

Conference Report

---

# Safeguarding European Core Values Online

Conference of the German Media Authorities in co-operation with ERGA

*Brussels, 11 April 2018*

---

## 1 Background

While the revision of Europe's core piece of media legislation – the Directive on Audiovisual Media Services – is in its final stage, national regulators are facing the day-to-day challenge to ensure the regulatory objectives in the rapidly changing media landscape – realising that traditional regulatory instruments are not always sufficient to enforce and safeguard fundamental principles like protection of minors, protection against hate speech and consumer protection in all audiovisual services.

Against this background, the public conference aimed to facilitate an exchange in an EU-wide context between regulators, legislators and those being regulated. The conference was dedicated to the experience of national regulatory authorities (NRAs) when dealing with services in an online environment, including influencers and online platforms: What services qualify as an audiovisual media service/video-sharing platform and how can the enforcement of the relevant rules to those services be effective? And how can the co-ordination between NRAs, beyond the AVMS procedures, be facilitated when addressing cross-border cases?

---

## 2 The regulator's perspective and corresponding approaches

The first part of the conference was particularly dedicated to an exchange of experiences of different national regulatory authorities while enforcing securing compliance with fundamental media law in the online environment.

**Hans H. Stein**, Director of the Representation of the State of North Rhine-Westphalia to the European Union, welcomed the guests to this event about safeguarding the core values which he called a crucial topic for Europe.

The opening keynote by **Giuseppe Abbamonte**, DG Connect, dealt with foreseeable consequences of the current legislative reforms, such as the potential extension of the scope of application of the AVMS Directive to social media, including live-streaming services and video-sharing platforms. He emphasized that new rules were important given the growing popularity of these services to protect minors from harmful contents. In light of these developments he talked about the Commission's co-operation with the European Parliament and the Council striving to find a pragmatic regulatory approach. One of the main issues of discussion will be the degree of harmonisation of the legal framework. In his view, national regulators will play a key role in making the new rules work properly. To that end, he stressed that it was crucial that national regulatory authorities were truly independent from both government and industry.

The subsequent contribution from **Mark D. Cole**, Institute for European Media Law, set the scene for a manifold depiction of regulators' approaches towards challenges in the online world. He reminded participants of the core values at stake: human dignity, prohibition to incitement, protection of minors, and consumer protection. In addition, Mark Cole stressed that law enforcement across borders needs assistance – between regulatory authorities but also involving platforms and service providers. He pointed out that it is not uncommon for industry players to establish efficient safety measures (for example, in product safety compliance on certain types of platforms) and that enforcement does not only mean sanctioning.

**Tobias Schmid** from the German Media Authorities explained the initiatives of the German regulators regarding influencer marketing and hate speech online. According to him, the lesson learned from those initiatives is that it is possible to insist on law enforcement online while at the same time receiving a positive reaction from the industry. He identified three scenarios of infringements in the country of destination in cross-border cases: infringement upon harmonised rules, infringement upon stricter rules, and infringement by a non EU-provider. The contact with non-EU providers is especially difficult in practice, he pointed out. But as the number of cases is increasing tremendously, he urged that national regulatory authorities learn from each other on how to react in these cases. These three scenarios raise different types of questions and might require different types of solutions. In this regard, Tobias Schmid made a reference to the ERGA taskforce on law enforcement online and pointed out that this taskforce has been set up with the concrete intention to develop joint solutions to these scenarios at ERGA level.

It is as important as it is our duty to take care that players in the European market fulfil the laws but are also protected, he said. To safeguard the democratic and free media landscape finding a solution is compulsory.

This presentation was followed by a session during which the ERGA Chair **Damir Hajduk** interviewed high level representatives from three national regulatory authorities that are particularly affected by the cross-border distribution of audiovisual content: Charlotte Ingvar-Nilsson from the MRTV in Sweden, Kevin Bakhurst from Ofcom in the United Kingdom and Frédéric Bokobza from the CSA in France. The session showed that the formal procedures laid down in the AVMS Directive need necessarily to be accompanied by an informal exchange in order to address the most pressing challenges.

