken by very large platforms.

<sup>46</sup> Recital 73 and art. 38 §2 of the DSA

<sup>47</sup> Recital 72 & 73 and Art. 38 of the DSA.

<sup>48</sup> For instance: Order to act against illegal content or to provide information shall be transmitted to all DSC in the UE (art. 8 & 9, §3); The DSC shall draft each year a single report covering the activities of all competent authorities (art. 44 §3).

<sup>49</sup> For example, see the Swedish Press and Broadcasting Authority example in Chapter 3.



How to enforce effective compliance in the online sphere will be a major challenge for the Digital Services Act. Cooperation mechanisms will play a key role. The shaping of institutional arrangements for that purpose (federated vs. centralised structure) as well as the repartition of tasks and interplay between the national, European, sectoral and horizontal levels are hotly contested issues.

#### 2.2.2.5. The regulation of Very Large Online Platforms

Very Large Online Platforms (VLOPs) are defined in Article 25 DSA as “online platforms which provide their services to a number of average monthly active recipients of the service in the Union equal to or higher than 45 million”.<sup>50</sup> The Explanatory Memorandum of the DSA recognises their particular impact on our economy and society, and therefore it sets a higher standard of transparency and accountability on how the providers of such platforms moderate content, on advertising and on algorithmic processes. It also sets the obligation, with regard to assessing the risks their systems pose, to develop appropriate risk management tools in order to protect the integrity of their services against the use of manipulative techniques.

Article 50 DSA provides for enhanced supervision in the event that VLOPs infringe on the additional obligations imposed on them by the DSA.<sup>51</sup> It also envisages the possibility for the Commission to intervene vis à vis VLOPs in case the infringements persist (Article 51 DSA). In these cases, the Commission can carry out investigations, including through requests for information, interviews and on-site inspections, can adopt interim measures and make binding commitments by very large online platforms, and can monitor their compliance with the Regulation (Articles 52-57 DSA). In case of non-compliance, the Commission can adopt non-compliance decisions, as well as fines and periodic penalty payments (Articles 58-60 DSA) for breaches of the Regulation by VLOPs as well as for supplying incorrect, incomplete or misleading information in the context of the investigation. The Regulation sets also a limitation period for the imposition of penalties and for their enforcement (Articles 61-62 DSA). Finally, the Regulation sets the procedural guarantees by which the Commission is bound, in particular the right to be heard and of access to the file and the publication of decisions (Articles 63-64 DSA). The Section also provides for the cooperation of the Commission with national courts and for the adoption of implementing acts on practical arrangements on the proceedings (Article 65-66 DSA).

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<sup>50</sup> As this threshold is proportionate to the risks brought by the reach of the platforms in the Union, the Commission will adjust the number of recipients considered for the threshold, so that it consistently corresponds to 10 % of the Union’s population in accordance with the methodology set out in the delegated acts referred to in Article 25(3) DSA.

<sup>51</sup> See Chapter III, Section 4 DSA.



## 2.2.3. Other recent developments

### 2.2.3.1. European Media and Audiovisual Action Plan

On 3 December 2020, the Commission adopted an Action Plan to support the recovery and transformation of the media and audiovisual sector.<sup>52</sup> The Media and Audiovisual Action Plan (MAAP) focuses on three areas of activity and 10 concrete actions, with the overall aim of helping the media sector recover from the crisis by facilitating and broadening access to financial support, promoting transformation by stimulating investments embracing the twin digital and green transitions while ensuring the sector's future resilience, and empowering European citizens and companies. There are three areas of activity: recover, transform, and enable and empower.

The third area of activity includes strengthening cooperation among regulators within the European Regulators Group for Audiovisual Media Services (ERGA) to ensure practical application of the media literacy provisions and obligations under the revised AVMS Directive, especially in the online sphere. More specifically, the MAAP articulates the requirement for a media literacy toolbox<sup>53</sup> for member states, “to improve users’ awareness, improve their critical skills and choices and to help users reach a greater variety of media content available on video sharing platforms”.

According to the Commission, this Media and Audiovisual Action Plan goes hand in hand with the European Democracy Action Plan, and it is also fully aligned with the Commission's proposals on the Digital Services Act and the Digital Markets Act. The different actions are being launched and implemented throughout 2021 and 2022.<sup>54</sup>

The Commission has already developed a number of initiatives to tackle disinformation through self- and co-regulation and also a set of principles designed to offer guidance and a benchmark for the adoption of effective codes of conduct.

The year 2018 was a particularly active one in this regard with the adoption of various soft law tools:

- the Communication on “Tackling online disinformation: a European approach”,<sup>55</sup> which is a collection of tools to tackle the spread of disinformation and ensure the protection of EU values;
- the action plan on disinformation,<sup>56</sup> aiming at strengthening EU capability and cooperation in the fight against disinformation;
- the Code of Practice on Disinformation,<sup>57</sup> which lays out a set of worldwide self-regulatory standards for industry.

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<sup>52</sup> <https://digital-strategy.ec.europa.eu/en/policies/media-and-audiovisual-action-plan>.

<sup>53</sup> See ERGA Action Group 3 report as adopted on 2 December 2021, <https://erga-online.eu/wp-content/uploads/2021/12/ERGA-AG3-2021-Report-on-Media-Literacy.pdf>.

<sup>54</sup> For more details on specific actions, phases, progress and time frames see: <https://digital-strategy.ec.europa.eu/en/policies/maap-implementation>.

<sup>55</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018DC0236>.

<sup>56</sup> <https://digital-strategy.ec.europa.eu/en/library/action-plan-against-disinformation>.



The DSA establishes a co-regulatory backstop for the measures that will be included in a revised and strengthened Code to address the spread of online mis- and disinformation. More precisely, Article 35 DSA contains provisions concerning the set-up of codes of conduct at EU level, taking into account the specific challenges of tackling different types of illegal content and systemic risks, such as those connected to disinformation, via Article 26 DSA.

According to the Commission's Guidance<sup>58</sup> of May 2021, media NRAs will be actively involved in the monitoring of the Code, a line of activity which might constitute a prelude to the implementation of the DSA in this specific field.

### 2.2.3.2. European Democracy Action Plan

On 3 December 2020, the European Commission presented a European Democracy Action Plan (EDAP),<sup>59</sup> which aims at empowering citizens and building more resilient democracies across the European Union. The EDAP is one of the major initiatives of the Commission's Work Programme for 2020, as announced in the Political Guidelines of President von der Leyen. The Commission expects that the EDAP, taken together with the new European rule of law mechanism,<sup>60</sup> the new Strategy to strengthen the application of the Charter of Fundamental Rights,<sup>61</sup> the Media and Audiovisual Action Plan as well as the package of measures taken to promote and protect equality across the EU, will be a key driver for the new push for European democracy to face the challenges of the digital age.

The Action Plan sets out measures around three main pillars:

- Promote free and fair elections
- Strengthen media freedom and pluralism
- Counter disinformation

The Commission will gradually implement the European Democracy Action Plan until 2023 – a year ahead of the elections to the European Parliament. The Commission will then also assess progress made and decide whether further steps are needed.

With regards to parity of treatment and balanced media coverage during elections, the Commission stressed the importance of strengthening cooperation between member states and relevant regulatory authorities, as traditional media and online platforms are

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<sup>57</sup> <https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation>.

<sup>58</sup> European Commission Guidance on Strengthening the Code of Practice on Disinformation, COM(2021) 262 final, <https://digital-strategy.ec.europa.eu/en/library/guidance-strengthening-code-practice-disinformation>.

<sup>59</sup> [https://ec.europa.eu/info/strategy/priorities-2019-2024/new-push-european-democracy/european-democracy-action-plan\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/new-push-european-democracy/european-democracy-action-plan_en).

<sup>60</sup> The European rule of law mechanism is a preventive tool, aiming to promote the rule of law and prevent challenges from emerging or intensifying, see [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law_en).

<sup>61</sup> The strategy to strengthen the application of the Charter of Fundamental Rights sets out the direction of the Charter implementation for the next 10 years, see [https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/application-charter/eu-strategy-strengthen-application-charter\\_en](https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/application-charter/eu-strategy-strengthen-application-charter_en).





not subject to the same obligations. The EDAP highlights the benefits of pooling the expertise of ERGA, self-regulatory media bodies and other relevant organisations such as the European Cooperation Network on Elections and the EU's Rapid Alert System.

In its contribution of September 2020 to the public consultation on the European Democracy Action Plan,<sup>62</sup> ERGA called for the “reinforced cooperation of media regulators at EU level to ensure seamless regulation across borders” and announced the development of a Memorandum of Understanding for that purpose.

### 2.2.3.3. Towards a European Media Freedom Act?

In a speech delivered to the European Parliament's Committee on Culture and Education on 19 April 2021, Commissioner Thierry Breton expressed his belief that the EU should “prepare a European Media Freedom Act to complement our legislative arsenal in order to ensure that media freedom and pluralism are the pillars of our democracies”.<sup>63</sup>

While the pandemic has accentuated the vulnerabilities and structural challenges of this sector, which is facing increased competition with large platforms in a fragmented market, Commissioner Breton also sees a multitude of opportunities, particularly with digital transformation. After describing EU support measures for the sector and the state of the art with regard to the adoption process of the Digital Services Act package, he addressed “the central issue” of media freedom and pluralism in Europe and the Commission's Democracy and Media action plans adopted last December. He declared himself “very vigilant” about respecting EU rules on the independence of media regulators, and expressed the need for a complementary tool to intervene in the area of media freedom, as the Commission's current toolbox is limited.

In Mr Breton's view, the EU needs a mechanism to increase transparency, independence and accountability around actions affecting control and freedom of the press. This would also be an opportunity to look at the resilience of small actors, and their innovative funding models. Furthermore, he proposed reflection on how best to strengthen the governance of public service media, around a common framework, to better prevent the risks of politicisation and ensure diversity and pluralism. And finally, he suggested reflection on the funding supporting pluralism and media freedom, and on the structures that carry this funding.

In its Work Programme for 2022,<sup>64</sup> ERGA scheduled a workstream accommodating the possible preparatory work on the European Media Freedom Act, with a view to ensuring that the role and competences of media regulators are taken into account. This includes preparing a benchmark on the competences of the various authorities interacting

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<sup>62</sup> EDAP ERGA Position (September 2021):

[https://erga-online.eu/wp-content/uploads/2020/10/ERGA\\_Position\\_EDAP-Consultation\\_Summary.pdf](https://erga-online.eu/wp-content/uploads/2020/10/ERGA_Position_EDAP-Consultation_Summary.pdf).

<sup>63</sup> [https://ec.europa.eu/commission/commissioners/2019-2024/breton/announcements/european-media-freedom-act\\_en](https://ec.europa.eu/commission/commissioners/2019-2024/breton/announcements/european-media-freedom-act_en).

<sup>64</sup> ERGA Work Programme 2022: <https://erga-online.eu/wp-content/uploads/2021/08/ERGA-Work-Programme-2022-as-adopted.pdf>.



on issues pertaining to content/media regulation and the safeguards to protect their independence.



## 3. National examples

The following paragraphs provide a glimpse of the variety of regulatory systems in Europe by way of six examples: the Czech Republic, France, Greece, Ireland, Luxembourg, Sweden and the UK.

### 3.1. CZ - Czech Republic<sup>65</sup>

#### 3.1.1. Powers and competences of the NRA

The *Rada pro rozhlasové a televizní vysílání* (Council for Radio and Television Broadcasting, RRTV)<sup>66</sup> of the Czech Republic is the central administrative and regulatory authority performing public administration in broadcasting and on-demand audiovisual media services provided for under other pieces of legislation. It also oversees the maintenance and development of programming and information plurality in the field of radio and television broadcasting, and retransmission. The RRTV guarantees the right of broadcasters to broadcast programmes freely and independently, and performs other tasks stipulated under Act no. 231/2001<sup>67</sup> and other special regulations.

#### 3.1.2. Other regulatory bodies relevant for the regulation of online platforms

It is important to note that as the Czech Republic has not yet transposed the Audiovisual Media Services Directive (AVMSD), there is no picture yet as to the other relevant regulatory bodies involved in regulating online platforms. Nevertheless, based on their current specialization the following authorities may be affected:

- The Office for Personal Data Protection;<sup>68</sup>

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<sup>65</sup> This section is based on input received from Kateřina Lojíková (RRTV, Czech Republic).

<sup>66</sup> <https://www.rrtv.cz/>

<sup>67</sup> *Zákon č. 231/2001 Sb. - Zákon o provozování rozhlasového a televizního vysílání a o změně dalších zákonů*, <https://www.zakonyprolidi.cz/cs/2001-231>.

<sup>68</sup> <https://www.uoou.cz>.



- The Czech Telecommunication Office;<sup>69</sup>
- The Czech Trade Inspection Authority.<sup>70</sup>

As mentioned above, it is not known yet which authorities will be involved in different aspects of online platform regulation, which intervention/enforcement mechanisms they will employ, and how they will cooperate.

### 3.1.3. Best-practice cooperation among NRAs with regard to online platforms

The RRTV, as a member of The European Regulators Group for Audiovisual Media Services (ERGA), cooperates with other members. In 2021, the RRTV chaired Action Group 1 – on implementation of ERGA’s Memorandum of Understanding.

Strengthening cooperation on cross-border cases is one of ERGA’s key strategic priorities for 2020-2023, with the aim of fulfilling one of ERGA’s core commitments: promoting common regulatory approaches and effective cooperation between members as well as with stakeholders.

## 3.2. FR - France<sup>71</sup>

### 3.2.1. Powers and competences of the NRA

The *Conseil supérieur de l’audiovisuel* (CSA) has powers and competences related to traditional media (TV, radio, on-demand services, distributors of audiovisual media services), and also with regard to online platforms in specific areas. It has no power over telecoms as such.

The primary mission of the CSA is to ensure freedom of communication.

Concerning traditional media, the CSA oversees access to the market for radio and television services as well as on-demand audiovisual media services according to their mode of broadcasting and distribution (e.g. by managing the use of the frequencies assigned to the audiovisual sector). It ensures that the stakeholders and operators comply with their obligations, which correspond to general interest objectives: firstly, democratic objectives with the aim to guarantee pluralism of thought and opinion and political pluralism; secondly, cultural objectives – financing film and audiovisual creation relies on

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<sup>69</sup> <https://www.ctu.eu>.

