European Commission

AVMS-RADAR

Audio**V**isual **M**edia **S**ervices – **R**egulatory **A**uthorities' In**D**ependence **A**nd Efficiency **R**eview

Update on recent changes and developments in Member States and Candidate Countries that are relevant for the analysis of independence and efficient functioning of audiovisual media services regulatory bodies (SMART 2013/0083)

Annex 5 – Answers of Correspondents to the Questionnaire

A study prepared for the European Commission

Digital Agenda for Europe

Introduction

This document contains Annex 5 to the Final Report of the study "Update on recent changes and developments in Member States and Candidate Countries that are relevant for the analysis of independence and efficient functioning of audiovisual media services regulatory bodies (SMART 2013/0083; short title: "Audiovisual Media Services – Regulatory Authorities' Independence and Efficiency Review", AVMS-RADAR). The study has been conducted in 2015 on behalf of the European Commission. The present annex aims to provide additional information on particular aspects relating to the independence of national regulatory bodies.

For this purpose, Annex 5 contains the answers of the national correspondents to the questionnaire drafted by the contractor with a view to gathering information going beyond what has been deduced from the evaluation of the updated country tables of the INDIREG study[1] (see Annex 4).

While the Final Report as such has been structured along the independence criteria assessed with a clear focus on comparative aspects, Annex 5 (as well as Annex 4) shows the relevant information – that, *inter alia*, forms an important source of the Final Report – on a country-by-country basis.

For ease of reading, page numbers used within the questionnaire on a specific country refer to the respective questionnaire and not to the document as a whole. To navigate to the data on a specific country (see the overview of countries on the following pages), readers are kindly requested to make use of the bookmarks incorporated in the PDF document.

[1] "Indicators for independence and efficient functioning of audiovisual media services regulatory bodies for the purpose of enforcing the rules in the AVMS Directive", SMART 2009/0001 (INDIREG study). Full documentation available at: http://www.indireg.eu.

COUNTRY-SPECIFIC QUESTIONNAIRES INCLUDED IN THIS ANNEX

- Albania
- Austria
- Belgium (de)
- Belgium (fl)
- Belgium (fr)
- Bulgaria
- Cyprus
- Czech Republic
- Germany
- Denmark
- Estonia
- Spain
- Finland
- France
- Greece
- Croatia
- Hungary
- Ireland
- Iceland
- Italy
- Lithuania
- Luxembourg
- Latvia
- Montenegro
- Former Yugoslav Republic of Macedonia
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Serbia
- Sweden
- Slovenia
- Slovakia
- Turkey
- United Kingdom

Albania

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

Tables 1-5: Comments on general information

The landscape of audiovisual media has expanded compared to 2011, currently consisting of: 72 analogue terrestrial television operators, privately owned, 71 analogue terrestrial radio operators, privately owned, 109 local cable operators, 5 satellite television operators, and 3 unlicensed digital transmission platforms. The public service broadcasters has also opened five thematic channels.

The new law on audiovisual media, Law 97/2013 was approved in 2013, covering all aspects of AVMSD: Audiovisual commercial communication, sponsorship, product placement, European works, hate speech, access to people with disability, broadcasting of major events, protection of minors, etc. With the same law, the regulator, National Council of Radio and Television, was replaced by Audiovisual Media Authority. The scope of competencies remains the same as its predecessor, though, covering content, transmission, and distribution. There have been no major changes regarding budget and staff of the regulator with the new law.

Tables 6-9: Comments on institutional framework

The regulator is regulated by the new law on audiovisual media, Law 97/2013, stating the regulator is an independent public legal person.

Tables 9-14: Comments on powers of regulatory bodies

The principle of regulation competencies remain the same, but there are more detailed functions, such as drafting strategy of AMA and more detailed regulation vis-a-vis public broadcaster. The monitoring powers have been extended to cover all areas specified in the law, as in AVMS Directive. Power to impose fines has extended to other areas, accordingly, while the range of fees has also increased. Council of Complaints is part of AMA, taking over from Council of Ethics, but it has yet to be constituted.

Tables 15-24: Comments on internal organization and staffing

The number of board members has gone from 5 to 7, elected from at least four candidates for each vacancy. They have to be experts in their field and can be proposed by several groups and associations. They are shortlisted to two candidates for each vacancy, with opposition and ruling majority MPs taking turns to do the elimination in the Parliamentary Commission on Media. Competencies of the Board on regulation and the term of election have not changed. Incompatibility rules and conflict of interest have been further detailed with a general law on prevention of conflict of interest, as well as by adding media-specific rules, such as dissociation from interests related to industry, extended to family and friends. Dismissal of

board members before term has continued, either with individual members' decision to pursue other careers or through suspension asked by operators and approved by court.

Tables 25-27: Comments on financial resources

There have been no major changes in financial resources available. Perhaps the major decision has been that to increase the regulator's percentage of fees coming from fines from 5% to 20%.

Tables 28-35: Comments on checks and balances

The annual report obligations have been expanded to include: regulatory functions; programs for disabled people, and participation of AMA members in meetings. The complaint procedure against AMA decisions on fines and sanctions is dealt with by administrative court, rather than general court.

Tables 36-39: Comments on procedural legitimacy

AMA is obliged to hold public consultation sessions with stakeholders on documents of great impact to audiovisual media, publish their opinion, and reflect them in the final draft. Several such consultations have taken place, but participation has not been the highest, reflecting the existing tension between the regulator and the audiovisual media, especially in 2013 and in 2014. Even before, the regulator has pointed out the low participation rate of operators. The regulator should not publish every its decision in official journal, only some of them, as required by law. In general, they are all published online on AMA's website.

Tables 40-41: Comments on cooperation

No particular changes from 2011.

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

The regulatory model adopted in Albania can fall under co-regulation, although nominally, the greatest powers and competencies in regulation lie with the regulator. While the regulator enjoys a wide array of competencies and must carry out a series of functions, it must do so by being accountable to the parliament, and in cooperation with other related authorities (Minister of Innovation, AKEP, Competition Authority, etc,). In addition, major decisions and amendments must be made after public consultation with stakeholders. However, the regulator is supposed to be independent and is responsible for issuing its own decisions, proposing amendments, drafting a strategy on audiovisual media development, and overseeing the whole implementation of the law. In this respect, while the competencies of the regulator are supposed to be checked and balanced through cooperation with other authorities, the main responsibility and actions are given to the regulator.

The regulator mainly focuses on content and licensing of operators, while the spectrum allocation in general is administered by AKEP. The regulator's scope of competencies includes:

- licensing and relicensing process for audio and audiovisual media; authorizations or licenses for programs broadcast;
- guaranteeing fair competition while guaranteeing further development of public broadcaster;
- -drafting strategies for provision of broadcasting services in the Republic of Albania.
- -supervision of the implementation of the service contract signed with public broadcaster;
- -drafting and adopting codes and rules of audiovisual broadcasts and other bylaws in implementation of this law;
- -setting fees for granting licenses;
- -cooperation with the Minister for the drafting of the National Frequency Plan;

In addition to these functions, AMA has also the duty to cooperate with its counterparts and represent Albania in international meetings and agreements related to its field, and cooperate with relevant authorities in the country. AMA is in charge of monitoring the implementation of the law as well as monitoring news programs and programs of current events. The regulator also can provide its opinion on future development of audiovisual media, draft amendments, and regulations for this purpose, report on its activity and draft its own budget and propose it to the government.

The regulator is mainly in charge of commercial media, and in some limited aspects it also cooperates and guides public broadcaster. So, Art. 117 of Law 97/2013 states that public broadcaster must draw a contract of public broadcasting service, revised every five years, which AMA must approve. AMA can also ask the public broadcaster for a licensed operator to use part of the PBS' infrastructure, against a fee proposed by RTSH and approved by AMA (Art.122.) In addition, RTSH, public broadcaster, must draw every year a report for AMA, containing products ordered from the fund of independent productions, including names of persons and organizations contacted for this purpose, and the use of funds to this effect. (Art.124.) Finally, public broadcaster must sign a contract with the regulator regarding the use and management of its digital network, covering its own free-to-air programs, other public services, and services of other broadcasters that might use this network.

AMA's highest decision-making body is its Board, composed of five members, the chair and the deputy chair. The quorum for the meetings must be at least 4 members. The decisions are valid when simple majority of present members vote pro them. In cases when the vote result is equally divided and the voting has not been secret, the chairman must decide. The chair of the regulator is the public person representing the regulator, employed full-time, and in charge of overall overseeing of functions and competencies of the regulator. The General Secretary is the highest civil servant in the administration, responsible for the management and functioning of the organization. The administration of the regulator is then divided in several departments: programming, legal matters and licensing, technical matters, economic matters, human resources and services. All of these directorates carry out part of AMA's functions and competencies, related to monitoring of media, licensing process, monitoring of technical criteria, administration, etc. Their activity is overseen by the General Secretary, who reports to the chair. In addition, there is also the Council of Complaints, which is appointed by the Board and cooperates with AMA administration and then proposes recommendations to the Board.

2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

The regulator's main funding comes from the fees that the industry pays for licenses and other services. More specifically, Art. 24 of the Law 97/2013 sets the following funding sources for AMA:
1) revenues from fees for issue and renewal of licenses/authorizations.
2) revenues from annual fees for licenses/authorizations;
3) revenues from administrative fees for processing of applications;
4) revenues from tariffs for broadcasting services set in the fiscal laws, in its role of tax agent;
5) funds from the state budget;
6) other legitimate sources.

For almost ten years now AMA does not receive funds from state budget. According to the law, AMA can request such funding "in cases it evaluates that some expenditures are

necessary for the discharge of its functions and they are of a special type and for which there is no other means of funding.“ However, there is no guarantee that it will receive such funding.For example, the regulator had in 2013 asked for funding from state budget for digital monitoring studio, in view of the digital switchover process, but it was denied. Such decisions are upon discretion of the government and depending on economic situation, and AMA has to apply to the state budget, as all other independent bodies.

The funds available to the regulator are managed by its internal staff, except from the revenues from fines, where AMA gets 20% of the sum, but, still, that sum is managed by the economic department. Overall AMA budget in the last years has been relatively stable, but its realization is highly dependent on fees that operators pay, and their payment is not always timely, which makes the budget uncertain to some extent.

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

Yes, there are incompatibility rules for AMA board, while the internal staff members are bound by the conflict of interest rules. More specifically, Art.7 of the Law 97/2013 lists the following incompatibilities for AMA members. They may not be:

a) members of executive bodies of political parties and associations; persons who run for members of parliament or who have been elected as such during the last two legislatures; persons who have run for mayors in the most recent local election or who have exercised the duty of the mayor, members of the Council of Ministers, or persons who have had the duty of prefect in the last three years, as well as those who are members of the Council for Complaints and of PECA, or who are employees of the latter.

b) persons linked with, according to the provisions of Law nr.9367, dt.7.04.2005 on “Prevention of Confict of Interests in Exercise of Public Functions“ or who own capital stakes or shares in commercial companies or other rights in the field of audiovisual broadcasting, advertising, audiovisual productions, and electronic communication networks or persons employed by or who are members of executive or advisory bodies of such undertakings or who are linked with some licenses with these undertakings.

In addition, AMA members must disclose:

a) any interest or links with any of the undertakings licensed by AMA.

b) any potential interest in some license that AMA has granted or intends to grant and they may not take part in the debate or in the decision-making process on matters related to such interests or links that represent a disqualification reason in accordance with Article 37 of Code of administrative procedures.

The law also states that AMA members may not voice or maintain public stands that infringe their impartiality in relation to the interests defined in point 2 of Article 7. In addition, AMA members may not be influenced financially or politically and must work always to fulfil and advance the objectives of AMA.

The third paragraph of the same articles states: „AMA shall draft a code of conduct in order to regulate its activity regarding the matters laid down in point 2, pursuant to the provisions of this Law and Law No. 9367, dated 07 April 2005 "On Prevention of Conflicts of Interest in the Exercise of Public Functions" and shall adopt similar codes for the AMA administration and for any boards it may set up." So far this code has not yet been approved, due to inability of AMA to function after lack of quorum for a long time, as well as other most pressing issues, such as regulation of digital switchover.

However, a set of rules was drafted in 2006: Decision no. 456, dated 11.05.2006: "Rules for the prevention of the conflict of interest of the members and administration of the National Council for Radio and Television." The Rules define procedures for identifying conflict of interest. The aim is to describe cases that would constitute conflict of interest and prevent them. Such cases might be: prohibition of receiving gifts or favors, signing contracts with public institutions, and general dissociation of interests from commercial companies in the media or related actors. Rules also include the immediate family and other intermediaries in cases considered to be conflict of interest.

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

Until the end of 2014 AMA's organic structure included 48 persons. In February 2015 the parliament also approved five more positions: General Secretary, secretary of the chairman, and three positions for the members of the Council of Complaints.

There is no sure way to judge whether the level of personnel is appropriate to the complexity of tasks and to the number of services regulated. However, in the recent years there have been significant changes in personnel and interruption of work contracts. The 2014 annual report of AMA states there have been 21 such cases in the period 2010-2014, out of which AMA has currently won only three. This is an indicator that is worrying regarding the stability of the institution and the staff. However, there are no other indicators on the professionalism of current or past members of staff. AMA itself mentions in its report that employment of sufficiently qualified technical staff in the on field monitoring department is one of the factors that has hindered successful monitoring of broadcasters on field.

Regarding technical facilities, AMA has a monitoring studio, which monitors 15 audio and audiovisual media, national and regional regularly. The main monitoring aims are related to law observation of requirements on main news editions, advertising, and other content obligations. AMA states that the situation of this studio is rather backward from the technical point of view, which poses serious difficulties in filing and analyzing the materials under monitoring. The annual report for 2014 points to serious problems with software and with

equipment that protects loss of data due to electrical energy problems. The report also notes that there is lack of appropriate equipment to measure signal and other indicators through the mobile studio, which monitors broadcasters outside the capital.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

The regulator has yet to establish the Council of Complaints, composed of three members. According Art.20 of Law 97/2013, the council has to examine complaints received by the public, but can also draw its own judgements based on analysis and data offered by other monitoring departments at the regulator. Every six months it must publish a summary of its conclusions. It can also organize public opinion polls regarding ethics or content, and draw up recommendations to AMA based on the findings. The process of appointing Council of Complaints is currently under way.

The regulator monitors systematically news editions of public and national radios and television stations, regarding the allocated time according to political wings and figures, as well as topics (political, social, etc.) Other local televisions or radios that operate in the capital are also monitored. Meanwhile, due to lack of monitoring capabilities, other media, based in other cities, are monitored on an ad hoc basis.

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

According to the 2014 annual report of AMA, one of the greatest problems lies in the failure of operators to pay their annual license fees in time, some accumulated over time. This is especially true for cable broadcasters, but also for terrestrial ones. The second most frequent sanction is related to inability to meet technical criteria as established in the license terms.

AMA/KKRT has also issued decisions and recommendations regarding different aspects of advertising spots broadcast. These are related to damage inflicted on minors and on moral principles in general, broadcasts made in foreign language, broadcasting of advertising spots with subtitles on the upper part of the screen during newscasts, product placement (when this was not regulated by law, before 2013), broadcasting of political spots, and broadcasting of medical products. AMA/KKRT has also issued notes/recommendations on the language used in some programs, considering it inappropriate.

Until 2013, the fines imposed by KKRT went to the state budget, while KKRT received 5% of the fine. This was changed through Law 97/2013, which states that AMA is entitled to 20% of the fine, while 80% goes to the state budget. However, the situation of collecting payments of fines remains problematic, due to general problems with the rule of law in the country. In addition, the regulator has depended on collection of fines from other authorities, such as tax authorities, and cooperation has not always been effective, as the regulator has continuously pointed out. With the change of law in 2013, upon the regulator's recommendation, it was decided that the fines should be executive titles, issued by the court, and then executed by bailiff services, which is supposed to facilitate the process.

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

Until 2013, the regulator's decisions should be published in the official journal, according to the law. With the Law 97/2013, this obligation was omitted for some reason. However, the regulator's decisions were just a statement of what was decided and did not include a reasoning or justification for the decisions, apart from citing the respective article in the law or regulation.

The general principle is that the regulator should public information on its activity and the documents it produces. The Law also states that the regulator should publish online documents for public consultation for at least 30 days In practical terms, it does so by publishing decisions, recommendations, press releases, annual reports, monitoring data, and other information online, in its website. AMA is also supposed to hold public consultation sessions with stakeholders for important documents or regulations, strategies, draft laws, etc. This has been done by publishing the draft documents online, but in some cases also with roundtable discussions.

The annual report is presented first to the Parliamentary Commission on Media, in a meeting open to media and public, where MPs ask questions to regulator's staff on activity of last year, and then to the plenary session. The annual report includes information on current development and situation of audiovisual media in the country, problems related to public broadcaster, to cable broadcasters, as well as information on specific processes, such as digital switchover. Other routine sections covered frequently include problems related to programming and monitoring, legal problems (drafting sub regulations, lawsuits, etc), and situation of financial management and human resources. In general the annual reports have been available online, but not all the time, or in a selective manner, e.g. including only those of the last years, which does not allow for comparison of data or progress regarding the regulator.

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

The public can be aware of the activities of the regulator through their website, where they publish activities, decisions, legislation, regulations, news, and documents for consultation. In general the main media outlets do cover the reporting of the regulator to the parliament. However, this media coverage varies depending on the relations of specific media with the regulator. There have been cases when the regulator's reporting has been publicly criticized by some media, aiming to cast a negative light on the regulator, based mainly on vested interests, and independently whether the attitude taken was justified or not.

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

In principle, yes, the regulator can set its own agenda. Art 21 of Law 97/2013 states that AMA must draft and approve a strategy, which describes the way it will carry out its legal functions. The strategy must include main goals and activities envisaged, but it should also consider demands from the parliament, suggestions from the Minister of Innovation and from other authorities (AKEP, Competition Authority, etc), Council of Complaints, and then also through public consultation process. AMA was supposed to draft the strategy five months after the law was approved in March 2013, and then revise it every three years. To this date, this has not been possible, due to deadlock on AMA's board members.

In addition, Law 97/2013 states: "AMA shall instruct the Albanian media service providers to act in compliance with international or regional acts to which Albania is party, when it comes to broadcasts from Albania to other countries."

AMA's main focus in 2013 and part of 2014 has been on content and digital switchover. AMA approved the Broadcasting Code in January 2014, focusing in more detail, on aspects such as news and current affairs, protection of minors, the right to reply, the right to privacy, etc. However, due to suspension of the chair of AMA at the time, and the general stalemate of election of missing members, the regulator has not been able to act on the Code.

b. *Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?*

The regulator's functions include drafting and approving codes and regulations on audiovisual broadcasting, based on Law 97/2013. The Broadcasting Code that was approved in 2014 (available in Albanian here: http://ama.gov.al/preview/wp-content/uploads/2015/03/5kodi_i_transmetimit.pdf) is in a way a further

interpretation/explanation/extension of AVMS Directive. The Code tackles in detail the guiding principles for content on audiovisual media, the right to privacy, the matter of public interest in audiovisual programs, and news and current affairs programs. The Code devotes a special section to coverage of children from audiovisual media, paying attention to ethical concerns in various situations and posing rules for warning signals on different programs. In addition, the Code also lays out some rules regarding the coverage of disabled persons in the audiovisual media. The Code addresses the requirement to promote and progressively increase inclusion of European works in audiovisual programs, stating that European works and independent works should be viewed with priority in the broadcasting plan. Advertisement and rules for their broadcasting is another area that the Code addresses, referring mainly to specific products, time limits, and the way advertisement spots are produced.

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

Yes. Art. 48 of Law 97/2013 states that AMA is obliged to carry out public consultation with stakeholders before making decisions which have a significant impact on the provision of audio and audiovisual services. In the process of public consultation, AMA shall publish the proposed regulatory documents and requests the opinion of the interest parties to be presented in writing, within a published timeframe, which shall be no shorter than 30 days. If necessary, AMA can carry out a hearing session, where it invites all the stakeholders to give their opinion about the proposed regulatory documents. After the deadline specified for public consultation, AMA should publish the opinion and comments of stakeholders, respecting the confidentiality of information.

The law does not specify which actors, though, leaving it to the discretion of the regulator, which usually publishes the documents online. Before 2013, the regulator, KKRT, also held public consultation sessions on Strategy on Digital Switchover. With the approval of the new law, the regulator has tried to hold public consultations in relation to several documents, such as Broadcasting Code, regulation on licensing of digital networks based on beauty contest principle, decision on must-carry content, regulation for inspecting and monitoring audiovisual media, etc. However, in these latter sessions, in late 2013 and in 2014, most of the operators have not participated in public consultation process, mainly due to opposition of the then-composition of AMA board and the decisions related to digital licensing, which affected the existing landscape.

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

There are two main aspects that are significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive:

1. Although the regulator is supposed to be independent, its election is a highly political one, due to the formula used, where the opposition MPs and those of the ruling majority take turns in short listing candidates, who are then voted in plenary session. This does not guarantee that the most professional candidates will be elected, but rather those that are considered closer to the respective political wing. In addition, as it has been proven in many cases, in a highly politicized context, where there is a great division, the election of the regulator has become a political battlefield and often blocked, with the opposition refusing to participate in the process, which annihilates consensus or even the possibility of electing members.

2. The second aspect is related to the general problems related to rule of law enforcement in the country. The regulator has the ability to impose fines and other sanctions, but the process can be lengthy and the court decisions are rarely considered impartial in the country. In addition, dependence on cooperation with other bodies also does not assist the regulator. In this respect, the regulator has had huge problems establishing its authority over the audiovisual media, with effects such as numerous overdue fees from the operators, refusal to pay fines, repeated refusal to respect intellectual property rights, unlicensed broadcasting, repeated contravention of license terms, etc.

Austria

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

N/A

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)?

The Austrian regulatory authority Austrian Communications Authority (KommAustria) is part of the state regulation.

What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

The KommAustria handles the administration of regulatory activities in the areas of electronic audio media, electronic audiovisual media, as well as the supervision of the Austrian public service broadcaster.

What is the hierarchical structure internal to the regulator?

The Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR-GmbH) acts as KommAustria's operational arm in the field of broadcasting regulation, especially for the purpose of providing administrative support.

If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

N/A

2. Financing

How is the regulator financed?

§ 35 of the Federal Act on the establishment of an Austrian Communications Authority (KOG) states that the expenditures of the KommAustria Media Division is financed by financial contributions on the one hand and funds from the federal budget on the other hand.

Does the state contribute (partly or exclusively) to its funding?

The grant from the federal budget in the amount of € 1,433,500 per year shall be remitted to RTR-GmbH. The grant shall be raised from receipts of the fees pursuant to the Broadcasting Fees Act (end-user licence fees).

If yes, are there conditions to receive state funding?

According to § 35 KOG KommAustria and RTR-GmbH shall annually submit a report on the use of these funds and a statement of accounts to the Federal Chancellor.

Have there been any cut-backs in view of the economic crisis? If so, please specify.

No, in December 2011 the amount has been raised from 1,211,550 € to 1,433,500 € (BGBl I 2011/125, 27th Dec. 2011).

Who manages the funds available to the regulator?

The receipts accrue to RTR-GmbH. The RTR-GmbH prepares a budget containing the values planned for the subsequent year and determines and publishes the actual sectoral expenditure and the actual total sectoral turnover in the subsequent year.

Is the funding scheme regulated by legislation? Please specify the legal basis.

§ 35 of the Federal Act on the establishment of an Austrian Communications Authority regulates the financing and administration of funds for the Media Division.

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)?

§ 4 of the Federal Act on the establishment of an Austrian Communications Authority (KOG) contains regulations regarding incompatibility.

If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office?

According to § 4 KOG the following persons may not be active in KommAustria:

- Members of the Federal Government, state secretaries, members of a provincial government, members of the National Council, the Federal Council or of another general representative body or of the European Parliament, as well as persons who are employees of a political party of have a leading position in a federal or regional organization of a political party; persons who are employees of a party faction in a general representative body or gave been seconded to such a party faction, parliamentary staff members within the meaning of the Parliamentary Staff Act as well as members of the Ombudsman's Office and the President of the Court of Audit;

- Employees of entities working in civic education in relation to the political parties;

- Members of the office of a federal minister or the office of a state secretary of another federal or provincial executive officer;

- Persons who are active in an organ of the Austrian Broadcasting Corporation;

- Persons who are employed or contracted by, or hold an interest in, the Austrian Broadcasting Corporation or its subsidiaries, another broadcaster or another media undertaking and persons who are in a close legal relationship with anyone who makes use of an activity of KommAustria or are affected by such activity;

- Persons who are entrusted with the representation of the interests of media undertakings, in particular on the basis of a contractual or employment relationship with a statutory body representing the interests of its members or any other interest grouping;

- Persons who have exercised any of the activities and functions listes above within the previous year.

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources?

KommAustria comprises 5 members: one head, one deputy head and three additional members (at the moment one member is at maternity leave).

Depreciation of intangible fixed assets and tangible assets in 2013: 87,950.72 € for the division 'media". Tangible Assets are listed in the balance sheet of the RTR-GmbH to the total amount of € 401,620.87 (including buildings on leasehold land, other equipment, factory and office equipment, properties under construction).

Information regarding the financial resources: see above

In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain.

Yes, the level of personnel is appropriate.

What kinds of technical facilities exist?

See above.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public?

Beneath monitoring after complaints (§ 61 AMD-G and § 36 ORF-G), the regulator also conducts systematic monitoring (within the obligation to report for broadcasters, see § 52 AMD-G and § 7 ORF-G), ad-hoc monitoring (see § 61 AMD-G and § 36 ORF-G; with limited scope regarding public service offers) and its information collection powers (see § 36 ORF-G and §§ 29, 47 AMD-G).

How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

On the one hand the broadcasters are obliged to report in writing to the regulatory authority on the implementation of channel quotas and to produce recording of all of their programmes and keep them for a minimum of ten weeks. On the other hand, upon request the desired recordings have to be made accessible to the regulator.

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements?

The publication of the decision of the regulator is (typical) for infringements of the regulations regarding product placement or sponsoring (see KOA 4.414/14-006; KOA 4.425/14-004; KOA 2.250/14-004). Infringements of regulations regarding the protections of minors usually lead to a fine (see KOA 4.400/14-003).

Which rules of the AVMS Directive have been violated most frequently? What is the "track record"?

No statistical information available. As far as can be seen there are every now and then infringements of provisions regarding advertising, sponsoring and the protection of minors.

Do fines flow, directly or indirectly, to the state budget?

According to § 64 (5) AMD-G and § 38 (4) the fines shall accrue to the federal state.

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? What information is included in the annual report?

§ 19 KOG contains regulations regarding transparency and reporting and states that decisions by KommAustria and RTR-GmbH shall be published in an appropriate manner. They shall also report annually on their activities and summarize the results in a joint activity report

(communications report). This report shall contain one chapter each on the activities of KommAustria, on the activities of the Telecom Control Commission, on the tasks and activities, the staff employment and the expended financial resources of RTR-GmbH, separated by divisions, on the allocation of funds, on the implementation of the Transparency in Media Cooperation and Funding Act and such. The report shall be submitted to the Federal Minister for Transport, Innovation and Technology by 30 June each year. For matters falling within the responsibility of the Federal Minister for Transport, Innovation and Technology, the Federal Chancellor, by agreement with the Federal Minister for Transport, Innovation and Technology, shall submit the report to the National Council. RTR-GmbH shall subsequently publish the report in an appropriate manner.

Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)?

The communications report and the decision can be found on the website of the RTR-GmbH (see https://www.rtr.at/en/m/Medien).

b. Is the public aware of the activities of the regulator?

No statistical information available (as far as can be seen), however most of the information can be easily found on the website of the RTR-GmbH anyhow.

Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

Yes, especially in the field of licensing, and the public value test regarding the public service broadcaster.

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator?

The tasks and objectives of KommAustria are regulated in § 2 KOG (see communications report page 11). The tasks performed by KommAustria are to achieve the following objectives: to promote the market access of new providers, to ensure diversity of opinion and promote the quality of channels including the technical requirements for their dissemination, to develop technical and economic schemes for a dual broadcasting market in Austria, to ensure the observance of European minimum standards by providers of contents, in particularly for the benefit of the protection of children, young persons and consumers, to optimise the use of the frequency spectrum for broadcasting, to provide expert knowledge in the field of the convergence of audiovisual media and telecommunication as well as to promote the development of markets in the audiovisual and telecommunications sectors, to create and maintain a modern and high-quality communications infrastructure for promoting locational quality at a high level.

Within the regulatory framework KommAustria decides on how it pursues the objectives, like the temporal dimensions.

What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

No information available.

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

From time to time the regulatory body publishes policy papers that are also used as interpretative guidance. However, as far as can be seen, such papers have not been published in the area of the AVMS Directive.

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)?

