



# The Borders of Cross-Border Law Enforcement

The Role of Regulators

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"Safeguarding Freedom - Securing Justice" Brussels, 12 November 2019



## Which core values are NRAs called to defend?

- Freedom of expression
- Respect of human dignity, protection from violence and hatred
- Protection of minors
- Protection of consumers
- Pluralism (internal and external)





## Operating environment for NRAs „External“ factors

- AVMS: minimum harmonisation of rules for AVMS and VSPs, only certain “AVMS-related” areas coordinated by the Directive
- Increasing trend: MS create their own regulatory framework to counter online harm, which partly overlaps with areas coordinated by the Directive. Those measure are thus not based on the principle of the CoO (hate speech, fake news laws).
- In addition, unclear future of regulatory environment re liability of intermediaries (also ref. to case-law)
- MS agree on core values in principle, but their approaches may diverge considerably (e.g. protection of minors). In part, interpretation (and thus transposition) of provisions in the harmonised area differs, as does the level of transposition in the respective MS (including Directive 2010/13/EU)

**Disclaimer: sovereignty of legislators not put into question, no recommendations given, only description of factual circumstances of work of NRAs**





## Operating environment for NRAs „Internal“ factors

- Varying competences of NRAs
- Issue of resources, especially with regard to new tasks, most NRAs heavily understaffed
- Diverging priorities in enforcement of tasks assigned to NRA
- Diverging interpretations of concepts of the AVMS Directive (definition of OD AVMS)
- Different legal traditions particular with regard to enforcement (administrative procedures), sanctions, deadlines for actions
- Varying regulatory instruments depending on how transposition of the AVMS Directive has been performed (statutory regulation, co- and self-regulation)

**KEY FINDING: HETEROGENITY**





## Operating environment for NRAs „Complication“ online

- Defining jurisdiction (localisation of providers)
- „Circumvention made easy“
- Speed of dissemination of unlawful/harmful content
- Number of incidents
- Variety of providers (difference to linear)
- Enforcement issues (traditional punitive measures such as publications of rebuttals are no more effective)

**KEY FINDING: NEW ENFORCEMENT ISSUES**






# ANNALES TRACTATUS I V R I S

DE  
AETATE AD OMNES HVMANOS ACTVS  
REQUISITA:

*In quibus omnes effectus ab aetate prouenientes, & quid in quacumque aetate cuilibet conueniat, & quilibet facere possit in materia Sacramentorum, Contractuum, Licentiarum, Ultimarum voluntatum, Delictorum, Præiudiciorum, Rerum Beneficialium, & generalitèr omnia, quæ ad aetatem pertinent late, & plenè explicantur.*

AUCTORE INSIGNI ET CELEBRI L. C.  
D. DIDACO DE NARBONA TOLETANO  
CAESAREI, ET PONTIFICII IVRIS  
PVBLCICO ANTECESSORE.

*Opus omnibus tam in Scholis, quàm in Palatijs versantibus  
theoricis, & practicis utile, & opportunum.*



QUID  
FACERE?

ROMAE.  
SVMP TIBVS IOSEPHI CORBI:  
*Typis Michaelis Herculis. Superiorum permissa.*



## ERGA action up to now

- ERGA Report on territorial jurisdiction in 2016
- ERGA Analysis & Discussion Paper to contribute to the consistent implementation of the revised Audiovisual Media Services (AVMS) Directive in 2018
- ERGA Statement of Purpose (adopted June 2019) sets out strategic priority for 2020-2023 the number one priority:

**“Cooperation in cross-border cases: working out concrete solutions to cross-border challenges”**





## Major cross-border scenarios

- Harmonised rules: Infringement occurs in a given MS (not CoO, but CoD), content unlawful both in CoO and CoD
- Stricter rules in the harmonised field: Infringement occurs in a given MS (not CoO, but CoD), however compliance in the CoO
- Infringement by non-EU provider: neither compliance with harmonised rules, nor with possibly stricter ones in the field coordinated by the AVMS Directive, nor respective national laws
- These are scenarios on the grounds of which ERGA will base its strategies in the event of cross-border cases



## Assumptions

- Solutions must be based on CoO, which is not only cornerstone of the Single Market, but guarantor of adequate standards and efficiency, regulation of VSP (combined with OD AVMS) will pose some challenges
- NRAs and ERGA must prepare for effective cooperation in view of Article 3 and 4 procedures, but also fast-track procedures must be developed
- Electronic media regulators have a longstanding tradition of balancing individual rights, consumer interests against the freedom of expression, traditionally guardians of freedom of expression and diversity. Their role should not be weakened



## Envisageable paths to go....

- Development of fast-track procedures, based on standardised approaches
- Intensification of informal cooperation
- Cooperation with other bodies, institutions, regulators on the European level but also outside the EU in view of cooperation in the field of enforcement
- Cooperation with EPRA
- Strategy for effective enforcement of VSP-regulation



Thank you for your attention.

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