<sup>70</sup> <https://www.coi.cz>.

<sup>71</sup> This section is based on input received from Raphaël Honoré (Arcom).



contributions from television channels and video-on-demand services; third, societal objectives – protecting children and teenagers, ensuring gender equality, accessibility for people with disabilities, fair representation of diversity and fostering media and information literacy. Beyond that, the CSA also ensures that the sectors it regulates are in economic and competitive equilibrium.

The CSA has a power of sanction derived from the law on freedom of communication of 30 September 1986.<sup>72</sup> If, after a warning, the operator commits the same kind of infringement, and subject to the opening of a sanctioning procedure by an independent rapporteur, the CSA can decide to impose a sanction. This can be a fine, a demand that an announcement be broadcast, the revocation, suspension or reduction of the licensing period, the suspension of a programme, or referral to a court.

As regards online platforms, the CSA exercises a power of systemic supervision aimed at monitoring the measures taken by the players, and their efficiency. The CSA has powers in different fields such as online manipulation of information, online hatred, or protection of minors. The powers of the CSA vary depending on the field concerned.

All these missions are carried out by a board of seven members and around 300 staff based in Paris and also in metropolitan and overseas territories, through 16 Territorial Audiovisual Committees (CTAs).

The regulatory powers of the CSA have been evolving in order to encompass the digital reality:

- Act on the fight against the manipulation of information<sup>73</sup> giving the CSA the power to make recommendations<sup>74</sup> to online platforms in the context of the duty to cooperate to fight the dissemination of false information and to publish a periodic report on the measures taken by the platforms to fight disinformation, and their efficiency<sup>75</sup>;
- Act on the fight against hateful content on the Internet<sup>76</sup> giving the CSA the duty to set up and manage an “Online Hate Speech Observatory”<sup>77</sup> bringing together platforms, civil society, researchers and public bodies;

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<sup>72</sup> <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000512205/>.

<sup>73</sup> Loi n° 2018-1202 du 22 décembre 2018 relative à la lutte contre la manipulation de l'information, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000037847559/>.

<sup>74</sup> See Recommandation n° 2019-03 du 15 mai 2019 du Conseil supérieur de l'audiovisuel aux opérateurs de plateforme en ligne dans le cadre du devoir de coopération en matière de lutte contre la diffusion de fausses informations, <https://www.csa.fr/Reguler/Espace-juridique/Les-textes-adoptes-par-le-CSA/Les-deliberations-et-recommandations-du-CSA/Recommandations-et-deliberations-du-CSA-relatives-a-d-autres-sujets/Recommandation-n-2019-03-du-15-mai-2019-du-Conseil-superieur-de-l-audiovisuel-aux-operateurs-de-plateforme-en-ligne-dans-le-cadre-du-devoir-de-cooperation-en-matiere-de-lutte-contre-la-diffusion-de-fausses-informations>.

<sup>75</sup> See <https://www.csa.fr/Informer/Toutes-les-actualites/Actualites/Lutte-contre-la-manipulation-de-l-information-le-CSA-publie-le-bilan-des-mesures-mises-en-oeuvre-par-les-plateformes-en-ligne-en-2020>.

<sup>76</sup> Loi n° 2020-766 du 24 juin 2020 visant à lutter contre les contenus haineux sur internet, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042031970>.

<sup>77</sup> See <https://www.csa.fr/Informer/Toutes-les-actualites/Actualites/Observatoire-de-la-haine-en-ligne-analyser-pour-mieux-lutter>.



- Act reinforcing respect for the principles of the Republic<sup>78</sup> giving the online platforms the obligation to contribute to the fight against the public dissemination of hateful content by taking ad hoc measures (appropriate human and technological means and procedures, appeal mechanisms, designation of a single point of contact, etc.) and cooperating with administrative and judicial authorities, and giving the CSA the powers to adopt guidelines, to supervise the moderation processes put in place by the platforms (for instance by defining the information and indicators that the platforms must make public in accordance with the law), to publish yearly reports on the measures taken by the platforms and to sanction the platforms if the CSA finds that there is a failure to comply with the procedural, means or transparency obligations set out in the law. The sanction can only be imposed after a formal notice and can be a fine (up to EUR 20 million or 6% of worldwide turnover);
- Act to protect victims of domestic violence<sup>79</sup> giving powers to the CSA to protect minors from accessing pornographic content online;
- Act to regulate the commercial exploitation of the image of children under the age of sixteen on online platforms<sup>80</sup> encouraging the online platforms to sign charters of good practice prepared by the CSA and the stakeholders. Besides, platforms must provide the CSA with all the information necessary to draw up a periodic review of the application and effectiveness of these charters;
- The transposition of the AVMSD through the 'ordonnance' of 21 December 2020<sup>81</sup> can also be quoted here. According to this text, video-sharing platforms must take appropriate measures relating to protection of minors, prevention of incitement to hatred and commercial communications.

Another key legislative development for the French regulator is the adoption of the Act on the regulation and protection of access to cultural works in the digital age<sup>82</sup> that entered into force on 26 October 2021. This text created Arcom (Regulatory Authority for Audiovisual and Digital Communication), as a result of the merger between the CSA and The *Haute Autorité pour la diffusion des œuvres et la protection des droits sur internet* (High Authority for the Dissemination of Works and the Protection of Rights on the Internet

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<sup>78</sup> Loi n° 2021-1109 du 24 août 2021 confortant le respect des principes de la République, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043964778>.

<sup>79</sup> Loi n° 2020-936 du 30 juillet 2020 visant à protéger les victimes de violences conjugales, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042176652>.

<sup>80</sup> Loi n° 2020-1266 du 19 octobre 2020 visant à encadrer l'exploitation commerciale de l'image d'enfants de moins de seize ans sur les plateformes en ligne, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042439054>.

<sup>81</sup> Ordonnance n° 2020-1642 du 21 décembre 2020 portant transposition de la directive (UE) 2018/1808 du Parlement européen et du Conseil du 14 novembre 2018 modifiant la directive 2010/13/UE visant à la coordination de certaines dispositions législatives, réglementaires et administratives des Etats membres relatives à la fourniture de services de médias audiovisuels, compte tenu de l'évolution des réalités du marché, et modifiant la loi du 30 septembre 1986 relative à la liberté de communication, le code du cinéma et de l'image animée, ainsi que les délais relatifs à l'exploitation des œuvres cinématographiques, <https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000042778215/>.

<sup>82</sup> Loi n° 2021-1382 du 25 octobre 2021 relative à la régulation et à la protection de l'accès aux œuvres culturelles à l'ère numérique, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000044245615/>.



[Hadopi]).<sup>83</sup> The new authority will be in place as of 1 January 2022. Arcom will create an integrated regulator with expanded competencies from the setting of obligations to the protection of copyright and the fight against piracy. This new authority will be particularly involved in a broad range of digital content issues.

## 3.2.2. Other regulatory bodies relevant for the regulation of online platforms

In France, several regulatory bodies are relevant for the regulation of online content.

### 3.2.2.1. CSA

As explained above, the CSA has powers through the transposition of the AVMSD but also through a significant number of national laws in fields such as the fight against the manipulation of information, the fight against online hatred, the protection of minors against pornographic content or the protection of underage influencers on the Internet.

### 3.2.2.2. Hadopi

Hadopi aims at encouraging the development of legal offerings and observing the legal and illegal use of works. It protects these works and regulates and monitors technical protection measures and the identification of works protected by copyright or by a related right.

### 3.2.2.3. ARCEP

The *Autorité de régulation des communications électroniques* (Electronic Communications, Postal and Print Media Distribution Regulatory Authority [ARCEP])<sup>84</sup> also works in the field of online regulation on several topics such as net neutrality and the Internet of things, among others.

### 3.2.2.4. CNIL

The *Commission Nationale Informatique et Libertés* (CNIL)<sup>85</sup> is the data protection authority in France. The CNIL responds to requests from individuals and professionals. It carries out actions of communication with the general public and professionals.

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<sup>83</sup> <https://hadopi.fr>.

<sup>84</sup> <https://www.arcep.fr>.

<sup>85</sup> <https://www.cnil.fr/>.



### 3.2.2.5. Autorité de la concurrence

Other bodies such as the *Autorité de la concurrence* (French Competition Authority)<sup>86</sup> can also work in this field.

### 3.2.2.6. How do they cooperate among each other?

The existence of several relevant bodies encourages the development of cooperation. To mention only one example, the CSA and ARCEP have jointly created a digital hub (*pôle numérique commun*) to deepen the technical and economic analysis of the digital markets under the jurisdiction of each of the two authorities, in order to support them in the implementation of their regulatory tasks in this area. The work of the hub is based on four pillars: the creation of an “observatory of digital uses”; a joint studies program; a joint team working on the protection of minors against online pornography; the organisation of joint workshops. Depending on the topics, persons not belonging to the aforementioned bodies or the academic field can work within the hub.

The CSA also cooperates with other bodies in order to draft and publish research. For instance, in 2019 the CSA and Hadopi published a report on “Vocal assistants and connected speakers”,<sup>87</sup> and in 2021 the CSA, Hadopi, the CNC, ARCEP and the Autorité de la Concurrence published a report on “SVOD service offerings and the economic impact of multiple subscriptions”.<sup>88</sup>

## 3.2.3. Best practices of cooperation areas among NRAs with regard to online platforms

The CSA participates in the work of several networks of regulators where the topic of online regulation is tackled (ERGA, EPRA, REFRAM, MNRA, IIC ...).<sup>89</sup>

Besides, it maintains a continuous dialogue with its foreign counterparts and meets them regularly to exchange views and practices on the regulation of online platforms.

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<sup>86</sup> <https://www.autoritedelaconcurrence.fr/>.

<sup>87</sup> <https://www.csa.fr/Informer/Collections-du-CSA/Thema-Toutes-les-etudes-realisees-ou-co-realisees-par-le-CSA-sur-des-themes-specifiques/Les-etudes-corealisees-avec-le-CSA/Etude-HADOPI-CSA-2019-Assistants-vocaux-et-enceintes-connectees>.

<sup>88</sup> <https://www.csa.fr/Informer/Collections-du-CSA/Thema-Toutes-les-etudes-realisees-ou-co-realisees-par-le-CSA-sur-des-themes-specifiques/Les-etudes-corealisees-avec-le-CSA/Etude-Hadopi-CSA-La-multiplication-des-services-de-video-a-la-demande-par-abonnement>.

<sup>89</sup> See Chapter 4 of this publication.





### 3.3. GB - United Kingdom<sup>90</sup>

#### 3.3.1. Powers and competences of the NRA

Ofcom<sup>91</sup> is the UK's regulator for the UK communications sector. Its principal duty is to further the interests of citizens and consumers in relation to communications matters, and to further the interests of consumers in these markets, where appropriate by promoting competition. Its remit covers broadcasting and video on demand, telecoms, spectrum and the postal sector. It also has responsibilities in relation to cybersecurity. Since November 2020, Ofcom's role has been extended to oversight of certain VSPs. The UK government recently confirmed that Ofcom will be the regulator for the future Online Safety regime.<sup>92</sup>

Ofcom takes enforcement action across a number of industry sectors and is able to use a range of administrative powers granted by, amongst other sources, the Communications Act 2003,<sup>93</sup> the Postal Services Act 2011,<sup>94</sup> the Competition Act 1998<sup>95</sup> and consumer protection legislation. Examples of Ofcom's enforcement mechanisms include the imposition of directives requiring parties to remedy the consequences of any regulatory breaches and the imposition of financial penalties, where appropriate. In October 2021, Ofcom published its approach to its new duties around VSP regulation, including its approach to enforcement.<sup>96</sup>

Article 30 of the AVMSD refers to the independence of national regulators from national governments. Ofcom is a statutory corporation created by section 1 of the Office of Communications Act 2002.<sup>97</sup> It is an independent, non-governmental body answerable to Parliament. As a statutory corporation, Ofcom has no inherent powers, and so (unlike government departments) its functions and powers are limited to those given to it by primary legislation (e.g. Acts of Parliament) or secondary legislation (e.g. Statutory Instruments).

Its independence is given effect by, for example, governance structures separate to the UK government, and limited and specific areas where the Secretary of State can issue directions to Ofcom.<sup>98</sup>

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<sup>90</sup> This section is based on input received from Lewis McQuarrie (Ofcom). Please note, the information included here was gathered per best efforts and so is only indicative of the competencies and powers of a selection of the most relevant UK sectoral regulators.

<sup>91</sup> <https://www.ofcom.org.uk>.

<sup>92</sup> See <https://www.gov.uk/government/publications/draft-online-safety-bill>.

<sup>93</sup> <https://www.legislation.gov.uk/ukpga/2003/21/contents>.

<sup>94</sup> <https://www.legislation.gov.uk/ukpga/2011/5/contents>.

<sup>95</sup> <https://www.legislation.gov.uk/ukpga/1998/41/contents>.

<sup>96</sup> Video Sharing Platforms: Ofcom's Plan and Approach, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0016/226303/vsp-plan-approach.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0016/226303/vsp-plan-approach.pdf).

<sup>97</sup> <https://www.legislation.gov.uk/ukpga/2002/11/contents>.

<sup>98</sup> For more information on Ofcom's relationship with the UK government see "DCMS and Ofcom Framework Document", 2016,



### 3.3.2. Other regulatory bodies relevant for the regulation of online platforms

To note, in the UK there is no single consumer protection authority. Rather, the competency for consumer protection is spread across a number of different regulatory bodies, including Ofcom for communication matters.

#### 3.3.2.1. Competition and Markets Authority (CMA)

The CMA<sup>99</sup> is the UK's competition authority and has powers across the whole economy. Its powers include investigating mergers that may reduce competition, studying entire markets or sectors where consumer problems have arisen, and sanctioning businesses and individuals where the CMA feels they are involved in cartels or other anti-competitive practices. The CMA has both civil and criminal enforcement powers.