According to § 128 TKG the Federal Minister of Transport, Innovation and Technology as well as the regulatory authority shall give interested persons the opportunity to comment, within a reasonable period, on draft measures pursuant to the TKG that are likely to have a significant impact on the relevant market, except for some measures. The consultation procedures as well as their results shall (usually) be made publicly available by the respective authority.

The Austrian Broadcasting Corporation (according to § 6a ORF-G) shall prepare a proposal for a new service for prior evaluation. The proposal shall be submitted to the regulatory authority, the Austrian Federal Economic Chamber and the Federal Chamber of Labour, and shall be made permanently accessible on its website. All persons affected by the intended service may submit their opinions within a reasonable, but at least six-week, period. The Austrian Broadcasting Corporation shall publish opinions received on its website. Then the Austrian Broadcasting Corporation shall submit the proposal, the opinions and any amendments to the service concept to the regulator. The regulator shall provide all documents to the Advisory Council and the Federal Competition Authority. The two shall submit their opinions within a period of six weeks.

According to § 21 AMD-G the "Digital Platform Austria" work group shall be set up to support the regulatory authority in drawing up a plan for the introduction and further expansion of digital broadcasting in Austria (digitization plan). The Working Group supports the regulatory authority.

If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

According to § 20 KOG the RTR-GmbH shall fulfil the function of a competence centre for matters pertaining to the sectors of media. The function shall include performing analyses of matters related to the tasks to be fulfilled by KommAustria, by commissioning studies or preparing expert opinions, in particular on issues concerning national and European provisions on advertising, the protection of minors and juveniles etc, as well as the documentation and providing information to the public, eg by publications and specialist events as well as publications on the website.

Additionally the RTR-GmbH commissions external experts in the field of media on a regular basis (see in the communications reports that are published annually: https://www.rtr.at/en/komp/alleBerichte). For instance in 2013 the RTR-GmbH commissioned experts to conduct a study on the topic "The Program and Communications Analysis of the Austrian Non-commercial Broadcast in the Change of Media".

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

N/A

Belgium (de)

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

N/A

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

In the German-speaking Community of Belgium, a mixed regulatory model has been adopted. For most aspects, state regulation applies. These are the tasks of the Regulatory chamber of the Media Council (German: *Beschlusskammer des Medienrates*). This Chamber is competent for both audiovisual media services (audiovisual contents) and technical aspects of the contents distribution (telecommunication issues). So it has to ensure the application of the AVMS directive and the telecom directives. There is no major distinction between public and private media services providers. But public broadcasters get a licence given by the government for an unlimited period. The Media Council is competent for audiovisual media services, i.e. radio and television services, not depending on the way there are brought to the public. But it is not competent for other media services (e.g. print press).

Then we have the Advisory chamber of the Media Council, which is composed of representatives of the German-speaking audiovisual media providers (radios and journalists), of the one part, and media consumers, of the other part. Representatives of political parties represented in the Parliament of the German-speaking Community may attend the meetings. This chamber is competent for:

1. advices about the list of events of major importance for society (on behalf of the Government of the German-speaking Community),
2. advices about the rules of internal procedure of the Open Channel (on behalf of the Government of the German-speaking Community),

3. non-binding advices on applications of audiovisual services providers willing to get a radio licence allowed from the Regulatory chamber,
4. advices on how audiovisual services providers can make their services accessible to people with a visual or hearing disability,
5. advices on the programme of the German-speaking public broadcaster,
6. reports every 5 years about the media landscape in the German-speaking Community.

This mixed regulatory model is based on a historical development from a pure advisory council (today the Advisory chamber) to a regulatory body after the creation of the Regulatory chamber (which is the very regulatory chamber). It is most based on the model of the Belgian CSA (French Community).

There are some aspects of hierarchical structure between both chambers of the Media Council, as the Regulatory chamber as the actual regulatory body has a primacy.

2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

The Media Council is, in fact, exclusively financed by the German-speaking Community, which is a state entity. Each year, the Government of the German-speaking Community proposes a global budget for the Community's public services including funding for the Media Council to the Parliament. While most public services have to negotiate a 5-year-long-term management contract with the Government, which ensures financial funds for this period of time and a better definition of the missions), this is not the case for the Media Council. There has not been any cut-backs as such but as the following chart shows, the allowed amounts are modest (in principle 15.000 EUR/year) and do not enable the Council to have its own staff, premises or equipment. The funds available were so far managed by the President of the Regulatory chamber but it has been proposed to transfer this task to the independent Bureau of the Media Council. Legislation regarding the funding scheme is scarce. The Bureau has to present an annual financial statement and a budget to the Government, as a basis for negotiating the next funding (art. 110.1 Decree). The Bureau is responsible for the accounting, too.

Year	**Amount**
2010	€ 10.000
2011	€ 15.000
2012	€ 25.000
2013	€ 38.000 (including an exceptional aid because of court and lawyer fees)
2014	€ 15.000

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

Conflict of interest rules are set in art. 91 Decree and art. 6 and 23 Rules of procedure. There is no code of ethics as such. According to art. 91 Decree, following persons may not be members of the Regulatory chamber:

1. Members of the House of Representatives, the Senate, a Regional or Community Parliament, the European Parliament, a provincial council, a local council, the federal government, a government of a Region or Community, a provincial college or a ministerial cabinet;
2. a provincial governor, district commissioner or mayor;
3. members of the Advisory chamber;
4. any person whose interests are connected with a company that sells electronic communications networks, equipment or services, or provides directly or indirectly services or exercises functions for such companies.

This includes the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office.

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

The decree of the German-speaking Community of 27 June 2005 stipulates that the Media Council is assisted by an independent Bureau with 3 members of staff (art. 116.1 Decree). One person should assist the Regulatory chamber, one the Advisory chamber and the third person should be a legal adviser for both chambers. So far only 2 persons have been designated (Erlass der Regierung vom 21. Mai 2012 zur Bezeichnung der Personen, die mit der Betreuung des Medienrats der Deutschsprachigen Gemeinschaft beauftragt sind, published in *Moniteur belge* of 15th June 2012) and part-time employed for the purposes of the Media Council (one at a rate of 50%, the other [legal adviser] at 25%). These persons are in reality employed and paid by the Ministry of the German-speaking Community. They become no remuneration from the Media Council. They are dependent – under the terms of the regulation of 21st May 2012 – on the president of the Regulatory chamber and on the Government. They work in the premises of the Ministry of the German-speaking Community for both Ministry and Media Council. Even the post is delivered at the Ministry's mail box, sometimes opened and then dispatched to the Council. It is clear that the complexity of tasks requires more than only one person at 25% work time (i.e. 9 1/2 hours a week) for all legal issues. Of course the number of services regulated seems to be manageable. But the Regulatory chamber is not only competent for contents (according to the AVMS directive), but partially for infrastructure, too, in co-operation with the other Belgian NRAs (according to

the telecom directives); and not only for audiovisual services, but for radio stations as well. Some tasks require a substantial presence in Brussels.

According to the decree of the German-speaking Community, there should be another independent organ for the handling of complaints (*instruction service*, art. 116.2 Decree), but this provision has not been enforced yet.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

So far, the regulator entirely rely on complaints by the public. There is no technical possibility even for an occasional monitoring of the services: the security rules of the Ministry's informatics do not allow to stream any radio programme, except those of the public service broadcaster BRF (and its on demand TV and radio offer).

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

Since the creation of the Media Council in its current form, infringement procedures never have led to a sanction. Fines would flow directly to the state budget (art. 122 Decree).

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

According to article 15 of the Authorisation Directive 2002/20/EC, the Regulatory chamber is obliged to publish all relevant information on rights, conditions, procedures, charges, fees and decisions concerning general authorisations, rights of use and rights to install facilities and market regulation (art. 105 Decree). Annual reports are to be published as well (art. 88 Decree and art. 14 Rules of procedure).

There is no obligation to publish other decisions and documents, but some are (in principle all licencing decisions about media providers). Publication is made on the website of the Media Council (www.medienrat.be). In case of free radio frequencies, invitations to bid are published in the *Moniteur belge*, the official journal (art. 51 Decree). The annual report gives a retrospect of all decisions and major meetings and events that have happened in the precedent year, including EPRA, ERGA and CRC (Conference of Belgian regulatory bodies for Communications) meetings. Furthermore, the annual report gave - at least in the last two years - an overview about the main issues the chambers are expected to deal with during the respective following year.

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

Generally speaking, some activities of the regulator are covered by the local media (radio, printed press). During the last years, some decisions of the Regulatory chamber were announced in form of press releases. They all were issued by the president of the Regulatory chamber himself; there was no organised communication policy as such, partly due to the lack of staff. The most covered activity was the decision to refuse a licence to a local radio broadcaster who had changed its legal form and had to be considered as a new applicant (see e.g. http://brf.be/nachrichten/regional/505320/).

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

The regulator can set its own agenda and determine long-term objectives, but this is not an legal obligation. Each chamber (Regulatory chamber and Advisory chamber) has the right to determine its own goals. In practice, these are the goals fixed by the president of the respective chamber and they have not been discussed in public (e.g. by means of a consultation) so far. The issue of the regulation regarding AVMS was the licencing of private radio broadcasters, which is a long-run concern since 2009.

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

No, the regulator is not entitled to issue (neither binding nor non-binding) interpretative guidance on the application of rules contained in the AVMS Directive, as it is a task of the Parliament and the Government of the German-speaking Community (see art. 12 Decree for European works, art. 14 Decree for events of major importance for society). Only in one case, the Advisory chamber has to give advice for a better accessibility of the audiovisual media services for people with a visual or hearing disability.

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

Yes, the regulator is obliged to consult industry stakeholders and the general public as far as the regulation of the telecommunication sector is concerned (art. 103 Decree). Furthermore, the Advisory chamber is conceived as a permanent forum of the different stakeholders, but is not intended for being consulted on issues reserved to the Regulatory chamber, in principle.

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

Formally, legal texts guarantee the regulator's independence, but there are some lacks in their enforcement:

1. the Bureau should effectively have at least three members in order to fulfil its tasks;

2. the instruction service (although foreseen by law) is missing;

3. financial framework should be guaranteed for a longer period of time (e.g. 5 years);

4. the fact that the members of the Bureau are still part-time under hierarchical supervision as staff members of the Ministry of the German-speaking Community can hinder their independence.

Belgium (fl)

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

N/A

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)?

The Flemish audiovisual media regulatory framework is mainly characterised by state regulation. While implementing the AVMS directive (2009) Flanders even incorporated existing co- or selfregulatory instruments (e.g. in the area of harmful commercial communication) into traditional state regulation, which is now supervised by the VRM. In recent years, there has not been any shift regarding the applied regulatory model.

What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

Because of the Belgian federal repartition of powers, communities are competent to regulate not only the "content" related aspects of audiovisual media, but also the aspects related to the transmission of the signals (through electromagnetic means). The audiovisual media regulators of the communities (such as VRM) are therefore also competent to regulation the distribution networks and/or frequencies used for the delivery of audiovisual media services (e.g. market analyses etc).

In Flanders, the Vlaamse Regulator voor de Media (VRM) is the only regulatory body for the audiovisual media sector. VRM is not only competent for supervising the private (commercial) broadcasters, but also monitors and sanctions the (non)-compliance of the public service broadcaster (VRT) with the audiovisual media act (e.g. provision on commercial communications such as sponsoring or messages of public interest). With the exception of written press, VRM is competent for all relevant media (e.g. TV, radio, internet, TV over mobile networks etc).

What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

As indicated above, there is little to no room for co- or selfregulatory instruments.

The VRM is formally structured as follows:

1. Board of directors: the board of directors (three persons, among which the managing director and chairman of VRM) is responsible for the administrative management (mainly: financial and human resources) of the VRM. It has no regulatory powers, which are assigned to the chambers (cf. infra), which are totally independent in performing the regulatory tasks. There is no hierarchical relationship between the (administrative) board and the (regulatory) chambers.

2. General chamber: composed of 5 persons; performs most of the regulatory tasks in total independence, competent for enforcing the audiovisual media act.

3. Chamber for impartiality and minors: 9 persons; enforces the provisions on impartiality and on the protection of minors.

Note: only the managing director is a full-time function. All other functions are part-time and therefore combined with other roles in the audiovisual media sector (e.g. academics, industry experts, …).

2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding?

The financial resources from the VRM mainly (i.e. for 63% in 2013) come from direct state subsidies. Each year, the Flemish government approves the budget the VRM as part of the overall state budget. Although VRM has some indirect leverage, it has only a limited direct effect on the approval of its budget.

If yes, are there conditions to receive state funding?

As every independent agency, the VRM also concludes 4 yearly management contracts with the Flemish government. The management contract lists the tasks of the VRM and provides the overall framework regarding financial resources.

Have there been any cut-backs in view of the economic crisis? If so, please specify.

Between 2009 and now, the overall budget of VRM has increased. As most other public organisations, there were cutback in the context of the most recent budget exercise. The most recent year report (2013) however shows that VRM disposes of significant reserves from previous years.

Who manages the funds available to the regulator?

The overall power lies with the administrative board of directors. Day-to-day management is assigned to the managing director. Chambers have limited to no influence on funds available.

Is the funding scheme regulated by legislation? Please specify the legal basis.

Yes. Main legal basis is article 232 of the Flemish media act.

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office?

As indicated above, besides the administration only the managing director holds a full-time function. The chairman of the VRM and the chairmen and members of both chambers are only part-time functions. Incompatibility rules exist and vary for the different functions within VRM, but mainly relate to incompatibility with other public functions (e.g. membership of government etc). Members of the regulatory chambers are not allowed to have links with or economic participation in any media or advertising company and/or any distribution company. See table 20 for details.

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

Regarding human resources: the administration of the regulator is formed by 20 civil servants (incl. the managing director), which are working in one of the following units:

1. Legal / economic unit: 6 persons
2. Investigation unit: 5 persons
3. Administrative support: 4 persons
4. Central service (e.g. communication): 3 persons
5. Secretary: 1 person

Regarding financial resources: although cut-backs have been announced as of this year (elections only last year), the year report of VRM indicates that it disposes of significant reserves built up since its establishment.

Regarding technical resources: no indication they would not be sufficient.

Regarding appropriateness: overall, I believe the resources of VRM are appropriate. It also needs to be taken into account that VRM is only competent for Flanders. It has to be taken into account that similar regulators (with 26 staff members in the case of the CSA) exist in other parts of the country.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

In most cases, the regulatory chambers have own initiative powers. A complaints procedure also exists. Of the actual decisions, around 2/3 is the result of the regulator's own initiative, and only 1/3 is the result of a complaint.

The regulator performs both systematic monitoring, ad-hoc monitoring and monitoring/investigations after a complaint. Recently, the general chamber of the VRM also adopted a framework decision on monitoring: www.vlaamseregulatormedia.be/sites/default/files/kaderbesluit_monitoring_0.pdf

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements?

When sanctions are imposed, the chambers the first time mostly impose a warning. In case of repeated breach, the sanction is most often an administrative fine (mostly between 2,500 and 25,000 euro). Suspension or revocation of a license, or the obligation to publish the VRM decision in the media are imposed only in quite exceptional cases.

Which rules of the AVMS Directive have been violated most frequently?

Commercial communication. This is also the reason why VRM in recent years has invested resources in clarifying its interpretation of these rules (e.g. through official communications, information documents, information meetings, VRM symposium, specific webpages clarifying basic concepts etc). See annex (parts 6-10) for overview.

What is the "track record"?

VRM effectively and efficiently enforces the existing legal and regulatory frameworks on both private and public service broadcasters (e.g. most recent communication on minimum requirements for the mentioning of sponsoring). VRM has tangible effect on behaviour of market players.

Do fines flow, directly or indirectly, to the state budget?

No. The media act was amended to explicitly state that fines would be allocated to the general state budget, mainly in order to prevent problems re. the (perceived) impartiality of the regulator.

Please give references (to the extent to which information is available).

See country table 13 and the specific webpage (where active selections can be made based on a number of criteria): www.vlaamseregulatormedia.be/nl/beslissingen

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public?

Most formal documents produced by VRM are obligatory publicly available (e.g. decisions, communications, recommendations, annual report, annual PSB monitoring report, annual media concentration report). The meetings of the regulatory chambers are not public (but the chambers have the possibility to ask parties to be present). Meeting minutes of the chambers and board of directors are not made public.

If not, does the regulator publish such documents on its own initiative?

Besides the formally obliged publication, VRM on its own initiative also invests quite some resources in transparency through the organisation of information meetings, information documents, specific webpages clarifying basic concepts etc.

Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)?

What information is included in the annual report?

The annual report mainly contains information on:

1. Organisation and working of the VRM (incl. financial and human resources)
2. Decision taken by regulatory chambers
3. Economic analysis of the sector
4. Reporting on performed tasks (mainly decision taken & monitoring activities)

Is the public aware of the activities of the regulator?

Yes. However, in order to improve awareness among the public, VRM in 2012 issued an information brochure: http://www.vlaamseregulatormedia.be/nl/nieuws/2012/vrm-publiceert-brochure-kan-dit-op-tv

Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

Yes. In general the media are quite keen on reporting on themselves…

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives?

Yes, within the context of the management contract concluded with the Flemish government and the yearly budget as it was approved.

If not, who determines the policies and goals of the regulator?

n/a

What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

The activities of the general chamber have mostly focused on the enforcing the provisions on commercial communication. In recent years, VRM has proactively tried to clarify its interpretations through organisation of information meeting, publication of information documents etc. See annex (parts 6-10) for overview.

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

Because of constitutional law constraints, independent administrative bodies are not allowed to issue general (abstract) rules, but only apply them in particular (concrete) cases. Referring to these concrete cases, they can of course clarify how a certain rule will be interpreted/applied by them. VRM has extensively made use of this possibility in order to increase transparency and awareness, mainly in the area of enforcement of commercial communication (e.g. most tangible example: clarifying basic concepts on a specific webpage: http://www.vlaamseregulatormedia.be/nl/commerciele-communicatie, incl. FAQs and references towards previous decisions). Other relevant examples are:

- VRM Communication on announcement spots in advertising blocks: http://www.vlaamseregulatormedia.be/sites/default/files/uitzenden_aankondigingspots_in_reclameblokken_standpunt_vrm.pdf
- VRM Communication on distinction advertising – sponsoring: http://www.vlaamseregulatormedia.be/sites/default/files/verschil_reclame_sponsoring.pdf
- VRM Communication on (on screen) contests as teleshopping: http://www.vlaamseregulatormedia.be/sites/default/files/prijsvragen_-_telewinkelspots_standpunt_vrm.pdf
- VRM Communication on (on screen) calling games: http://www.vlaamseregulatormedia.be/sites/default/files/belspelletjes_standpunt_vrm.pdf

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public?

The VRM is only obliged to consult with industry stakeholders and the general public where this is required based on EU law (e.g. in case of market analyses regarding potential imposing of obligations on e-communications network providers).

Because of the specific constitutional framework, VRM has to consult all other relevant regulators (e.g. CSA for French community, Medienrat of German speaking community, BIPT for telecommunication and some media activities in Brussels, competition council etc).

Are these consultations institutionalized (e.g. Industry Forum)?

Except for the political consultation (cf. second item previous question), an institutionalized forum does not exist.

If not, does the regulator nonetheless regularly seek the views of the industry and the public?

Only in the domains where this is formally required.

Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

See consultation re. market analysis leading to opening of broadband and cable networks: annex (nr. 3).

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

Overall, there have been few changes to the framework for the regulator's independence and its enforcement of the AVMS Directive. In recent years, some additional (non EU-harmonised) powers have been assigned to it (e.g. signal integrity, investment in local content, remuneration of local broadcasters). In general, the VRM is quite effective in enforcing the legal and regulatory provisions for the audiovisual media sector. A specific positive point worth mentioning, is that VRM is slowly but surely is making progress in clarifying its jurisprudence (e.g. through the publishing of information meetings, information documents, etc) although this is not formally obliged by the law.

Annex. OVERVIEW MOST RELEVANT CHANGES FLEMISH MEDIA LAW (INDIREG UPDATE – VRM)

A. LEGAL FRAMEWORK:

1. Media decree amended by:
   a) decreet van 8 juli 2011, (Belgisch Staatsblad, 5 augustus 2011): art. 24: control on VRT by Rekenhof
   b) decreet van 13 juli 2012, (Belgisch Staatsblad, 17 augustus 2012):
      - implementation updated e-communications regulatory framework;
      - update art. 18 MD: new services by VRT (outside management contract): advice from VRM (no longer advisory sectorraad media);
      - update art. 36 MD: update TV and radio programs by human interest and family associations
      - abrogation of article 46 tMD
      - update art. 50 – 72 MD: updates commercial communication and messages of public interest (BAN)
      - update art. 82 MD: prohibition on calling games on screen
      - update art. 84 MD: prohibition on teleshopping for paranormal activities
      - update art. 153 MD: update major event framework
      - update art. 186-187 MD: update must & may carry
      - update MD market analysis procedure by VRM (incl.
        - publishing of information by VRM, art. 190 MD in fine;
        - imposing of access obligations on operators that control access to users (art. 191 al. 4 MD)
        - imposing of minimum service requirements by VRM art. 191 al. 5 MD)
        - imposing access on fair terms by VRM (art. 192 MD)
        - new art. 192/1 – 192/3 MD: additional remedies by VRM
        - VRM can impose to share infrastructure: art. 200 – 202/1 MD
   c) decreet van 5 juli 2013, (Belgisch Staatsblad, 2 augustus 2013): art. 15: update audit on VRT (incl. information request procedure)
   d) decreet van 19 juli 2013, (Belgisch Staatsblad, 13 augustus 2013): signal integrity
   e) decreet (1) van 17 januari 2014, (Belgisch Staatsblad, 11 februari 2014):
      - update art. 150 – 152 MD: clarification geographical competence of VRM
      - update art. 153 MD: major events
   f) decreet (2) van 17 januari 2014, (Belgisch Staatsblad, 12 februari 2014): update art. 182 – 184 MD: content investment obligation on distributors (incl. new task for VRM)
   g) decreet van 21 februari 2014, (Belgisch Staatsblad, 21 maart 2014): update 165 – 166 MD on regional broadcasting (cf. infra)
   h) decreet van 25 april 2014(1), (Belgisch Staatsblad, 11 juni 2014): update article 185 MD: must carry not applicable to providers using access to cable networks;
   i) decreet van 25 april 2014(2), (Belgisch Staatsblad 12 augustus 2014): update art. 144 – 149 MD: local radio broadcasters

2. New secondary legislation:
   a) Regional broadcasting (incl. collaboration and remuneration model):

- Act of 21 februari 2014 (pdf)
- Decree of 25 april 2014 (pdf)

b) Stimulating audiovisual sector:
- Act of 17 januari 2014 (pdf)
- Decree of 21 maart 2014

c) Reconciliation: decree of 8 november 2013
d) PP logo: decree of 10 september 2010
e) Amendment framework "major events": act of 17 januari 2014
f) Must carry decree Flemish government of 22 november 2013

3. New acts and decrees on VRM:
   a) Amendments MD:
      - Art. 216 §3 (second chamber):
        i. Extended montoring and enforcement of children protection in linear broadcasting services and commercial communication;
        ii. sanctioning of obligation on distributors to protect minors
      - Art. 218 §2 : monitoring and sanctioning of:
        i. 1° secondary legislation by VRM
        ii. 9°/1: advice on new services offered by VRT
        iii. 11° Market analyses by VRM
        iv. 12° content investment obligation
        v. 13° regional broadcasters remuneration process
      - Art. 232: additional resources:
        i. 5° management of own property and goods
        ii. 6° reclaimed funds
        iii. Al. 3 & 4: imposed fines not allocated to VRM (but added to general budget)
      - Art. 234: amendment information requesting procedure
   b) Reglement van orde raad van bestuur (pdf) (21 maart 2013)
   c) Framework decision VRM on monitoring: www.vlaamseregulatormedia.be/sites/default/files/kaderbesluit_monitoring_0.pdf
   d) charter good governance: Charter deugdelijk bestuur (pdf)

B. REGULATORY INITIATIVES VRM:
   1. BOARD:
      - Update composition Board of Directors: http://www.vlaamseregulatormedia.be/nl/nieuws/2015/samenstelling-raad-van-bestuur
   2. STAFF:
      - Additional staff members:
        - Economic expert:
        - Legal counsel: http://www.vlaamseregulatormedia.be/nl/nieuws/2014/de-vlaamse-regulator-voor-de-media-werft-een-jurist-mv-aan
        - Office manager: http://www.vlaamseregulatormedia.be/nl/nieuws/2015/vrm-werft-aan-kantoorcoordinator-mv

3. DECISIONS (http://www.vlaamseregulatormedia.be/nl/beslissingen):
    - Figures:
        - per domain:
            - Cable: 21
            - Radio: 399
            - TV: 529
        - per year:
            - Q1 2015: 11
            - 2014: 54
            - 2013: 31
            - 2012: 36
            - 2011: 34
            - 2010: 55
        - Per chamber:
            - General chamber: 483
            - Second chamber: 44
        - Type of decision:
            - Advice: 14
            - Decision: 26
            - Authorisation: 190
            - License: 147
            - Preliminary ruling: 2
            - Appeal: 3
        - Initiative for ruling:
            - Own initiative VRM: 464
            - Complaint: 279
            - Request Fl. Government: 1
            -
    - Opening broadband & cable networks (CRC, 2011):
        - update: http://www.vlaamseregulatormedia.be/nl/nieuws/2014/crc-neemt-vernieuwingsbesluit-aan-betreffende-de-analyse-van-de-breedbandinternetmarkten
        - dec 2013: http://www.vlaamseregulatormedia.be/nl/nieuws/2013/regelgevingskader-openstelling-kabel-helemaal-afgerond
        - okt 2013: http://www.vlaamseregulatormedia.be/nl/nieuws/2013/aanpassingen-wholesalereferentieaanbiedingen-aan-opmerkingen-crc-beslissingen-van-3
        - sep 2013: http://www.vlaamseregulatormedia.be/nl/nieuws/2013/crc-neemt-besluiten-aan-betreffende-de-kwalitatieve-aspecten-van-de-referentieaanbiedingen
        - jul 2013: http://www.vlaamseregulatormedia.be/nl/nieuws/2013/marktanalyse-verslag-openbare-raadpleging-wholesale-tarieven

        - may 2013: http://www.vlaamseregulatormedia.be/nl/nieuws/2013/planning-verder-verloop-marktanalyse
        - apr. 2013: http://www.vlaamseregulatormedia.be/nl/nieuws/2013/marktanalyse-verslag-openbare-raadpleging-wholesale-referentieaanbod-numericable
        - apr 2013 : http://www.vlaamseregulatormedia.be/nl/nieuws/2013/marktanalyse-raadpleging-over-ontwerp-van-beslissing-vrm-betreffende-wholesaletarieven
        - mar 2013 : http://www.vlaamseregulatormedia.be/nl/nieuws/2013/verslag-openbare-raadpleging-in-het-kader-van-de-marktanalyse
        - jan 2013: http://www.vlaamseregulatormedia.be/nl/nieuws/2013/raadpleging-over-ontwerp-van-beslissing-over-het-wholesale-referentieaanbod-van-coditel
        - dec 2012: http://www.vlaamseregulatormedia.be/nl/nieuws/2012/raadpleging-over-ontwerpen-van-beslissingen-over-het-wholesale-referentieaanbod-van

4. REPORTS:
    - Media concentration:
        - 2014: http://www.vlaamseregulatormedia.be/nl/nieuws/2014/rapport-mediaconcentratie-2014
        - 2013: http://www.vrmrapporten.be/rapporten/mediaconcentratie-2013
        - 2012: http://www.vlaamseregulatormedia.be/nl/nieuws/2012/rapport-mediaconcentratie-in-vlaanderen-2012
        - 2011: media concentration: http://www.vlaamseregulatormedia.be/nl/nieuws/2011/verslag-symposium-mediaconcentratie-kansen-en-bedreigingen-in-vlaanderen
        - 2010: http://www.vrmrapporten.be/rapporten/mediaconcentratie-2010
    - Liberty Global – SBS: http://www.vlaamseregulatormedia.be/nl/nieuws/2014/nota-vrm-mogelijke-gevolgen-participatie-liberty-global-in-de-vijver-media
    - VRT – management agreement:
        - 2013: http://www.vlaamseregulatormedia.be/nl/nieuws/2014/toezichtsrapport-vrt-2013
        - 2012: http://www.vrmrapporten.be/rapporten/toezichtsrapport-vrt-2012
        - 2011: http://www.vlaamseregulatormedia.be/nl/nieuws/2012/toezichtsrapport-2011-naleving-beheersovereenkomst-door-vrt
        - 2010: http://www.vrmrapporten.be/rapporten/toezichtsrapport-vrt-2010

5. INFO REQUESTS:
    - Operators: working reports 2013: http://www.vlaamseregulatormedia.be/nl/nieuws/2014/indienen-werkingsverslagen-2013-dienstenverdelers-aanbieders-kabelomroepnetwerken
    - Broadcasters:
        - quota reports 2013: http://www.vlaamseregulatormedia.be/nl/nieuws/2014/quotaverslagen-indienen-voor-31-maart-2014
        - quota reports 2012 : http://www.vlaamseregulatormedia.be/nl/nieuws/2013/quotaverslagen-televisieomroepen