**Charlotte Ingvar-Nilsson** mentioned the very good co-operation the Swedish regulatory authority had with other member states on specific cases. At the same time, she identified the possibility to improve the communication even further. Regarding the classification of an audiovisual media service, she stated that definitions needed to be very clear, including terms such as licences or registration.

**Kevin Bakhurst** talked about the British experience in handling cross-border cases. He reported that a lot of channels based in the UK chose to broadcast from the UK into other countries without actually broadcasting in the UK itself. In cases of complaints or breaches, the co-operation with other regulatory authorities had worked very well indeed. He hopes to continue the good co-operation after Brexit. However, with the large number of broadcasters, Ofcom is regularly faced with a lot of political pressure from around the world. When assessing extra-European cases, Ofcom also takes in cultural advice for contextual understanding. In any case, he declared, Ofcom views freedom of expression to be the most fundamental right of all.

**Frédéric Bokobza** addressed the situation that satellite broadcasting channels often turn out to be complex. First of all, it is usually necessary to assess which Member State is competent for which channels. The fact that content is transmitted using the French Eutelsat satellite, does not per se constitute French jurisdiction since the criterion of the location where the up-link takes place needs also to be taken into account. Moreover, for political reasons some authorities from other countries often ask the CSA to act. As this is sensitive politically, there is a special need to assess the content critically, he pointed out. Generally, the CSA co-operates and shares as much information with other authorities as possible while there still remain some problems to be solved. Also, as an example for judicial challenges, he mentioned a case in which a provider changed the country of his seat in the course of a proceeding and thus the territorial competence changed which resulted in the case being prolonged.

**Susanne Lackner** from the national regulatory authority in Austria then reported about the authority's experience when interpreting and applying legal definition in a rapidly changing media landscape. She particularly addressed the Austrian approach towards the online offer of a regional newspaper that eventually resulted in the judgement of the

ECJ in the case *New Media Online* (C-347/14). She also reflected on the judgement of the ECJ in the case *Peugeot Deutschland* (C-132/17) and drew conclusions as to its effects on the daily work of a national regulatory authority.

The first part was concluded by a talk between Mari Velsand from the Norwegian regulatory authority and Ruben Vareide, a well-known Norwegian vlogger and entrepreneur. To start with, **Mari Velsand** gave an insight in the Norwegian approach regarding influencer marketing and the experiences of the authority in this regard. She talked about how the Norwegian media authority engaged with vloggers and youtubers, and how the regulatory authority had experienced a fast acceptance and usage of advertising and youth protection labelling by youtubers.

**Ruben Vareide** has been a professional vlogger for five years and is currently the most popular Norwegian-speaking youtuber. In the talk, he praised the guide to labelling provided by the regulatory authority, as this was especially helpful for younger youtubers. In general, he expressed his gratitude to the Norwegian authority who had helped him handling the labelling issues in the correct manner. When asked about his experience in the beginning, he mentioned that at first he was afraid to label everything because of what his viewers might think. Their first reaction was indeed disappointment and anger, yet after a while the viewers understood the concept of it and after that, other youtubers started learning how to use labelling from his channel. The advertisers on the other hand had reacted differently to the labelling, he said. Some of the advertisers even pressured his channel not to label advertisement so in consequence he turned down working with them.

In his talk with Mari Velsand, he also mentioned that he is in favour of age labelling as he regards some of his content as not recommended to younger children.

---

### 3 The industry's perspective on a sustainable future legal framework

The afternoon session was designed to more broadly discuss future media regulation in Europe, with a particular view on ensuring a comparable level of protection in all audiovisual media services.

**Nico van Eijk** opened the session with his views on how future media regulation could look like. He prefers an incentive and value-based regulation. Co-ordination and co-operation amongst national regulatory authorities in his view is the best tool to safeguard a harmonised and consistent application of the European media framework.

The concluding panel discussion, moderated by **Maja Cappello** from the European Audiovisual Observatory, mainly focused on two aspects: How

can a comparable level of protection be ensured in all audiovisual services; what does “comparable” and “all audiovisual services” mean? And how can cross-border cooperation among stakeholders (legislators/regulators/industry/consumers) help ensure a proper safeguard of core values online?