The CMA has launched a number of market studies and investigations related to online platforms. Most recently this has included an investigation into the Apple AppStore,<sup>100</sup> an investigation into Facebook's use of data,<sup>101</sup> and an online platforms and digital advertising market study.<sup>102</sup> In October 2021, the CMA fined Facebook GBP 50.5 million for breaching an order imposed during its investigation into Facebook's purchase of Giphy.<sup>103</sup>

#### 3.3.2.2. Information Commissioner's Office (ICO)

The ICO<sup>104</sup> is the UK regulator responsible for upholding information rights. As such, the ICO enforces legislation ranging from that focused on data protection (such as the Data Protection Act and GDPR)<sup>105</sup> to legislation focused on public access to written information held by public authorities (as the Freedom of Information Act<sup>106</sup>). The ICO can take a range of enforcement actions, which include serving information, enforcement, and penalty notices, and conducting inspections.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/542594/Ofcom\\_Framework\\_Document\\_23\\_June\\_2016\\_signed.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/542594/Ofcom_Framework_Document_23_June_2016_signed.pdf).

<sup>99</sup> <https://www.gov.uk/government/organisations/competition-and-markets-authority>.

<sup>100</sup> CMA, Investigation into Apple AppStore, <https://www.gov.uk/cma-cases/investigation-into-apple-appstore>.

<sup>101</sup> CMA, Investigation into Facebook's use of data,

<https://www.gov.uk/cma-cases/investigation-into-facebooks-use-of-data>.

<sup>102</sup> CMA, Online platforms and digital advertising market study,

<https://www.gov.uk/cma-cases/online-platforms-and-digital-advertising-market-study>.

<sup>103</sup> CMA press release, "CMA fines Facebook over enforcement order breach", 20 October 2021,

<https://www.gov.uk/government/news/cma-fines-facebook-over-enforcement-order-breach>.

<sup>104</sup> <https://ico.org.uk/>.

<sup>105</sup> See <https://www.gov.uk/data-protection>.

<sup>106</sup> <https://www.legislation.gov.uk/ukpga/2000/36/contents>.



### 3.3.2.3. Financial Conduct Authority (FCA)

The FCA<sup>107</sup> is the UK regulator for financial services firms and financial markets. The FCA is responsible for protecting consumers and financial markets, and working concurrently with the CMA to promote competition. The FCA has a wide range of criminal, civil and regulatory enforcement powers ranging from withdrawing a firm's authorisation to bringing criminal prosecutions for financial crime.

As set out in further detail below, the FCA recently joined the Digital Regulators Cooperation Forum (DRFC),<sup>108</sup> reflecting its increased focus on online safety for retail financial service consumers.

### 3.3.2.4. Advertising Standards Authority (ASA)

Under a system of self-regulation (non-broadcast ads only), the ASA<sup>109</sup> acts as the UK's independent regulator of advertising across media (including online), enforcing the Advertising Codes written by the Committee of Advertising Practice (CAP).<sup>110</sup> The ASA can require the amendment or withdrawal of advertisements that violate the CAP Code.

A co-regulatory arrangement exists with Ofcom in the case of broadcasting advertising. The ASA is accountable to Ofcom as the back-stop regulator on broadcast advertising. The ASA can refer broadcasters that persistently violate the BCAP to Ofcom, which can impose financial penalties or withdraw broadcasting licences.

### 3.3.2.5. How do they cooperate among each other?

In July 2020, the Digital Regulators Cooperation Forum (DRFC)<sup>111</sup> was formed by Ofcom, the CMA and the ICO to ensure a greater level of cooperation, given the unique challenges posed by regulation of online platforms. The FCA joined as a full member in April 2021 (having previously been an observer member). The DRFC published a workplan in March 2021,<sup>112</sup> which outlined how Ofcom, the FCA, the CMA and the ICO will work collaboratively to respond strategically to industry and technological developments and build shared skills/capabilities. Gill Whitehead was recently appointed Chief Executive of the body. In May 2021, the CMA and ICO also published a joint statement, setting out their shared views on the relationship between competition and data protection in the digital economy.<sup>113</sup>

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<sup>107</sup> <https://www.fca.org.uk>.

<sup>108</sup> See below.

<sup>109</sup> <https://www.asa.org.uk>.

<sup>110</sup> See <https://www.asa.org.uk/codes-and-rulings/advertising-codes.html>.

<sup>111</sup> See <https://www.gov.uk/government/collections/the-digital-regulation-cooperation-forum>.

<sup>112</sup> CMA Policy paper, "Digital Regulation Cooperation Forum workplan 2021/22", 10 March 2021, <https://www.gov.uk/government/publications/digital-regulation-cooperation-forum-workplan-202122>.

<sup>113</sup> CMA-ICO joint statement on competition and data protection law, 19 May 2021, <https://www.gov.uk/government/publications/cma-ico-joint-statement-on-competition-and-data-protection-law>.



Beyond the DRCF, Ofcom participates in the UK Regulators Network (UKRN)<sup>114</sup> alongside other UK regulators from a wide range of sectors, including financial services, data protection, utilities, transport and housing.

The UKRN's multi-year workplan,<sup>115</sup> published in 2021, sets out three strategic priorities for the network: 1) improving outcomes for consumers in vulnerable circumstances or with additional needs; 2) adapting regulatory approaches where appropriate to support the innovation and investment necessary for economic recovery; and, 3) strengthening joint regulatory capabilities to meet shared current and future challenges.

### 3.3.3. Best practices of cooperation areas among NRAs with regard to online platforms

Ofcom works closely with other EU and wider European regulators on the regulation of broadcast and on-demand services, as well as on the recently established framework around the regulation of video-sharing platforms, particularly in relation to jurisdictional issues. It also holds regular set-piece meetings and “mini-summits” with key European peers (notably Ireland, Germany and France) with a particular focus on the future regulation of online platforms.

Ofcom has for many years been an active member of EPRA and has been represented on the EPRA Board for the last 12 years.<sup>116</sup>

In 2020, Ofcom formed an informal group to discuss the challenges of online regulation with counterparts from Australia, Ireland and Canada. Ofcom is also active in global fora where online policy and regulatory issues are discussed, notably the UN Internet Governance Forum (IGF),<sup>117</sup> and other affiliated groups: EuroDIG<sup>118</sup> at the European regional level and the UK IGF.<sup>119</sup> Ofcom has also participated in multi-stakeholder fora such as RightsCon,<sup>120</sup> a global meeting organised by civil society to discuss issues around human rights online, which attracts the participation of global platforms and many national governments, and has joined the Internet & Jurisdiction Project's content workstream, which is examining issues of interoperability around content and platform regulation, in a multi-stakeholder group.<sup>121</sup>

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<sup>114</sup> <https://www.ukrn.org.uk>.

<sup>115</sup> UKRN Annual Report and multi-year work plan 2021, <https://www.ukrn.org.uk/publications/ukrn-annual-report-and-multi-year-work-plan-2021/>.

<sup>116</sup> See Chapter 4 of this publication.

<sup>117</sup> <https://www.intgovforum.org/en>.

<sup>118</sup> <https://www.eurodig.org>.

<sup>119</sup> <https://ukigf.org.uk>.

<sup>120</sup> <https://www.rightscon.org>.

<sup>121</sup> See <https://www.internetjurisdiction.net>.



## 3.4. GR - Greece<sup>122</sup>

### 3.4.1. Powers and competences of the NRA

Greece transposed the AVMSD on February 2021 through Act 4779/2021.<sup>123</sup> Article 33(1) transposes Article 30 of the AVMSD, providing that unless otherwise specified, all responsibilities of Act 4779/2021, as well as the supervision of the application of its rules and the imposition of sanctions for violations, are assigned to the National Council for Radio and Television (NCRTV),<sup>124</sup> which is an independent authority and enjoys full operational independence from the government and from any other public and private body. Article 32 (9) of the same act provides that the NCRTV is entrusted with the responsibility to enforce the provisions of paragraphs 1 and 2 (art. 28b par. 1 and 2 of the new AVMSD) regulating VSPs.

The Authority, until recently, had little experience not only in relation to video-sharing platforms but also in relation to AV media services offered over the Internet, as this market (except for IPTV services) was still unregulated in Greece. With the addition of these new competences, NCRTV is now responsible for: the licensing and supervision of free-to-air TV and radio services; the registration and supervision of other linear and non-linear audiovisual services; the licensing and supervision of pay-TV platforms, the registration and supervision of VSPs; the enforcement of art. 13 par. 2 of the Directive on on-demand AVMS providers established in other member states and targeting Greece; keeping an updated registry of all the above services and, in addition, of advertisers offering their services also to the Public Sector, of audience measurement providers, publishers and others.

Article 33(2) of Act 4779/2021 provides: “The NCRTV shall exercise its powers impartially and transparently, serving the principles of pluralism, cultural diversity, equal treatment and safeguarding consumer protection, accessibility for people with disabilities, the proper functioning of the internal market and the promotion of healthy competition in the sector. In exercising the powers conferred on it, it is prohibited to request or accept

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<sup>122</sup> This section is based on input received from Persa Lampropoulou (ESR).

<sup>123</sup> ΝΟΜΟΣ ΥΠ’ ΑΡΙΘΜ. 4779 ΦΕΚ Α 27/20.2.2021 - Ενσωμάτωση στην εθνική νομοθεσία της Οδηγίας (ΕΕ) 2010/13 του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου της 10ης Μαρτίου 2010 για τον συντονισμό ορισμένων νομοθετικών, κανονιστικών και διοικητικών διατάξεων των κρατών μελών σχετικά με την παροχή υπηρεσιών οπτικοακουστικών μέσων, όπως έχει τροποποιηθεί με την Οδηγία (ΕΕ) 2018/1808 του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου της 14ης Νοεμβρίου 2018 και άλλες διατάξεις αρμοδιότητας της Γενικής Γραμματείας Επικοινωνίας και Ενημέρωσης, (Law No. 4779 Government Gazette A 27 / 20.2.2021 - Transposition into national law of Directive (EU) 2010/13 of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, as amended by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 and other provisions within the competence of the General Secretariat for Communication and Information), [https://www.kodiko.gr/nomologia/download\\_fek?f=fek/2021/a/fek\\_a\\_27\\_2021.pdf&t=b9fc0db9c8c3b3c09f1b91723b46186b](https://www.kodiko.gr/nomologia/download_fek?f=fek/2021/a/fek_a_27_2021.pdf&t=b9fc0db9c8c3b3c09f1b91723b46186b).

<sup>124</sup> <https://www.esr.gr/>.



instructions from any other body. If necessary, it may cooperate with other competent bodies for the effective exercise of its responsibilities. The ESR is subject to parliamentary scrutiny, in accordance with the Rules of Procedure of Parliament.” The legislator has chosen an almost verbatim transposition of Art. 30 AVMSD and it should be noted that NCRTV has not been assigned with specific powers to apply competition law in relation to audiovisual media services or VSPs, and that consumer protection can only be addressed in the context of the relevant media legislation.

Articles 7, 7a and 7b of the AVMSD only apply to AVMS providers. The Greek law transposing the Directive has not extended these obligations to VSPs. There are other legal provisions, however, that provide for accessibility obligations of online services. Directive 2019/882/EU on accessibility requirements for products and services, also applying to both AVMS and to services giving access to AVMS, has not yet been transposed into Greek law. The deadline is set for 2022 and enforcement of the law will start in 2025. NCRTV is not, yet, responsible for supervising compliance of online providers with their accessibility obligations.

NCRTV is a relatively small NRA now counting 34 employees. The last recruitment procedure was more than 10 years ago. There is a shortage of employees: 18 have retired or resigned, or been transferred to other public bodies over the years, and were never replaced.<sup>125</sup> Only recently, Parliament approved the recruitment of five persons and the replacement of the rest through “loans” from other public bodies. Needless to say, when staff numbers are constantly decreasing and the workload is increasing, it is difficult to meet expectations. It is also difficult to meet expectations when people lack the necessary expertise to understand the new environment.

Understaffing is not, however, the only matter of concern. The Authority also needs to adjust its work to its new competencies, as the law providing for its departmental structure and responsibilities dates back to 2000 when the needs were different and NCRTV was entrusted with fewer competencies, mainly concerning free-to-air TV and radio.

### 3.4.2. Other regulatory bodies relevant for the regulation of online platforms

Online platforms (including VSPs) are under the competence of an array of NRAs and governmental bodies. Besides NCRTV, the Hellenic Competition Commission,<sup>126</sup> the Data Protection Authority,<sup>127</sup> the Hellenic Authority for Communication and Privacy,<sup>128</sup> the Hellenic Copyright Organisation,<sup>129</sup> the Consumer Protection Directorate of the Ministry of

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<sup>125</sup> Restrictions on the recruitment of personnel were in place in place during the debt crisis.

<sup>126</sup> <https://www.epant.gr>.

<sup>127</sup> <https://www.dpa.gr>.

<sup>128</sup> <http://www.adae.gr>.

<sup>129</sup> <https://www.opi.gr/>.



Development,<sup>130</sup> the Police Directorate for Cybercrime<sup>131</sup> and the Hellenic Telecommunications and Post Authority<sup>132</sup> (the competence of which is somewhat unclear) could all, in respect of their remit, be responsible for supervising online platforms. There are no legal provisions that regulate the interaction of these authorities. Each acts within its remit but overlaps are not rare. For example, the Competition Committee (CC) is primarily responsible for applying and enforcing competition rules. It investigates, among other things, anti-competitive agreements and abuses of a dominant position, imposes sanctions where applicable, and adopts interim measures where an infringement is *prima facie* presumed. The Directorate for the Protection of Consumers of the Ministry of Development has competency related to, among other areas, the protection of consumers, but also proper operation of the market and the suppression of unfair commercial practices, to the benefit of both consumers and healthy business competition. It thus appears at first glance as though there is an overlap of competences between the Competition Authority and the Directorate for the Protection of Consumers. A new bill is expected to be issued to address these problems and clarify the competences of the two bodies which, in any case, are under the umbrella of the same ministry and collaborate with each other. In another context, the provisions of the AVMSD in relation to the protection of personal data of minors could also cause legal and other kinds of problems between the NCRTV and the Data Protection Authority, should the former decide to audit the platforms' compliance in relation to this issue.