6. PR:
    - Symposium:
        - 2014: concentration: http://www.vlaamseregulatormedia.be/nl/nieuws/2014/verslag-symposium-2014-nieuwe-machtsverhoudingen-binnen-de-media
        - 2013: local and regional broadcasters : http://www.vlaamseregulatormedia.be/nl/nieuws/2013/verslag-symposium-de-toekomst-van-regionale-en-lokale-audiovisuele-media-in-vlaanderen
        - 2012: connected TV: http://www.vlaamseregulatormedia.be/nl/nieuws/2012/verslag-symposium-connected-tv-de-vlaamse-mediasector-onder-druk
        - 2011: http://www.vlaamseregulatormedia.be/nl/nieuws/2010/verslag-symposium-nieuwe-trends-in-televisiereclame
        - 2009: http://www.vlaamseregulatormedia.be/nl/nieuws/2009/verslag-symposium-haat-geweld-en-discriminatie-evenwichtsoefeningen-van-de-omroepen

7. ABOUT VRM
    - SELF-EVALUATION: online survey: http://www.vlaamseregulatormedia.be/nl/nieuws/2013/resultaten-online-enquete-nieuwsbrief
    - Information brochure: http://www.vlaamseregulatormedia.be/nl/nieuws/2012/vrm-publiceert-brochure-kan-dit-op-tv

8. INFORMATION MEETINGS:

    - Presentatie informatievergadering 20 oktober 2014 (PDF): commercial communication
    - Presentatie informatievergadering 17 november 2011 (PDF): protection of minors
    - Verslag informatievergadering 11 oktober 2010 (PDF): product placement, teleshopping

9. COMMERCIAL COMMUNICATION: specific webpage clarifying basic concepts (advertising, sponsoring, product placement), incl. FAQs and relevant decisions: http://www.vlaamseregulatormedia.be/nl/commerciele-communicatie
    - Reclame: http://www.vlaamseregulatormedia.be/nl/beslissingen?searchKeyDecision=reclame
    - Sponsoring: http://www.vlaamseregulatormedia.be/nl/beslissingen?searchKeyDecision=sponsoring
    - PP: http://www.vlaamseregulatormedia.be/nl/beslissingen?searchKeyDecision=productplaatsing

10. OTHER/COMMUNICATION:
    - Communication on announcement spots in advertising blocks: http://www.vlaamseregulatormedia.be/sites/default/files/uitzenden_aankondigingspots_in_reclameblokken_standpunt_vrm.pdf
    - Communication on distinction advertising – sponsoring: http://www.vlaamseregulatormedia.be/sites/default/files/verschil_reclame_sponsoring.pdf
    - Communication on (on screen) contests as teleshopping: http://www.vlaamseregulatormedia.be/sites/default/files/prijsvragen_-_telewinkelspots_standpunt_vrm.pdf
    - Communication on (on screen) calling games: http://www.vlaamseregulatormedia.be/sites/default/files/belspelletjes_standpunt_vrm.pdf
    - Communication on decision framework VRM: http://www.vlaamseregulatormedia.be/sites/default/files/informatiedocument_-_beslissingskader_vlaamse_regulator_voor_de_media.pdf
    - Opening authorization procedure local radio: http://www.vlaamseregulatormedia.be/nl/nieuws/2013/marktanalyse-raadpleging-over-ontwerp-van-beslissing-vrm-betreffende-wholesaletarieven
    - communication on temporary radio frequency license: http://www.vlaamseregulatormedia.be/nl/nieuws/2012/aanvragen-tijdelijke-zendvergunning
    - communication on fixed antenna sites: http://www.vlaamseregulatormedia.be/nl/nieuws/2012/conformiteitsattest-verplicht-voor-vast-opgestelde-zendantennes
    - communication on tender for legal support and representation: http://www.vlaamseregulatormedia.be/nl/nieuws/2013/aankondiging-overheidsopdracht-oproep-tot-kandidaatstelling
    - overview market players: http://www.vlaamseregulatormedia.be/nl/radio-tv-netwerken
    - Year Report VRM
        - 2013: http://www.vrmrapporten.be/rapporten/jaarverslag-2013
        - 2012: http://www.vrmrapporten.be/rapporten/jaarverslag-2012

- 2011: http://www.vrmrapporten.be/rapporten/jaarverslag-2011
- 2010: http://www.vrmrapporten.be/rapporten/jaarverslag-2010

11. TRANSPARENCY: information webpage about VRM:

Over VRM

Algemene kamer

Kamer van onpartijdigheid en bescherming van minderjarigen

Raad van bestuur

Beoordelingscommissie (stimuleringsregeling audiovisuele sector)

Administratie

Veelgestelde vragen over de VRM

Rapporten

Jaarverslag 2013

Mediaconcentratie 2013

Toezichtsrapport VRT - 2013

Archief

Documentatie

Informatiedocumenten VRM

Informatievergaderingen VRM

Standpunten VRM

Marktanalyse

Activiteiten

Thesisprijs

Symposium

Belgium (fr)

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

In general, the changes are relatively minor as the regulatory framework has not changed since 2009.

Tables 9-14: Comments on powers of regulatory bodies

Table 13: figures only concern audio-visual media services and not purely audio services

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

- The competences, structure and composition of the CSA ("High Audiovisual Council") are laid down in the "Décret coordonné du 26 mars 2009 sur les services de médias audiovisuels" (hereinafter: AVMS Act) published in the Official Journal on the 24th July 2009[1].

  Article 133 of the AVMS Act provides that "The High Audio-visual Council of the French Community of Belgium is hereby created. It shall be an independent administrative authority with legal personality and shall be responsible for regulating the audio-visual sector within the French Community".

  The CSA is therefore not only competent for content issues but also for regulating all transmissions aspects of audio-visual (and audio) broadcasting signals and the networks used for that transmission[2]. It means that the CSA regulates the different

[1] *M.B.*, 24 juillet 2009. A coordinated version may be found at http://www.csa.be/documents/1440.

[2] We note that, at the Belgian federal level, broadcasting ("radiodiffusion") is no longer the criteria for the repartition of competencies due to the sixth reform of the Belgian State. The concept has been replaced by "technical and content-related aspects of audio-visual and audio services" (Article 4, 6° of the Special Act on Institutional Reform of 8 August 1980). This amendment aims at modernising the concept. Its content and

players along the broadcasting value chain, i.e. the editors of services (“éditeurs de services”), the distributors of services (“distributeurs de services”) and the networks operators (“opérateurs de réseaux”)[3].

- Article 134 of the AVMS Act states that the CSA is composed of two committees – the Advisory Committee (“Collège d’avis”) and the Authorization and Control Committee (“Collège d’autorisation et de contrôle”) – as well as a Bureau and an Investigatory Office, the latter entitled to receive complaints by the viewers and to take the initiative to open any investigation.

  According to the explanatory memorandum[4], it was important to establish two committees in charge of two different missions: one advisory committee composed of professionals, another committee competent for controlling and sanctioning the editors, independent of the particular interests.

  The Authorization and Control Committee is the **regulatory body** of the CSA. According to Article 136 (1) of the AVMS Act, its remits are to grant frequency usage rights, advise the Government of the French Community, control the compliance of the services with the laws, decrees, codes of conduct and other rules and draw up recommendations.

  The Advisory Committee can be considered as a **co-regulatory body** competent for audio-visual media services[5]. The Advisory Committee is mainly an advisory body composed by members of the sector. The Government may consult it on various issues related to the broadcasting sector (e.g. commercial communication, the evolution of the sector, protection of human rights, protection of minors,...). It has also the competence to draw up codes of conduct in six matters: advertising and sponsorship, protection of minors, human dignity, accessibility of programmes for people with sensory deficiencies, broadcasting of short news reports and political information during electoral campaigns. These codes can become binding if the Government approves them (otherwise they are non-binding). Article 135 AVMS Act further specifies the remits of the Advisory Committee.

  The members of the Advisory Committee are appointed by the Government. However, the Government has not appointed new members since 2011, when the four-year mandate of the members came to end. Therefore, by the end of 2014, those members still continue their duty and the Advisory Committee is still composed by the full members appointed in 2007[6] or[7] their alternates.

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the scope of competences of Communities (content and transmission) nevertheless remain the same. This amendment has not yet let to amendments of the legislation of the French Community.

[3] We note that regarding transmission, the CSA must cooperate with the other media regulators and with the IBPT in the context of the CRC. However, this cooperation concerns exclusively transmission networks and services and not content issues like those addressed in the SMA Directive.

[4] Projet de décret du 22 avril 1997 relatif au Conseil supérieur de l’Audiovisuel, Exposé des motifs, *Parl. Comm. fr*., sess. ord., 1996-1997, p. 2.

[5] F. JONGEN, „Belgium“, *Reports on possible cooperative regulatory systems – Study on Co-Regulation Measures in the Media Sector*, Hans Bredow Institut, http://www.hans-bredow-institut.de/webfm_send/335, 2005, p. 77.

[6] Arrêté du Gouvernement de la Communauté française du 25 mai 2007 désignant les membres du Collège d'avis et du Collège d'autorisation et de contrôle du Conseil supérieur de l'Audiovisuel, *M.B*, 7/8/2007.

2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

According to Article 151 AVMS Act, the financing sources of the CSA are a general subsidy allocated by the French Community, a specific subsidy, gifts and other own income[8]. In practice, the CSA is only financed by the general subsidy, which is paid by the Government.

- The general subsidy is negotiated by the CSA and the Government for a five-year term. It is part of the overall state budget. Between 2009-2013, the annual amount was fixed at 2.200.000 euros. This amount was not indexed every year, contrary to the Government's commitments. A new financing contract has been negotiated for the 2014-2018 period. Article 1 of this contract stipulates that the Government allocates an annual subsidy of 2.250.000 euros. This amount will be indexed annually to the consumer price index and will be increased by 1% every year. Although the workload has intensified in recent years, due to the growing number of regulated actors[9], the subsidy remained stable. This might lead to an underfinancing of the CSA.

- A specific subsidy can also be allocated in order to cover the damages paid by the CSA, due to the potential liability within the execution of its duties. This specific subsidy will only be paid if these damages cannot be covered by the CSA's own other resources.

The CSA can establish its annual budget and use the assigned financial resources at its discretion. The regulator is nevertheless submitted to a marginal hierarchal control as a government Commissioner participates in the meetings of the Bureau and supervises the administrative and financial management of the CSA. This government Commissioner can issue appeal to the Government against decisions related to the functioning and the administrative and financial management of the CSA that he considered illegal or jeopardizing its financial equilibrium (article 152 AVMS Act). This control therefore relates to acts falling outside the regulatory mission of the CSA and is really weak since it does not allow the government to interfere in the policy of the regulatory authority.

Furthermore, according to article 153 AVMS Act, the financial management of the CSA must comply with the federal law of 16 March 1954 on the control of certain public interest bodies. This provision requires the CSA to designate an independent auditor responsible for the control of annual accounts and the regularity of transactions referred to in the annual accounts.

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[7] Indeed some full members have effectively withdrawn and are replaced by their alternates, the latter having now no alternates on their own.

[8] We note that there is none own income. The fines are to be paid to the State (and not to the regulator).

[9] Cf. Table 1 – French Community, in particular as regards the number of non-linear audio-visual media services.

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

- The Bureau

According to Article 142 (2) AVMS Act, the incompatibility rules laid down in Article 139 also applies to the members of the Bureau. Therefore, membership of the Bureau is incompatible:

- with membership of the executive or legislative power at European, federal, community, regional, provincial and local level;
- with a position in a minister's cabinet (at European, federal, community or regional level);
- with any function or position in another media company which would create a conflict of interest;

- with any membership in an organization condemned for not having respected the democratic principles enshrined in the European Convention of Human Rights, the Belgian Constitution and Belgian anti-discrimination laws.

The procedure to find incompatibilities and revoke members of the Bureau is detailed in its Rules of procedure (articles 24-31 Bureau Rules of Procedure).

- the Authorization and Control Committee

Article 139 (1) AVMS Act stipulates that membership of the Authorization and Control Committee is incompatible:

- with membership of the executive or legislative power at European, federal, community, regional, provincial and local level;
- with a position in a minister's cabinet (at European, federal, community or regional level);
- with any function or position in another media company which would create a conflict of interest;

- with any membership in an organization condemned for not having respected the democratic principles enshrined in the European Convention of Human Rights, the Belgian Constitution and Belgian anti-discrimination laws.

The procedure to find incompatibilities and revoke members of the Authorization and Control Committee is detailed in its Rules of procedure (Articles 20-29 CAC Rules of procedure).

- The Advisory Committee

According to Article 138 (4) AVMS Act, the membership of the Advisory Committee is incompatible:

- with membership in any executive or legislative power at European, federal, community, and regional level;
- with a position in a minister's cabinet;
- with any membership in an organization condemned for not having respected the democratic principles enshrined in the European Convention of Human Rights, the Belgian Constitution and Belgian anti-discrimination laws;
- with membership in the Authorization and Control committee (AVMS Act), apart from the president and the vice-presidents.

There is no provision forbidding a conflict of interest with the industry. On the contrary, members of the Advisory Committee are appointed by the Government with regard to their membership in one of the specific socioeconomic categories referred to in article 138 (2) AVMS Act.

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

The regulator employs currently 25 staff members (including six administrative assistants, a librarian and a driver). One of those staff members is dedicated to the Investigatory Office. Article 140 (3) AVMS Act provides that staff members of the Investigatory Office must hold a master's degree in law or justify a professional experience in broadcasting. There is no specific requirement for other staff members.

The appointment procedure for staff members must be transparent and non-discriminatory[10] in order to guarantee that the CSA is equipped with qualified people. Indeed, up to date, there are no signals indicating a level of personnel inappropriate to the complexity of tasks. However, as the number of regulated services is growing up and as the number of staff people employed has diminished (from 26 to 25), the CSA might face in the future problems of understaffing. Therefore, an eye must be kept on that point as the financing of the CSA might not be sufficient in the years to come to monitor all the new media services.

[10] Public calls containing explicit criteria for selection, interviews, …

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

The CSA (Investigatory Office) conducts monitoring of the services *ex officio* and also acts on complaints from the public[11].

- *Ex officio*

The *ex officio* monitoring is performed by the Investigatory Office, which can open an own-initiative-investigation (Article 143 (1) AVMS Act). The Investigatory Office performs a regular monitoring of the activities of the editors established in the French Community, especially as regards commercial communications. It also performs a special monitoring during the election period. However, in 2013[12], only 2,5 % of the files were open *ex officio*. This low percentage can be explained by the popularity of the complaint procedure.

According to Article 37 AVMS Act, the RTBF and the other editors of service must retain a complete copy of their programmes for a period of three months after their insertion into the audio-visual media service. As regards linear services, the editors of services must also retain, during the same period, the daily programming (*"conduite"*) of each broadcast audio-visual media service including all the programmes, programme sequences and the exact time of their insertion.

On the basis of such an investigation, it is then up to the CAC to decide on the case (article 35 CAC Rules of procedure).

- On complaint

On its website, the CSA gives clear guidance on how a complaint has to be filed (by online form[13], letter, e-mail or fax).[14] Complaints received by the CSA are transmitted to the Investigatory Office, which can decide to declare the complaint inadmissible, close the case or open an investigation. On the basis of such an investigation, it is then up to the CAC to decide on the case (article 35 CAC Rules of procedure).

[11] CSA, *Annual Report 2013*, available (in French) at the following link : http://www.csa.be/documents/2270
[12] Idem
[13] Available (in French) at the following link: http://www.csa.be/messages/new?type=complaint
[14] Information available at the following link: http://www.csa.be/faqs/21

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

According to Article 159 (1) AVMS Act, the Authorization and Control Committee may, in accordance with the procedure referred to in Article 161, impose one or more of the following sanctions:

- 1° a warning;
- 2° the publication on the service complained of or in any other periodical publication or both and at the offender's expense, of a statement indicating that the Authorization and Control Committee has noted an offense that the statement relates;
- 3° the suspension of the offending programme;
- 4° the withdrawal of the offending programme;
- 5° the suspension of the authorization for a maximum period of time of six months;
- 6° without prejudice to the (3), [procedural rules applicable when the Authorization and Control Committee decides to suspend the distribution of an audio-visual service] the suspension of the distribution of the service;
- 7° a fine not being less than € 250 nor exceeding 3% of the annual turnover, taxes not included; For a subsequent offense within five years, this amount is increased to 5% of annual turnover excluding taxes; the fine may be imposed complementary to any other penalties provided in this subsection;
- 8° the withdrawal of the authorization.

Fines flow directly to the state budget (principle of the budgetary universality, enshrined in article 174 (2) Belgian Constitution and article 50 (1) Special Law of financing of 16 January 1989).

In 2013, the CSA adopted 12 decisions in infringement cases concerning audio-visual media services[15] and only 7 in 2014. There are thus relatively few sanctions imposed. This situation can be explained by the policy of the CSA: the regulator aims at changing bad practices rather than sanctioning the actors. Therefore, when the editors have committed themselves to respect the regulatory framework, the regulator generally observes that there is no ground for a sanction.

[15] This figure does not include audio services.

In practice, in 2013, the CSA took the following decisions in infringement cases concerning audio-visual services[16]:

Date	Editor	Issue	Decision
7 November 2013	TV COM (local broadcaster)	Editorial independence of the editor	Grievance established and warning
24 October 2013	STAR TV (private broadcasters)	Quotas	Grievance established but no sanction
29 August 2013	RTBF (public broadcaster)	Self-promotion	Grievance established and warning
11 July 2013	TV COM (local broadcaster)	Advertising	Grievance established but no sanction
11 July 2013	RTC Télé-Liège (local broadcaster)	Advertising	Grievance not established
11 July 2013	TéléVesdre (local broadcaster)	Advertising	Grievance is established but no sanction
18 April 2013	RTBF (public broadcaster)	Appropriate visual warnings	Grievance not established
18 April 2013	NO Télé (local broadcaster)	Elections period	Grievance is established and warning
28 March 2013	RTBF (public broadcaster)	Infringement of the management contract: educative program	Grievance established but no sanction
28 March 2013	RTBF (public broadcaster)	Self-promotion	Grievance established and warning
31 January 2013	RTBF (public broadcaster)	Protection of minors	Grievance established but no sanction
31 January 2013	Canal Z (local broadcaster)	Elections period	Grievance established and warning
17 January 2013	RTBF (public broadcaster)	Placement of product	Grievance established and warning

[16] Information available at the following link : http://www.csa.be/documents/categorie/3

In practice, in 2014, the CSA took the following decisions in infringement cases concerning audio-visual services[17] :

18 December 2014	RTBF (public broadcaster)	Placement of product	Grievance established but no sanction due to the editor's commitments
3 July 2014	TV COM (local broadcaster)	Composition of the Management Board	Grievance non established
12 June 2014	RTC Télé-Liège (local broadcaster)	Composition of the Management Board	Grievance established and warning
8 May 2014	RTBF (public broadcaster)	Protection of minors	Grievance non established
8 May 2014	TeleVesdre (local broadcaster)	Elections period	Grievance non established
24 January 2014	RTBF (public broadcaster)	Infringement of the Management Contract	Grievance non established
23 January 2014	RTBF (public broadcaster)	Infringement of the Management Contract: educative program	Grievance established but no sanctions

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

The AVMS Act does not rule the transparency of decisions nor awareness issues and refers to the Bureau Rules of procedure. However, these Rules of procedure contain very little information about these matters. According to Article 38 of the Bureau Rules of procedure, information tools and an Internet website must present the activities, decisions and advises of the CSA. In practice, the Internet website of the CSA is well documented and presents all the documents (decisions, recommendations, annual reports,…) adopted by the regulator[18]. A newsletter also provides regular information about the (regulatory and other) activities of the CSA[19].

[17] Information available at the following link : http://www.csa.be/documents/categorie/3
[18] http://www.csa.be
[19] http://www.csa.be/newsletter/abonnement

An annual activity report is adopted by the Plenary Assembly[20] and published in printed form or electronically (article 13 Plenary Assembly Rules of procedure). This annual report contains:

- a report on the execution of missions within the CSA;
- a report on the sanctioning policy.

This report is transmitted to the Parliament and the Government (article 146 AVMS Act).

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

In our understanding, the public is well aware of the activities of the regulator. For example, the presentation of the annual report always gets a media coverage in printed press as well as in television[21]. Moreover, particular reports and studies drafted by the CSA, e.g. on the depoliticisation of local broadcasters, are commented by the media[22]. Finally, the journalists cover the most important infringement cases, especially when they involve politicians. For example, the Prime Minister appeared in a popular show a few weeks before the election period[23]. Although this was not legally prohibited, it raised a controversy on whether such an appearance was appropriate.

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

The regulator can set its own agenda and determine long-term objectives. The CSA is not obliged by law to set objectives and do not have, by consequence, to ask for approval by the Parliament or the Government. The CSA has nevertheless made available its annual work programme since 2012 as a matter of good governance and transparency. In the 2013[24] and 2014 work programmes[25], some of the prioritised issues are:

- Plan TV 2015: a programme to support to the production of TV shows;
- The promotion of European works on VOD services;

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[20] The Plenary Assembly is composed of the Bureau and the other members of the Authorization and Control Committee and the Advisory Committee (Article 134 AVSM Act).

[21] In the printed press: http://www.lesoir.be/504787/article/actualite/fil-info/fil-info-belgique/2014-03-26/csa-recu-plus-300-plaintes-en-2013 ; in television : http://www.rtbf.be/info/medias/detail_quelques-300-plaintes-deposees-devant-le-csa-en-2013?id=8231893

[22] In the printed press : http://www.lalibre.be/culture/medias-tele/faut-il-depolitiser-les-televisions-locales-547ca3e33570a0fe4c8db5fb ; in television : http://www.rtbf.be/info/belgique/detail_la-depolitisation-des-televisions-locales-doit-se-poursuivre-estime-le-csa?id=8460415

[23] http://www.lesoir.be/401849/article/culture/medias-tele/2014-01-14/sans-chichis-philippot-auditionne-mardi-prochain-par-csa

[24] http://www.csa.be/system/documents_files/2229/original/Programme%202014%20version%20publique.pdf?1393491331

[25] http://www.csa.be/system/documents_files/2229/original/Programme%202014%20version%20publique.pdf?1393491331

- A new recommendation on sponsoring;
- Search engines and electronic programmes guides: identification of the practices that could jeopardize the visibility and the access to contents.

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

- The Authorization and Control Committee can issue recommendations on the interpretation of certain provisions of the AVMS Act[26]. A recommendation aims at informing the editors on how the regulation will be applied by the CAC. The Authorization and Control Committee has already adopted many of such recommendations. We can mention as examples:
  - the recommendation of 20 February 2014 on the protection of the youth (article 9 AVMS Act) ;
  - the recommendation of 20 September 2012 on the transparency of editors of audio-visuals services (article 6 AVMS Act) ;
  - the recommendation of 29 March 2012 on the scope of regulation of audio-visual services (article 2 AVMS Act);
  - the recommendation of 22 December 2011 on self-promotion (articles 18-19 AVMS Act);
  - the recommendation of 22 June 2010 on the promotion of European and French Community works in VOD services (article 46 AMVS Act);
  - the recommendation of 17 December 2009 on product placement (article 21 AVMS Act);
- The Advisory Committee of the CSA has also the competence to adopt regulations on a large variety of issues (article 135 (1) 5°). These regulations may become binding if they are approved by the Government of the French Community. A recent example is the Regulation on the "methods for issuing information messages on the television consumption by children under the age of 3"[27].

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

After each publication by the European Commission of its Recommendation on relevant product and service markets within the electronic communications sector, the regulator is obliged to determine the relevant markets for the networks and services of electronic communications and conduct market analysis (article 91 AVMS Act). Within this framework, the regulator must conduct open consultations (article 94 AVMS Act). Except from

[26] Article 136 (1) 11° AVMS Act
[27] Document available at the following link:
http://www.csa.be/system/documents_files/2123/original/CAV_AVIS_20130916_Protect_Enfants_Moins_3_ans.pdf?1379488989

confidential information, the responses are published on the website of the CSA. The organizational arrangements are further described in the CAC Rules of procedure (article 49).

Moreover, according to article 65 CAC Rules of procedure, the CAC may organise further public consultations when it considers it useful. For example, the regulator launched a public consultation on the scope of regulation of audio-visual media services[28].

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

As a positive point, we would like to underline the policy of dialogue which is led by the regulator, in particular with the editors.

However, at the end of 2014, some concerns should be raised. The first issue, already mentioned, concerns the financing of the CSA. Signals are not positive in this regard. Although the workload has intensified in recent years, due to the growing number of regulated actors[29], the subsidy remained stable. This might lead to an underfinancing of the CSA.

The second issue might concern the independence of the regulator towards the Government. In this context has been raised the case of a member of the CAC appointed by the Government[30] which appeared to be closely related to an operator. He nevertheless withdrew soon after his appointment[31].

Moreover, as it has been mentioned above, the Advisory Committee has not been renewed since 2011.

Finally, as a general remark, we would like to observe that, according to the Constitution, Belgium counts three Communities (the Flemish Community, the French Community and the German-speaking Community)[32], which are among others competent for cultural matters including the content and transmission of broadcasting[33]. The Constitution also foresees four linguistic regions: the Dutch-speaking region, the French-speaking region, the bilingual

[28] http://csa.be/consultations

[29] Cf. Table 1 – French Community, in particular as regards the number of non-linear audio-visual media services.

[30] Arrêté du Gouvernement de la Communauté française du 18 avril 2013 modifiant l'arrêté du Gouvernement de la Communauté française du 25 mai 2007 désignant les membres du Collège d'avis et du Collège d'autorisation et de contrôle du Conseil supérieur de l'Audiovisuel, *M.B.*, 5/8/2013.

[31] http://www.google.be/url?q=http://www.lavenir.net/article/detail.aspx%3Farticleid%3DDMF20110723_00026036&sa=U&ei=NK38VKqwM4ee7gbhlYHgDw&ved=0CBMQFjAA&usg=AFQjCNGAQ8s3m1bufPf6zAG7c7eJ6A0QCQ ;

[32] Article 2 of the Belgian Constitution.

[33] "Content and technical aspects of audiovisual and audio media services with the exception of the broadcasting of communications of the government" as it is called after the sixth reform of the State finalized in 2014. Cf. Article 4, 6° of the Special law of 8 August 1980 on reforms of the institutions, *Belgian OJ, 15/08/1980*. The new concepts aim at modernizing the terminology used. Scope and content of the Communities competences remain unchanged.

region of Brussels-Capital and the German-speaking region[34]. According to article 127, §2 of the Constitution, the decrees (laws) of the Flemish and French Communities "have the force of law in the Dutch-speaking and French-speaking regions respectively, as well as in those institutions established in the bilingual region of Brussels-Capital which, because of their activities, must be considered as belonging exclusively to one Community or the other". *A contrario*[35], the Federal State, on the basis of its residual competence, is competent if the latter condition is not met, *i. e.* if the overall languages of the programmes transmitted include both French AND Dutch (or none of these two languages).

Consequently, the AVMS Directive was transposed by the federal law of 27 December 2012 modifying the law of 30 March 1995 concerning electronic communications networks and services and broadcasting activities in the bilingual region of Brussels-Capitale[36]. The IBPT[37] website currently indicates that the regulator is competent for one service, Almaghreb TV[38]. As the editor of this service is established in the bilingual Region of Brussels-Capitale and as the languages of the programmes are Arabic, Flemish and French, the editor does not fall within the competence of the CSA (French Community) or the VRM (Flemish Community).

[34] Article 4 of the Belgian Constitution.
[35] See transitional provision of article 35 of the Constitution.
[36] Loi du 27 décembre 2012, modifiant la loi du 30 mars 1995 concernant les réseaux de communications électroniques et services de communications électroniques et l'exercice d'activités de radiodiffusion dans la région bilingue de Bruxelles-Capitale, *M.B.*, 31/12/2012.
[37] The Belgian Institute for Postal services and Telecommunications is the audio-visual regulator with federal powers in the bilingual region Brussels-Capital.
[38] http://www.bipt.be/en/operators/media/publications.

Bulgaria

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

N/A

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

State regulation

The competent regulatory authority on the content of the private and public radio and television programmes and video-on-demand services is the Council for Electronic Media (CEM). The Council consists of a Management Board of 5 members, 3 of which are elected by the National Assembly, and 2 are appointed by the President (Art. 24 Law on Radio and Television, LRT). The Board Members elect among themselves the Chairman of the Board for one year. The Chairman manages the administration of the regulator.

Co-and Self-Regulation

In 2004 the Code of Ethics of the Bulgarian media was adopted. It is the code of conduct for the Bulgarian journalists, which applies for broadcasting, press and online services. The "National Council for Journalistic Ethics" Foundation was established and is responsible for monitoring the compliance with the Code. There are two commissions within the foundation – Ethics Commission on Printed Media and Ethics Commission on Electronic Media, each of which consists of 12 members.