**Clara Sommier** emphasized that Google as a company had no control over the content of users but that there were rules to be followed nonetheless. In any case, Google felt a responsibility, which is why the company has already put measures in place. Additionally, Google is working on machine learning to possibly detect hate speech automatically and take it down. She claimed that Google encourages its users to help them abide by the rules. Her plea to the regulatory authorities was to have rules that are technically implementable and future-proof, i.e. which worked for a longer term.

**Thorsten Schmiede**, State Chancellery of Bavaria, pointed out that there was a consensus about the protection of core values but also discussions in Germany about how far this protection should go. It was necessary to provide a distinct framework while at the same time showing flexibility in the tools, he stated. Therefore, regarding future-proof regulation, there needed to be sufficient space for the execution of the rules.

**Anna Herold**, DG CONNECT/European Commission, marked that the goal of the revision of the AVMS Directive was to achieve having the same rules in Europe and in fact a comparable level of protection, while at the same time fostering innovation in the market. She thus favoured a principle-based regulation which allows for more flexibility.

**Claus Grewenig**, Mediengruppe RTL Germany, called for an adequate regulation for compatible services. He differentiated that the intensity of regulation must be higher for the protection of minors, however in the area of advertisement and quotas there should be de-regulation and the level of regulation should be lower. He mentioned the co-operation of RTL with prosecutors regarding hate-speech, and also their contact with the German Media Authorities. After all, he asked for the same level of protection and regulation for both VOD service providers and traditional TV broadcasters.

**Monica Ariño** talked about the variety of platforms run by the British Telecom, e.g. how the company produced its own content. Whenever asked to block content BT is very mindful, she said. She gave the example of a youth block as a voluntary measure taken by BT in the past. Her request of the regulators was clarity about the rules and the outcome, especially about the transparency and the implementation.

**Tino Kunert** from the office of MEP Petra Kammerevert, pointed out that the challenge was to take into account lots of different perspectives while not losing focus. Moreover, he stressed it was important to note

that the sovereign was still the legislator, e.g. the Parliament, as opposed to large companies such as Google.

To conclude the event, **Tobias Schmid** made a few closing remarks. First of all, he thanked the Representation for hosting the event and all participants for joining in. As a core challenge he identified not losing focus of what's at stake. Commenting on aspects mentioned during the discussions, he emphasized that market players needed to follow the law and that technical problems needed to be faced by the companies who in his opinion were responsible to find adequate solutions. Overall, he stated that ERGA is dedicated to close the gap between the convergent market and the core values. To this end, the regulators should discuss amongst each other which cases could be handled autonomously and which cases needed adjustment by legislators. "We shouldn't get too afraid of the complexity", he said. "Complexity doesn't change our duty."

---

#### 4 **Conclusions, possible solutions and first thoughts on future approaches**

As a matter of conclusion it can be assessed that the well-established country of origin principle remains a cornerstone of European media legislation that should also be adhered to regarding services in the online environment.

Nevertheless, national regulatory authorities should be encouraged to work closely together to ensure a consistent application of the relevant rules across Europe. Most importantly, national regulatory authorities should strive for finding agreements that are based on certain commitments, while still respecting national particularities of regulators' approaches and procedures. These commitments in any case need to include documentation and reporting elements in order to gather a clear picture of cross-border cases at ERGA level, as well as sustainable tools to guarantee a regular exchange of information.

When it comes to details of such ways of co-operation, they depend on different scenarios.

In particular, in the case where a specific content is regarded unlawful in both the country of origin and the country of destination (due to harmonised rules), national regulatory authorities can seek to align enforcement priorities as much as possible.

In the case where a specific content (due to stricter rules) is considered unlawful in the country of destination but not in the country of origin, the regulatory authority in the country of origin could at least commit itself to enter into talks with the local provider in order to create a certain degree of awareness.

Finally, in the more broader case where the unlawful content is provided by a non-EU provider, a constant exchange of regulators' strategies is necessary, in order to align the national approaches.

In any case, ERGA as a platform of national regulatory authorities is seen to play a crucial role in this regard. As regards non-EU providers, ERGA as a platform of national regulatory authorities could particularly think about solutions that are designed to avoid that 28 (or more) national regulatory authorities are acting autonomously against the foreign service provider.