Overlapping competences and/or unclear provisions on the competences of 'affiliate' authorities are the main causes of tensions between NRAs and/or other governmental bodies, especially when it comes to the regulation of problematic areas of the market. These authorities are not responsible for this situation as the solution requires a political will to redefine their competences. In addition, differences in the way the NRAs are organised and their focus, may also create communication problems. For example, the NCRTV focuses less on the media market and more on safeguarding the principles underpinning media regulation. On the other hand, the Hellenic Telecoms Committee or the Hellenic Competition Commission are market-driven authorities whose main objectives are to ensure competition in the Greek market. Sometimes it is difficult to bridge different cultures.

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<sup>130</sup> See <https://www.mindev.gov.gr/?lang=en>.

<sup>131</sup> See

[http://www.astynomia.gr/index.php?option=ozo\\_content&perform=view&id=8194&Itemid=378&lang=EN](http://www.astynomia.gr/index.php?option=ozo_content&perform=view&id=8194&Itemid=378&lang=EN).

<sup>132</sup> [https://www.eett.gr/opencms/opencms/EETT\\_EN/index.html](https://www.eett.gr/opencms/opencms/EETT_EN/index.html).



### 3.4.3. Best-practice cooperation among NRAs with regard to online platforms

Despite the lack of structured cooperation between NRAs, there have been cases where effective collaboration has been achieved and legal obstacles have been partially overcome.

At the EU level, implementation of the MoU adopted at the ERGA Plenary Meeting in 2020 has helped ERGA members bypass the time-consuming procedures of the AVMS Directive and communicate, in a simple and direct way, with other NRAs on all matters concerning providers established in their territories. As some member states have not yet transposed the Directive, it is premature to assess the success of this channel of communication. The NCRTV has used it to seek both information and cooperation from other authorities. In the latter case, the pending transposition process has been an impediment to a fruitful response to a request concerning a VSP established in the receiving party's territory.

## 3.5. IE - Ireland<sup>133</sup>

### 3.5.1. Powers and competences of the NRA

The revised Audiovisual Media Services Directive (AVMSD) has yet to be transposed into Irish Law. In January 2021, the General Scheme for the Online Safety and Media Regulation (OSMR) Bill was published by the Irish Government.<sup>134</sup> This General Scheme proposes to transpose the AVMSD and make provision for online safety regulation in Ireland. It would also see the dissolution of the BAI and establishment of a new Media Commission. The Media Commission will have regulatory responsibility for radio and television broadcasters, on-demand services, video sharing platforms as well as online safety more broadly.

The Irish Government's Parliamentary Committee for Media, the Joint Committee for Tourism, Culture, Arts, Sport and Media,<sup>135</sup> committed to undertake pre-legislative scrutiny of the proposed General Scheme for the OSMR Bill and this process began in March of this year when the Committee made a call for written submissions.<sup>136</sup> The BAI

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<sup>133</sup> This section is based on input received from Deborah Molloy, Broadcasting Authority of Ireland (BAI), the statutory regulator of broadcasting in Ireland.

<sup>134</sup> Online Safety and Media Regulation Bill, <https://www.gov.ie/en/publication/d8e4c-online-safety-and-media-regulation-bill/>.

<sup>135</sup> <https://www.oireachtas.ie/en/committees/33/tourism-culture-arts-sport-and-media/>.

<sup>136</sup> Written submissions to the Joint Oireachtas Committee, <https://www.oireachtas.ie/en/publications/?datePeriod=all&term=%2Fie%2Foireachtas%2Fhouse%2Fdail%2F33&committee=%2Fen%2Fcommittees%2F33%2Ftourism-culture-arts-sport-and->





engaged in this process, and made two submissions to the Committee.<sup>137</sup> In addition the Committee also conducted oral hearings and heard from various Government agencies (including the BAI<sup>138</sup>), civil society groups, voluntary organisations and other online safety regulators. The pre-legislative scrutiny concluded in late July and the final Committee report<sup>139</sup> was published on 2 November 2021.

The Irish Government has made provision for the establishment of a Media Commission in 2022 and recently announced a budget allocation of EUR 5.5M for the establishment of the Commission, including the appointment of an Online Safety Commissioner.<sup>140</sup>

As the Media Commission has yet to be established, the BAI continues with its current regulatory remit which includes the regulation of public, commercial and community radio and television services, the making of broadcasting codes and rules, and the provision of funding for programmes and archiving relating to Irish culture, heritage, and experience. At a national level, the BAI is responsible for the regulation of television services pursuant to the 2010 AVMS Directive.

### 3.5.2. Other regulatory bodies relevant for the regulation of online platforms

In the area of consumer protection, the Competition and Consumer Protection Commission (CCPC)<sup>141</sup> is responsible for the enforcement of the CPC Regulations<sup>142</sup> as they relate to online platforms. The Data Protection Commission<sup>143</sup> is responsible for the enforcement of the GDPR Directive as it relates to online platforms.

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[media%2F&resultsPerPage=20&topic%5B0%5D=correspondence&topic%5B1%5D=opening-statements-submissions.](#)

<sup>137</sup> See

[https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint\\_committee\\_on\\_tourism\\_culture\\_arts\\_sport\\_and\\_media/submissions/2021/2021-11-02\\_submission-broadcasting-authority-of-ireland\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_tourism_culture_arts_sport_and_media/submissions/2021/2021-11-02_submission-broadcasting-authority-of-ireland_en.pdf) and

[https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint\\_committee\\_on\\_tourism\\_culture\\_arts\\_sport\\_and\\_media/submissions/2021/2021-11-02\\_submission-2-independent-broadcasters-of-ireland\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_tourism_culture_arts_sport_and_media/submissions/2021/2021-11-02_submission-2-independent-broadcasters-of-ireland_en.pdf).

<sup>138</sup> Video available here, <https://www.oireachtas.ie/en/oireachtas-tv/video-archive/committees/4097>.

<sup>139</sup> Report of the Joint Committee on the Pre-Legislative Scrutiny of the General Scheme of the Online Safety and Media Regulation Bill <https://www.gov.ie/en/publication/d8e4c-online-safety-and-media-regulation-bill/>

<sup>140</sup> See <https://www.gov.ie/en/press-release/86fff-budget-2022-a-powerful-programme-of-supports-for-tourism-culture-and-arts-gaeltacht-sport-and-media-sectors/>.

<sup>141</sup> <https://www.ccpc.ie/>.

<sup>142</sup> <https://eur-lex.europa.eu/eli/reg/2017/2394/oj>.

<sup>143</sup> <https://www.dataprotection.ie/>.



### 3.5.3. Best practices of cooperation areas among NRAs with regard to online platforms

The BAI is Ireland's designated body to the European Regulators Group for Audiovisual Media Services (ERGA) and continues to contribute to the delivery of its annual Work Programme. In 2020, the BAI, along with the French CSA, co-chaired the Sub-group that developed the ERGA's Memorandum of Understanding (MoU).<sup>144</sup> The MoU creates a framework for cooperation in the implementation of the revised Directive.

## 3.6. LU - Luxembourg<sup>145</sup>

### 3.6.1. Powers and competences of the NRA

The *Autorité luxembourgeoise indépendante de l'audiovisuel* (ALIA),<sup>146</sup> Luxembourg's independent media authority, monitors the content of television services under licence or notification in Luxembourg in order to ensure that they comply with any applicable legal provisions. In case of defined violations, ALIA may order penalties (reprimands or fines up to EUR 25 000), and in case of failure to comply with the respective orders or in case of recidivism, the penalty may be increased (e.g. doubling of the fine, order of temporary suspension, permanent withdrawal of the permit or concession, or other). However, ALIA does not have the power to enforce its decisions autonomously, as the responsibility for the recovery of fines lies with the *Administration de l'enregistrement, des domaines et de la TVA* (Registration and Domains Authority).<sup>147</sup>

Apart from this, ALIA's competences extend beyond the regulation of audiovisual media in the traditional sense. In fact, since the entry into force of the national transposition of the revised AVMS Directive on 12 March 2021, ALIA also monitors the video-sharing platforms (VSP) under Luxembourg's jurisdiction. Moreover, ALIA monitors the content of national radio stations, regional radio stations (transmission networks), and local radio stations and it monitors and assesses the film classification undertaken by cinema operators. Finally, ALIA is tasked with preserving and making available to the public any relevant information that serves as a basis for performing political opinion surveys.

With the amendments introduced on 26 February 2021, the law on electronic media now explicitly highlights the scope of ALIA's independence in Art. 35 (1) by stating that the authority "does not request or accept instructions from any other body on the

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<sup>144</sup> [http://erga-online.eu/wp-content/uploads/2020/12/ERGA\\_Memorandum\\_of\\_Understanding\\_adopted\\_03-12-2020\\_L.pdf](http://erga-online.eu/wp-content/uploads/2020/12/ERGA_Memorandum_of_Understanding_adopted_03-12-2020_L.pdf).

<sup>145</sup> This section is based on input received from Georges Jacoby, Carole Kickert and Loredana Rinaldis (ALIA).

<sup>146</sup> <https://www.alia.lu/>.

<sup>147</sup> <https://aed.gouvernement.lu/fr.html>.



fulfilment of the tasks assigned to it. It exercises its powers in an impartial, independent and transparent way.” Furthermore, Art. 35 (2) (j) tasks ALIA “to encourage the development of media education for citizens of any age and in all sectors of society”, giving ALIA an important role in the coordination of national media literacy efforts.

### 3.6.2. Other regulatory bodies relevant for the regulation of online platforms

Online platforms are complex technical, societal and regulatory phenomena. As such, their supervision may require actions by different regulators or by different co-regulatory constellations and bodies, depending on the nature of the potential legal infringement. Besides ALIA, some of Luxembourg’s regulatory authorities with potential competence for the oversight of different aspects of online platforms are the *Commission nationale pour la protection des données* (National Commission for Data Protection [CNPD]),<sup>148</sup> the *Institut luxembourgeois de régulation* (Regulatory Institute [ILR])<sup>149</sup> for electronic communications, electricity, radio frequencies, and others, the *Conseil de la concurrence* (Competition Council), and the *Société des auteurs, compositeurs et éditeurs musicaux* (Society of Music Authors, Composers and Editors [SACEM]) for copyright supervision.

Amongst the different types of online platforms, VSPs are those that are of most direct relevance for ALIA. Their supervision has become one of ALIA’s core tasks in accordance with the transposition of the revised AVMS Directive in the Act of 26 February 2021 that amends the amended law of 27 July 1991 on electronic media (law on electronic media).<sup>150</sup> Whereas ALIA does not generally monitor the content that is provided on VSPs, the VSP providers that are under the competence of the Grand Duchy of Luxembourg must take appropriate measures to ensure compliance with any relevant requirements as specified by the law. ALIA evaluates the appropriateness of the measures taken by VSP providers by considering the nature of the relevant content, the prejudice it may cause, the characteristics of the category of people to protect as well as the rights and legitimate interests at stake, including those of the video-sharing platform providers and those of the users who have created the content or put it online, as well as the interest of the general public.

Regarding potential co-regulatory cases, Luxembourg has not established a dedicated national body or fixed format for organisation of co-regulation. Rather, dynamic cooperative frameworks enable the different competent regulators to engage in targeted cooperation.

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<sup>148</sup> <https://cnpd.public.lu/fr.html>.

<sup>149</sup> <https://web.ilr.lu/FR/ILR>.

<sup>150</sup> Loi du 26 février 2021 portant modification de la loi modifiée du 27 juillet 1991 sur les médias électroniques, <https://legilux.public.lu/eli/etat/leg/loi/2021/02/26/a174/jo>.



### 3.6.3. Best practices of cooperation areas among NRAs with regard to online platforms

Whereas ALIA integrates the European Regulators Group for AVMS (ERGA), and it fully cooperates with its European and international partners in resolving cross-border regulatory matters, it does not have abundant practical experience with the resolution of cross-border cases involving online platforms. Accordingly, ALIA is currently not in a position to share best practices different from the general framework for cooperation elaborated within ERGA.

## 3.7. SE - Sweden<sup>151</sup>

### 3.7.1. Powers and competences of the NRA

In Sweden, the revised AVMSD was fully transposed into national law on 1 December 2020. Since the *Myndigheten för press, radio och tv* (Swedish Press and Broadcasting Authority, SPBA)<sup>152</sup> has the main responsibility for supervision under the Directive, it was designated as the national regulatory authority in accordance with Article 30 of the revised Directive, as long as regulatory tasks do not lie with any other national authority or body. The *Granskningsnämnden för radio och tv* (Swedish Broadcasting Commission, SBC),<sup>153</sup> an independent decision-making body within the SPBA, monitors, *inter alia*, through ex-post reviews, whether radio and television content complies with the Swedish Radio and Television Act and the programme-related conditions in broadcasting licences.

Depending on the regulatory tasks at hand, the SPBA and the SBC have different enforcement powers and competences to ensure that the national rules and regulations are complied with. These enforcement powers and competences are similar to those of other Swedish regulatory authorities and include orders (for example to provide information or documentation or to comply with certain rules and conditions), which may be combined with conditional fines, special fees (penalty fees) and ultimately the revocation of licences.

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<sup>151</sup> This section is based on input received from Rebecca Parman (PMRT)..

<sup>152</sup> <https://www.government.se/government-agencies/swedish-broadcasting-authority/>.

<sup>153</sup> <https://www.mprt.se/om-oss/om-verksamheten/vara-namnder/>.



### 3.7.2. Other regulatory bodies relevant for the regulation of online platforms

Other national authorities and bodies with (regulatory) tasks under the AVMSD are the *Justitiekanslern* (Swedish Chancellor of Justice),<sup>154</sup> the *Konsumentverket* (Swedish Consumer Ombudsman, within the Swedish Consumer Agency),<sup>155</sup> the *Läkemedelsverket* (Swedish Medical Products Agency),<sup>156</sup> the *Integritetsskyddsmyndigheten* (Swedish Authority for Privacy Protection),<sup>157</sup> and the *Statens medieråd* (Swedish Media Council).<sup>158</sup> The different authorities co-operate on several topics under the AVMSD, including issues relating to audiovisual commercial communications and media information literacy.