Since December 2013 there is a second Code of Ethics as a self-regulatory instrument, namely the "Code of Professional Conduct of the Bulgarian Media" adopted by the Bulgarian Media Union. The procedure for dealing with complaints has been regulated by the Regulation for the implementation of the Code of Professional Conduct. The decisions of the Ethic Commission are mandatory for implementation by the members of the Bulgarian Media Union.

Concerning the commercial communication, there is also the *National Council for Self-Regulation* (*NCSR*), which has promulgated Ethical Rules for Advertising and Commercial Communication in 2009 addressing the radio and television commercial communications as well as print and other types of published media.

With regard to the self-regulation for the broadcasting according to the Art.126g LRT, the CEM is obliged to impose penalties between BGN 2,000 and BGN 5,000 on media service providers who do not comply promptly with resolutions of the self-regulatory authorities - Ethic Commission of the "National Council for Journalistic Ethics" Foundation and/or National Council for Self-Regulation.

The CEM and the State Agency for child protection developed assessment criteria of content, which might seriously impair or is likely to impair minors. According to these criteria the CEM together with the media service providers and the State Agency for child protection shall conclude annually by 31 March agreement to protect minors. CEM impose fines for non-compliance with the provisions for protection of minors in the LRT and according to the criteria and the agreement.

2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

LRT contains detailed provisions regarding the financing through fees of the CEM. For this purpose a special fund must be created, where funds from the fees from the population must be collected. The practical implementation of those provisions is being postponed every year since 2002 through amendments of the law. They extend the subsidizing of the CEM every year and from the state budget, including until the end of 2015. The Council receives in 2015 BGN 1,2 million (Euro 0,6 million) instead of BGN 1,3 million in 2014 due to the economic situation of the country.

CEM collects license and registration fees and annual fees from the media service providers.

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

There are no incompatibility rules in the appointment process of the Board Members of the CEM. There are rules to avoid conflicts of interest during the term of office (art. 27 and 28 LRT) and within one or two years after the expiration of this term. Art. 27 includes the prohibition to be remunerated by a media service provider. According to item 6 the Board

Members may not "receive remuneration in any form whatsoever from any media service provider, except in accordance with intellectual property legislation." During the term of office, they may not hold a public/political office.

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

The 2010 CEM budget has been cut by 50% as foreseen in the State Budget Law. Its sum was in 2010 BGN 1,0 million, in 2011 BGN 1,3 million, in 2012 BGN 1,4 million, in 2013 BGN 1,4 million, in 2014 BGN 1,3 million and in 2015 BGN 1,2 million. The CEM Chairperson criticized the shortening of the budget in 2015. This fact may lead, as the Chairman announced, to prevent a functionally correct fulfilment of the CEM duties.

According to the last CEM semi-annual report (01.01.2014 - 30.06.2014) there are 56 employees (administrative and technical staff) and 5 Board Members. The approved number of staff is with six more. One of the reason for not hiring people is the lack of well-qualified candidates. During the period, an unsuccessful attempt has been made to attract young civil servants through trainee programs as well. Due to lack of funds, the CEM staff did not participated training programs.

As regards the CEM technical facilities and resources, it should be noted that under a PHARE project in 2003, in which the CEM was the beneficiary, it received equipment for setting a functioning integrated monitoring and control network. The integrated monitoring and control network in the CEM is a system that receives radio and television programmes, digitises and codifies the signal and archives it. The programmes archived in the system are subject to supervision in compliance with the LRT. This supervision must be conducted by the "monitoring staff" in the relevant working stations. Information on violations (administrative violations as well as programme materials) must be kept in a special storage.

Specialized equipment and software for the measurement of the level of loudness in audiovisual programs through the device 70 PAM PiCo have been introduced in 2014.

In conclusion, it can be stated that equipment and technological resources are available for conducting monitoring of audiovisual content.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

The CEM conducts current monitoring of the services itself. It conducts the so-called focused monitoring in case of e.g. election campaigns, current events or themes as well. CEM

conducts its monitoring by spot checks and by indiscriminate monitoring techniques. There is no data about the proportion. During the last reported period in 2014 the total volume monitoring hours is 10 632. 83 television programmes were monitored.

The number of the complaints by the public, which are received, discussed and completed during the same period, is 554.

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

There is no summarised information about the kinds of sanctions, which have been imposed in practice for which infringements. Information can be found on a monthly base in the CEM monthly newsletter where the single Penalty Acts has been published. For example in December 2014 9 Penalty Acts in total are issued and the following sanctions for infringements in the scope of the AVMS Directive have been imposed:

- BGN 15,000 for violation of the provisions for protection of minors;
- BGN 3,000 for paid reportage in news;
- BGN 3,000 for not fulfilling the principle of identification.

According to the semi-annual reports, the rules of the AVMS Directive, which have been violated most frequently, are the provisions for protection of minors, for commercial communication and for identification.

In the period 01.01.2014 – 30.06.2014 there are 3 Acts for Establishing Administrative Violations (AEAV)of the provisions for protection of minors, 5 Acts of the provisions for commercial communication, 7 Acts of the provisions for identification, 7 Acts for non-complying with resolutions of the self-regulatory authority - National Council for Self-Regulation regarding the commercial communication.

The most fines (41) were imposed for breaches of copyright rules linked to the distribution of audiovisual content.

The "Track record" summarized by the national expert (the data is available only on a semi-annual base and case-by-case):

- 2013 – 8 AEAV related to protection of minors; 18 AEAV related to commercial communication; 15 AEAV related to identification;
- 2012 - 16 AEAV related to protection of minors and 54 AEAV related to commercial communication;

- 01.07.2011 – 31.12.2011 - 3 AEAV related to protection of minors and 31 AEAV related to commercial communication (for the period 01.01.2011-30.06.2011 – the report is not publicly available);

- 2010 - 17 AEAV related to protection of minors and 33 AEAV related to commercial communication.

The fines flow indirectly to the state budget.

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

According to Art. 39 LRT the CEM is obliged to publish its semi-annual reports and monthly newsletters (so-called bulletin) on its website. Since 2010, the meetings of the regulator are public as well. The CEM is obliged to make the meeting minutes and its decisions available to the public on its website (Art. 35 LRT). Its decisions must be motivated.

The main activities, which are included in the semi-annual-reports, are licensing and registration procedures; digitalization; monitoring; legal, financial and administrative activities; international cooperation.

The statistics always cover the decisions taken by the Council, number of monitored operators, number of complaints, number of sanctions (and fines), number of sanctions appealed etc.

The CEM bulletin has been published on a monthly basis. The bulletin includes also CEM resolutions on established administrative violations and penalty resolutions and court decisions on CEM resolutions that have been appealed against. The CEM's decisions, though, albeit not in a bulletin form, are published on its website.

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

The public is aware with the activities of the regulator especially since its meetings are public. There is one weekly well-known newspaper "Capital" which regularly inform about important activities of the CEM. Its articles contain critical statements when needed.

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

Since 2013 the regulator sets its own agenda in the form of a one-year term. This plan of activities has been published on its website as well. The CEM determines the policies and the goals for the period of one year alone. The regulator prioritizes the following issues since the transposition of the AVMS Directive:

- interpretation of terms regarding the surreptitious audiovisual commercial communication, product placement and sponsorship;
- protection of minors - establishing criteria for the assessment of content and undersigning annual agreements with the media service providers and the State Agency for Child Protection;
- major events - drawing up a list of designated events, which it considers to be of major importance for society and regulating measures
- European works – collecting data from the media service providers on annual base;
- digitalization – licensing media service providers.

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

The regulator can issue interpretative guidance on the application of rules contained in the AVMS Directive and they are binding on media service providers. The CEM developed the assessment criteria of content, which might seriously impair or is likely to impair minors (http://www.cem.bg/actbg/1390) and interpretative guidance on the surreptitious audiovisual commercial communication and product placement (http://www.cem.bg/actbg/1730) and on the sponsorship (http://www.cem.bg/actbg/1145).

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

The CEM is not obliged to consult industry stakeholders and the general public, but it seeks the views of the media service providers or organizations representing them. Therefore, the CEM consulted them on the issues regarding the criteria for the assessment of content, the list of major events, the interpretative guidance on the surreptitious audiovisual commercial communication and product placement and on sponsorship. The drafts and the final decisions of the CEM have been published on its website. Other information about the consultation process or the responses by stakeholders are not publicly available.

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

In its semi-annual reports, the CEM stressed that it often found it difficult to get hold of media service providers because it was too easy to obstruct the necessary serving of legal documents. Therefore, no formal procedure could be completed in a huge number of cases, although the facts had been fully established. The regulator recommended that the legislator make corresponding amendments of the rules. For example, provisions on the serving of these legal documents could be designed in such a way that the documents could be considered to have been served if the addressee refused to accept their delivery.

Cyprus

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

N/A

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

The Cyprus Radio Television Authority, established by the Law on Radio and Television Stations N. 7(I)/1998 and assigned with the powers to regulate the media, is an independent regulator that started operation in April 1998. The law provides for all the aspects of the authority's operation, i.e. composition, appointment, operation, functions and powers, as well as the kind and extent of sanctions it can impose for breaches of the Law and the terms of a licence. The rules of procedure for complaints and examination of cases are set in Part VII of the Regulations – Normative Administrative Acts 10/2000.

The Authority's powers extend to commercial operators and the PSB RIK (*Ραδιοφωνικό Ίδρυμα Κύπρου* – Cyprus Broadcasting Corporation), covering also other operators with regard to enforcement of the AVMS provisions in the space under the jurisdiction of Cyprus.

Technical aspects related to the radio spectrum and satellite communications are managed by the Department of Electronic Communications of the Ministry of Communications and Works, which designs the plan of frequencies.(http://www.mcw.gov.cy/mcw/dec/dec.nsf/DMLmission_en/DMLmission_en?opendocument). The CRTA attributes frequencies to operators on the basis of this plan.

Issues of technical infrastructure and networks are under the authority of the Commissioner for Electronic Communications and Postal Regulation (OCEPR) http://www.ocecpr.org.cy/nqcontent.cfm?a_id=1&tt=ocecpr&lang=gr.

The Authority has a chairperson, a vice-chairperson and five members, all appointed by the Council of Ministers for a six-year mandate. Following the adoption of the amending Law on

Radio Television Stations N. 73(I)/2011, the chairperson has a full-time executive position that can be renewed for a second mandate.

Article 11 of the Law N. 7(I)/1998 provides for the operation of an advisory committee (*Συμβουλευτική Επιτροπή Ραδιοτηλεόρασης*) in which participate representatives of government services, media professional organisations and a variety of professional and scientific associations and others; "its composition reflects the public opinion" and its role is to "advise the Authority in the exercise of its competences", according to the Law. Vagueness with regard to the Committee's constitution, composition and role, and a rather negative stance of the Authority on its existence, made the Committee inoperative since 2011.

Article 3(1) of the Law provides for the establishment of an "Independent Authority"; the Authority's status, functions and powers and other relevant aspects as provided by the same Law warrant this independence in all aspects of operation. Its decisions are only subject to judicial review under art. 146 of the Constitution. Some constraints, rather indirectly, affect this independence, in particular through the procedure of preparation and approval of its budget. Interferences on the budget by the administration and the parliament may impact on the Authority's development and effective work.

Under art. 30F of the Law, provides that within one year following the transposition of the AVMS Directive into Cyprus Law, in December 2010, service providers should draft a self-regulatory code of advertising communication addressed to children and related to food and other products. No results have so far been produced.

The Authority's six-year term of office compared to five years term for the President of the Republic and the Government, and the House of Representatives may be viewed as further warranting its independence; conversely, the appointment of its chairperson and members by the Council of ministers, which in practice means a decisive role of the President of the Republic, might compromise this independence in case it is politically motivated.

There are two self-regulatory bodies, the Cyprus Media Complaints Commission (CMCC) and the Organisation of Control of Advertising Communications (*Φορέας Ελέγχου Διαφήμισης* - FED). CMCC was set by broadcasters, publishers and journalists' Union. Its existence and work and the Code of Ethics it implements are recognised by the Law. FED is set by media organisations, advertisers and advertising agencies. It monitors advertising communications since early 2014 when it started work. FED seeks cooperation with the authorities in implementing its code of advertising communications ethics.

2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

Art. 36 of the Law 7(I)/1998 provides that the Authority has its own budget, which, as is the case for all public law organisations, is subject to approval by the Council of Ministers and the House of Representatives. The funding of its activities and services relies mainly on four sources of income, which are fees paid for the examination of applications for a licence, the

yearly licence fees paid by audiovisual media services providers, a fee of 0.5% on the providers' income from advertising, and from administrative fines paid for breaches of the legislation. The 2014 budget provided for 1.8m euros income and 1.6m euros expenses showing self-sufficiency, but also cutbacks of 0.2m euros on expenses compared to 2013.

Eventual interferences, through cuts in the process of approval of the budget, by the administration (Ministries of Interior and of Finances) and the Council of Ministers, and by the Parliament may affect the Authority's development and activities.

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

The Law is prohibiting any person having direct or indirect interests in an audiovisual media service provider or the PSB - the Cyprus Broadcasting Corporation, to be appointed as chairperson or member of the regulator. No prohibition is set regarding interests in the broad media and communications sector.

Holding an office in a political party is a reason for dismissal of an Authority member, which may imply that this is also incompatible with appointment.

The Constitution sets also incompatibility rules with regard to holding an elective office and appointment to/simultaneously holding a "public office" which includes membership in a body of a public law, such as CRTA. While this is clear with in connection to elective offices it is not clear enough at least with combining membership to the regulator and holding posts such as that of a public university professor. The latter is so far considered as not causing any incompatibility.

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

In 2014 the Authority had 25 full time personnel (the Director, one senior officer, 17 officers, six secretaries and one clerk), and a full time executive Chairperson. Following the transposition of the AVMSD and the switch-over to digital (July 2011), eventually meaning an increase of the workload, the only significant personnel change was the full time status of its President.

The hierarchy is deficient, with 17 officers under one supervisor and the legal as the only (non-organically) specialised section; dispersion of activity and tasks for each officer may not favour specialisation and efficiency. Along with the fact that most members of the board have little or no knowledge /experience in regulation, the number of employees can hardly be

sufficient to respond to the duties and powers of a regulator. Despite a well qualified staff, more is needed for an efficient monitoring, speeding up decision making procedures, planning of work, reporting and more importantly, for effectively regulating the sector.

The lack to-date of any regulations and schemes of service for the full-time executive chairperson may be a factor of confusion of duties and powers, since the Law stipulates that "the Director, who is the supreme executive organ of the Authority, is the head of its services, takes care for the implementation of its decisions [...]", while "the general management of the work of the Authority is assigned to its director". The question is 'who is the supreme executive organ', when a director and an executive president are present?

As noted above, the situation is characterised by financial self-sufficiency and own resources management. A sophisticated set of equipment is also present; an initial system of tape-recordings of the evening programmes passed to a system of DVD recordings and as of June 2012 to digital recording. This allows to record the full programme of tens of service providers for months and easily direct sorting of any recorded segment for examination.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

The Radio Television Authority does conduct monitoring of programmes and examines cases on its own initiative or following a complaint in accordance with procedures set in the Regulations KDP 10/2000. *Table 1* below and comparison of data between 2009-10 and 2013-4 show that,

- The overall number of cases has declined dramatically from 158 in 2009 to 50 in 2014 (TV only).
- Complaints-based cases have significantly taken over those based on monitoring of content by the Authority.

Table 1 – Number of cases (radio)

	# Cases	Complaints	RTA-initiated	Non-content*
20091	169 (11)	24	145	41
2010	97 (15)	41	56	12
2013	81(15)	51(11)	30(4)	0
2014	55(5)	38(4)	17(1)	3

* Non-content refers to breaches related to the terms of the licence and other obligations. The figure for 2009 is on number of breaches, which means there might be multiple breaches per case.

Source: Compiled by the author from data received by the Authority and from the activity report for 2008-2009

- Figures are an indication that monitoring is being sidelined; thus the system appears to be mainly complaints-based, which may greatly affect its efficiency. Even if we accept a high level

[1] Radio Television Authority, Annual Report 2008-09, pp.25-29. In 90 cases, no breach was substantiated.

of public awareness, which surveys by the Authority contradict, complaints cannot compensate for limited or no monitoring.

With regard to the type of content of cases examined in recent years, data also show significant changes between 2009 to 2014. Using the same sources mentioned above, the author of this report compiled T*able 2* below from which the following is deduced:

- The overall number of suspected breaches has diminished drastically between 2009 and 2014, from 811 to 103 respectively;

- If one substracts single cases where a massive number of suspected breaches was recorded, the number of remaining cases is very small;

- Monitoring-based cases focus on very specific areas, mainly advertising and television games.

The above point to the urgent need for *ad hoc* or systematic monitoring as a means for the regulator to effectively responding to their mission.

Table 2 – Breaches per category from monitoring & complaints

Subject	2009		2010		2013		2014	
	AI	C	AI	C	AI	C	AI	C
Human Rights	37	7	0	20	0	12	1	14
Accuracy pluralism etc	3	4	2	20	0	4	0	1
Language /sex/violence	34	2	47	69	1	21	6	17
Rating /Family Zone	39		8	17	2	19	3	13
Quality	31	2	9	6	2	17	5	24
Advertising (quantitative)	312	-	781+	99+	3	0	1	1
Advertising (qualitative)	272	-	132	128	6	2	2	3
Surr. Ads/ Sponsorship	17	-	3	2	7	3	5	3
Administrative	41	-	21	-	0	0	1	0
Various - tele-games	25	-	6	5	-	10	1	2
Total	811	15	1009	366	21	76	25	78

AI: Cases initiated by the Authority. **C**: Cases following a complaint.

Note: There may be more than one breaches per case examined by the Authority.

+ 874 breaches refer to cases of screening advertisements of children's toys at times prohibited by the Law, by seven channels in November-December 2009.

Sources: Authority's activity report for 2008-09, figures for 2010, 2013 and 2014 compiled by the author from data about decided and open cases provided by the Authority

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

The only body penalising breaches of provisions of the Law on Radio Television Stations 7(I)/1998 on audiovisual commercial communications is the Radio Television Authority, which has also similar powers on RIK, the public service broadcaster. However, some offences are considered of criminal nature and are referred to the Courts (see art. 19(6), 41D of the Law N. 7(I)/1998). Art. 3(2)(g) provides that [the Authority] "imposes administrative sanctions on the audiovisual media service providers in accordance with Part XIA of this Law".

In the absence of a systematic or an ad hoc monitoring, it is difficult to draw conclusions about most breached clauses of the AVMS directive or consider that cases examined are a representative sample.

In many cases in 2013, a warning or a recommendation was sent to operators in breach of the law, while in the rest fines were imposed ranging from 500 to 3000 euros. In one case, the

penalty was 3400 (advertisement of an alcoholic beverage during family zone). The most severe sanction however reached the sum of €41,250 for repeated breaches of the quantitative and qualitative rules for advertising over several days.

According to the legislation the amounts from fines flow to the Authority's budget. An operator may object a decision or file a recourse to courts, but fines and all dues must be paid to the regulator pending a recourse. The regulator has also the option to claim dues before the courts and interest that is provided under the Law.

As it appears from data in the budget for 2014, €94,000 was cashed in 2012, where estimates for 2013 put this type of income to €400,000 and for 2014 to €300,000.

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

The Authority has to submit reports to the Council of Ministers and the Parliament; they are mostly those which the AVMSD provides for (quota), along with one triennial report on media ownership and pluralism, and its yearly budget and financial management report. Even though no clause exists in the Law for an activity report, the Authority **used** to publish a biennial activity report. The last one published covered the years 2008-2009. It has a descriptive and statistical character, with no strategic planning or goal setting being part of that document.

The above reports and other information are available on the regulator's website (www.crta.org.cy), created since 2004. The site is regularly updated with press releases and decisions that can be searched on the website, albeit with limited accuracy of responses to queries. Press releases making public decisions on cases examined receive very limited publicity in the media.

The legislation in respect of the procedures and the criteria for the granting of licences is very specific to warrant transparency about the applicants, albeit with no chances for public scrutiny of this information either before or after the granting of the licence.

The complaints procedure set in detail in the Regulations KDP 10/2000, warrants a transparent and fair quasi-judicial examination of cases; in every stage, until the issuance of the final decision, the interested parties and eventually witnesses are heard.

Diagnosing a limited awareness of the public on the work, even of its mere existence, the Authority launched information campaigns since 2010, with a number of video clips screened on all providers/services. A need for a more sustained effort emerges in order for the public to

know the existence and activity of the Authority and how to claim their rights from the regulator and the media, as viewers/audience and consumers.

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

The Law gives the Authority a broad margin of independent planning and action, even though it is set in art. 10 of the Law (deriving from the Constitution and applied to all public law bodies) that, "the Minister of Interior can give the Authority instructions of a general nature in connection with the exercise of its competencies/powers, necessary to the general interest of the Republic". The generic and vague formulation of the above clause leaves some margin of broad interpretation and interferences with the Authority's powers and prerogatives. The cuts on the budget mentioned in previous paragraphs might be one of the side-effects of that formulation.

Overall, the management of the Authority's affairs, planning and implementation is by law in its hands and adequately responding to its role mostly depends on its own will and determination to fully assume it.

Under article 3 of the Law N. 7(I)/1998, the Radio and Television Authority is entrusted with powers to:

Grant licenses in the public interest, examine breaches of the legislation and impose sanctions.

Issue circulars, guidelines and recommendations for compliance with the principles set in the codes of journalistic ethics and advertising, sponsorship and teleshopping, appended to the regulations.

Exercise control on ownership in order to avoid tendencies to oligopoly or monopoly.

Safeguard the editorial and creative independence of those working in audiovisual media service providers and avert any interference with their work.

The Authority is exercising supervision to ensure compliance of audiovisual media service providers and operators under the jurisdiction of the Republic with the Law and the Regulations. It also exercises control on providers and operators that are not under the jurisdiction of the Republic with regard to compliance with the rules on transfrontier transmissions.

Breaches are examined in connection with the Law and the Regulations, and the interpretation the regulator offers to their provisions in circulars, guidelines and recommendations, create an obligation for service providers to comply with. In practice, however, circulars, guidelines and recommendations have been only brief reminders of the provisions of the Law and Regulations (see references on the regulator's website). Thus, the only case where the Authority interprets the law is by implementing it in its decisions, a power recognised by Courts.

Given the independent status of the Authority, is has the power to set its own agenda, set policies and a strategic planning framework. However it has so far almost exclusively focused on examining breaches of the law with respect to content, while planning and real regulatory work is absent from its agenda.

Protection of minors appears (this is witnessed by informative TV spots) to be a goal following the transposition of the AVMS Directive, without however providing a specific plan and comprehensive proposals.

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

Public consultations become an obligation on the basis of relevant Directives but no provisions are found in the law N. 7(I)/1998. Conversely, the Office of the Commissioner of Electronic Communications and Postal Regulation organises regular public consultations on matters of its competence. The Authority held a consultation in 2009 in connection to how best transpose the AVMS Directive into Cyprus Law. No report has followed or results made public. A meeting with stake holders and the Authority was held in early 2014 on an invitation by the Ministry of the Interior, but no follow-up has taken place.

In practice, parliamentary committees, including the one competent for media issues, invite stake holders when relevant issues are discussed at the House of Representatives. This, however, can not replace or produce the results expected from a public consultation.

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

In general, the following assessment can be made in respect of the Radio Television Authority:

Competences with regard to the supervision of the commercial and the public service audiovisual media services sector are assigned by Law exclusively to the Radio Television Authority, established in 1998.

With the transposition of the AVMSD into Cyprus Law in December 2010, supervision covers for the first time on-demand services too.

The Authority's powers extend also to transfrontier broadcasts, all issues that come under the jurisdiction of the Republic of Cyprus.

The legal framework, the extent of powers and instruments at the Authority's disposal overall warrant its independence; in practice this can be/is affected by the discretionary powers of the Council of Ministers in selecting and appointing its members and by the way the administration and the parliament interfere with the drafting and approval of its budget.

On a general note, there is in practice no concrete evidence of a strategic plan that will set priorities and ensure compliance with the rules/the Law and regulations.

In respect of monitoring compliance by the broadcasters, the situation is as follows:

In the absence of any other statutory body, the Authority's powers and prerogatives cover the whole spectrum of provisions of the AVMSD.

By law the service providers were called to draft codes of self-regulation within specific time-frames, but no results have been recorded so far.

In practice, the Authority needs more personnel and more resources at its disposal in order to meet its obligations; it needs also a better structure and hierarchy in order to increase efficiency. It goes without saying that the need for appointment of fully knowledgeable chairperson and members remains a critical prerequisite for efficiency. Without that, data and information about infringements of the Laws and Regulations that may come from the high end monitoring equipment and software, put at work in June 2012, could not be timely and effectively exploited. This is also true for data on advertising coming from the audience rating company Nielsen to which the Authority has access via subscription.

Data and information provided by the Authority show that monitoring in 2013 and 2014 has mostly relied on complaints by the viewers. Monitoring of some issues is entirely absent, in particular that for product placement.

The impositions of sanctions for breaches examined following complaints by viewers can guarantee neither efficient regulation nor justice.

It can be assessed that while the measures and powers assigned to the Authority by the Law are capable to have a deterrent effect, this cannot be/has not been automatic. Other factors have had a negative impact on the efficiency of sanctions, such as deficient or non-effective monitoring, delayed decisions and broadcasters' (financial) benefits generated by breaches that outweighed sanctions, and other.

Czech Republic

Questionnaire (incl. review of INDIREG country table)

Two important changes have taken place since the year 2010 when the initial country report was prepared:

a) new Act of 13 April No.132/2010 Coll., on on-demand audiovisual media services and amending certain laws (the On-demand Audiovisual Media Services Act - AVMS Act) was adopted as a complementary law to the Act of 17 May 20012 No. 231/2001 Coll., on Radio and Television Broadcasting Operation (Broadcasting Act). The AVMS Act came into force in January 2011.
b) the terrestrial analogue television broadcasting was replaced by the digital one, the analogue switch-off was completed gradually in November 2011 and ended by June 2012. The a number of new TV-channels has been launched on the new digital platforms due to their much enlarged capacity.

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

N/A

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?
What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

Council for Radio and Television Broadcasting RRTV (Rada pro rozhlasove a televizni vysilani RRTV - Broadcasting Council) was originally established by a special Act on RRTV (103/1992 Coll.) as a complementary regulatory body to the Federal Broadcasting Council FRTV (set by the Broadcasting Act 368/1991 Coll.) in the federal state of Czechoslovakia. After splitting of Czechoslovakia into two independent states of the Czech Republic and the Slovak Republic, and after dissolution of the Federal Council FRTV by the end of 1992, the Czech Broadcasting CRTB remained the main and only broadcasting regulator since 1993.

In 2001 the new Broadcasting Act No. 231/2001 Coll. was adopted in the process of harmonization of the Czech legislation with the acquis before joining the EU. The legal basis of RRTV was incorporated into the new Broadcasting Act, the former special Act on RRTV

was abolished. However, the most provisions on RRTV laid down in the 1992 Act were reintroduced into the new legal norm. For details see Broadcasting Act No. 231/2001 Coll.: http://www.rrtv.cz/en/static/documents/act-231-2001/Act-on-RTV-broadcasting-reflecting-AVMSD.pdf

The Broadcasting Council RRTV is "an administrative authority which executes state administration in the field of radio and television broadcasting and rebroadcasting, and in the field of audiovisual media services provided on demand." It means that RRTV is responsible for the content of the both - linear and non-linear - audiovisual media services. RRTV is a tool of a state regulation - a state administrative organ sui generis - nevertheless its status is envisaged as a regulatory body independent of the state authority, accountable to the Czech Parliament only. Recently, by a decision of Czech Constitutional Court, the status of RRTV as an administrative organ has been reconfirmed. Appointments and withdrawals of Broadcasting Council members are made by the Chamber of Deputies, lower chamber of the Czech Parliament formally made by the Prime Minister (Article 7: *The Council consists of 13 members who are appointed and removed by the Prime Minister based on proposal made by the Chamber of Deputies; the appointment shall be carried out immediately after receiving the proposal. Membership in the Council is a public service position. (…) The term of office of Council Members is 6 years.)*

Converged regulatory body responsible for both broadcasting and telecommunication does not exist in the Czech Republic. Communication infrastructure and spectrum administration is regulated by the Czech Telecommunications Office (Český telekomunikační úřad - CTU) enacted by the Act of 22 February 2005 No. 127/2005 Coll., on Electronic Communications and on Amendment to Certain Related Acts (Electronic Communication Act). According to the Act CTU is "established as a central administration body with responsibility for state administration in matters set out in this Act, including market regulation and determination of business terms and conditions in the area of electronic communications and postal service." The office is chaired by five-members Council appointed by Ministry of Industry.