After the introduction of the DSA proposal by the European Commission, the SPBA and several other national authorities saw the need for further cooperation regarding the regulation of online platforms. The authorities considered there to be great value in a closer dialogue about what the proposal entails and what consequences the DSA may have in practice, once in place. On 26 April 2021, the so-called DSA Network was therefore established as a voluntary forum for cooperation between interested authorities on matters that primarily concern the DSA. The members of the network also envisage a need for similar cooperation regarding other horizontal EU legislation in the field of digitization in the coming years. The cooperation within the network may therefore include other legislation as well in the future.

Covering areas such as media regulation, telecommunications, data protection, competition, consumer protection and cross-border trade, the network currently consists of representatives from the SPBA, the Swedish Media Council, the *Post- och telestyrelsen* (Swedish Post and Telecom Authority, PTS),<sup>159</sup> the Swedish Authority for Privacy Protection, the *Konkurrensverket* (Swedish Competition Authority),<sup>160</sup> the Swedish Consumer Agency, the *Kommerskollegium* (National Board of Trade Sweden)<sup>161</sup> and the *Myndigheten för digital förvaltning* (Swedish Agency for Digital Government).<sup>162</sup> The network may expand its list of members in the future, either on a permanent or an ad hoc basis, to include other authorities involved in the regulation of online platforms. The enforcement powers and competences held by the different members within their different fields vary, as not all participating authorities are regulatory authorities. The enforcement powers include orders, which may be combined with conditional fines, penalty fees and on-site inspections.

Within the network, there is a high-level group that mainly consists of the directors general, and a working group consisting of officials from the different

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<sup>154</sup> <https://www.jk.se/>.

<sup>155</sup> <https://www.konsumentverket.se/>.

<sup>156</sup> <https://www.lakemedelsverket.se/>.

<sup>157</sup> <https://www.imy.se/>.

<sup>158</sup> <https://www.statensmedierad.se/>.

<sup>159</sup> <https://www.pts.se/>.

<sup>160</sup> <https://www.konkurrensverket.se/>.

<sup>161</sup> <https://www.kommerskollegium.se/>.

<sup>162</sup> <https://www.digg.se/>.



authorities. The network as such has no formal powers but aims to enable cooperation and the exchange of knowledge and experience between its members. All participating authorities may raise and share issues within the network but may not oblige the other authorities to act. The network's efforts and outputs are based on the authorities' operational needs, responsibilities, resources, etc. There are no resources other than those the members themselves are able and willing to contribute to the network.

The network aims – through the exchange of knowledge and experience between participating authorities, as well as other national and international authorities, networks and stakeholders – to build knowledge about how the DSA may affect both Swedish democracy and the Swedish market and legal landscape, including for example how the act borders on other legislation and other relevant EU collaborations. Through this exchange, the network also hopes to gain increased knowledge about how to create the best conditions for effective cooperation between authorities in regard to acts with broad areas of application that involve several authorities.

The network may, depending on its resources and to the extent it is requested, assist the government with analysis and mapping of the participating authorities' areas of responsibility and the possible need for additional supervisory responsibilities, market control, information efforts and advocacy. The network may also identify important issues common to all participating authorities that the government may want to pay special attention to during the DSA negotiations. Lastly, the network may, if deemed appropriate by its members, flag important authority-specific issues that the government may want to monitor or prioritize during the negotiations.

### 3.7.3. Best-practices cooperation among NRAs with regard to online platforms

The DSA Network has come in contact with several different forums for cooperation with a focus on online platforms and digitization, since the network was established. Two examples are the British Digital Regulation Cooperation Forum (DRCF)<sup>163</sup> and the Dutch Digital Regulation Cooperation Platform (SDT),<sup>164</sup> which cover many of the same areas and have similar sets of participating national authorities as the Swedish DSA Network.

Another example is the European Digital Clearinghouse,<sup>165</sup> which brings together regulators, policymakers, stakeholders and researchers to exchange best practices and novel ideas about how to protect individuals in digital markets across legal regimes.

Through the Swedish Consumer Agency, the network has recently also learnt about a Norwegian cooperation forum, which the Norwegian Consumer Authority<sup>166</sup> is

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<sup>163</sup> See <https://www.gov.uk/government/publications/digital-regulation-cooperation-forum-workplan-202122/digital-regulation-cooperation-forum-plan-of-work-for-2021-to-2022#foreword>.

<sup>164</sup> See <https://autoriteitpersoonsgegevens.nl/en/news/dutch-regulators-strengthen-oversight-digital-activities-intensifying-cooperation>.

<sup>165</sup> <https://www.digitalclearinghouse.org>.



currently starting up to strengthen supervision in the digital area in Norway. The Swedish DSA Network will find it interesting to follow and learn from these other networks in the future.

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<sup>166</sup> <https://www.forbrukertilsynet.no/>.







## 4. Networks of media regulatory authorities

In economics, the network effect is a phenomenon whereby increased numbers of people or participants improve the value of a good or service.<sup>167</sup> In regulatory terms, increased numbers of NRAs joining forces for cooperation and sharing of information results in better handling of cross-border cases and superior knowledge of the market and applicable regulatory frameworks. While the creation of ERGA has driven NRA cooperation in the EU to a higher level, there are other networks in and around Europe that aim at achieving similar effects. The main networks of media regulators active in Europe – both formal and informal – are described below. Their number has kept increasing over the years, testimony to the appetite for reinforced cooperation and coordination. This overview shows that cooperation between media regulators comes in many different forms and fulfils different purposes that can complement one another.

### 4.1. European cooperation networks

#### 4.1.1. ERGA

As explained in Chapter 2 of this publication, the European Regulators Group for Audiovisual Media Services (ERGA) consists of the EU national regulatory authorities in the field of audiovisual media services, advises the European Commission and facilitates cooperation between the regulatory bodies in the EU. As to the governance, the rules of procedure<sup>168</sup> envisage a board composed of a chair, a vice-chair and up to three additional members from among the members with voting rights, all in charge for 12 months.

In its Statement of Purpose,<sup>169</sup> ERGA highlights its members' commitment to advancing the values enshrined in the AVMSD and outlines the resulting responsibility on

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<sup>167</sup> <https://www.investopedia.com/terms/n/network-effect.asp>.

<sup>168</sup> ERGA Rules of procedure, <http://erga-online.eu/wp-content/uploads/2020/04/ERGA-Rules-of-Procedure-10-12-2019-ver-1.pdf>.

<sup>169</sup> ERGA Statement of Purpose,

[http://erga-online.eu/wp-content/uploads/2019/06/ERGA-2019-02\\_Statement-of-Purpose-adopted.pdf](http://erga-online.eu/wp-content/uploads/2019/06/ERGA-2019-02_Statement-of-Purpose-adopted.pdf).



the part of ERGA's members to cooperate on application of the revised AVMSD and development of frameworks to bolster such cooperation.

One stated strategic objective is to work out concrete solutions to cross-border challenges notably raised by the extension of the material scope of the AVMSD to video-sharing platforms, the identification of the services under the jurisdiction of member states and the provisions relating to the cross-border financing of European works. For that purpose, the Statement proposes the drafting of memorandums of understanding which NRAs would apply on a voluntary basis to enable such cooperation between NRAs.

On 3 December 2020, at its December plenary meeting, the ERGA members<sup>170</sup> adopted a new ERGA Memorandum of Understanding (MoU).<sup>171</sup> Following years of cooperation on an ad hoc basis, this MoU sets out a framework for collaboration and information exchange between the participant NRAs in order to resolve practical issues arising from the implementation of the revised AVMSD in a consistent manner.

Moreover, it lays down mechanisms to enable the exchange of information, experience, and best practice on the application of the regulatory framework for audiovisual media services and video-sharing platforms. The MoU does not alter, however, existing competencies of the participants or create new ones that would affect the institutional framework in their respective member states. Point 4.4. clarifies that the MoU is not intended to be legally binding and point 4.6. that the participants may agree more detailed or additional cooperation arrangements bilaterally.

The MoU sets out graduated mechanisms of cooperation and areas of cooperation that NRAs commit to implement and support. Firstly, each NRA agrees to establish and maintain a single point of contact (SPOC), to receive requests for cooperation, who will be in charge of making available to other NRAs up-to-date information about the competences and powers of the regulatory authority and about relevant national legislation upon request.

Moreover, NRAs agree to provide mutual assistance to other NRAs in the resolution of a matter beyond the mere provision of information upon receipt of a request specifying the form of mutual assistance requested from the receiving NRA. This type of request implies the dedication of resources (human, technical) to provide practical assistance to another NRA.

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<sup>170</sup> The NRAs from Iceland, Liechtenstein, and Norway fully participate in ERGA, except for the right to vote. See ERGA, "Media regulators adopt new framework for cooperation to strengthen cross-border law enforcement", press release of 3 December 2020, [https://erga-online.eu/wp-content/uploads/2020/12/2020-12-03-Press-Release-14th-ERGA-Plenary\\_final.pdf](https://erga-online.eu/wp-content/uploads/2020/12/2020-12-03-Press-Release-14th-ERGA-Plenary_final.pdf).

<sup>171</sup> Memorandum Of Understanding between the National Regulatory Authority members of the European Regulators Group For Audiovisual Media Services, 3 December 2020, [https://erga-online.eu/wp-content/uploads/2020/12/ERGA\\_Memorandum\\_of\\_Understanding\\_adopted\\_03-12-2020\\_L.pdf](https://erga-online.eu/wp-content/uploads/2020/12/ERGA_Memorandum_of_Understanding_adopted_03-12-2020_L.pdf).



Requests for mutual assistance may relate to any field coordinated by the revised AVMSD for which the receiving NRA has jurisdiction.<sup>172</sup> This may notably include issues relating to:

- jurisdiction (Art. 2 and 28a);
- freedom of reception and cases of circumvention (Art. 3 and 4);
- cases where cross-border harm might arise (e.g. Art. 6, 6a, 9-11 and 19-24);
- accessibility (Art. 7);
- cross-border financial contributions (Art. 13(2));
- video-sharing platform services (Art. 28a and 28b).

The MoU also outlines additional specific cooperation arrangements concerning Article 28b<sup>173</sup> and Article 13(2) AVMSD.<sup>174</sup> With regards to Article 28b, the MoU points to its novelty and stresses that NRAs can benefit significantly from sharing knowledge, resources, and their experiences with one another, by working together particularly at the macro level and targeting large-scale issues of significant public interest.

Concerning Article 13(2) AVMSD, the MoU recognises a.o. that the implementation of financial contributions by targeted member states raises specific challenges for regulators and audiovisual media service providers alike, as the latter may have to comply with the rules of several EU member states at the same time. On top of this, effective implementation of financial contributions by targeted member states requires readily accessible and accurate information about a service provider's activities, and appropriate information-sharing and cooperation arrangements between NRAs have the potential to alleviate the burden for some service providers of having to declare their revenues, investments, and levies paid in multiple countries.

In order to facilitate implementation of the MoU, a dedicated ERGA Action Group composed of SPOCs established by NRAs is responsible for:

- maintaining the register of SPOCs;
- maintaining the register about the details of national financial schemes based on the information (where available) provided by NRAs;
- setting up quarterly meetings of the national SPOCs to exchange their views on the implementation of the MoU;
- collecting information from national SPOCs and reporting to the ERGA plenary, about the implementation of the MoU;
- where appropriate, developing standard forms to be used by the participants in the MoU in the context of the general and specific cooperation frameworks envisioned in the MoU;

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<sup>172</sup> NRAs may also agree to cooperate on issues that fall outside the scope of the fields co-ordinated by the revised AVMSD for which the receiving NRA has been assigned competency.

<sup>173</sup> Article 28b AVMSD requires EU member states to ensure that video-sharing platform services established within their jurisdiction take appropriate measures in respect of certain kinds of harmful and illegal content.

<sup>174</sup> Article 13(2) AVMSD allows EU Member States to impose levies on audiovisual media services established outside of their jurisdiction.



- making recommendations about how to amend the MoU in order to address challenges identified by the participants; and
- maintaining a list of mediators to be used by NRAs.

The Action Group is also tasked to report about the implementation of the MoU at each ERGA plenary meeting.

The fight against disinformation is another theme worth highlighting in this context as this ERGA work stream has encouraged the cooperation and development of work processes among media regulators in the largely uncharted territory of the regulation of online platforms. From 2018 onwards, ERGA, as an advisory body to the European Commission, was asked to assist the Commission in monitoring the Code of Practice on Disinformation. The Code was set up in 2018 as a multi-stakeholder self-regulatory instrument, a forum including global online platforms, such as Google, Facebook and Twitter, committing to implement policies designed to counter the spread of disinformation. Further to the creation of a dedicated sub-group, ERGA members produced a series of monitoring reports<sup>175</sup> and recently issued recommendations<sup>176</sup> for a more streamlined Code of Practice on Disinformation.

Particularly noteworthy is that the exchange of information and knowledge between media NRAs required as per the monitoring provision of the Code of Practice on Disinformation allowed involved media regulatory authorities to better understand the skills that are needed for conducting such tasks, to develop expertise, methodologies and joint research, and to experience negotiation with large online platforms.

In light of the Digital Services Act (DSA) proposal, ERGA sees the strengthened Code “as an opportunity to test some of the proposals in the DSA related to access to data, audits, external oversight, or risk-mitigating measures”.

## 4.1.2. European Platform of Regulatory Authorities

The European Platform of Regulatory Authorities (EPRA) was set up in 1995 in response to the need for increased cooperation between European regulatory authorities. With its 25 years of experience and a robust network of working-level contacts, EPRA is the oldest and largest network of broadcasting regulators. It currently counts 55 regulatory authorities from 47 countries as its members, including all NRAs from the EU 27, EFTA, EU candidate countries<sup>177</sup>, potential EU candidates<sup>178</sup>, as well as NRAs from five countries of the EU Eastern partnership.<sup>179</sup> The European Commission, the Council of Europe, the

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<sup>175</sup> [https://erga-online.eu/wp-content/uploads/2019/06/ERGA-2019-06\\_Report-intermediate-monitoring-Code-of-Practice-on-disinformation.pdf](https://erga-online.eu/wp-content/uploads/2019/06/ERGA-2019-06_Report-intermediate-monitoring-Code-of-Practice-on-disinformation.pdf).

<sup>176</sup> ERGA Recommendations for the new Code of Practice on Disinformation (October 2021), [https://erga-online.eu/wp-content/uploads/2021/11/ERGA-RECOMMENDATIONS-2021\\_11.pdf](https://erga-online.eu/wp-content/uploads/2021/11/ERGA-RECOMMENDATIONS-2021_11.pdf).

<sup>177</sup> i.e. Albania, Montenegro, North Macedonia, Serbia and Turkey.

<sup>178</sup> Bosnia and Herzegovina and Kosovo.

<sup>179</sup> Armenia, Azerbaijan, Georgia, Moldova and Ukraine.



European Audiovisual Observatory and the Office of the OSCE Representative on Freedom of the Media have permanent Observer status. EPRA also has regular contacts with other regional networks of NRAs in Europe, such as ERGA, MNRA, REFRAM, CERF etc.

#### 4.1.2.1. Organisation and aims of EPRA

EPRA Statutes set out the rules applying to the functioning of the network and membership.<sup>180</sup> The Executive Board acts as the strategic body steering the EPRA. Inter alia, it represents the EPRA at external events, proposes a three-year strategy, devises the yearly work programmes and the related activities, and takes decisions relating to operation of the EPRA. The EPRA Board Members do not represent their respective authorities but are elected on an individual basis, they are not candidates but nominees and perform their duties on a philanthropic basis.

The EPRA Secretariat is exclusively financed by members and hosted by the European Audiovisual Observatory, to ensure stability and independence, and to make use of natural synergies with the host and minimize administrative burdens and costs.

EPRA's Statutes expressly prohibit the adoption of common positions or declarations and EPRA is committed to preserve an informal character to encourage a frank and open exchange of views on issues pertaining to the application of media regulation.

As highlighted in its Strategy 2021-2023 "Sharing knowledge to embrace change",<sup>181</sup> EPRA aims at accompanying its members in the changing media paradigm. In this regard, it provides an independent, informal and transparent forum for audiovisual regulators to share relevant information, best practice, experience and expertise and to learn about new technical and policy developments affecting the audiovisual ecosystem. During the regular meetings organised for its members, EPRA explores innovative means of regulating and analysing the audiovisual sector and of empowering audiences through media and information literacy and sharing that with a wider audience of stakeholders.

#### 4.1.2.2. EPRA and cooperation

The current Strategy and the recent outputs of the EPRA network give particular prominence to understanding the evolving online media landscape and to the increasing need for horizontal and vertical cooperation among regulatory authorities. In addition to long-standing dedicated cooperation tools – such as its interactive website where members can create and respond to information surveys – EPRA is committed to building

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<sup>180</sup> On 20 May 2021, EPRA's Statutes were unanimously amended as part of its Strategy for 2021-2023 "Sharing knowledge to embrace change" and its related work plan. The Statutes were amended with a view to reflecting the current operating framework of the network and enhancing the accountability and transparency of EPRA as an organisation. See [https://www.epra.org/news\\_items/53rd-epra-meeting-adoption-of-new-statutes](https://www.epra.org/news_items/53rd-epra-meeting-adoption-of-new-statutes).

<sup>181</sup> EPRA Strategy for 2021-2023 "Sharing knowledge to embrace change" as adopted by EPRA members on 7 December 2020, <https://www.epra.org/articles/epra-statement-of-strategy>.



relationships with a wide range of stakeholders and recently launched various collaborative projects to foster cooperation among its members.

In 2021, EPRA launched thematic taskforces on, respectively, Artificial Intelligence<sup>182</sup> and Media Literacy (EMIL).<sup>183</sup> These taskforces give media NRAs an opportunity to cooperate on a regular basis to address in a practical way the challenges and initiatives undertaken in these topical fields. The EMIL taskforce, built on the long-standing work of the EPRA network on media literacy and open to external European actors, helps connect media NRAs with relevant and active media literacy organisations in Europe.

In addition, national regulatory authorities from adjacent sectors are regularly invited to EPRA gatherings for an exchange with media NRAs on common challenges they face.<sup>184</sup> As a key theme of the EPRA Work Programme 2021,<sup>185</sup> the cooperation with regulators from adjacent sectors was recently addressed during a joint event<sup>186</sup> with the Independent (telecommunications) Regulators Group and during a thematic plenary session on "Cross-sectoral cooperation between regulators" in October 2021. The overlaps of regulatory frameworks in the online environment and the need for stronger and more structured coordination between policies and regulatory actors were particularly highlighted and practical examples of cooperation were presented. More generally, EPRA regularly cooperates with its permanent observers, external stakeholders and academia. For instance, EPRA helped the European Audiovisual Observatory liaise with its members and develop templates and processes to provide data for MAVISE, the free-access database on audiovisual services.<sup>187</sup> EPRA also recently launched a collaboration with the University of Vienna to better understand the regulatory needs and challenges in the audiovisual field, encourage an informed, evidence-based approach to regulation and support NRAs' practical skills and capacities.

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<sup>182</sup> The AI & Regulators Roundtable: A series of informal roundtables between EPRA members for exchanges on the tools and technologies that audiovisual regulators could use to support their work and the impact of AI on their mission.

<sup>183</sup> EMIL: A taskforce currently gathering 36 members and aimed at promoting media literacy networks in Europe and sharing best practices and knowledge around media literacy. For more details, see the Terms of reference, <https://www.epra.org/attachments/emil-terms-of-reference>.

<sup>184</sup> Data Protection Authorities on the issue of protection of minors or competition authorities on the existing interconnections with media regulation and pluralism, for instance.

<sup>185</sup> EPRA Work Programme 2021: <https://www.epra.org/attachments/epra-s-work-programme-for-2021>.

<sup>186</sup> EPRA/IRG joint event, 9 July 2021: "Working together: Why does it matter?", [https://www.epra.org/news\\_items/working-together-irg-and-epra-organised-a-joint-event-for-their-members](https://www.epra.org/news_items/working-together-irg-and-epra-organised-a-joint-event-for-their-members).

<sup>187</sup> The European Audiovisual Observatory's MAVISE database: <https://mavise.obs.coe.int/>.



## 4.2. Other platforms with a cultural and linguistic focus

### 4.2.1. Mediterranean Network of Regulatory Authorities (MNRA)

The Mediterranean Network of Regulatory Authorities (MNRA)<sup>188</sup> was created on a proposal of the French Conseil supérieur de l'audiovisuel (CSA) and the Consell de l'Audiovisual de Catalunya (CAC) on 29 November 1997. It aims at strengthening the historical and cultural links between Mediterranean countries (understood in a broad sense), and at giving to the independent regulatory authorities from the Mediterranean area the opportunity for exchanges on the common challenges they face.

The MNRA is a platform for discussion and a place for the regular exchange of information on issues related to audiovisual regulation. It works towards transparency and mutual knowledge among its members, in particular through the exchange of best practices between regulators. It acts for a free and responsible communication in the Mediterranean basin through a set of fundamental principles for the regulation of audiovisual content. It maintains cooperative relations with international organisations and platforms of similar institutions.

The network counts 27 member authorities representing 24 states and territories from the Mediterranean Basin. The network is open to any independent regulatory authority in the Mediterranean willing to take part in its activities and exchanges.

The functioning of the MNRA is governed by its Charter.<sup>189</sup> The Plenary Assembly is the sovereign body of the network. Decisions are taken by consensus or, failing that, by a simple majority of the members present. The MNRA meets once a year in a Plenary Assembly. This meeting is held in the country of the member institution holding the incoming vice-presidency of the network. The transfer of powers from the presidency to the incoming vice-presidency takes place at the beginning of the Plenary Assembly. The outgoing President is a Vice-President for the duration of one year. The Vice-President is elected at the end of each annual meeting. The Technical Commission is composed of the Presidency, the two Vice-Presidencies, the Executive Secretariat and the founding members of the network. It meets at least once a year between two Plenary Assemblies. The Executive Secretariat of the network is provided jointly by the CSA (France) and the HACA (Morocco).

Among the cooperation platforms, the Mediterranean Network of Regulatory Authorities has been a precursor in raising the awareness of media regulators and undertaking research on issues pertaining to gender representation on screen, with reports on gender stereotypes in advertising<sup>190</sup>, equality between men and women in sport

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<sup>188</sup> <https://www.rirm.org/en/the-mnra/>.

<sup>189</sup> <https://www.rirm.org/wp-content/uploads/2018/02/Charte-du-RIRM-en-vigueur.pdf>

<sup>190</sup> [https://www.rirm.org/wp-content/uploads/2018/02/Etude-stereotypes-de-genre-PUBLICITE-2016\\_FRANCAIS\\_FRENCH-1.pdf](https://www.rirm.org/wp-content/uploads/2018/02/Etude-stereotypes-de-genre-PUBLICITE-2016_FRANCAIS_FRENCH-1.pdf).



programmes,<sup>191</sup> and, most recently, news coverage of gender-based violence in the Mediterranean area.<sup>192</sup>

#### 4.2.2. Network of French-speaking media regulatory authorities (REFRAM)

The Francophone Network of Media Regulators (REFRAM)<sup>193</sup> was created in Ouagadougou on 1 July 2007. It comprises 30 members from Europe, Africa and North America.<sup>194</sup>

REFRAM's mission is to work towards the consolidation of the rule of law, democracy and human rights. It aims at establishing and strengthening solidarity and exchanges between its members, providing a space for debate and exchange of information on issues of common interest, and contributes to training and cooperation efforts among its members.

To this end, REFRAM is empowered to undertake any action necessary to pursue its objectives, and in particular to:

- encourage mutual knowledge among its members regarding the way in which they carry out their respective missions, in particular through the exchange of good practices;
- organise working seminars on media regulation for the benefit of its members
- maintain any useful relationship with organisations or networks with similar or complementary objectives, and carry out any other activity in line with the objectives of the Network.

The *Organisation internationale de la francophonie* (OIF)<sup>195</sup> is an observer of the Network.

The secretariat of the Network is entrusted to France's *Conseil supérieur de l'audiovisuel*. The secretariat works under the responsibility of the president of the Network.

Recent priority topics covered by REFRAM's Roadmap<sup>196</sup> include dealing with disinformation, supporting content creation and public interest content, protecting minors in an online environment, hate speech and the treatment of migration issues in the media.

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<sup>191</sup> [https://www.rirm.org/wp-content/uploads/2018/02/Study-Gender-Equality-in-SPORTS-PROGRAMMES\\_2017\\_ENGLISH\\_ANGLAIS.pdf](https://www.rirm.org/wp-content/uploads/2018/02/Study-Gender-Equality-in-SPORTS-PROGRAMMES_2017_ENGLISH_ANGLAIS.pdf).

<sup>192</sup> [https://www.rirm.org/wp-content/uploads/2021/10/Study-on-the-news-coverage-of-gender-based-violence-in-the-Mediterranean-audiovisual-area-english\\_DEF.pdf](https://www.rirm.org/wp-content/uploads/2021/10/Study-on-the-news-coverage-of-gender-based-violence-in-the-Mediterranean-audiovisual-area-english_DEF.pdf).

<sup>193</sup> <https://www.refram.org/>.

<sup>194</sup> <https://www.refram.org/Les-membres>.

<sup>195</sup> <https://www.francophonie.org/>.

<sup>196</sup> <https://www.refram.org/Ressources/Feuilles-de-route/Feuille-de-route-2020-2021>.





### 4.2.3. Informal regional discussion fora

In addition to the larger platforms of cooperation described above, there are a number of smaller, mostly informal fora, aimed at facilitating the exchange of information and best practices between regulatory authorities from neighbouring countries.

#### 4.2.3.1. Central European Regulatory Forum (CERF)

The Central European Regulatory Forum (CERF)<sup>197</sup> was set up on 15 December 2009 by the regulatory authorities supervising the electronic media of the Czech Republic,<sup>198</sup> Hungary,<sup>199</sup> Poland,<sup>200</sup> Romania,<sup>201</sup> Serbia,<sup>202</sup> and Slovakia,<sup>203</sup> with the aim of enhancing cooperation among the regulatory authorities of Central Europe.

The Memorandum of Understanding establishing the Central European Regulatory Forum does not intend to create legal relations among the signatories, but it serves as a tool to address the challenges posed by the advent of digitalisation with special regard to transfrontier broadcasts. The regular exchange of ideas and best practices are important elements of the cooperation, yet the pivotal goal of the regulatory forum is the handling of complaints against transfrontier broadcasts.

The CERF holds one meeting a year at the invitation of a regulatory authority.

### 4.2.4. Baltic cooperation

A cooperation agreement between the regulatory authorities in Estonia,<sup>204</sup> Latvia<sup>205</sup> and Lithuania<sup>206</sup> was signed in 2005 to take into account the similarities of the small audiovisual markets of the Baltic States. The three authorities have been meeting on a yearly basis ever since.

At their last annual meeting, which was held in Tallinn on 11-12 November 2021, the representatives of the NRAs interacted on issues related to the transposition of the AVMSD and its implementation in the three Baltic States, reported on fundamental changes in the structure of their institutions, and discussed measures to prevent the dissemination of illegal content on the Internet, as well as the regulatory challenges and opportunities raised by video-sharing platform services and on-demand audiovisual media

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<sup>197</sup> <http://cerfportal.org/>.

<sup>198</sup> Council for Radio and Television Broadcasting (RRTV), <https://www.rrtv.cz/>.

<sup>199</sup> Media Council of the National Media and Infocommunications Authority (NMHH), <https://nmhh.hu/>.

<sup>200</sup> National Broadcasting Council (KRRiT), <https://www.gov.pl/web/krrit>.

<sup>201</sup> National Audiovisual Council (CNA), <https://www.cna.ro/>.

<sup>202</sup> Regulatory Authority for Electronic Media (REM), <http://www.rem.rs/>.