For details see the Act No. 127/2005:
http://www.ctu.eu/164/download/Legal_Regulations/Acts/act_No_127-2005.pdf

The RRTV cooperates with ČTÚ namely in the field of frequency allocations for broadcasters. Decision about telecommunication infrastructure is fully in the responsibility of ČTÚ. The co-operation of both regulators is defined in both laws - Broadcasting Act (Section 5) and Electronic Communications Act (Section 112)

The RRTV is responsible for ensuring compliance with the rules laid down in the Broadcasting Act, which are obligatory for broadcasting sector in general. The RRTV´s duty is to “supervise compliance with legal regulations in the area of radio and television broadcasting” applies also for broadcasting of public service broadcasters.

Czech public broadcasters - the Czech Television (Česká televize - CT) and the Czech Radio (Český rozhlas CRo) were established by special Acts No. 483/1991 Coll., on the Czech Television, and No. 483/1991 Coll., on the Czech Radio in 1991. On one hand, broadcasting of PBS stations must be in compliance with provisions of the Broadcasting Act, on the other hand the RRTV has no power to interfere into daily business and content production of PBS stations. Accountability of these stations is directed solely towards the Czech Parliament.

The supervisory bodies the Czech Television Council (15 members) and the Czech Radio Council (9 members) with power to nominate and recall the General Director are appointed by the Chamber of Deputies. The new AVMS Act of 2010 extended RRTV powers and duties defined in Article 5 with new obligation to maintaining records of audiovisual media services providers, to monitoring their service and to imposing sanctions to them. Besides these powers the AVMS Act assigns new duties to the RRTV, related to European cooperation and to coordination of activities with European regulators.

2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

The Broadcasting Council RRTV is financed entirely and exclusively by the state budget, in which the RRTV has a separate chapter. The draft of the state budget act is prepared by Ministry of Finance. The amount of funds allocated to RRTV is usually consulted with the RRTV office, however the final decision is usually made in the Parliament.

RRTV officials have been using the parliamentary committees as a tool for lobbying for the increase of funds in the past. However, such an effort resulted only in marginal lump sum increase approved by amendment to ministerial bill. The RRTV budget has been affected by austerity measures after 2008 crisis (see the table). Since that, for the time being the contribution of the state to RRTV´s budget is maintained at the level of about 54 million Czech crowns, e.g. 2 million euro.

year	RRTV budget in CZK thds
2006	48018
2007	53355
2008	60901
2009	64006
2010	58957
2011	54253
2012	54986
2013	53633
2014	54986
2015	54516

Source: chapter No. 372 (RRTV) in state budget Acts 2006-2015

Funds available to the regulators are managed by the RRTV Office with approval of the Council. The state budget chapter specifies the amount for salaries of thirteen board members, as implied by the regulations applicable for state officials (The Act No 236/1995 Coll., on salaries and benefits of the representatives of the state power.) That is the only budget item regulated by legislation. The spending of the rest of the budget depends on range of activities performed by Broadcasting Council and on the number of RRTV Office staff necessary for fulfilling the tasks envisaged by the Broadcasting Act.

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

The incompatibility rules in the Broadcasting Act expressly exclude the possibility of appointment of members of the Council that occupy certain senior positions in the state administration, political parties, in other regulatory bodies and which have a conflict of interest due to their positions in the broadcasting and advertising industry.

Section 7
Council membership

(1) The Council consists of 13 members who are appointed and removed by the Prime Minister based on proposal made by the Chamber of Deputies; the appointment shall be carried out immediately after receiving the proposal. Membership in the Council is a public service position.
(2) The term of office of Council Members is 6 years.
(3) Citizens of the Czech Republic can be elected members of the Council if they meet the following requirements:

a. full legal capacity,
b. permanent residence in the Czech Republic,
c. minimum age of 25 years,
d. integrity; this requirement is not considered as being fulfilled if the candidate has been convicted with finality for an offence committed in direct relation to the operation of radio or television broadcasting or rebroadcasting, or to the provision of on-demand audiovisual media services, or to publishing periodical press, or for any other willful offence, unless such a conviction has been annulled or unless there is any other reason to consider such a person as not convicted; furthermore, the person fails to fulfil the requirement of integrity if he/she does not comply with the conditions laid down by specific legislation.

(…)
(9) The membership in the Council is incompatible with the capacity of the President of the Czech Republic, Deputy, Senator, Member of the Government, Judge, Public Prosecutor, Member of the Supreme Audit Office, Member of the Bank Council of the Czech National Bank, and with the membership in the Council of the Czech Press Agency, the Council of the Czech Television and the Council of the Czech Radio.
(10) Council Members shall execute their functions personally and they shall not accept any directions or instructions for the execution of their functions.
(11) Council Members shall not assume positions in political parties or movements and act in their favour.
(12) Neither Council Members nor persons closely related to them may assume any positions, including unpaid ones, in any bodies of companies that carry out business in the field of mass media, audiovisual production and advertising. Furthermore, neither Council Members nor persons closely related to them may participate in the business of commercial companies that carry out their activities in the field of mass media or in the field of audiovisual production and advertising, or provide directly or through mediation any consultancy or other assistance

to broadcasters, rebroadcasters and ondemand audiovisual media service providers in return for payment. Council Members may not be employed or otherwise engaged by any broadcaster, rebroadcaster and on-demand audiovisual media service provider.
(13) If Council Members perform any paid employment or activity besides their capacity in the Council, they shall conduct such an activity in a way not threatening to affect their appropriate performance in their capacity as Council Members. Not even scientific, teaching, journalistic and artistic activities may be carried out by Council Members in a way which could damage or challenge the trust in the independence and impartiality of the Council.

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

Czech Broadcasting Council consists of 13 "councillors" (board members), appointed by the Chamber of Deputies. The today's number of councilors resulted from a political deal adopted in 1997. Originally the board had nine members (French model), which shall represent "various/diversed factions". The board was enlarged from nine to thirteen members after the left-wing opposition, (with its position strengthened after 1996 elections), demanded to be also represented in this body. The extra four members were reserved for the opposition nominees. The new Broadcasting Act of 2001 removed the requirement of diversed faction with assumption that the Chamber of Deputies may take into consideration abilities and capacities of nominees in representing and promoting various public interest issues. (See the Article 7: *The Council consists of 13 members who are appointed and removed by the Prime Minister based on proposal made by the Chamber of Deputies*) The political nature of the board is illustrated by the fact that are three former senators and former two MPs among the councilors.

The Office of the Broadcasting Council consists of 45 full-time employees, chaired by Head of the Office (permanent position). The office renders services to the board and carries out the regulatory activities stipulated by law. Since the Broadcasting Act is very explicit as to the range of duties assigned to the Broadcasting Council, and because the number of licensed services is permanently increasing (see the table from RRTV Annual report 2014), it is evident, that the office is understaffed. While in the nineties the main activity of the Broadcasting Council was focused on licensing and on introducing the private broadcasting sector as a part of transformation of media landscape after fall of communism, and while after 2000 the transition from analogue to digital TV broadcasting was in forefront of Council interest, monitoring of broadcasters and providers of audiovisual media services nowadays makes main part of the Broadcasting Council actions (see chapter on monitoring).

Technical facilities in office enable to tape program services of six TV or radio channel simultaneously. There are another twelve monitoring stations that are recording radio broadcasting in the regions to encompass local radio stations in the monitoring. However, not all of the taping is analyzed later, it serves as archive for potential complaints and random monitoring. For checking and analyzing TV stations broadcasting content the Council Office uses a special computer software.

If all the duties of the Broadcasting Council as are laid down in Article 5 of the Broadcasting would be undertaken (e.g. supervision laid down in the Article 5/a of Broadcasting Act), the Council would not be able to perform these tasks in full scope (such as monitoring satellite TV channels, licensed in the Czech Republic, but broadcasting to other territories (HBO Europa, MTV Networks, AMC Network).

Type of license	total	awarded in 2014
Satellite radio	2	0
Satellite television	70	11
Cable and satellite radio	1	0
Cable and satellite television	21	1
Cable television	94	6
Local and regional radio stations	149	46
National radio stations	2	0
National digital radio stations	7	3
Local and regional television	28	5
National television stations	15	1
Others	14	0
TOTAL	403	73

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

The most of monitoring of services is conducted by the Office of the Broadcasting Council. The RRTV annual reports describe two types of checking the content of media services: analytical monitoring and screening.

The screening is carried out by an external group of several "screeners," usually the persons with disability pension, who are trained to perform monitoring activities. They are watching the programming services in their homes. Broadcasting Council assigns them the task to observe a given channel or given audiovisual media service in a given time. Later the screeners submit to Broadcasting Council a protocol with remarks relating compliance with the rules. This protocol can be an impetus for subsequent monitoring to be made by the Office in some cases.

Analytical monitoring comprises of watching or hearing a given part of broadcast content, which is later described and analyzed. The final detailed account of monitoring serves later as a base for Councilors' conclusions or decisions.

Analytical monitoring uses four methods:

a) monitoring of broadcast segments
b) monitoring with analytical purpose
c) monitoring based on complaints of audience
d) monitoring of commercial communications

ad a) The sample of broadcasted content to be monitored may usually encompass several hours, in some cases several days. It is analyzed and evaluated from the perspective, which takes into account the compliance with all provisions of the Broadcasting Act or with the law on advertising. This type of monitoring selects the samples usually at random. As a rule, such monitoring is applied to all new programming services in first six months of their existence. The repeated control is conducted at programming services with large impact on audience (national channels and stations are monitored more frequently than the local ones), with formats which are prone to be in conflict with rules laid down in Broadcasting Act, and services which are subject to viewer´s complaints.

ad b) Monitoring with analytical purpose take place at broadcasting of content that is regulated by special provisions of Broadcasting law, e.g. monitoring of news and current affairs programs in the pre-election period, whose task is to verify that operators in such a sensitive period adhere to the principles of broadcasting only objective and balanced information, monitoring of crime series broadcast before 22.00 p.m. in order to determine whether its content does not endanger the physical, mental or moral development of minors.

ad c) Agenda of each Broadcasting Council meeting includes summary and overview of all complaints that Council has received since its previous meeting. A part of this summary is a brief analysis of program related to the complaint, which serves as an evidence for the possible administrative proceedings. Volume of monitoring based on audience complaints comprise about one quarter of the total monitoring activity. However, the results of this monitoring initiate more Councils administrative proceedings than the other methods, because it is targeted to reveal potential infringements of the rules by broadcasters.

ad d) Commercial communications - advertising, teleshopping and sponsorship –
are subject to continuous review. For this purpose Broadcasting Council uses data obtained from agency Atmosphere, which is monitoring advertising in all Czech media. The data are used as an alert to new commercials produced and broadcasted in recent period. They can serve also as a tool for checking time limits for commercial in broadcasting set by law

In controlling and analyzing of published content ten employees of Broadcasting Council are engaged. Five analysts monitor television broadcasting, one of which is specialized for commercial communications. Three analysts monitor radio broadcasts and two analysts are responsible for the content control of audiovisual media services on demand. In 2014 Broadcasting Council used services of five screeners. The Office also cooperated with several external analysts as well as with agencies and academic institutions that focus on media analysis.

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

The sanctions are imposed mainly for infringement of the rules objectivity and balance of information in the news and current affairs programmes, rules on commercial

communications /advertising, sponsorship, product placement and increasingly more fines are imposed on infringements relating to rules on protection of minors and consumers, as the Broadcasting Council is in its capacity as a state administrative organ also responsible for ensuring compliance with the rules of the Act on the regulation of advertising. Act No. 40/1990 Coll. as amended

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?
b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

The Broadcasting Council publishes on its webpages detailed minutes from all its meetings and issues detailed press reports from all its meetings. The decisions of the Council on imposing are widely commented in the press media. The Council Annual Reports provide detailed analysis and summaries of regulator activities of the Council and are available on-line. The Council on its webpages publishes recommendation to various regulatory issues.
The Council has also powers to issue by-laws and so far such a by-law No. 122/2013 was introduced on the issue of loudness of advertising spots

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?
b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

The Council is setting its own agenda within the scope of its regulatory powers. Among its agenda, the priorities are given to protection of minors, the rules of promotion of European works are generally observed by the broadcasters.

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

N/A

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

N/A

Germany

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

N/A

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

Germany has a dual broadcasting system with ten[1] public service broadcasting institutions (PSB), nine of which at the level of the federal territorial units (*Länder*) as well as one nationwide public service television provider (*Zweites Deutsches Fernsehen*, ZDF), and privately owned broadcasters operating under the supervision of 14 media authorities established by the *Länder* (*Landesmedienanstalten*, LMA).

The PSB dispose of an internal self-regulatory body supervising the content-related activities of the PSB (Broadcasting Council of the nine *Landesrundfunkanstalten* (LRA), Television Council of the ZDF). These pluralistic bodies consist of members appointed by diverse social groups (e.g. trade unions, churches and professional associations) and State organs (Government, Parliament), who shall represent society as a whole and shall act in the interests of the general public. The self-regulatory nature of these bodies stems from the principle of the *Staatsferne*, which means that broadcasting in Germany shall be organised at arm's length from the State in order to reduce governmental influence on mass media and ensure media diversity.

The LMA, in turn, are in charge of issuing licences for, assigning transmission capacities to and ensuring compliance with the requirements of the AVMSD in terms of programme content of private operators. Aside from broadcasting services, some LMA also oversee the

[1] Since the AVMSD does not apply to radio broadcasting, the public service radio broadcaster *Deutschlandradio* is not covered here.

activities of other audiovisual media services providers. In some *Länder*, these services are regulated by State authorities.

Some of the LMA's tasks need to be carried out in a uniform way throughout Germany, e.g. licencing and oversight of nationwide broadcasters and decisions on the compliance of broadcast content with rules regarding the protection of minors. § 35(10) RStV allows the media authorities to spend their share of the broadcasting contribution in the work of centralised bodies established to fulfil these tasks, such as the ZAK (Commission for Licencing and Oversight), GVK (conference of the chairpersons of the LMA's highest decision-making bodies), KEK (Commission on the Evaluation of Media Concentration) and KJM (Commission for Youth Protection in the Media). The 14 LMA coordinate their work within the Working Group of LMA in Germany (*Arbeitsgemeinschaft der Landesmedienanstalten der Bundesrepublik Deutschland*, ALM) and have established a joint secretariat (*Gemeinsame Geschäftsstelle*, GGS).

Germany does not have a converged regulator. Due to the distribution of competences between the federal and the *Länder* level, media content regulation lies with the *Länder*, whereas infrastructural issues (regulation of communications networks, spectrum management) are dealt with at federal level. The regulatory authority competent for the latter is the Federal Network Agency (*Bundesnetzagentur*, BNetzA).

2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

As has been mentioned above, several regulatory bodies exist at federal and *Länder* level, overseeing commercial and non-profit privately organised broadcasters as well as public service broadcasting providers. These bodies are predominantly financed by the broadcasting contribution (*Rundfunkbeitrag*), a levy imposed on households and business premises (§§ 2 *et seqq.* Broadcasting Contribution Interstate Treaty – *Rundfunkbeitragsstaatsvertrag*, RBStV).

The broadcasting contribution serves mainly to cover the public service broadcasting providers' financial needs. These also include the means necessary for the work of their internal oversight bodies, the Broadcasting Councils (*Rundfunkräte*) within the nine public broadcasting institutions established pursuant to the law of the *Länder* (*Landesrundfunkanstalten*, LRA) and the Television Council (*Fernsehrat*) of the provider of the nationwide public television channel *Zweites Deutsches Fernsehen* (ZDF).

The media authorities of the *Länder* (*Landesmedienanstalten*, LMA), which are in charge of monitoring and regulating the operations of private broadcasters within the *Land* (or the *Länder*, as two of the LMA cover more than one *Land*) of their competence, are funded from diverse sources. Their main source of funding is a share of the broadcasting contribution that, pursuant to § 10(1) of the Broadcasting Finance Interstate Treaty (*Rundfunkfinanzierungsstaatsvertrag*, RFStV), may not exceed 1.8989% of the amount collected within their *Land/Länder*. However, *Länder* are entitled to cut this share (§ 40(2)

RStV) and have frequently done so.[2] Resources that remain unused by the LMA shall be paid to the LRA (§ 40(3) RStV). Other sources of funding include licence fees and other fees imposed on broadcasters[3] as well as administrative expenses[4]. Fines do not contribute to the regulators' budget, as these are transferred directly to the state budget.

Neither the public service broadcasters nor the LMA receive funds from the state budget.[5]

There have been some cut-backs in the past years that were mainly due to demands from the Commission on the Evualation of Budgetary Needs of Public Service Broadcasters (*Kommission zur Ermittlung des Finanzbedarfs der öffentlich-rechtlichen Rundfunkanstalten*, KEF) for cost effectiveness reasons. Some budgetary limits might also have resulted, to some degree, from decreasing revenues from the previous, fee-based financing model in place before 2013, when the broadcasting contribution was introduced instead. However, none of these cut-backs can be directly linked to the economic crisis.

The fields for which the funds may be used (mainly licencing and oversight) are regulated by law. Tasks of the LMA are defined in § 40(1) RStV and specified and/or amended at *Länder* level.[6] Within their scope of tasks, the LMA draw up and adopt a budget plan. Usually, the budget plan is prepared by the director or president of the LMA and adopted by the decision-making body (see e.g. § 109(1) LMG NRW). In some *Länder*, the budget plan needs to be approved by the Government of the *Land*; however, the approval may only be denied if the budget plan is in breach of the *Land's* budget laws, particularly if the rules for economic budget spending are not observed.[7]

Tasks of the Broadcasting Councils are laid down in the relevant Act or Interstate Treaty establishing the respective public broadcasting institution. Broadcasting Councils usually decide on the budget plan of the public broadcaster they pertain to, which also includes their own budget positions.[8]

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2 Currently, the lowest share, fixed by the *Länder*, is 0.5% (in the case of the LMA for Hamburg and Schleswig-Holstein, MAHSH) and the full 1.9% (in the case of the Bavarian LMA, BLM).

3 See, e.g., § 52 Media Act of Saxony-Anhalt.

4 See, e.g., § 51(4) Media Act of Saxony-Anhalt.

5 It should be noted that the German foreign broadcasting service, *Deutsche Welle*, and its internal oversight mechanisms are fully funded by the state budget. However, since this broadcaster has very little relevance for the German market, it has not been further examined in the present study.

6 See e.g. § 57(2) HessPRG.

7 See, e.g., § 46(2) Media Act of Baden-Wurttemberg, LMedienG BW.

8 See, e.g., § 26 Act on the Interstate Treaty establishing a common broadcasting institution of the *Länder* of Berlin and Brandenburg (RBB-Gesetz).

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

Both the provisions regulating the scope of tasks of the media authorities and the laws establishing the internal oversight bodies of the public service broadcasters include rules to prevent conflicts of interest.

For the public service broadcasters, see, for instance, § 5(3) Act on the *Hessischer Rundfunk* (HR-Gesetz, rough translation):

> No one may be delegated to the Broadcasting Council who is a member of an organ, a civil servant or a permanent freelancer of a public service broadcasting institution or of a media authority of a *Land*, a provider of a broadcasting programme or a cable operator or is under a service or employment contract with these or in other ways dependent from these or with an equitable interest in these.

For the media authorities, see, e.g., Art. 13(2) of the Bavarian Media Act (*Bayerisches Mediengesetz*, rough translation):

> Members of the Media Council must not represent any special interests that may compromise the fulfilment of their tasks; they shall not be bound by any instructions. They must not, at the same time, be member of an organ of a public service broadcasting institution. Except for the representative of the Bavarian government, no other Board member may be a member of the Bavarian government.

It should not go unmentioned that the BVerfG, in its landmark decision on the ZDF, also lamented the lack of rules on incompatibilities regarding the ZDF Television Council and established a maximum share of one third of members that may have close ties with State functions. This includes members of the Government, the Parliament, the public administration, elected officials in executive positions and political party members with particular responsibility. Government representatives may not have decisive influence on the selection of non-State members. Incompatibility rules should also, according to the Court, ensure personal independency of members from the State. Members should not be bound by any instructions and laws should ensure that they cannot be dismissed other than for good cause. The laws establishing the ZDF Television Council did not meet these conditions. The judgment obliged the legislator to remedy this situation by 30 June 2015. On 18 June 2015, a new Interstate Treaty has been signed by the *Länder* Heads of Government to this effect. The Treaty, which is currently awaiting ratification by the *Länder* Parliaments, shall come into effect on 1 January 2016.

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

PSB: no figures available

The number of staff varies a lot among the LMA, which in part may be due to the varying size and population of the respective *Land*. A table indicating the number of staff employed with the 14 LMAs is available in the Yearbook of the LMA 2014/2015.[9] The relatively high number of staff in the BLM might be explained by its special function as a public service broadcaster who – unlike all other LMAs – acts as the legal entity responsible for any broadcast content provided by a private broadcasting provider (see Art. 2(2) BayMG). It can be argued that this task requires more staff.

As regards the financial resources of the LMAs, the overall budget is mainly made up of the share of the broadcasting contribution collected in the *Land* or the *Länder* of their territorial competence. The budgets therefore reflect the population of the respective *Land/Länder*.

Staff and budget figures for the PSB's Broadcasting Councils are not publicly known, as these bodies are organised as a part of the respective PSB. However, the work of these bodies is financed from the respective PSB's total budget, which in turn is predominantly funded by its designated share of the broadcasting contribution.

No information is available with regard to the technical equipment of the regulators.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

As far as PSB are concerned, their services are monitored by their internal oversight bodies, the Broadcasting Councils (in the case of the LRA) and the Television Council (in the case of the ZDF). For example, § 16(5) of the Act on the *Westdeutscher Rundfunk Köln* (WDR Act) provides that the WDR Broadcasting Council shall monitor compliance of the WDR with, among others, its programme mandate. However, no guidelines are publicly available setting out the way in which this duty is fulfilled.

The LMA shall monitor that programmes are balanced and comply with the provisions of the respective Media Act or Interstate Treaty of the *Länder*. To this end, they carry out spot checks and also act upon viewers' complaints (see for the LMA in Rhineland-Palatinate, *Landeszentrale für Medien und Kommunikation*: http://www.lmk-online.de/aufsicht/). If a violation is observed, the LMA can issue a formal objection, limit, suspend or revoke the

[9] http://www.die-medienanstalten.de/publikationen/jahrbuch.html

respective provider's licence and impose fines (see, e.g., §§ 59, 65(1) and (3) of the Media Act of the Saarland, SMG).

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

As internal oversight bodies of public entities realising the PSB's right to self-regulation, the ZDF Television Council and the Broadcasting Councils of the LRA have no formal sanctioning power, but can only advise the PSB's chairperson on regulatory matters. Like any other public administrative body, the PSB have the duty, under the German constitution (Art. 20(3) *Grundgesetz*, GG), to abide by the law.

LMA dispose of various remedies and sanctions to respond to violations of broadcasters. For nationwide broadcasting programmes, the ZAK, established by the 14 LMA, can issue formal objections or prohibit the relevant action, withdraw or revoke the broadcasting licence (§ 38(2) Interstate Broadcasting Treaty; for regional programmes, see section 5 on monitoring). Violations that amount to an administrative offence can be punished by a fine of up to EUR 500,000 (§ 49 Broadcasting Interstate Treaty).

In 2014, the ZAK observed 29 violations of nationwide broadcasters (2013: 14). 19 of these were addressed by a formal objection, in 10 cases, supervisory notices were issued. In 16 cases, fines were imposed. Infringements concerned, among others, advertising rules (13), raffles (3 cases), journalistic rules of reporting (2).[10] The KJM, which is the central body of the LMA responsible for ensuring the protection of minors in broadcast programmes and Internet media (telemedia), reported 79 infringements in 2014. 38 of these concerned broadcast programmes, 41 Internet media. Depending on the type and seriousness of the violation, the KJM issued objections or prohibitions and/or imposed fines.

As a general rule, fines imposed accrue to the State budget, unless otherwise specified (as is the case, e.g., for the media authority of the Saarland (LMS), which receives all fines imposed by it for the purpose of promoting private sector broadcasting; see § 56(3) SMG).

[10] For details, see the Yearbook of the LMA 2014/2015, available at http://www.die-medienanstalten.de/publikationen/jahrbuch.html, pp. 24 et seq.

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

Please indicate and, where possible, explain where information is unavailable.

The PSB's regulatory bodies are under no obligation to publish their decisions or any reports on their activities. The PSB themselves usually have to prepare annual reports and financial statements, a summary of which, in some cases, shall be published after they have been revised by the Court of Auditors of the responsible *Land* or *Länder*, respectively (see, e.g. § 44(3) WDR Act, § 21(4) *Radio Bremen* Act, § 32(4) Act on the *Norddeutscher Rundfunk*, NDR Act).

Some of the PSB's regulatory bodies have recently taken steps to provide the public with more information about their activities. In this regard, the NDR Broadcasting Council enacted, on 24 January 2014, an amendment to its Statute providing that agendas and substantial summaries of its meetings as well as its resolutions will be published on the Internet. The ZDF Television Council decided on 19 September 2014 that its plenary meetings will, in principle, be public.[11] The WDR Broadcasting Council publishes reports summarising its activities[12] and recently decided also to publish minutes of its meetings on its website.[13]

There is no legal obligation on LMA to publish their decisions. LMA, however, have to prepare annual reports and financial statements (see., e.g., § 112 Media Act of North Rhine-Westphalia, LMG NRW), which in some cases have to be published in the Official Gazette and, as the case may be, on the Internet (see, e.g., § 46 LMedienG BW) or, where a legal obligation is missing, are nevertheless published on their websites as a matter of fact.[14]

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

The activities of the media authorities are generally covered by the media.

Although the work of the PSB's internal regulatory bodies usually does not attract the same level of public attention, there has been extensive media coverage about a decision of the ZDF Administrative Council in 2009 not to extend the term of the then editor-in-chief of the ZDF, allegedly for political reasons. This triggered a public debate on the composition and independency of the ZDF Administrative Council and Television Council. At the time, well

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11 See http://www.badische-zeitung.de/computer-medien-1/zdf-fernsehrat-mitglieder-fuer-mehr-transparenz--91008344.html

12 See http://www1.wdr.de/unternehmen/gremien/rundfunkrat/rundfunkrat-berichte100.html

13 http://www1.wdr.de/unternehmen/gremien/rundfunkrat/rundfunkrat-protokoll100.html

14 See, e.g., for Rhineland-Palatinate: http://www.lmk-online.de/wirueberuns/jahresberichte/

over 40% of members of these bodies represented the State or had close ties with State functions.[15]

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

Please indicate and, where possible, explain where information is unavailable.

The work of the internal oversight bodies of the PSB are governed by the laws establishing the PSB. Their role, as a supervisory body, is to elect the members of the other bodies (usually, the Administrative Council and the chairperson (*Intendant*)), to monitor the PSB's compliance with the provisions on broadcast content, to adopt the budget plan and take decisions of strategic importance.[16] Within this context, no legal restrictions as to the organisation of the body's work apply. By law, no other internal or external body is entitled to limit the agenda or otherwise influence the operations of the LMA's Broadcasting Councils or the ZDF Television Council. However, the organisations appointing (and, as the case may be, dismissing) the bodies' members have a high factual influence. Regulatory issues in the areas covered by the AVMSD include the protection of minors, journalistic diligence, accessibility and reporting on sports events.

The members of the LMA's highest decision-making organs do not take any instructions and represent the general public.[17] No legal restrictions as to the organisation of the regulatory boy's work apply. The regulators' work in the ambit of the AVMSD focuses on the rules on commercial communication and protection of minors.

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

The LMA can issue binding guidance regarding the interpretation of rules contained in the AVMS Directive.

The working procedures between the PSB's internal oversight bodies and those responsible for the content of broadcasting programmes are not further specified by law.

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15 Following this debate, the law regulating the composition of these bodies was challenged before the Federal Constitutional Court, which resulted in the decision discussed under section 3 on incompatibility rules.

16 See, e.g., § 28 SMG.

17 See, e.g. § 41 Media Act of Lower Saxony, NMedienG.

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

The allocation and assignment of transmission capacities by the LMA frequently requires the previous consultation of stakeholders, such as LRA and private broadcasters, or a public tender procedure.[18] Also in cases where there is no formal obligation of the regulator to hold consultations on their regulatory activities, the LMA frequently seek the views of stakeholders. Otherwise, they are in constant dialogue with the public through events organised by them or with their active participation, e.g. as a panelist.

The PSB's regulatory bodies are not obliged to consult other stakeholders or the general public nor do they usually initiate such consultations in practice.

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

N/A

[18] See, e.g. § 20 LMedienG BW, § 30 Media Act of Rhineland-Palatinate, LMG RP.