<sup>203</sup> Council for Broadcasting and Retransmission of the Slovak Republic (RVR), <http://www.rvr.sk/>.

<sup>204</sup> Consumer Protection and Technical Regulatory Authority (TTJA), <https://www.ttja.ee/>.

<sup>205</sup> National Electronic Mass Media Council (NEPLP), <https://www.neplpadome.lv/>.

<sup>206</sup> Radio and Television Commission (RTCL), <https://www.rtk.lt/>.



services. Representatives of the three regulators also participated in the annual international conference of Tallin University focusing on the mission and values of public service broadcasters.<sup>207</sup>

#### 4.2.5. Nordic cooperation

The regulatory authorities in the Nordic countries, that is to say Iceland,<sup>208</sup> Denmark,<sup>209</sup> Finland,<sup>210</sup> Norway<sup>211</sup> and Sweden,<sup>212</sup> have also established regional cooperation. They have been meeting once a year at the invitation of one of the members to discuss and exchange experiences on current media issues since 1996.

The Nordic countries have much in common, which makes it appropriate to exchange best practice on relevant issues. The regulations, which are largely based on the AVMS Directive, are similar, media development is comparable and in addition, several of the media market players are active across the Nordic market.<sup>213</sup>

#### 4.2.6. FR-DE-UK tripartite

Regular so-called tripartite meetings have been organised since 1996 between the three largest NRAs in Europe, namely the French,<sup>214</sup> German<sup>215</sup> and UK<sup>216</sup> regulators.

These twice-yearly small-scale meetings are an opportunity to compare in a concrete way the approaches to regulation as well as to discuss topical European audiovisual issues.<sup>217</sup>

The continuation of the tripartite meetings demonstrate the added value of informal exchanges and personal relationships between media regulatory authorities in addition to more formal modes of interaction.

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<sup>207</sup> <https://www.rtk.lt/lt/naujienos/aptarta-audiovizualines-ziniasklaidos-paslaugu-reguliavimo-problematika>.

<sup>208</sup> Icelandic Media Commission (Fjölmiðlanefnd), <https://fjolmidlanefnd.is/>.

<sup>209</sup> Radio and Television Board, c/o Agency for Culture and Palaces (Radio og tv-nævnet), <https://slks.dk/omraader/medier/>.

<sup>210</sup> The Finnish Transport and Communications Agency (Traficom), <https://www.traficom.fi/>.

<sup>211</sup> Norwegian Media Authority (Medietilsynet), <https://www.medietilsynet.no/>.

<sup>212</sup> Swedish Press and Broadcasting Authority (Myndigheten för press, radio och tv), <https://www.mprt.se/>.

<sup>213</sup> [https://www.mprt-se.translate.google.com/om-oss/vara-natverk-eu-och-norden/?x\\_tr\\_sl=auto&x\\_tr\\_tl=en&x\\_tr\\_hl=de](https://www.mprt-se.translate.google.com/om-oss/vara-natverk-eu-och-norden/?x_tr_sl=auto&x_tr_tl=en&x_tr_hl=de).

<sup>214</sup> Conseil Supérieur de l'Audiovisuel (CSA), <https://www.csa.fr/>.

<sup>215</sup> Directors Conference of the State Media Authorities (DLM), <https://www.die-medienanstalten.de/>.

<sup>216</sup> Ofcom, <https://www.ofcom.org.uk/>.

<sup>217</sup> <https://www.csa.fr/Reguler/Regulation-europeenne-et-internationale/Des-relations-bilaterales-constructives>.



## 5. Cross-sectoral cooperation

The digital environment has prompted policy-makers and regulatory authorities to review the frontiers of cooperative schemes, to take into account not only the cross-border challenges but also the cross-sectoral ones.

### 5.1. Emerging harms, policy interplays and the need for cross-sector regulatory cooperation

While the digital economy brings many benefits, the global and concentrated nature of online platforms poses risks for individuals and society, including new types of harms. These can include exposure to harmful content or conduct, loss of privacy, data and security breaches, lack of competition, unfair business practices and online fraud or harm to wellbeing.<sup>218</sup> Additionally, platforms can also play a significant role in wider societal discourse around elections and the smooth functioning of democratic processes.<sup>219</sup>

A consequence of these new harms is that previously separate policy areas have become increasingly linked, and these new harms mean different authorities are required to consider a wider set of issues from the perspective of potentially conflicting policy aims and objectives. One example of this intersection is between the policy aims of promoting and protecting competition in digital markets, and safeguarding the personal data of the users on digital platforms.

Traditionally, there has been a natural tension between the increased use of data to promote competition and innovation versus the need to keep personal data contained to protect an individual's privacy rights. However, as highlighted in a 2020 Digital Clearinghouse paper, these different regimes can lead to complementary analysis, ways of working and design of remedies.<sup>220</sup>

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<sup>218</sup> Ofcom, "Online market failures and harm: an economic perspective on the challenges and opportunities in regulating online services", 2019, [https://www.ofcom.org.uk/data/assets/pdf\\_file/0025/174634/online-market-failures-and-harms.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0025/174634/online-market-failures-and-harms.pdf).

<sup>219</sup> The Sustainable Computing Lab, "The 2021 German Federal Election on Social Media: An Analysis of Systemic Electoral Risks Created by Twitter and Facebook Based on the Proposed EU Digital Services Act", 2021, [https://www.sustainablecomputing.eu/wp-content/uploads/2021/10/DE\\_Elections\\_Report\\_Final\\_17.pdf](https://www.sustainablecomputing.eu/wp-content/uploads/2021/10/DE_Elections_Report_Final_17.pdf).

<sup>220</sup> Digital Clearing House, "Interplay between EU competition law, consumer protection and data protection law: Strengthening institutional cooperation to increase enforcement effectiveness of EU laws in the digital



For example, a data protection authority might benefit from a better understanding of competition concepts of market power to determine whether the data processing by a powerful data controller strikes a fair balance with the interests of data subjects. A competition authority also needs to be aware of data protection rules in order to prevent any data-sharing remedies from creating data protection concerns. Earlier this year, the UK's competition authority (the CMA) and data protection authority (the ICO) published a joint statement highlighting the benefits of closer working and the synergies between the interests related to data protection, and competition. Similarly, data protection and consumer protection law could be used to offer complementary protection in contractual relationships.

As media and content consumption moves into the digital space, various forms of competition regulation are also increasingly being used to address both economic and social policy objectives, alone or in conjunction with new approaches to regulating online content and content-sharing platforms.<sup>221</sup>

In the UK, for example, the CMA noted in its recent market study on online advertising that “concerns relating to online platforms funded by digital advertising can lead to wider social, political and cultural harm through the decline of authoritative and reliable news media, the resultant spread of ‘fake news’ and the decline of the local press which is often a significant force in sustaining communities”.<sup>222</sup>

In France, meanwhile, it is the competition authority that has overseen negotiations between publishers and platforms in the context of applying requirements set out in the French law implementing the EU's Copyright Directive; and in Australia the Competition and Consumer Commission (ACCC) has developed a Code on remuneration negotiations between these same actors. And perhaps most importantly of all, the EU has brought together both content moderation and a review of platform liability provisions, and proposals to overhaul the competition framework for digital platforms in its Digital Strategy – which rests on the twin pillars of the Digital Services Act and the Digital Markets Act.

It is clear that interventions in this space will need to be carefully designed to promote synergies and avoid undesirable consequences. Part of this will require effectively engaging with the new interplays between competition, data, content and consumer issues, and the scope of the challenges means delivering effective regulation no longer fits neatly into the remit of one regulator.

For the effectiveness of rules and ultimately the benefit of consumers and citizens, it is key that the authorities in charge cooperate with each other in an effective manner. However, cooperation in itself is not always straightforward and can take many forms, ranging from developing increased coherence between cross-sector regimes to more

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economy”, 2020; A summary is available at <https://www.digitalclearinghouse.org/s/Background-note-DCH-dec-2020.pdf>.

<sup>221</sup> EPRA background paper produced by Barbov K., Donde M., and McNulty B., “Teach-in on Competition Law and ex ante market intervention”, 2020, <https://www.epra.org/attachments/ad-hoc-working-group-2-competition-background-paper>.

<sup>222</sup> [Online platforms and digital advertising: Market study final report](#), CMA, July 2020.



practical forms of cooperation and engagement between different regulators, both domestic and international.

## 5.2. The importance of developing effective cooperation models

The debate around cooperation has been growing and it is recognised that more joined-up approaches enable regulators to build skills and capabilities, respond strategically to industry and technological developments and carry out more effective enforcement action.

The OECD, for example, has long been advocating the importance of international regulatory cooperation to deliver effective regulation in the age of digitalisation and in July 2021 published its Best Practice Principles on International Regulatory Cooperation.<sup>223</sup> Although the OECD recommendations predominantly focus on cross-border cooperation, they highlight three examples where effective cooperation has galvanised change: 1) limiting tax evasion thanks to close cooperation between tax authorities; 2) preserving the ozone layer thanks to a protocol between 46 countries; and, 3) eradicating smallpox through collective action led by the WHO.

Furthermore, it is important to consider the consequences of failing to effectively consider broader international aspects when thinking about developing cooperation models. As highlighted by Wagner and Ferro in a 2020 paper, the multi-stakeholder Internet governance model, IGF, has so far been unable to produce any actual governance due to a failure to effectively include representative actors from different countries and sectors, and develop shared decision-making powers among experts.<sup>224</sup> This in turn has prevented other institutions from emerging to contest existing governance practices and question these organisations' important status in this area.

A failure to effectively cooperate can lead not only to an inability to develop effective governance but also an inability to effectively enforce the rules. This might stem from different interpretations of regulations, conflicting policy aims or a conflict in remedies.

As highlighted by Digital Clearinghouse, the shared regulatory digital space, in which different areas of regulation can be applied in parallel and by different authorities with sometimes conflicting policy aims, creates practical challenges around

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<sup>223</sup> OECD Best Practice Principles for Regulatory Policy, <https://www.oecd.org/gov/regulatory-policy/international-regulatory-co-operation-5b28b589-en.htm>.

<sup>224</sup> Wagner B. and Ferro C., "Governance of Digitalisation in Europe: A contribution to the exploration sharing digital policy – towards a fair digital society?", 2020, [https://benwagner.org/wp-content/plugins/zotpress/lib/request/request.dl.php?api\\_user\\_id=2346531&dlkey=8KUHYZ5M&content\\_type=application/pdf](https://benwagner.org/wp-content/plugins/zotpress/lib/request/request.dl.php?api_user_id=2346531&dlkey=8KUHYZ5M&content_type=application/pdf).



enforcement.<sup>225</sup> Enforcing the rules is a difficult task as the asymmetry of information between authorities and online platforms is very broad, markets change quickly, and innovation is rapid and often unpredictable. Enhanced cooperation can help to overcome these challenges to a certain extent.

### 5.3. Different cross-sectoral cooperation and enforcement models at national and European level

At a domestic level, regulators with competencies in the digital space are increasingly recognising the importance of cooperating on areas of mutual importance. Historically, this cooperation has, more often than not, occurred on an ad hoc, informal basis and been subject to influence from wider policy and external pressures.

In recent years, however, we have seen a move towards more formalised cooperation structures between cross-sectoral regulators in the digital space – notably in the UK with the Digital Regulators Cooperation Forum (DRCF) and in France, with the launch of Le Pôle numérique, jointly founded by Arcep, the agency in charge of regulating telecommunications in France, and the CSA.<sup>226</sup>

In the Netherlands, on 13 October 2021, the ACM, the media regulatory authority CvdM, the Data Protection Authority and the authority for financial markets announced they would intensify cooperation through the launch of the Digital Regulation Cooperation Platform (*Samenwerkingsplatform Digitale Toezichthouders* - SDT).<sup>227</sup> SDT aims to exchange knowledge and experiences in areas such as AI, algorithms, data processing, online design, personalization, manipulation, and misleading practices. Platform members are committed to joint investments in knowledge, expertise, and skills, and will explore how to strengthen each other's work in enforcement procedures, e.g. by dealing with digital market problems collectively. In the online sphere, cooperation and coordination are more important than ever for the sake of coherence and efficiency. While some degree of cross-sectoral cooperation has always been present at national and European level, it needs to gain in intensity; the Digital Services Act will no doubt act as an accelerator.

Recent discussions in the framework of EPRA have highlighted that there are indeed many areas where enhanced coordination between sectoral regulators would be of benefit. This notably includes (but is not restricted to): joint research, access to and collection of data, the promotion of media/digital literacy, election regulation and targeted online political advertising, the regulation of influencers, media plurality, the prominence of general interest content, etc.

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<sup>225</sup> Digital Clearing House, "Interplay between EU competition law, consumer protection and data protection law: Strengthening institutional cooperation to increase enforcement effectiveness of EU laws in the digital economy", 2020; See above.

<sup>226</sup> See Chapter 3 of this publication.

<sup>227</sup> <https://www.acm.nl/en/publications/dutch-regulators-strengthen-oversight-digital-activities-intensifying-cooperation>.



## 6. State of play

### 6.1. Shared challenges for media NRAs across Europe

From the outset, it is only fair to point out that media regulatory authorities have faced unprecedented challenges in recent years due to the complexification of the media ecosystem, the changing nature of regulation and the evolving relationships with stakeholders and citizens.

#### 6.1.1. The changing media ecosystem

The past decades have witnessed the rise of online technologies, opening the doors to new players such as online intermediaries – platforms – and new ways to communicate worldwide – such as social media and video-sharing platforms where the user becomes the content producer. This ‘platformisation’ of the market, dominated by major global players and the increase of gateways to news,<sup>228</sup> have provoked a continuing erosion of TV viewing figures, as well as a severe loss of advertising revenues,<sup>229</sup> thus disrupting the media ecosystem and threatening the pluralism of the European audiovisual markets. The COVID-19 crisis, which started in 2020, has reinforced existing trends, for instance by amplifying the move of advertising revenue to online or accelerating the take-up of subscription video on demand services (SVOD services).<sup>230</sup>

In more general terms, the long-term, structural impact of such changes on society and on the fundamental values of modern democracies is now at the heart of policy makers' concerns.<sup>231</sup> Microtargeting, algorithmic content curation, data-based architecture, and the spread of dis- and misinformation<sup>232</sup> have been identified by experts as four key

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<sup>228</sup> Rokša-Zubčević A., 51<sup>st</sup> EPRA meeting, Introductory paper on "Understanding key market trends in times of COVID-19", 2020,

<https://www.epra.org/attachments/understanding-key-market-trends-introductory-document>.