Denmark

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

N/A

II. Additional Questions

1. Type of regulation.

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

In Denmark the Radio and Television Board (RTB) as a regulatory body is implemented by the state, but its decisions are sovereign, i.e. cannot be appealed to another state institution (incl. the Ministry of Culture, in charge of audio-visual media sector), but to the judicial system only. The competence is directed to the commercial as well as the public (service) audio-visual sector, and the RTB issues licenses for all stations. For the public service sector the areas of regulation includes annual control of the fulfilment of the public service remits, described in the public service contracts /licenses, and surveillance of the legal conditions for conduct, for instance regarding commercials, harmful content (hate speech), protection of minors etc. For local and community radio stations – commercial as well as non-commercial – the RTB issues licences, monitor the legal conditions for conduct, for instance regarding commercials, harmful content (hate speech), protection of minors etc. For commercial, nationwide television and radio, transmitted from Denmark, the RTB has similar monitoring functions, while television and radio stations, licensed and broadcasting outside Denmark, but aimed at a Danish audience, is under the jurisdiction of either The UK or Sweden. But – all these stations must be registered by the RTB. (http://www.kulturstyrelsen.dk/english/media/the-radio-and-television-board/) Transmission licences are issued by the Danish Business Authority. (http://danishbusinessauthority.dk/)

For the regulations of the RTB in English:

http://www.kulturstyrelsen.dk/fileadmin/user_upload/dokumenter/medier/radio_og_tv/Engelsk_side/Promulgation_of_the_Radio_and_Television_Broadcasting_Act_2010.pdf

- section 7.

The RTB has its own Secretariat, which prepares the agenda for each monthly meeting, in close cooperation with the Chairman of RTB.

2. Financing.

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

RTB is financed through the Ministry of Culture - via the annual Finance Act and specific for The Danish Agency for Culture. A specific annual budget for RTB activities cannot be found - is not available.

3. Incompatibility rules.

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

Such rules are to be found in the Order of Business for the RTB (see the first part of the questionnaire). If a member of the board has or has had an engagement with one of the media institutions under the jurisdiction of the RTB, the member cannot take part in the proceedings in this item on the agenda, if it involves the company/institution.

4. Staffing and resources.

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

The RTB is sufficiently supported by the secretariat. If a major and more staff demanding issue appears, the staff will either be extended or supplied with external experts for this specific task. It is my impression that this flexibility is appropriate to solve the tasks – and there is a constant focus to keep down the duration of the processes of cases.

5. Monitoring.

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

The RTB conduct monitoring services by itself, primarily concerning local/community radio and television, mainly due to previously observed violation of conditions of programming, funding or financial public support. But the main part of the of the issues on the agenda concerns violations of the guidelines for sponsoring and commercials, and this part is almost entirely dependant on complaints from the public.

6. Sanctions.

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

If the infringement has to do with violation of the guidelines/acts for sponsoring and commercials, the decision (including premises) of the RTB will be given by mail to the company/institution, and it will be announced in a press release. If the infringement has to do with a violation of the conditions for the licence (incl. financial support), a warning will be issued. If it is repeated, the licence can be withdrawn. Furthermore the license holder will have to pay back the public financial support. This can also happen without withdrawing the licence - depending on the circumstances. This will normally happen less than five times during this reporting period. No exact statistics are available.

7. Transparency and awareness.

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

The RTB is obliged to make its recommendations, decisions and annual reports available to the public – normally through press releases after each meeting, and announced at the RTB website. The agenda for the RTB meeting are announced at the RTB website, but the minutes of the meetings are not accessible for the public. The public and the press are very aware of the RTB activities, and the coverage takes place over a wide range of media, especially in news reporting.

8. Agenda setting and enforcement.

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

The RTB cannot set its own agenda. The long–term objectives for the audio-visual media are included in the Media Agreements, decided by the majority of political parties in the Parliament, normally for four years. One of the mains tasks of the monitoring is to secure that the conditions in the AVMS Directive are complied with.

A guidance (in Danish only) can be found at:

http://www.kulturstyrelsen.dk/medier/radio/registrerede-radio-stationer/

9. Consultations.

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

The RTB is not obliged to consult industry stakeholders and the general public, but they will be invited for special occasions to inform the RTB, express viewpoints and take part in the consultations hearings. This was for example the case during the preparations of the law revision of the local/community media in 2013-2014. The proceedings of those consultations are normally made available for the public on the RTB website.

See: (in Danish only):

http://www.kulturstyrelsen.dk/presse-nyt/rundbordssamtaler-om-ikkekommerciel-lokalradio-og-tv-via-internettet/

10. General remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

N/A

Estonia

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

Tables 1-5: Comments on general information

As regards the market data under Table 1, the number of activity licenses issued for the provision of television services is 13 and the number of activity licenses issued for the provision of on demand audio-visual services is 2. The number of public service channels is still 2.

Further, as concerns Table 2 and onwards, a major change that has taken place is that the Broadcasting Act has been repealed and replaced by the Media Services Act since 16 January 2011, which serves to implement the AVMS Directive in Estonia. Thus, the coverage of the areas reflected in Table 2 also has to be revised in light of the new law.

Secondly, as a result of subsequent amendments to the Media Services Act and the Estonian Public Broadcasting Act, the Estonian Ministry of Culture is no longer a regulatory body in the field of media services or with respect to Estonian Public Broadcasting, whereas this competence (incl. the competence to issue activity licenses) has been transferred to the Technical Regulatory Authority as from 1 July 2013.

The Technical Regulatory Authority is a government agency operating in the administrative area of the Ministry of Economic Affairs and Communications and conducting supervision in the fields of media services, electronic communication, industrial safety and transport. The Technical Regulatory Authority was established in 2008 by merging several government agencies that had so far conducted supervision over the abovementioned fields separately.

The Technical Regulatory Authority is located at Sõle 23 A, Tallinn 10614, Estonia. Its webpage in Estonian is http://www.tja.ee/et and in English http://www.tja.ee/en

There have not been any significant changes pertaining to the Estonian Public Broadcasting Council.

Tables 6-9: Comments on institutional framework

As noted under "Comments on general information", the Technical Regulatory Authority has replaced the Ministry of Culture as the regulatory body in media services matters. According to the explanatory memorandum of the draft act under which this change was implemented, the Technical Regulatory Authority should qualify under the category of *independent or semi-independent regulatory authorities* in the context of the EU.

The Technical Regulatory Authority is established on the basis of the Government of the Republic Act and the main principles of its activities derive from the Statute of the Technical Regulatory Authority (available at: https://www.riigiteataja.ee/akt/102072014002?leiaKehtiv; a translation into English is not available).

Tables 9-14: Comments on powers of regulatory bodies

The tables should be wholly revised in consideration of the fact that the regulatory body and the relevant legislation have changed (please see "Comments on general information").

Tables 15-24: Comments on internal organization and staffing

The tables should be amended/supplemented with information pertaining to the Technical Regulatory Authority – the new regulatory body in media services matters (please see "Comments on general information") –, where necessary.

Tables 25-27: Comments on financial resources

The tables should be supplemented with information pertaining to the Technical Regulatory Authority – the new regulatory body in media services matters (please see "Comments on general information") –, if necessary.

Tables 28-35: Comments on checks and balances

The tables should be amended/supplemented with information pertaining to the Technical Regulatory Authority – the new regulatory body in media services matters (please see "Comments on general information") –, where necessary.

Tables 36-39: Comments on procedural legitimacy

The tables should be amended/supplemented with information pertaining to the Technical Regulatory Authority – the new regulatory body in media services matters (please see "Comments on general information").

Tables 40-41: Comments on cooperation

The tables should be revised in consideration of the fact that the new regulatory body in media services matters is the Technical Regulatory Authority (please see "Comments on general information").

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

The regulatory model in the field of media services is mainly state regulation, with a few elements of self-regulation.

As concerns the latter, Article 22 of the Media Services Act provides that entities engaged in the field of media services may create on their own initiative a system the parties to which define voluntarily common recommendations and rules, establishing standards as a code of conduct with the purpose of regulating the activities in the area and fix the boundaries of good and bad practice to the parties; the self-regulation associations also determine voluntarily the procedure for the compliance with the established rules and the liability of the parties for the compliance with the rules.

According to the explanatory memorandum of the Media Services Act, the reason for the introduction of the above self-regulation provision is that the practice of many European countries has demonstrated that self-regulation is a possible and effective measure for organising regulatory compliance in the field of broadcasting.

However, we are not aware of any such general codes of conduct established specifically under the above referred provision for media service providers.

There is however a self-regulation body for journalists in general –the Estonian Press Council[1] that has its own Code of Ethics and is affiliated with the Estonian Newspaper Association. The majority of mainstream media organizations (including online media and TV broadcasters) also belong into the Estonian Press Council. The Estonian Press Council defines itself as a voluntary body of media self-regulation handling complaints from the public about materials published in the media (incl. in the press, in online portals with journalistic content, and on public service broadcasting stations). It has ten members, including six from the media sector and four lay members from the non-media sectors, as well as a rotating chairman. Complaints can be submitted within three months as of the moment when material appeared in media. The handling of complaints is free of charge and quick. The Estonian Press Council meets once per month.

In addition, according to Art. 29 of the Estonian National Broadcasting Act there is a public advisory board at the National Broadcasting that has the task to advise the management board of the National Broadcasting in matters related to the content of programmes and other media

[1] http://www.eall.ee/pressinoukogu/index.html

products, and the structure of programme services of the National Broadcasting and the preparation of the draft development plan of National Broadcasting. The public advisory board has nine to fifteen members who are appointed by the decision of the Council of the National Broadcasting on proposal of the management board of the National Broadcasting for a period of up to five years. Appointment of the members of the public advisory board is based on the representation of the interested groups and walks of life of the society.

In line with Article 9(2) of the AVMS Directive, Article 27 of the Media Services Act stipulates that entities engaged in the field of media services may establish a code of conduct by way of self-regulation regarding inappropriate audio-visual commercial communication, accompanying or included in children's programmes, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular, those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended for children; whereas, if the entities have not established such code of conduct by way of self-regulation themselves, the code of conduct will instead be laid down by the competent Minister of the Estonian Government. The Association of Estonian Broadcasters which unites most of the broadcast organisations operating in Estonia, has enacted a code of conduct named "*Responsible Advertisement Policy in Children's Programmes*" (available at: http://www.ringhliit.ee/eneseregulatsioon/Lastele_suunatud_reklaamid/; a translation into English is not available).

As concerns state regulation, the competent regulatory body – the Technical Regulatory Authority – has supervisory competence in all fields of media services as well as electronic communications (i.e. the underlying infrastructure); the Technical Regulatory Authority conducts supervision over both the public service broadcaster and private broadcasters as well as both television broadcasters and providers of other audio-visual media services.

The Technical Regulatory Authority is led by the General Director and its structure consists of three divisions: the division of electronic communication (which encompasses the field of media services), the division of transport and the division of industrial safety. A division is led by a division manager. There also may be officials who are not part of any division and report directly to the General Director.

2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

The Technical Regulatory Authority is financed fully from state budget. The relevant Minister of the Estonian Government approves and amends the budget of the Technical Regulatory Authority and inspects compliance therewith. In more broad terms, principles for using state budget derive from the State Budget Act. Within the organisation of the Technical Regulatory Authority, it is the General Director who is responsible for the correct and purposeful use of the budget.

The budget for the Technical Regulatory Authority has been stable in years 2010-2013 (data for 2014 is not available), staying within the approximate range of EUR 2,200,000-2,400,000.

Source: annual activity reports of the Technical Regulatory Authority, available at: http://www.tja.ee/en

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

The Anti-Corruption Act lays down the relevant rules which apply to all public officials – which include the officials of the Technical Regulatory Authority.

According to the Anti-Corruption Act, public officials are prohibited from demanding, intermediating and receiving income derived from corrupt practices (corrupt income). The Anti-Corruption Act defines corrupt income as proprietary or other benefits offered to the official or any third person due to his or her official duties or demanded by the official, and benefits received by violation of the obligations of the official. Any advantages that fall within this definition are considered corrupt income, the acceptance of which is prohibited; first and foremost, benefits in which case there is an (underlying) aim to influence the public official to generally prefer the provider of the benefit are considered corrupt income. Only benefits which cannot be associated with the official's duties or which are unambiguously understood as common courtesy are not considered corruptive.

However, where benefits are offered or provided to the official (or a third party instead of him or her) in exchange for the public official taking advantage of his or her position, this can constitute bribery, which is a criminal offence under the Penal Code. In that case, both the offerer and recipient of the bribe can be liable for the offence.

The Public Service Act stipulates that as a rule, by giving his or her public agency an according notification, an official is free to engage in business activities, employment relations, provision of services and other activities. The agency may partly or fully forbid

such activities if it finds that the official's activities hinder the performance of the official's public duties or if it damages the reputation of the official's position. The Anti-Corruption Act further provides that an official has the right to engage outside his or her official duties in any other activities outside his or her official duties, if this is not prohibited by law and the procedural restrictions are complied with. Procedural restrictions mean that an official is prohibited from performing an act or making a decision, if: (1) the decision is made or the act is performed with respect to the official or a person connected to him or her; (2) the official is aware of an economic or other interest of that official or a person connected to him or her and which may have an impact on the act or decision; or (3) the official is aware of a risk of corruption.

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

The latest official information available on these matters concerns the end of year 2013. As at that time, the Technical Regulatory Authority had 83 officials, of whom 68 had higher education. There was no indication given that the Technical Regulatory Authority would be understaffed; instead, the Technical Regulatory Authority stated that their priority was to improve the professional and teamwork skills of its existing staff.

However, according to the webpage of the Technical Regulatory Authority, as of this date it has a total of 94 officials, 9 of whom are in the communications- and media services department.

The budget of the Technical Regulatory Authority for the year 2013 was EUR 2,415,906 (together with the resources that were transferred over from year 2012).

Due to lack of information indicating otherwise, we have no specific reasons to doubt that the level of personnel would be appropriate to the complexity of tasks and to the number of services regulated.

Source: annual activity reports of the Technical Regulatory Authority, available at: http://www.tja.ee/en; the contact details section of the webpage of the Technical Regulatory Authority: http://www.tja.ee/kontakt/

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

As the Technical Regulatory Authority took the supervisory activities in the field of media services over from the Ministry of Culture only as from 1 July 2013, there is no information available on the monitoring activities and practices of the Technical Regulatory Authority yet. Usually, regulatory bodies in Estonia both act on complaints by the public as well as rely on

monitoring conducted by itself at least to some extent. The latter usually involves mostly spot checks, however as the number of major market participants in the field of media services in Estonia is not that big, this could enable the regulator to rely on more indiscriminate monitoring techniques as well.

For instance, the regulatory practice of the Ministry of Culture from years 2011-2013 indicate that it relied on monitoring data provided by an external service provider (a market research services provider, AS Emor) as regards the fulfilling of the quota for transmitting programmes of European origin by the media service providers. Also, in the context of one administrative order the Ministry of Culture issued to a radio service provider, it had relied on "surveillance data" obtained during certain periods of time, although it was not specified whether the Ministry had collected the data by itself or also relied on an external service provider.

However, no further data is available on these matters.

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

Information made available by the Technical Regulatory Authority does not reveal that it would have imposed any sanctions in the field of media services yet. As the Technical Regulatory Authority took the supervisory activities in the field of media services over from the Ministry of Culture only as from 1 July 2013, it could be speculated that no sanctions have indeed yet been imposed.

As concerns the Ministry of Culture, there appear to be three administrative orders issued in the period of 2011-2013. Two of these concerned two separate instances of failure to fulfil the quota for transmitting programmes of European origin by a television service provider, and the remaining one a radio service provider's failure to transmit programmes reflecting local news, which was a condition associated with the radio service provider's activity license. However, no information is available whether any of these media service providers failed to cure the identified violation by the deadline indicated in the administrative orders, which would have resulted in an administrative penalty payment being imposed on them. In all cases, the potential administrative penalty payment was EUR 1,300 (and in the case of repeated non-compliance, EUR 5,000).

Further and more conclusive statistics on sanctions imposed could be obtained from the Ministry of Culture and the Technical Regulatory Authority by addressing an according inquiry to them.

Fines flow directly to the state budget.

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

The Public Information Act sets forth numerous categories information that all government agencies have to make public. As a rule, the information has to be made public on a webpage.

Among other information, government agencies have to make public reports on work results and the performance of duties, budgets and draft budgets and reports on the implementation thereof, administrative orders or decisions relating to state supervision or supervisory control as of the entry into force thereof, draft concepts, development plans, programmes and other projects of general importance before such drafts are submitted to the competent bodies for approval, and the corresponding approved or adopted documents, and the document register of the agency.

The annual activity report ("yearbook") published on the webpage of the Technical Regulatory Authority contains a short summary of last year's activities in each field under the supervision of the Authority as well as information on personnel, state fees collected and budget.

In our view, the activities of the Technical Regulatory Activities are not subject to a lot of media coverage, i.e. there are other government agencies which are mentioned in the media quite more often.

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

Government agencies report to the Government or to a respective Minister or the State Secretary who directs and co-ordinates their activities and exercises supervisory control over them pursuant to the procedure provided by law. One of the larger goals of the Technical Regulatory Authority's activities is to implement the state-level economic policy related to the fields that are under the supervision of the Authority. However, one of the duties of the Technical Regulatory Authority is to develop and implement its own strategy and work plans.

Thus, to that extent, the Technical Regulatory Authority can set its own agenda. More general and long-term objectives may derive from the policies of the Ministry.

The Ministry of Culture has stated in its Development Plan for years 2016-2019 that it prioritises vigorous participation in the renewal procedure of the AVMS Directive and in the course of that it aims to defend the interests of smaller producers in smaller countries. However, no other policy goals concerning media services have been noted. The Development Plan is available at: http://www.kul.ee/sites/default/files/kum_arengukava_2016-2019.pdf

The Technical Regulatory Authority can issue guidance pertaining to the fields of its regulatory supervision, however such guidance would not be binding on service providers, but rather simply indicative of the Authority's future regulatory activities. Indeed, according to the statute of the communications- and media services department of the Technical Regulatory Authority, one of the duties of the department is to issue guidelines and recommendations to ensure a unified application of the regulations relevant to the field of media services. However, currently no guidance materials relevant to the field of media services have been published yet by the Technical Regulatory Authority.

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

According to the statute of the Technical Regulatory Authority, there are general obligations for the Authority to collaborate, among other institutions, with consumer- and entrepreneurial associations and to inform the public and relevant entities of developments, changes and achieved goals in the fields of its activities. However, we are not aware of any examples of such previous consultations in the field of media services; it has to be considered that the field of media services is under the supervision of the Technical Regulatory Authority only as from 1 July 2013.

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

N/A

Spain

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

The comments on the given tables reflect only the changes given between 2011-2014.

Tables 1-5: Comments on general information

In respect of the evolution of the market, this is the current situation regarding national channels as well as regional ones, whether an independent audiovisual authority exists:

National channels	5 (public service) and 15 (commercial)	National public broadcaster: La 1, La 2, 24H, Teledeporte, Clan Private broadcasters: Telecinco, Cuatro, FDF, Divinity, Boing, Energy, Antena 3, laSexta, Neox y Nova, Gol (payment tv), 13TV, Discovery Max, Disney Channel, Paramount Channel
Regional channels channels (where regional Audiovisual Independt Authorities exist)	Cataluña: -5 regional public service channels -3 regional commercial channels Andalucia: -2 regional public service channels	 TV3, 33, Sport 3, 3/24, Super 3 8TV, Barça TV, RAC105 Canal Sur and Canal Sur 2

Sources:
-National data: http://www.televisiondigital.gob.es/TDT/Paginas/canales-tdt.aspx
-Cataluña data: http://www.cac.cat/web/prestadors/index.jsp?MzQ%3D&MQ%3D%3D&L3dlYi9wcmVzdGFkb3JzL2luZGV4Q29udGVudA%3D%3D
-Andalucia: http://www.canalsur.es/rtva/%C2%BFQuienes_Somos?/210924.html and http://www.tdt1.com

In respect of the audiovisual laws and regulatory bodies, it must be said:

From October 2011 the region of Navarra has no longer its Audiovisual Council. The Audiovisual Council of Navarra (CoAN) –*Consejo Audiovisual de Navarra*, in spanish-, which was born in 2001, was suppressed by the *Ley Foral 15/2011, de 21 de octubre, por la que se deroga la Ley Foral 18/2001, de 5 de Julio, por la que se regula la actividad audiovisual en Navarra y se crea el Consejo Audiovisual de Navarra* (unofficial translation: *Regional Act 15/2001, october 21st, on the abolition of the Regional Law 18/2001, July 5th,*

on the regulation of the audiovisual activity in Navarra and establishing the Audiovisual Council of Navarra). The measure was taken by the Regional Government of Navarra in the context of the Spanish economic crisis, in order to achieve efficiency and austerity in the public regional Administration, as the preface of the Act states.

From June 2010 the region of Illes Balears provided its own Audiovisual Council, under the name of Audiovisual Council of Illes Balears – *Consejo Audiovisual de Illes Balears*, in Spanish. This independent authority was founded by the *Ley 2/2010, de 7 de junio, del Consejo Audiovisual de las Illes Balears* –unofficial translation: Act 2/2010, June 7th, on the Audiovisual Council of Illes Balears). Attending to articles 2, 3 and 4 of the Act, the Council watches over the fulfilment of audiovisual market law, in respect of regional and local media, whether public or private; so on the fulfilment of the principles of the Audiovisual Media Services EU Directive by these regional and local broadcasters would be within the scope of its supervision. However, and despite of this Act of foundation, this regional Audiovisual Council has actually never existed or been implemented.

From February 2012 there have been also changes in respect of the Audiovisual Council of Catalunya – *Consejo Audiovisual de Cataluña* (CAC) –, provided by the *Ley 2/2012, de 22 de febrero de modificacion de varias leyes en material audiovisual* (unofficial translation: Act 2/2012, February 22nd, on modifying several acts regulating the audiovisual market). Its articles 2 to 5 modify the *Ley 2/2000, de 4 de mayo, del Consejo Audiovisual de Cataluña* (unofficial translation: Act 2/2000, May 4th, on the Audiovisual Council of Cataluña), in respect of the members of this body, as it will be described in tables 15-24.

The public references of its budget are: 8.982.260,60 million euros (2011); 6.287.464,05 million euros (2012); and 5.264.816,76 million euros (2013). The number of employees for 2013 was 77, according to its yearly Report of Activities.

Sources: http://www.cac.cat/pfw_files/cma/configuracio/general/evolucio_2008_2014_3.pdf
http://www.cac.cat/web/informacio/index.jsp?MTE%3D&MQ%3D%3D&L3dlYi9pbmZvcm1hY2lvL2NvbnRlbnRNZW1vcmllcw%3D%3D.

On the other hand, the State Council on Audiovisual Media – *Consejo Estatal de Medios Audivosuales*, in Spanish –, founded by the *Ley /2020, de 31 de marzo, General del Audiovisual (*unofficial translation: General Act 7/2010, March 31st, on the Audiovisual field) has not been implemented at all, as President Mariano Rajoy stated in January 2012 that the development of this institution was not a governmental priority. Further, the *Ley 3/2013, de 4 de junio, de creación de la Comisión Nacional de los Mercados y la Competencia* (unofficial translation: Act 3/2013, June 4th, on the foundation of the National Commission on Markets and Competition) states in its Aborogation Disposition, the abolishing of Title V of the General Act 7/2010, March 31st, on the Audiovisual field, which means the suppression of the *Consejo Estatal de Medios Audivosuales* (unofficial translation: State Council on Audiovisual Media.

In October 7th 2013 the National Commission on Markets and Competition – *Comisión Nacional de Mercados y Competencia*, in Spanish – started its public activities, due to its foundation by the *Ley 3/2013, de 4 de junio, de creación de la* Comisión Nacional de los Mercados y la Competencia (unofficial translation: Act 3/2013, June 4th, on the foundation of the National Commission on Markets and Competition). The aim of this new authority is,

according to article 1 of the foundation Act, «to guarantee, preserve and promote correct functioning, transparency and effective competition in all markets». From this date on, the *Comisión del Mercado de las Telecomunicaciones* –unofficial translation: Telecommunications Market Commission-, kept integrated in the new institution, which has also taken over the functions of the Ministry of Industry, Energy and Tourism in respect of the supervision of the Audiovisual Market (article 9 of the foundation Act), including the requirements and principles of the *Ley 7/2010, de 31 de marzo, General del Audiovisual* – unofficial translation: General Act 7/2010, March 31st, on the Audiovisual Market-, which implements the EU Audiovisual Media Services Directive. The new Authority has its central building in Madrid, and its web address is http://www.cnmc.es . For 2014, its estimated budget was 52.767,16 million euros

Source: http://www.sepg.pap.minhap.gob.es/Presup/PGE2014Proyecto/MaestroDocumentos/PGE-ROM/doc/2/1/4/10/1/N_14_A_V_1_104_2_1_427_1_1302_2_2_1.PDF)

The last autonomous budget of the *Comisión del Mercado de las Telecomunicaciones* (Telecommunications Market Commission) belongs to 2013 and reached 26.024.000,00 euros The last public data about its staff composition belongs to 2012 and it reaches 137 employees.

Sources:http://www.cnmc.es/Portals/0/Ficheros/cnmc/memorias_cnmc/EXTINTAS/BOE-A-2014-9954cuentas_anuales_2013_CMT.pdf; and http://www.cnmc.es/Portals/0/Ficheros/Telecomunicaciones/Informes/Memoria%20Anual%20de%20actividades%202012.pdf.

The last reference in respect of the Audiovisual Council of Andalucia refers to 2014, counting a whole of 35 employees and a estimated year budget of 4.621.639. For the previous years, it was: 6. 6.677.819 million euros (2011); 5.267.351 million euros (2012); and 4.980.566 million euros (2013).

Source:
http://www.juntadeandalucia.es/haciendayadministracionpublica/planif_presup/presupuesto2014/memoria/memoria-a and4.pdf
http://www.consejoaudiovisualdeandalucia.es/sites/default/files/publicacion/pdf/1410/a._memoria_2013_ultima.pdf.

Tables 6-9: Comments on institutional framework

As it has been advanced before, the Telecommunications Market Commission disappeared in October 2013, the 7th, as soon as the National Commission on Markets and Competition took over its functions. The new Authority was founded by the already mentioned Act 3/2013, June 4th, on the foundation of the National Commission on Markets and Competition. This Act abolished the before Act on the foundation of the Telecommunications Market Commission. On the other hand, the governing legislation in respect of the new Authority responds to the *Real Decreto 657/2013, de 30 de agosto, por el que se aprueba el Estatuto Orgánico de la Comisión Nacional de los Mercados y la Competencia (*unofficial translation: Royal Decree 657/2013, August the 30th, on the approval of the Organic Statute of National Commission on Markets and Competition). In respect of its legal status, the new Authority takes the form of a public entity, with a legal personality of its own, and full ability to conduct itself publicly and privately, as well as enjoying full autonomy in respect of the Government and the Public Administration (art. 2 of the foundation Act).

On the other hand, the Act 2/2010, June 7th, on the Audiovisual Council of Illes Balears), states in its article 2, the legal nature of the public entity, with full legal ability and autonomy in respect of the regional Government of Illes Balears and the regional Public Administration. However, no governing legislation has been developed, as it must be remembered that this Council has not become a reality, apart from its legal foundation by law.

Also, there have been also changes in respect of the setting legislation of Audiovisual Council of Catalunya governing legislation –*Consejo Audiovisual de Cataluña* (CAC)-, provided by the *Ley 2/2012, de 22 de febrero de modificacion de varias leyes en material audiovisual* (unofficial translation: Act 2/2012, February 22nd, on modifying several acts regulating the audiovisual market). Its articles 2 to 5 modify the *Ley 2/2000, de 4 de mayo, del Consejo Audiovisual de Cataluña* (unofficial translation: Act 2/2000, May 4th, on the Audiovisual Council of Cataluña), in respect of the members of this body.

Tables 9-14: Comments on powers of regulatory bodies

The National Commission on Markets and Competition assumes the before functions of the never existent *Consejo Estatal de Medios Audiovisuales* (State Council on Audiovisual Media), of the disappeared *Comisión del Mercado de las Telecomunicaciones* (Telecommunications Market Commission) and those developed by the Ministry of Industry, Energy and Tourism in respect of the audiovisual market.

Regarding the INDIREG country table of 2011, the new general policy settings correspond to supervision and control of the audiovisual communication market, and are stated in article 9 of the *Ley 3/2013, de 4 de junio, de creación de la Comisión Nacional de los Mercados y la Competencia* (unofficial translation: Act 3/2013, June 4th, on the foundation of the National Commission on Markets and Competition:

a) Supervision of national broadcasters in respect of the broadcasting quotas of European audiovisual works (art. 9.1)
b) Supervision of the fulfilment of obligations regarding the protection of minors and disabled people; regarding this double protection, the Commission will work jointly with the correspondent Ministry in order to control advertising, sponsorhip and promotion of gambling services (art. 9.3)
c) Control of audiovisual commercial communications, in respect of obligations, banishing and limits (art. 9.6).

In respect of its new sanctioning powers, and besides those still in force, the assumption of the functions of the Ministry of Industry, Energy and Tourism, as well as those from Telecommunications Market Commission does not mean any changes in the before existent legal rules. Article 29 of the Act recognizes the inspection and sanctioning power of the Commission in respect of Title 6 of the General Act 7/2010, March 31st, on the Audiovisual Market, within the terms already stated in that Act (new sanctioning attributions in the audiovisual field -article 12 of the Act- are not related within the scope of our study).

Within the still short life the Commission, sanctioning resolutions and informative proceedings regarding the following three aspects, were as it follows:

a) Protection of Minors: 6 informative resolutions and 3 fines for a total sum of 510.600 euros.
b) Commercial communications: 3 informative resolutions and 4 fines for a total sum of 197.000 euros.
c) European works quotas and financing: 21 informative resolutions.

Source: http://www.cnmc.es/es-es/telecomunicacionesysaudiovisuales/resolucionestelecomunicacionesyaudiovisuales.aspx

For the years 2011-13 it was the Ministry of Industry, Energy and Tourism the institution in charge of these proceedings and sanctioning activity; however, this information is not suitable in this report, as the Ministry is not an Independent Audiovisual Authority. However, data are available at:
http://www.minetur.gob.es/telecomunicaciones/mediosaudiovisuales/Documents/Expedientes_sancionadores_audiovisual_2005_2013.pdf .

To the date, the Commission has not official handling procedures, in respect of the Audiovisual and Telecommunications markets specifically; however, there are several general possibilities for contacting with this general Directorate: by telephone, 93.603.62.00; by email, info@cnmc.es; by mail-post, c/Bolivia 56, 08018 Barcelona; and finally, by using the Electronic Management site, at the URL http://sede.cnmc.es/es-es/mapasede.aspx .

On the other hand, the Act 2/2010, June 7th, on the Audiovisual Council of Illes Balears states in its articles 3 that the Council watches over the fulfilment of audiovisual market law, in respect of regional and local media, whether public or private. Besides, and under the scope of the fulfilment of the principles of the Audiovisual Media Services EU Directive by these regional and local broadcasters, article 14 of the Act states its supervision and control by this Authority:

a) Section “m” of the article refers to commercial communications and protection of minors.
b) Section “o” of the article refers, under a general overview, to the fulfilment of the European Union Law, specifically regarding the scope of Television without Frontiers field.

Once again, it must be remembered that this Authority does not exist in practice.

The Audiovisual Council of Andalucia published the following reports and recommendations between 2011-2014, within the scope of the AVMS EU Directive:

a) 1 general Recommendation on the audiovisual contents broadcasted during 2011; 1 Recommendation on the covering of demonstrations in which minors take part; 1 Recommendation on the broadcasting of the Court Trial on the murder of Marta del Castillo (a minor).
b) 1 Report on Commercial communications of alcoholic beverages; 1 Report on signalizing commercial communications; 2 Reports on quotas of European Audiovisual Works in the regional televisions; 4 general Reports on audiovisual contents under the supervision of the Audiovisual Council of Andalucia; 1 Report on pretended medical products advertising; 1 Report on the coverage of the murder of a minor in El Salobral; 1 Report on Food stuff advertising for minors;

Besides, between 2011 and 2014, there 4 sanctioning proceedings were implemented: 1 of them related with the broadcasting of commercial communications, with a fine of 137.000 euros; 3 of them related with the protection of minors and the broadcasting of harmful contents, with fines for a whole value of 567.500.

No changes have been made in respect of the complaints handling procedure.

Finally, the Audiovisual Council of Catalunya, has made available to the public the following Reports, Informative Proceedings and Sanctioning Proceedings between 2011 and 2014:

a) Protection of minors: 52 reports, 15 Informative Proceedings and 9 sanctioning Proceeding with fines for a whole value of 550.608,36 euros.

b) Commercial communications: 1 general report; 6 Informative Proceedings; and 3Sanctioning proceedings with fines for a whole value of 48.004 euros.

c) Quotas and financing of European audiovisual works: 4 general reports on the position of the regional public broadcaster TVC.

No changes have been made in respect of the complaints handling procedures.

Tables 15-24: Comments on internal organization and staffing

Regarding the above mentioned disappearance of the State Council on Audiovisual Media and the Audiovisual Council of Navarra, as well as the birth of the two new independent authorities, updates on this section go as follow:

The new National Commission on Markets and Competition is regulated by the Act 3/2013, June 4th, on the foundation of the National Commission on Markets and Competition. According to its article 14, its Board –named Council- becomes the highest decision-making organ, as its functions relate to informative resolutions, consultations, competition promotion, arbitration and conflicts resolutions. The President of the Commission will also be the President of its Board (art. 13).

According to article 15 of the Act, the number of members of the Board is 10, and all of them will be entitled to this position by the Government, through the legal form of a Decree, but under the proposal of the Minister of Economy and Competition. These 10 people should be known by their prestige and competence in the scope of work of the Commission. The Spanish Parliament, through a specific Congress of Deputies commission, will interview all of the candidates which could be rejected by an absolute majority of the votes of the members of the Congress. The term of office will be 6 years and there is no renewal possibility; in order to avoid that any member of the Board stays longer than the official term, as well as any vacancy period, the designation of new members will be partially done every 2 years.

Article 16 states that the Board can act and meet fully or by *rooms*, as there are officially two of them; however, assistance to meetings is compulsory. Official decisions and agreements

require a simple majority of the votes, however the vote of the member presiding the meeting will be decisive in case of draw.

Article 20 refers to functions and competences of the Council, which were basically above mentioned, as stated in article 13. There are no specific references to the audiovisual field, in both articles, as to the Board duties. However, as it was already said, the whole Commission is entitled to the supervision of the Audiovisual Market (article 9 of the foundation Act), including the requirements and principles of the General Act 7/2010, March 31st, on the Audiovisual Market-, which implements the EU Audiovisual Media Services Directive.

Article 22 requires exclusive work dedication to the members of the Board; further, it denies any possibility of taking executive functions within the different departments of the Commission. Any conflict of interest will be regarded under the *Ley 5/2006, de 10 de abril, de regulación de los conflictos de intereses de los miembros del Gobierno y de los Altos Cargos de la Administración General del Estado* (unofficial translation: Act 5/2006, April 10th, on the regulation of conflicts of interests concerning members of the Government and high staff of the State Public Administration). Besides, once ended their term of office, they will not be able to develop any work/job in the sectors covered by the Commission powers, for the next 2 years period –cool off period-.

Article 23 establishes causes for a dismissal as well as the option of voluntary resignment. For a mandatory dismissal, causes relate to: condemnation by court sentence in respect of a criminal action; permanent disability; and a Governmental decision in case of serious unfulfilment of the duties attached to the position or the unfulfilment of the duties concerning incompatibility rules, conflicts of interest and discretion obligations. None of the members of the Board has been dismissed or ended his term of office before the expected time.

Source: http://normativa.cnmc.es/documento.asp?id=LE0000506796_20141017.html

Some aspects of the foundation Act of the Commission have been developed by the *Real Decreto 657/2013, de 30 de agosto, por el que se aprueba el Estatuto Orgánico de la Comisión Nacional de los Mercados y la Competencia (*unofficial translation: Royal Decree 657/2013, August 30th, on the approval of the Organic Statute of the National Commission on Markets and Competition). Articles 6 to 14 deal with the Board of the Commission; however, in respect of this study, their content does not bring any essential information which has not already stated in the Act of foundation.

Source: http://normativa.cnmc.es/documento.asp?id=LE0000512199_20130901.html#I5

The Audiovisual Council of Illes Balears was founded by Act 2/2010, June 7th, on the Audiovisual Council of Illes Balears). Neither the Council has been developed, nor the Act has been abolished. So on, according to the content of the law and within the scope of this study:

According to its article 4, it is the main duty of the Council to supervise the functioning of the regional audiovisual system, both regarding public and private audiovisual broadcasters, including the guarantee of the fulfilment of audiovisual regulation concerning content programming and commercial communications.

According to its article 14, specific competences embrace:

a) Reporting, proposing and recommending in respect of the regional audiovisual system.
b) Supervising the fulfilment of legal duties by the audiovisual media services and broadcasters.
c) Establishing and keeping up to date a register of audiovisual media services and broadcasters.
d) Playing an arbitration and mediation role in respect of controversies and self-regulation initiatives.
e) Publishing preliminary reports in respect of any legal proposal concerning the audiovisual market.
f) Publishing a yearly report on the fulfilment of pluralism.
g) Previously reporting in every issue related with public tenders concerning new broadcasting licences, as well as their renewal, modification or reversal. Besides, supervising changes in the monetary capital of companies, as well as any possible action against effective competition at the audiovisual market.
h) Supervising the fulfilment of legal duties regarding audiovisual contents, advertising, sponsorship, teleshopping, as well as the protection of minors.
i) Founding an Office for the Protection of the Audience, handling complaint procedures to the citizens.
j) Supervising the fulfilment of the European Union Law on the field.
k) Guaranteeing the fulfilment of public service duties entitled to public broadcasters.
l) Urging other authorities –either governmental or judicial- to adopt the necessary measures in case of unfulfilling the audiovisual laws by any media services out of the scope of this regional authority.
m) Opening and resolving sanctioning files to those media services unfulfilling audiovisual laws.
n) Adopting measures in order to correct the possible negative consequences stemmed by the broadcasting of contents attempting against human dignity, specially when those contents are broadcasted within time schedules when children and youth watch television.

Article 7 states that the Council will have a board of 9 members. It is required that members of the board enjoy professional prestige and broad knowledge of the audiovisual field, as well as independency.

Article 8 declares that these members will be elected by the regional Parliament, whenever a majority of 3/5 of the votes is achieved. It will also be the regional Parliament, at the moment of this election, the institution in charge of naming the President of the Council.

Article 9 states an office term of 6 years, with a possible renewal for another additional term. Half of the members of the board must be renewed every 3 years. However, the position of President of the Audiovisual Council is not renewal at all.

Article 10 establishes causes for dismissal: condemnation by court sentence in respect of a criminal action, permanent disability, or unfulfilment of legally entitled duties. The Parliament will review any dismissal of any member of the Board.

Article 11 states the regime of incompatibilities for the members of the Board: obtaining a Parliamentary or Government seat; developing any other elective or politically nominated position; as well as developing any executive position in political parties, trade unions or business organization. Further, members of the Board should not have any direct or undirect interest in any audiovisual company, or provide any kind of service/work to public/private broadcasters. Full exclusivity is only required to the President of the Board, who will not be able to work in any company related with the audiovisual and telecommunications markets before a year has passed from the date of the end of his term of office.

Article 13 states that agreements taken by the board will need a majority of the votes of the members, once give that at least half of the members plus one are present (that is to say, 5 members). In case of draw, the vote of the President will decide. Finally, an absolute majority of the votes is needed in those cases related to the internal functioning of the Board, including the aproval of its internal regulation.

From February 2012 there have been also changes in respect of the Audiovisual Council of Catalunya Board, provided by the Act 2/2012, February 22nd, on modifying several acts regulating the audiovisual market. Its articles 2 to 5 modify the Act 2/2000, May 4th, on the Audiovisual Council of Cataluña:

Article 2 of this Act –which modifies article 4 of the original foundation Act-, states that the Board will count with 6 members –President included-. Its election method will require now a 2/3 majority of the votes of the Parliament, as well as being supported by two political groups. In case of no candidate achieves this 2/3 majority, then a second voting round will only require absolute majority of the votes.

Article 3 of this Act –which modifies article 5 of the original foundation Act-, establishes the term of office in a non-renewable 6 years period. On the third year, a partial renewal of half of the members of the Board will be done.

Article 5 of this Act, modifying article 8 of the original foundation Act, changes the voting requirements within the Board: simple majority is now the rule, once provided that at least 3 members of the Board are attending the session. However, absolute majority is required in the following cases: those issues concerning the internal functioning of the Council; those agreements in respect of the budget project; and those agreements concerning broadcasting licensing, the approval of the yearly report of the Council, and deep sanctioning.

Between 2011 and 2014 only two people have abandoned the Board of the Audiovisual Council of Catalunya before the term of office ended: Ramón Font Bové was the President of the Board between January 2009 and July 2012, but resigned in order to make easier the renewal of the Council according to the new 2012 Act provisions; Esteve Orriols i Sendra was a member of the Board between June 2008 and December 2013, but voluntary resigned as he wanted to professionally retire.

In respect of the Audiovisual Council of Andalucía, there have not been changes in respect of its composition, power or parliamentary control; however, the 11 members of its Board where all renewed in February 2011, due to a new term of office of the whole membership. None of them has resigned or has been dismissed until the date.

Tables 25-27: Comments on financial resources

National Commission on Markets and Competition:
According to article 33 of the Act 3/2013, June 4th, on the foundation of the National Commission on Markets and Competition, its budget will come out from the State National Budget, yearly, although it will be the Board of the Commission the one in charge of approving its first draft, that will be then submitted to the Ministery of Economy and Competition.

Article 34 states that control over the budget will be under the supervision of the Intervención General de la Administración del Estado (Stat Administration Audit Office), as well as the Tribunal de Cuentas (Court of Auditors) when appropriate.

Audiovisual Council of Illes Balears:
According to article 18 of the Act 2/2010, June 7th, on the Audiovisual Council of Illes Balears, the yearly draft of its budget has to be approved by the Council and, after, be sent to the regional Government so it becomes part of the General Regional Budget.

Article 20 of the Act states four different forms of income, for the financing of the budget: incomes from the general regional budget; any monetary compensation that comes from the assignment of different possible agreements with the communications services providers; percentage over the licensing taxes; and any other income, either public or private, which can be suitable whenever the law allows it.

According to Article 22 it will be the Sindicatura de Cuentas (Illes Ballears Audit Office) and the main institution in charge of supervising the execution of the budget; secondly, Tribunal de Cuentas (Court of Auditors) when appropriate.

Audiovisual Council of Catalunya:
No changes have been made in the Law in order to modify the sources of financing of this regional Council.

Audiovisual Council of Andalucia:
No changes have been made in the Law in order to modify the sources of financing of this regional Council.

Tables 28-35: Comments on checks and balances

National Commission on Markets and Competition:
As part of the General State Budget, the budget of the Commission it must be passed into Law by the Parliament of Spain. A yearly Report on Activities and Financing is compulsory and must be sent for its review to the correspondent commission of the Parliament, and made available to the public through electronic media, according to art. 37 of the Act 3/2013, June 4th, on the foundation of the National Commission on Markets and Competition. Besides It will be in charge of the President of the Commission the parliamentary presentation of the yearly Report, as well as a every-three-year Report which should evaluates the fulfillment of the aims declared by the Commission (art. 39).

According to article 36 any action, resolution, decision or proceeding taken by any section of the Commission –with the exception of its Board`s decisions- can be appealed within the internal administrative procedure of the Commission. Any decision of the Board will only be appealed within the Administrative Court Proceedings.

Audiovisual Council of Illes Balears:
According to article 24 of the Act 2/2010, June 7th, on the Audiovisual Council of Illes Balears, the President and members of the Board of the Council are entitled to attend any information requirement made by the regional Parliament.
Article 17 states the obligation of publishing a yearly report, which should comprise the situation of the audiovisual market in the region. This report shall be sent to the regional Parliament and the Government, and shall be considered as "available to the public".
No other considerations on the issue are provided by the Law.

For the Audiovisual Council of Catalunya and the Audiovisual Council of Andalucia, there are no changes to be mentioned.

Tables 36-39: Comments on procedural legitimacy

National Commission on Markets and Competition.
The Act 3/2013, June 4th, on the foundation of the National Commission on Markets and Competition says nothing in respect of public consultation processes or asking for external advice. But according to the 2014 budget, an amount of 6,198,000.00 euro was spent in technical reports. However it is not possible to state if this consignment refers to external expertise aid or to the developing of the Commission's own work .

Source:http://www.cnmc.es/Portals/0/Ficheros/PortalTransparencia/Presupuestos/20141209_Presupuesto%20inicial%20y%20actual%20final.pdf

According to article 37 of the Act, the Commission will make available to the public all dispositions, resolutions, agreements, reports or proceedings concerning the implementation of the laws, once the the parts have been noticed and not disclosing any confidential information or breaking personal data protection rules.

Audiovisual Council of Illes Balears:
No further information available or included in the Law.

Audiovisual Council of Catalunya:
No changes have been made in the way the Law concerning this Council considers these issues. However, and despite of the impossibility of getting specific details on the issue, attending to the yearly reports, the Council has directly confirmed by email that is not possible to specify the number of external advices asked by the institution. However, there was a specific budget for it between 2011 and 2014: 5,000 euro (2011); 150,000 euro (2012, which were extended to 2013); and 15,000 euro (2014)

Audiovisual Council of Andalucia:
No changes have been made in the way the Law concerning this Council considers these issues. There are no specific data in the general budget of the region However, for 2012, the budget of this Council shows a expense of 763,600 euro in technical reports and studies carried out by external experts; for 2013, the expense on the issue was 563.353 euro.
The number of advice consultations has not been given.

Sources:
http://www.juntadeandalucia.es/economiayhacienda/planif_presup/presupuesto2012/estado/programas/programas-e-7.pdf
http://www.juntadeandalucia.es/economiayhacienda/planif_presup/proy_presupuesto2013/estado/programas/programas.pdf

Tables 40-41: Comments on cooperation

In the scope of the AVMS EU Directive, there are not many updates in respect of the before existent authorities: between 2011 and 2014, the Audiovisual Council of Catalunya and the Audiovisual Council of Andalucia took part in the yearly Conferencia Ibérica de Consejos Audiovisuales (Iberian Conference of Audiovisual Councils), which also includes the Portuguese independent authority. Despite of being said that both Spanish authorities are members of this yearly Conference, it is not clear at all which the legal status of this Conference is, possibly going no further than those meetings; besides, it is not even possible to find any particular web site of its own.

On the other hand, it must be remarked that the National Commission on Markets and Competition, is also a member of the European Platform of Regulatory Authorities.

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?
What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

Attending to the definitions of the University of Luxembourg, the Spanish regulatory model on the audiovisual landscape is essentially a State regulation model, as far as laws are provided by Parliaments and Governments –either national or regional-, and the industrial body is not directly involved in the process.
The model shows small attempts to build a co-regulatory model as far as some independent authorities exist, and members of their boards must be independent; but these attempts collide with the fact of their parliamentary (political) election and designation. Only the decisions and resolutions of these authorities are fully independent of the political power, which is important regarding that supervision of the fulfilment of the audiovisual laws (AVMS EU Directive), is entitled to them and comprises both private and public broadcasters.

In every case these authorities have a neat separation between their board of governors and their technical staff; any hierarchical structure referring to the technical staff follows the rules of the Public Administration categorization of employees, according to merits and duties. And, as to the case, of the Boards of these authorities, the hierarchy is present as far as there is a President of the Board in every authority and, as to the case of the National Commission on Markets and Competition, there is also a Vice-president. It must be also noticed that, in every case, the position of the President of the Board is decisive in case of draw between the votes of the members of the Board (it is the so called “quality vote”).

2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

As it has been shown in the update of the study, these authorities are mainly financed with state funding, included either in the State General Budget of the country, or the Regional General Budgets in Catalunya and Andalucia. The draft of the budget is firstly made by the independent authorities –the Boards must propose them- , but it is finally outlined by the governments and the parliaments, as they have to be passed into Law. Once the budget is approved, its management is done according to the financing limits established for each section and expense of the independent authorities.

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

Incompatibility rules are settled in the respective Laws of foundation of the different independent authorities. As it has been shown both, on the national and in the regional level, these authorities settle:

a) Members of the Board of the National Commission on Markets and Competition will not be able to hold executive functions within the Commission during their term of Office; further, once their term has ended, they should keep a two years period out of any work/job related with their before position. Besides, they cannot hold any political or governmental position during their term of office, as part of the board of an independent authority.

b) Members of the boards of the regional councils – Catalunya, Andalucia and Illes Balears – enjoy, by their foundation laws, the same regime of incompatibilities:

Members of their boards should stay away of any elective or politically nominated posititon or having an executive position in political parties, trade unions or business organizations, during their term of office. What is more important, they cannot have any direct or undirect interest in any audiovisual company, or provide any kind of service/work to public/private broadcasters.

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

The resourcing and staffing of these authorities is appropriate as far as their budgets are high and the number of employees is proportional to this budget and work to be done; however, the impact of the economic crisis has been felt in both issues. Qualification of the employees is correct and diverse.

However, the fact of contracting external services for the development of some technical reports or broadcasting monitoring, talks about some limitations for the fulfilment of their mission.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

Every authority conducts monitoring themselves, but give the citizens the chance to complain through telephone or electronic devices, mainly. In respect of audiovisual content broadcasting, this monitoring is usually systematic and developed by expertise companies.

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

The National Commission on Telecommunications and Markets has stated the following sanctions to the date: in respect of protection of minors, 3 fines for a total sum of 510.600 euros; in respect of commercial communications, 4 fines for a total sum of 197.000 euros.
All of the sanctions are referenced below (in Spanish, so they can be identified if necessary):

- Multa en ATRESMEDIA (SNC/DTSA/0468/14)
- Multa en MEDIASET (SNC/DTSA/0408/14)
- Multa en MEDIASET (SNC/DTSA/0407/14)
- Multa en NET TV (SNC/DTSA/0409/14)
- Multa en ATRESMEDIA CORPORACIÓN DE MEDIOS DE COMUNICACIÓN, S.A. (SNC/DTSA/0410/14)
- Multa en ATRESMEDIA (SNC/DTSA/0490/14)
- Multa en ATRESMEDIA (SNC/DTSA/0490/14)

All of their texts can be downloaded at: http://www.cnmc.es/es-es/telecomunicacionesysaudiovisuales/resolucionestelecomunicacionesyaudiovisuales/sancionadorestelecomunicaciones.aspx

The Audiovisual Council of Andalucia has implemented 4 sanctioning proceedings between 2011 and 2014, 1 of them related with the broadcasting of commercial communications, with a fine of 137.000 euros; 3 of them related with the protection of minors and the broadcasting of harmful contents, with fines for a whole value of 567.500. All of the sanctions are referenced below (in Spanish, so they can be identified if necessary):

- Expediente sancionador 02/2014 a Onda Cádiz por la emisión de comunicaciones comerciales de bebidas alcohólicas con un nivel superior a veinte grados
- Expediente sancionador 224/2010 a Onda Giralda por emitir contenidos que pueden perjudicar el desarrollo de los menores en horario protegido
- Expediente sancionador 01/2013 al Ayuntamiento de Tarifa como prestador de servicio de comunicación audiovisual

- Expediente S05/2011 a Channel Vit por emitir contenido relacionado con el esoterismo y las paraciencias
- Expediente S04/2011 a Metropolitan TV como prestador del servicio de comunicación audiovisual
- Expediente S03/2011 al Ayuntamiento de Mairena de Alcor como prestador de servicio de comunicación audiovisual
- Expediente S01/2011 a Avista Televisión de Andalucía, S.A. como prestador de servicio de comunicación audiovisual

All of their texts can be downloaded at http://www.consejoaudiovisualdeandalucia.es/actividad/actuaciones/expedientes

Finally, in respect of the AVMS Directive, the Audiovisual Council of Catalunya has implemented the following sanctioning proceedings, between 2011 and 2014 (in Catalonia own language, so they can be identified if necessary) :

Protection of minors: Fines concerning this issue value a whole amount of 550.608,36 euros. All of the following sanctioning proceedings can be found at http://www.cac.cat/web/actuacions/index.jsp?NzA%3D&MQ%3D%3D&L3dlYi9hY3R1YWNpb25zL2xsaXN0YXRDb250ZW50&Ng%3D%3D&MjA%3D#

- Acord 114/2014 de resolució sancionadora de l'expedient sancionador núm. 19/2013-S (Protecció de menors. Esoterisme. Aura TV - 66.4 de Barcelona) incoat al prestador de serveis de televisió Esoditel, SL -COVISUAL4-
  Dat: 17/09/2014
- Acord 113/2014 de resolució sancionadora de l'expedient sancionador núm. 18/2013-S (Protecció de menors. Esoterisme. Aura TV - 66.3 de Barcelona) incoat al prestador de serveis de televisió Esoditel, SL -COVISUAL3-
  Data: 17/09/2014
- Acord 112/2014 de resolució sancionadora de l'expedient sancionador núm. 17/2013-S (Protecció de menors. Esoterisme. Aura TV - 66.2 de Barcelona) incoat al prestador de serveis de televisió Esoditel, SL -COVISUAL2-
  Data: 17/09/2014
- Acord 111/2014 de resolució sancionadora de l'expedient sancionador núm. 16/2013-S (Protecció de menors. Esoterisme. Aura TV - 66.1 de Barcelona) incoat al prestador de serveis de televisió Esoditel, SL -COVISUAL1-
  Data: 17/09/2014
- Acord 66/2014 en relació amb l'expedient sancionador núm. 14/2013-S (Protecció de menors. Esoterisme. TV Nacional 4 - 66.4 de Tarragona) incoat al prestador de serveis de televisió Infraestructuras y Gestión 2002, SL
  Data: 14/05/2014
- Acord 63/2014 en relació amb l'expedient sancionador núm. 11/2013-S (Protecció de menors. Esoterisme. TV Nacional 1-66.1 de Tarragona) incoat al prestador de serveis de televisió Infraestructuras y Gestión 2002, SL
  Data: 14/05/2014
- Acord 64/2014 en relació amb l'expedient sancionador núm. 12/2013-S (Protecció de menors. Esoterisme. TV Nacional 2 -66.2 de Tarragona) incoat al prestador de serveis de televisió Infraestructuras y Gestión 2002, SL

Data: 14/05/2014

- Acord 65/2014 en relació amb l'expedient sancionador núm. 13/2013-S (Protecció de menors. Esoterisme. TV Nacional 3 - 66.3 de Tarragona) incoat al prestador de serveis de televisió Infraestructuras y Gestión 2002, SL
  Data: 14/05/2014
- Acord 187/2012 en referència amb l'expedient sancionador núm. 1/2012-S (Manca de respecte dels valors constitucionals i protecció de menors) incoat al prestador de serveis de televisió Smile Advertising, SL
  Data: 03/12/2012

Commercial communications: Fines concerning this issue value a whole amount of 48.004 euros. All of the following sanctioning proceedings can be found at http://www.cac.cat/web/actuacions/index.jsp?NzE%3D&MQ%3D%3D&L3dlYi9hY3R1YWNpb25zL2xsaXN0YXRDb250ZW50&Nw%3D%3D&MjA%3D

- Acord 159/2012 en relació amb l'expedient sancionador núm. 3/2012-S incoat al prestador de serveis de televisió Emissions Digitals de Catalunya, SA
  Data: 24/10/2012
- Acord 54/2011 en relació amb la resolució de imposició sanció.Procediment sancionador núm. 1/2010-S (Saturació publicitària. Canal Català Barcelona) incoat al prestador de serveis de televisió SMILE ADVERTISING, SL
  Data: 13/04/2011
- Acord 55/2011 en relació amb la resolució de imposició de sanció. Procediment sancionador núm. 2/2010-S (Saturació publicitària i publicitat encoberta. 25tv) incoat al prestador de serveis de televisió GIBSON TIME, SL.
  Data: 13/04/2011

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

It is legally mandatory for all of the regulators to publish yearly a report on their activities; further the National Commission on Markets and Competition must also present a special report every three years, where it states the fulfilment of its objectives and aims.
These reports have to be introduced before the national and regional parliaments, depending on the geographical scope of the authority.
The information contained in these yearly reports usually relates to the composition of the regulator and its board; the financing resources and budget; the staff; actions in the different fields covered by the regulator (pluralism, protection of minors, commercial communications, etc…); institutional relations; and new regulations on the field.
Besides, all of the regulators do make available to the public their recommendations, reports, informative and sanctioning proceedings through their websites.

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

No. As a general matter of fact, and despite some promotional campaigns of these authorities, the public does not know these regulators very much, with the exception of the Audiovisual Council of Catalunya which has a longer tradition and a bigger presence in the academic and political life. However, newspapers usually cover the issues related with the three of them, specially in the field of audiovisual contents and commercial communications.

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

Protection of minors and commercial communications have been the two main issues prioritized by the regulators, due to the monitoring of the implementation of the Directive by the European Commission itself, through different studies, as well as the monitoring schedules in respect of contents and times of advertising developed by the three authorities. Besides, these are the two most visible aspects of the Directive for the general public.
Apart from supervising the fulfilment of the different audiovisual laws, all the regulators can set their own agenda whenever this is settled within the explicit terms of their legally recognized functions.

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

To the date, the National Commission on Markets and Competition has not issued any application rule on the scope of the AVMS Directive.
In respect of the Audiovisual Council of Catalunya, it has published instructions on the following issues:

- The procedure for previous communication to the authority of the beginning of a new service on audiovisual communication by other means that the radiolectric spectrum (*Acord 65/2012 pel qual s'aprova la Instrucció general sobre les condicions i el procediment de la comunicació prèvia per a la prestació de serveis de comunicació audiovisual mitjançant tecnologies altres que l'espectre radioelèctric*, date: 26/04/2012).
- Accessibility to audiovisual contents on television (*Acord 19/2013 d'aprovació de la Instrucció general del Consell de l'Audiovisual de Catalunya sobre l'accessibilitat als continguts audiovisuals televisius*, date: 20/02/2013).