<sup>229</sup> A decline of 6% over five years in TV viewing (even 20% in the Nordic countries) in favour of subscription video on demand, pay services and video-sharing platforms; See “Key trends of the European Audiovisual Observatory 2020/202”, <https://rm.coe.int/yearbook-key-trends-2020-2021-en/1680a26056>.

<sup>230</sup> Rokša-Zubčević A., *op.cit.*

<sup>231</sup> See for instance the European Democracy Action Plan of the European Union, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_2250](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2250).

<sup>232</sup> A recent Eurobarometer survey in all EU countries revealed that over half of the population say they come across fake news online at least once a week. See Flash Eurobarometer 464: Fake News and Disinformation Online, 2018,



pressure points that are likely to impact pluralism and influence users' political decisions and behaviours.<sup>233</sup>

To face the magnitude of the changes, a major overhaul of the rules applicable to the media and communications sectors is currently taking place at the European Union level. As mentioned earlier, the adoption of the revised AVMS Directive, the recent Democracy Action Plan and the Audiovisual Media Action Plan as well as the draft Digital Services Act package have already, or are likely to, impact on the media regulatory authorities' field of competences and remit.<sup>234</sup>

## 6.1.2. The changing nature of regulation

Policymakers and regulators face the acute challenge of designing and implementing regulatory schemes adapted to this new technical and financing ecosystem while duly preserving freedom of expression. Indeed, a national regulatory authority that regulates with old tools and mindsets and ensures compliance strictly of domestic and traditional broadcasters is doomed to ultimately become useless and not respected.<sup>235</sup>

As a consequence of the far-reaching sectoral changes and the likelihood of expanding missions, media regulatory authorities will need to adapt to new tasks and responsibilities and develop new approaches to regulation. This process is likely to require some strategic planning, the setting of priorities for compliance and enforcement policies, and the development of new tools, as well as the hiring or training of staff.

At the same time, media regulatory authorities have to cope with a lack of accessible data from online actors, a heterogeneous legal framework, the cross-border nature of content and, depending on the national context, a potential lack of financial resources.<sup>236</sup>

Generally – but not only – stemming from the transposition of the AVMS Directive, most media regulatory authorities in Europe are expecting a change in their structure or mandate and a shift in the way they regulate the audiovisual landscape. The

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[https://data.europa.eu/data/datasets/s2183\\_464\\_eng?locale=en](https://data.europa.eu/data/datasets/s2183_464_eng?locale=en).

<sup>233</sup> Lewandowsky, S., Smillie, L., Garcia, D., Hertwig, R., Weatherall, J., Egidy, S., Robertson, R.E., O'connor, C., Kozyreva, A., Lorenz-Spreen, P., Blaschke, Y. and Leiser, M., "Technology and democracy: Understanding the influence of online technologies on political behaviour and decision-making, EUR 30422 EN, Publications Office of the European Union, Luxembourg, 2020, ISBN 978-92-76-24089-1, doi:10.2760/593478, JRC122023, <https://publications.jrc.ec.europa.eu/repository/handle/JRC122023>.

<sup>234</sup> In the EU, the AVMSD has expanded the scope of regulation to on-demand services and, to some extent, to video-sharing platforms, for instance. See Chapter 2 of this publication.

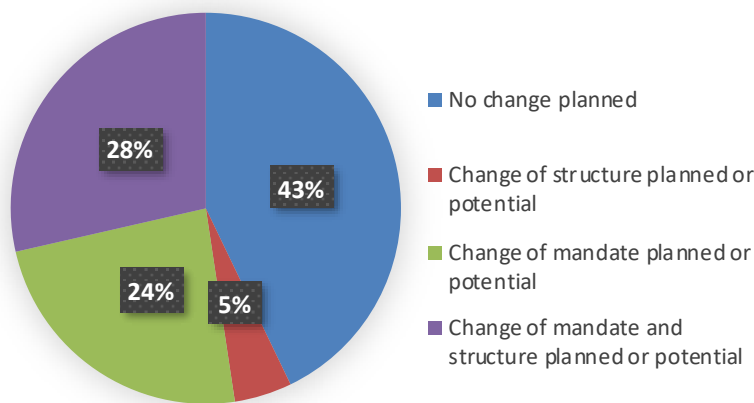
<sup>235</sup> 44<sup>th</sup> EPRA meeting, Keynote speech for the plenary session on Compliance & Enforcement, Policies, Strategies & Methods of NRAs put to test by Jean-François Furnémont, 2016, <https://www.epra.org/attachments/yerevan-plenary-ii-compliance-enforcement-policies-strategies-methods-of-nras-put-to-test-part-ii-keynote-jean-francois-furnemont>.

<sup>236</sup> 44<sup>th</sup> EPRA meeting – Introductory paper for the plenary session on Compliance & Enforcement - Policies, Strategies & Methods of NRAs put to test, by the EPRA Secretariat, June 2016, <https://www.epra.org/attachments/yerevan-plenary-ii-compliance-and-enforcement-policies-strategies-methods-put-to-test-part-ii-introductory-paper>.



development of self- or co-regulatory schemes might, for instance, constitute a response to some of the challenges raised by the significant expansion of the regulatory scope and the difficulty of enforcing rules in the complex and evolving online landscape.<sup>237</sup> For many regulators, however, it is still too early to predict how new initiatives related to regulatory restructuring will play out in practice. For example, in Ireland, the headquarters of major online actors, it is unclear how, with the planned dissolution of the Broadcasting Authority of Ireland and the creation of a new multi-person Media Commission will operate in practice, due to the rather slow pace of the AVMSD transposition process.

**Figure 5. Expected change of mandate and/or structure of the NRA**



Source: EPRA research 2020 (22 EPRA members)

Looking ahead, with regard to the regulation of online content platforms, many experts are calling for a shift to a 'compliance by design' approach. Such a co-regulatory system would be based on the application of guiding general principles to stakeholders, regular assessment and oversight of compliance with these principles by the regulators through human and technological resources (such as artificial intelligence tools supporting them their tasks), and stronger and effective national and international cooperation between NRAs from audiovisual and adjacent sectors.<sup>238</sup> The introduction of such a systemic approach to regulation, rather than the granular method based on the editorial responsibility of media providers prevailing until now, will require far-reaching changes in how media regulatory authorities operate.

<sup>237</sup> “Based on an EPRA survey (22 participants): around 70% of the NRAs planned, considered or have already established self or co-regulatory schemes, especially in areas such as the protection of minors and the regulation of VSP”. 52<sup>nd</sup> EPRA meeting - Background paper on "Great expectations: the changing paradigm of media regulators" by Asja Rokša-Zubčević & Jean-François Furnémont, October 2020, <https://www.epra.org/attachments/epra-webinar-great-expectations-the-changing-paradigm-of-media-regulators-background-paper>.

<sup>238</sup> De Streef A. and Ledger M., “New ways of oversight for the digital economy”, 2021, CERRE Publication, <https://cerre.eu/publications/new-ways-of-oversight-digital-economy/>.



Cooperation between regulators from adjacent sectors, at the national and European level, combined with in-depth research, also appear key to obtaining greater knowledge of the ecosystem – a must-have to maintain trust from stakeholders and ensure the efficient design and implementation of regulatory schemes.

### 6.1.3. The changing relationships with citizens

Adherence to accountability and transparency mechanisms can enhance the regulators' credibility and public trust. The accountability of regulators towards consumers and citizens contributes to their reliability and thus indirectly supports the public trust towards the media landscape. As information disorder increases and the world is likely to face crises where information is key, as demonstrated by the COVID-19 pandemic, understanding audience behaviour and expectations, and enabling the public to deal with the huge amount of news available and to actively interact in the media landscape, appear crucial to preserving democracy and the link between media and society. Only a trustworthy relationship between regulators and citizens can sustain such an achievement. This has led many media NRAs to rethink their role, communication and interaction with citizens, and even to directly involve the public in research projects.<sup>239</sup>

As recently highlighted by EPRA chairperson Luboš Kukliš<sup>240</sup> the digital environment has induced a shift from an established dichotomy scheme (media/regulator) to a regulatory triangle (media/regulator/user). The user is now an active actor in the online audiovisual landscape, whose rights (freedom of speech, privacy...) and actions (content creation, flagging, privacy settings...) must be recognised and taken into account. Such recognition leads NRAs to further adapt and develop their regulatory missions, requiring, for instance, a stronger information role.

It is now widely held among media regulatory authorities that statutory regulation alone will not be enough to ensure adequate protection of audiences in a converged audiovisual environment. The promotion of media literacy is becoming increasingly vital in ensuring that citizens are equipped with adequate tools and skills both to take advantage of the greater choice and control that this environment provides, and to protect themselves and their children from harmful content.

As a result of the increasing awareness by media NRAs of the importance of media literacy and their greater involvement in the subject, the relationship of many media regulatory authorities with citizens has been gradually evolving from a top-down approach based on the requirement to inform the viewers, protect the vulnerable audience and be transparent and accountable towards viewers, to an expectation also of active engagement with, or the empowerment of, citizens, to turn them into partners of regulation.

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<sup>239</sup> See for instance the Cartesio project in Italy by AGCOM and partners, <https://cartesio.news/>, and the Small screen – Big debate project in the United Kingdom by Ofcom, <https://www.smallscreenbigdebate.co.uk/>

<sup>240</sup> See Kukliš L., EPRA Chairperson, presentation, November 2021, <https://www.epra.org/attachments/epra-workshop-with-university-of-vienna-introductory-presentation-by-lubos-kuklis>



A growing number of media regulatory authorities have had their sphere of activities extended to include media literacy, which is expected to become a key remit for media NRAs in the next years.<sup>241</sup> In this area, working in collaboration and utilising the strengths of other media literacy stakeholders through initiatives like national networks is particularly important. This is testified to by the emergence of many examples of national and international cooperation through networks or associations involving stakeholders and regulators, to foster media literacy initiatives and share resources (raising awareness campaigns, educational material...)<sup>242</sup>

## 6.2. Concluding remarks

Despite their great diversity, media NRAs in Europe are united in facing unprecedented challenges raised by the new global media ecosystem, the rapidly evolving regulatory framework and the changing relationships with citizens and stakeholders. In many regards, media NRAs are confronted with a proper paradigm shift and may need to reinvent themselves to respond adequately to these challenges.

Against this background, the cooperation, both formal and informal, and the sharing of experience between media regulatory authorities is crucial if they are to anticipate and adapt to the changed environment while remaining relevant and coherent.

As conceptualised by Alexandre de Streel from CERRE,<sup>243</sup> and shown in the previous chapters, cooperation can take various forms:

- Horizontal cooperation between audiovisual NRAs and other national authorities within a country must be strengthened and expanded.
- Vertical cooperation between member states and the European Commission and between NRAs from the same field but from different countries (as in ERGA). Vertical cooperation is crucial given the global nature of many online platforms.
- A mix of horizontal and vertical cooperation (the most advanced level) involving a complex interplay between various legal instruments and national and European frameworks.

The scale of intensity of the cooperation between regulators from adjacent sectors can also vary considerably, from a mere exchange of information/best practices to a full merger between sectoral authorities. Alternatively, this could take the form of the establishment of a cross-sectoral cooperation forum (e.g. DRCF in the UK).

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<sup>241</sup> Source: EMIL, the EPRA media literacy network and 52nd EPRA meeting, background paper on "Great expectations: The changing paradigm of media regulators"; Most media regulatory authorities now have media literacy responsibilities or are involved in media literacy activities.

<sup>242</sup> For instance, EMIL, EDMO, Media & Learning, Media Literacy Ireland.

<sup>243</sup> Source: EPRA, 54th EPRA meeting, Plenary thematic session on "Cross-sectoral cooperation between regulators"; Background paper:

<https://www.epra.org/attachments/54th-epra-meeting-cross-sectoral-cooperation-background-paper>



Source: EPRA/CERRE

Developing such a complex cooperation scheme is likely to require that the media NRAs, and the other regulatory authorities involved in the regulation of online actors, fundamentally review their traditional regulatory missions, work processes and organisation. However, in the light of the rapidly evolving market and legal framework, such a shift is essential to secure necessary understanding, coherent rules and efficient regulation of the online landscape.

Greater cooperation, however, may not be the silver bullet solution for all the issues raised by a lack of harmonisation and political will at national level. Media regulatory authorities will also need to be equipped with enough resources in terms of funding, staffing, tools, and skills to fulfil their expanding missions in a satisfactory manner. Indeed, as shown in the first Chapter, the majority of media NRAs in Europe are middle-sized organisations with rather modest budgets, and a great heterogeneity with regard to competences and powers. Several ideas are already emerging in an attempt to tackle the lack of resources of national media authorities, such as the establishment of common pools of experts at European level<sup>244</sup>, for instance, and/or increasing the resources and powers of ERGA and turning it into an “ERGA+”.<sup>245</sup> Additional pools of regulatory capacity both at European Union and Council of Europe levels could help feed a stronger evidence-based approach and support media NRAs in their understanding of the audiovisual ecosystem without jeopardising regulatory authorities’ resources.

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<sup>244</sup> See for instance, the proposal of Wagner B., TU Delft, The Netherlands, during the 54<sup>th</sup> EPRA meeting, <https://www.epra.org/attachments/54th-epra-meeting-cross-sectoral-cooperation-ben-wagner-keynote>

<sup>245</sup> ERGA Proposals Aimed at Strengthening the Digital Services Act (DSA) with Respect to Online Content Regulation (June 2021), <https://erga-online.eu/wp-content/uploads/2021/06/2021.06.25-ERGA-DSA-Paper-final.pdf>.



A joint publication  
of the European Audiovisual Observatory and the EPRA  
published in the IRIS *Plus* Series