Finally, the Audiovisual Council of Andalucia has published one general instruction on accessibility to audiovisual contents on television (Nueva instrucción sobre accesibilidad a los contenidos audiovisuales en las televisiones de Andalucía, date 12/06/2013).

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

No, the authorities are not obliged to take this kind of consultations; concerning this point, there are no formal procedures to collect opinions from the industry or the public, which does not mean that these authorities totally omit their point of views.

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

As far as members of the Boards are parliamentary elected, it is difficult to talk about independency from the governments or the political parties. However, it is also truth that – in the case of television broadcasting –, the three regulators have shown, at least, independency in respect of the broadcasters.

Finland

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

N/A

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

In Finland we have a system of state regulation. The laws are stated by the Finnish Parliament.

See closer

http://web.eduskunta.fi/Resource.phx/parliament/aboutparliament/legislativework.htx

Ficora, Kavi and Finnish Competition and Consumer Agency act as regulatory bodies at the field of radio and television operations and they are funded by the state.

2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

Ficora, Kavi and Finnish Competition and Consumer Agency act as regulatory bodies at the field of radio and television operations and they are funded by the state.

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

Just general competition law rules exist. In addition to that it is stated in the 6§a Section of the Act on Yleisradio Oy (; 1380/1993; that is a Finnish Public Service Broadcasting Company which is funded by the state budget by a tax collected by Finnish citizens) that "A prior evaluation shall be carried out of such new services and functions that have a more than insignificant influence on the available content services as a whole and that are considerable in terms of significance, duration and cost. At the discretion of the Administrative Council, an evaluation may also be conducted in other circumstances, if this is deemed necessary for a justified reason."

http://www.finlex.fi/fi/laki/kaannokset/1993/en19931380.pdf

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

There is enough personnel at the regulatory bodies. The financial resources are OK taking into consideration the current economic situation in Finland.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

The regulators are monitoring by their own initiatives (for example by spot checks) and also relying on the complaints.

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

I guess the most common sanction is the penalty payment ordered by the Consument authorities (and one can claim about that to the court). Those are considering marketing/advertising. If the actor follows the decision of the Finnish Competition and Consumer Agency, the decision is not put into force. Otherwise I don´t know that penalty payments would have been imposed.

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

The regulators publishs some major decisions on their websites. Al the decisions are public according to the Act on Openness of Government Activities, unless there is a special reason to keep a decision or part of it secret (for example protecting commercial secrets might be that kind of reason).

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

Yes and yes.

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

There can be some own agenda or priorities but they also have to do all the tasks that are stated in the law.

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

The regulator can give interpretative guidance if the matter is quite clear or obvious. Unclear things should be decided by the court.

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

In Finnish legislative processes the views of industry and public are taken into account. The regulatory body usually acts according to the law and there are not Industry forums etc.

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

N/A

France

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Tables 1-5: Comments on general information

- **Table 1 – Market data**

The number of terrestrial TV channels is now 32.

Since the Law n°2009-258 of March 5, 2009, on demand AVM services must file a declaration to the CSA. For the year 2011, 44 companies have declared 106 services (source, CSA report of December 2013 on on-demand AVM services). More recent data not available.

- **Table 2 – Audiovisual laws and regulatory bodies**

On the first line, third column, the following sentence : *« Law 86-1067, September 30, 1986, « relative à la liberté de communication », as subsequently amended by various laws, including the Law 2009-258, March 5, 2009, "relative à la communication audiovisuelle et au nouveau service public de la television" which has incorporated the last version of the AVMS directive. »* should be completed as follows:

> *« Law 86-1067, September 30, 1986, « relative à la liberté de communication », as subsequently amended by various laws, including the Law n°2009-258 of March 5, 2009, "relative à la communication audiovisuelle et au nouveau service public de la television" which has incorporated the last version of the AVMS directive, and by Law n°2013-1028 of November 15, 2013 "relative à l'indépendance de l'audiovisuel public", which, inter alia, reinforces the independence of the CSA. »*

On the second line, I would delete references to the ARPP (not mentioned in article 14 of the Law of 1986 as indicated and does not constitue a regulatory body, but merely a self regulation association in the advertising sector acting for its members).

- **Table 3 – Regulatory bodies – general information**

The information in the table is still correct.

- **Table 4 – Sectors covered**

The information in the table is still correct.

- **Table 5 – Staff and overall budget**

The information should be updated as follows (source, Annual reports for 2010, 2011, 2012 and 2013):

- Current staff count: 310 (2010), 310 (2011), 310 (2012), 308 (2013)

- Annual budget (as foreseen in statutes/law): €39.08m (2010), €38.3m (2011), €38.1m (2012) €37m (2013)

- Annual budget (current use): N/A (2010), N/A (2011), €36.4 m (2012) €35.1m (2013)

Tables 6-8: Comments on institutional framework

- **Table 6 – Legislation establishing and governing the regulatory body**

Under Governing Legislation, add: Decree n°2014-382 of 28 March 2014 relating to the organisation and functioning of the CSA.

- **Table 7 – Legal status**

The Law 2013-1028 of November 15, 2013 "relative à l'indépendance de l'audiovisuel public" modified the form of the CSA. Until then the CSA was an "autorité administrative indépendante" (Independent Administrative Authority). It is now an "autorité publique indépendante" (Independent Public authority), which implies a legal personality distinct from the State, more freedom in administrative and financial management as well as responsibility for its decisions.

The other information in the table is still accurate.

- **Table 8 – Staff and overall budget**

The sentence : *"Appointment procedures (see Article 4) and relative lack of means of investigation and research still makes it an issue"* should be replaced by:

> *"The Law 2013-1028 of November 15, 2013 "relative à l'indépendance de l'audiovisuel public" reinforced the independence of the CSA through a new legal status as "Independent Public authority" (which implies a legal personality distinct from the State, more freedom in administrative and financial management as well as responsibility for its decisions) and through modification regarding the appointments of its members."*

The other information in the table is still accurate.

Tables 9-14: Comments on powers of regulatory bodies

- **Table 9 – Regulatory powers**

The information in the table is still accurate.

- **Table 10 – Supervision and monitoring power**

The information in the table is still accurate.

- **Table 11 – Powers of santions**

The information in the table is still accurate.

- **Table 12 – De facto use of formally granted competences and monitoring powers**

The information in the table is still accurate.

- **Table 13 – De facto use of formally granted sanction powers**

To be updated as follows:

Warnings: no data available concerning the total exact number of letters, reminder letters and formal warnings (mises en demeure) sent by the CSA. The number and nature of formal warnings are described in the annual reports, per area of regulation. E.g. in 2013 4 formal warnings were sent to broadcasters in relation to the protection of minors, 2 in relation to surreptitious advertising (but according to the CSA numerous letters were sent).

Fine (lump sum): over the last five years = 4 (maximum 100.000 euros) (source CSA website)

- **Table 14 – Complaint handling**

To be updated as follows:

In 2013, the CSA has received 7,790 letters, calls or emails of viewers (TV) and listeners (radio). 5,255 complaints concern audiovisual programs. 40% of which relate to facts of violence, vulgarity or sex, 26% to lack of deontology, 4% to lack of pluralism (source CSA annual report 2013).

Tables 15-24: Comments on internal organization and staffing

- **Table 15 – Highest decision-making organ – composition**

The composition and nomination of members of the CSA was modified by Law 2013-1028 of November 15, 2013:

Number of board members = 7

Please delete “Representatives of government” and “Representative of parliament”, as members appointed respectively by the President of the Republic and by the Presidents of the Parliamentary chambers are not representatives of the government and of the parliament.

- **Table 16 – Highest decision-making organ – competences and decision-making process and transparency**

Under Decision-making process:

Quorum of 4 members present.
Rules governing the functioning of the Conseil are set up in the Decree n°2014-382 of 28 March 2014 relating to the organisation and functioning of the CSA.

Internal set of rules ("Réglement Intérieur") as established in deliberation of April 9, 2014 (OJ of May 7, 2014).

- **Table 17 – Highest decision-makign organ – appointment process**

The nomination of board members of the CSA was modified by Law 2013-1028 of November 15, 2013.

Board Members: Nominated by the president of the National Assembly (3 members) and the President of the Senate (3 members), after validation by the parliamentary commission of cultural affairs.

- **Table 18 – Term of office and renewal**

The information in the table is still accurate.

- **Table 19 – Professional expertise/qualifications**

Modified by Law 2013-1028 of November 15, 2013 (board members only).

Add a line for board members: article 4 of the Law 86-1067 provides that board members *"are designated by reason of their competence in economic, legal or technical matters or of their professional experience in the domain of communication, in particular in the audiovisual or electronic communications sectors"*.

Concerning Chariman of the board, specifiy that the CSA has had 4 chairmen since 1989, and add Olivier Schrameck (since January 2013) (civil servant).

- **Table 20 – Rules to guard against conflicts of interest – Appointment process**

Under "Rules to prevent conflicts of interest with industry », add ",directly of indirectly," after "cannot" and "or contract with or receive fees from" after "have an interest in".

- **Table 21 – Rules to guard against conflicts of interest – during term of office**

Under "Rules to prevent conflicts of interest with industry », add ",directly of indirectly," after "cannot" and "or contract with or receive fees from" after "have an interest in".

- **Table 22 – Rules to guard against conflicts of interest – after term of office**

Under "Is a cooling-off period foreseen", replace "One year period during which the exiting member cannot work in a media/telecommunications company." by "One year period for the other prohibitions."

- **Table 23 – Rules to protect against dismissal**

The information in the table is still accurate.

- **Table 24 – Dismissal before term**

Add “No” to “Indivisual board members”.

Tables 25-27: Comments on financial resources

- **Table 25 – Source of income**

The information in the table is still accurate.

- **Table 26 – Annual budget**

The information in the table is still accurate.

- **Table 27 – Financial accountability - auditing**

The information in the table is still accurate.

Tables 28-35: Comments on checks and balances

- **Table 28 – Formal accountability**

The information in the table is still accurate.

- **Table 29 – Reporting obligations**

Under “Government as a whole”, insert “same” (same report and same periodicity as for parliament).

- **Table 30 – Auditing of work undertaken**

The information in the table is still accurate.

- **Table 31 – Power to overturn/instruct**

The information in the table is still accurate.

- **Table 32 – Number of stages in appeal procedure**

Under “Do internal procedures need to be followed before external recourse”, add in fine: “Sanctions procedures have been amended by Law 2013-1028 of November 15 2013, through a more formal separation between instruction and decision phases.”

- **Table 33 – Does the regulator's decision stand pending appeal**

The information in the table is still accurate.

- **Table 34 – Accepted ground for appeal**

The information in the table is still accurate.

- **Table 35 – Does the appeal body have power to replace the decision with its own?**

The information in the table is still accurate.

Tables 36-39: Comments on procedural legitimacy

- **Table 36 – External advice regarding regulatory matters**

The information in the table is still accurate.

- **Table 37 – Public consultations**

The information in the table is still accurate.

- **Table 38 – Public consultations - figures**

2010: 2
2011:
2012:
2013: 1
2014:

- **Table 39 – Publication of regulator's decisions**

The information in the table is still accurate.

Tables 40-41: Comments on cooperation

- **Table 40 – Cooperation with other regulatory bodies**

The information in the table is still accurate.

- **Table 41 – International cooperation**

The information in the table is still accurate.

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)?

In general, regulations applicable to AVMS are either set by the law or defined (or rather, specified) by the CSA. To a large extent, the existence and powers of the CSA predates the establishment of pure co-regulation systems.

The regulatory framework for AVMS is almost entirely defined in the Law n°86-1067, as amended, and in its numerous implementing decrees. Next to the Law of September 30, 1986 there exists numerous, non-codified, texts, mainly of a technical nature. The Code of Posts and Electronic Communications and the Tax code also include specific provisions applicable to the broadcasting industries. Lastly, AVM services are also subject to numerous provisions of the Law of July 1881 on the Freedom of the Press (in particular to the sanctions for the press and media offenses detailed in this Act).

As mentioned, some standards are defined or specified by CSA. The CSA issues them with or without prior consultations or hearings of the interested parties, through decisions, recommendations and circular letters to broadcasters. These concern mainly the pluralism of information, advertising and sponsorship, protection of minors and ethics and deontology of programs.

The advertising sector is the object of a self-regulation system, organized around a professional association, the ARPP. Advertisers and media are not required to present or obtain pre-clearance of their advertising with the ARPP, except in the field of television advertising. Despite members undertake to follow the advice and decisions of the ARPP, these only have a consultative value. This mechanisms coexists with (and is independent from) the *ex-post* control operated by the CSA. The CSA is not a member of the ARPP, which is a private association. It has no powers in respect of the ARPP and cannot issue instructions or recommendations to it. However, the ARPP, both as spokesperson for the interests of the advertising sector and as a self-regulatory body, is a privileged interlocutor of the CSA. Meetings are held between the institutions on specific issues, and the ARPP reflects in its recommendations to its members and in its practice the norms edicted by the CSA.

Professional agreements have been entered into between professional organization in the cinema industry and television channels, notably concerning the so-called “chronology of media” and the windows for film distribution. These are contemplated within the French Code of cinema and can be “extended” by decree (made compulsory for AVM services).

What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

The CSA is competent for all AVM services, but not for operators of underlying infrastructure (unless insofar as they act as AVM services). Operators of electronic communication networks are under the scope of competence of another independent administrative authority, the ARCEP.

What is the hierarchical structure internal to the regulator?

There is no hierarchy between the members of the CSA, although its president has specific decision and representative powers and a prevailing vote in case of a casting vote in case of deadlock of certain votes.

The CSA is assisted by services.

These services of the CSA are directed, under the authority of its president, by a General director, nominated by decree of the President of the Republic, upon proposal of the president of the CSA.

If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

Not applicable.

2. Financing

How is the regulator financed?

The CSA is funded by the State.

Does the state contribute (partly or exclusively) to its funding?

The State contributes exclusively to the funding of the CSA.

If yes, are there conditions to receive state funding?

No. The credits necessary for the accomplishment of the missions of the CSA are proposed by the CSA during the elaboration of the annual budgetary law.

Have there been any cut-backs in view of the economic crisis? If so, please specify.

This was not publicly expressed.

Who manages the funds available to the regulator?

Since the Law n°2013-1028 of November 15, 2013 (and subject to transitional provisions now expired) the CSA manages its budget in complete autonomy. The deliberations of the CSA relating to the budget and its modifications are sent for information to the Prime Minister and the minister in charge of the State budget.

Is the funding scheme regulated by legislation? Please specify the legal basis.

Article 7 of the Law n°86-1067 provides that the CSA proposes, during the making of the draft annual budgetary laws, the credits necessary for the accomplishment of its missions. These are included in the general budget of the State.

A Decree n°2014-382 of 28 March 2014, "relating to the organisation and functioning of the *Conseil supérieur de l'audiovisuel*" specifies the accounting and budgetary regime of the CSA.

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)?

The rules are included in article 5 of the Law n°86-1067 of September 30, 1986. They are specified in a Deontology Code (Internal set of rules adopted by the CSA regarding in particular conflicts of interest) and published in the Official Journal of February 23, 2003, available at:

http://www.csa.fr/Le-CSA/Code-de-deontologie-applicable-aux-membres-du-Conseil

If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

Yes. Article 5 provides that *"the functions of member of the CSA are incompatible with any elective mandate, public employment or any other professional activity"*. It futher provides that *"subject to the provisions of the Intellectual property Code, members of the CSA cannot, directly or indirectly, exercise functions, receive fees, except for services rendered before their nomination, hold interest or have an employment agreement in a business of the audiovisual, cinema, publishing, press, advertising or electronic communications sectors"*.

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources?

Maximum staff number is fixed by the annual budgetary law. For 2013, the maximum is 290 full time jobs (3 less than 2012). As of December 31, 2013, all status included, the staff of the CSA included 306 persons (304 in December 2012).

The CSA has and uses is own premises and technical services (subject to technical cooperation with the National agency of frequencies), and may contract with experts for studies and reports.

Financial resources are provided by the State.

In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain.

I cannot answer this question, but the various annual reports do not include complaint or requests by the CSA in this respect.

What kinds of technical facilities exist?

The CSA has technical facilities in its bureaux in Paris, but also benefits from the facilities operated by the Territorial committees of the audiovisual (CTAs): there are 18 CTAs (12 in continental France and 4 overseas). CTAs are an integral part of the CSA. They contribute to the information of the CSA and monitor local programs.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public?

The CSA conducts monitoring of the services of the AVMS.

How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

This depends on the service. Monitoring of television and radio programmes is made on a more continuous basis (through recordings and visioning) than monitoring of other services (non linear services). Also, spot checks can be made for specific issues arising.

As of today, the CSA counts nearly 300 collaborators in Paris, placed under the authority of the president and the chief executive officer. Its direction of programmes (*direction des programmes*), in particular, monitors and analyzes the programmes of radio and television services (relying, inter alia, on the work of the CTAs, described above).

Article 19 of the Broadcasting Law grants to the CSA the power to obtain communication of documents necessary for the accomplishment of its missions.[1] It provides that:

> *"For the achievement of the missions which are entrusted to it by the present law, the CSA can:*
>
> *1° obtain, without other limitations than those which result from the free exercise of the activities of political parties and political groups mentioned in article 4 of the Constitution:*

[1] Extended by L. n° 2004-669, 9 July 2004.

- *from the administrative authorities, all the information necessary for the making of its opinion and decisions,*
- *from the administrations, from producers of audiovisual and cinematographic works, from the persons mentioned in article 95 as well as from publishers and distributors of audiovisual communication services, all necessary information to ensure the compliance with their obligations by the latter,*
- *from satellite network operators, all the information necessary for the identification of the publishers of the carried television services;*
- *from any natural or legal person holding, directly or indirectly, a share equal or higher than 10% of the share capital or voting rights to the general meetings of a company publishing or distributing a television or a radio service whose programmes contribute to political and general information, all information on the public procurement contracts and public service delegations for the attribution of which this person or a company which it controls presented an offer during the last twenty-four months;*

2° make enquiries on or with administrations or publishers of services.

The information collected by the CSA pursuant to these provisions cannot be used for other ends than the achievement of the missions which are entrusted to it by the law. Their disclosure is prohibited."

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements?

The general power of sanction is defined in articles 42 and seq. of the Law n°86-1067 of September 30, 1986

This power applies to *"publishers and distributors of audiovisual communication services [therefore television and radio services and on-demand audiovisual media services] and to operators of satellite networks"*, and sanctions the respect of the *"obligations which are imposed on them by the statutory and regulatory texts and by the principles defined in articles 1 and 3-1"* of the Law.

Article 1 provides:

Communication to the public by electronic means is free.

The exercise of this freedom can be limited only to the required extent, on the one hand, by the respect of human dignity, of freedom and property of others, of the pluralist character of the expression of the currents of thought and opinion and, on the other hand, by the protection of childhood and adolescence, by the safeguard of public order, by the needs for national defence, by the requirements of public service, by the technical constraints inherent in the means of communication, and by the need, for audiovisual services, to develop audiovisual production.

Article 3-1 of the Act grants to the CSA a general mission of protection and guarantee of the freedoms and basic principles of the audiovisual communication sector. It provides that the CSA guarantees the exercise of the freedom of audiovisual communication by any means of electronic communication, under the conditions defined by the law, which refers, *inter alia*, to the principles in article 1. It further provides that the CSA :

> *(...) ensures the equality of treatment; it guarantees the independence and the impartiality of the public sector of audiovisual communication; it ensures free competition and the establishment of non-discriminatory relations between publishers and distributers of services, on any electronic communication network, in accordance with the principle of technological neutrality; it ensures the quality and the diversity of the programmes, the development of the national audiovisual production and creation and the defence and the illustration of the French language and culture. It can formulate proposals on the improvement of the quality of the programmes. It ensures the equitable, transparent, homogeneous and non-discriminatory nature of the numbering of the television services in the offers of programmes of the distributors of services.*
>
> *The Conseil supérieur de l'audiovisuel contributes to the actions in favour of social cohesion and to the fight against discriminations in the field of audiovisual communication. It ensures in particular, that the programming of the publishers of audiovisual communication services, taking into account the nature of their programmes, reflects the diversity of the French society and contributes in particular to the influence of the France of overseas. It gives an account each year to the Parliament of the actions of the publishers of television services as regards programming reflecting the diversity of the French society and proposes the appropriate measures to improve the effectivity of this diversity in all the kinds of programmes.*
>
> *It ensure the respect of the rights of women in the field of audiovisual communications (…)*
>
> *The Conseil supérieur de l'audiovisuel ensures that the development of the audiovisual communication sector is accompanied by an elevated level by environmental protection and public health*

The non-observance of a recommendation taken on the principles described in articles 1 and 3-1 of Law n°86-1067 may trigger the power of sanction of the CSA.

The CSA has a broad range of available sanctions.

The CSA can send to the publishers and distributors of television and radio services a formal notice and request, made public, to respect their obligations (article 42 of Law n°86-1067).

Trade-union and professional organizations, representatives of the sector of audiovisual communication, the *Conseil national des langues et cultures régionales*, family associations and associations for the defence of women's rights as well as associations having in their social object the defence of the interests of the viewers can ask the CSA to initiate this procedure of formal notice (article 42 of Law n°86-1067).

If a publisher or a distributor of services of radio or television does not conform to a formal notice, the CSA, on the basis of article 42-1 of Law n°86-1067, can decide, taking into account the importance of the violation, to impose one of the following sanctions:

- the suspension of the production, the broadcasting, the distribution of a category of programme, of part of the programme, or of one or more advertising sequences for one month at maximum;
- the reduction of the duration of the licence within the limit of one year;
- a penalty possibly accompanied by suspension of the production or distribution of the service(s) or of part of the programme. The amount of the pecuniary penalty must correspond to the importance of the violation but shall not exceed 3 % of the turnover net of tax, made the last fiscal year calculated over a twelve months period (5 % in the event of a repeated infringement); it cannot however be higher than the amount of the criminal fine, when the failure is constitutive of a criminal offense (article 42-2 of Law n°86-1067);
- the withdrawal of the authorization or the unilateral termination of the licence.

If a public broadcaster mentioned in Article 44 of Law n°86-1067 does not comply with the orders made by the CSA, the authority may order suspension of part of its programme for one month at maximum or may impose a penalty (article 48-2).

Lastly, the CSA can finally order, in all the cases of violation of its obligations by a publisher of audiovisual communication service (public and private), the insertion in the programmes of an official statement under the conditions determined by the CSA (articles 42-4 and 48-3 of Law n°86-1067).

Sanctions are framed by a procedure intended to protect the rights of the defence (article 42-7 of Law n°86-1067).

The decisions of the CSA are motivated and published in the Official Journal.

The CSA can also seize the public prosecutor of any infringement to the provisions of the law (article 42-11 of Law n°86-1067).

Full text of the regulation in force, including Laws, Decrees, licences of operators, decisions and recommendations from the CSA and Codes of good conducts, is available on the website of the CSA, at the following address: http://www.csa.fr/Espace-juridique.

Which rules of the AVMS Directive have been violated most frequently?

The CSA does not publish a specific report of all infringements retained as a result of its monitoring activities or of claims from viewers. Its activity in this field, however, is summarized in its annual report and in other documents.

In addition, although its decisions are published in the OJ, preliminary informal contacts and requests for explanations are not.

These infringement cases or preliminary discussions often result in circular letters and recommendations by the CSA on the relevant topics, or in modification of the applicable licences.

Based on the reading of the annual reports of the CSA, advertising rules seem to be the area of the AVMS Directive which is violated most frequently.

What is the "track record"?

As mentioned, the CSA does not publish a specific report of all infringements retained as a result of its monitoring activities or of claims from viewers.

Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

Yes. No information available.

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public?

Yes. Under various provisions of the Law of September 30, 1986, recommendations, decisions of the CSA, deliberations and reports of the CSA, whatever the nature, opinions of the CSA on various texts, decisions of sanction, are published in the official journal. The Law also provides for the publication of its annual report (article 18 of the Law of September 30, 1986).

If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

See answer under a) for documents subject to publication in the Official journal.

The annual report of the CSA is made available to the public on its website.

Article 18 of the Law of September 30, 1986, provides that the annual report:

- describes the activity of the CSA;
- describes the application of the provisions of the Law of September 30, 1986;
- describes the impact (including the economic impact) of the decisions of the CSA for the use of frequencies by AVMS;
- and describes the respect of their obligations by public service broadcasters.

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

Most major decisions of the CSA are covered by the medias, especially when they relate to major news events. For example, the recent decisions covered by the medias include one set

of decisions relating to the coverage and the treatment, by several broadcasters, of the terrorists attacks of February 2015, and the request by a major news channel, to be authorised on DTT (due to implications in terms of jobs and continuation of the activity of the channel).

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda?

Yes, within the powers and area of competence of the CSA.

Can it determine long-term objectives?

Yes, again within the limits of its competence set by the Law of September 30, 1986.

If not, who determines the policies and goals of the regulator?

N/A

What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

Most recommendations adopted concern protection of minors and advertising.

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive?

As mentioned, the CSA has broad recommendation powers, which cover areas of the Law n°86-1067 and associated decrees implementing the provisions of the AVMS directive. These are used to give guidance on the application of these texts. However the CSA restricts to the guidance of the French texts, in line with the text of the Directive and the decisions of the ECJ.

Is this guidance binding on service providers?

Yes. As mentioned, non-observance of a recommendation taken on the principles described in articles 1 and 3-1 of the Law n°86-1067 (reproduced above) may trigger the power of sanction of the CSA.

What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

Many recommendations have been adopted. They are classified into three groups on the website of the CSA (AVMS only):

- Protection of minors and youth
    - Rating logos and classification of programmes: *Délibération n° 2014-17 du 5 mars 2014 modifiant la recommandation n° 2005-5 du 7 juin 2005 aux éditeurs de services*

de télévision concernant la signalétique jeunesse et la classification des programmes ; Délibération du 23 octobre 2012 modifiant la recommandation n° 2005-5 du 7 juin 2005 aux éditeurs de services de télévision concernant la signalétique jeunesse et la classification des programmes; Recommandation du 7 juin 2005 aux éditeurs de services de télévision concernant la signalétique jeunesse et la classification des programmes.

- On demand AVM services: *Délibération du 20 décembre 2011 relative à la protection du jeune public, à la déontologie et à l'accessibilité des programmes sur les services de médias audiovisuels à la demande.*
- Games: *Délibération du 27 avril 2011 relative aux conditions de diffusion des communications commerciales en faveur des opérateurs de jeux d'argent et de hasard ; Délibération du 18 mai 2010 relative aux conditions de diffusion, par les services de télévision et de radio, des communications commerciales en faveur d'un opérateur de jeux d'argent et de hasard légalement autorisé.*
- Infants / General: *Délibération du 22 juillet 2008 visant à protéger les enfants de moins de 3 ans des effets de la télévision; Directive du 5 mai 1989 relative à la protection de l'enfance et de l'adolescence*.
- Advertising: *Délibération du 13 novembre 2007 relative à la diffusion de messages publicitaires en faveur de services téléphoniques ou SMS surtaxés susceptibles d'exploiter l'inexpérience ou la crédulité des mineurs; Recommandation du 4 juillet 2006 relative à la présentation faite à la télévision d'oeuvres cinématographiques ou audiovisuelles, de jeux vidéos et de services téléphoniques, télématiques ou de sites internet qui font l'objet de restrictions aux mineurs; Recommandation du 7 juin 2006 aux éditeurs de services de télévision relative à des pratiques publicitaires liées à la diffusion d'oeuvres d'animation et de fiction à destination des mineurs.*
- Minors in programs: *Délibération du 17 avril 2007 relative à l'intervention de mineurs dans le cadre d'émissions de télévision diffusées en métropole et dans les départements d'outre-mer.*
- Adult contents: *Recommandation du 26 juillet 2005 aux éditeurs et distributeurs de services de télévision diffusant dans les collectivités territoriales outre-mer des programmes de catégorie V; Recommandation du 15 décembre 2004 aux éditeurs et distributeurs de services de télévision diffusant en métropole et dans les départements d'outre-mer des programmes de catégorie V*.

➢ Elections

Many recommendations have been adopted in this area.

➢ Other subjects (examples in areas covered by the directive or relating to contents)

- Rights of women: *Délibération n° 2015-2 du 4 février 2015 relative au respect des droits des femmes par les sociétés mentionnées à l'article 20-1-A de la loi n° 86-1067 du 30 septembre 1986*.
- Short excerpts of sports or major events: *Délibération n° 2014-43 du 1er octobre 2014 relative aux conditions de diffusion de brefs extraits de compétitions sportives et d'événements autres que sportifs d'un grand intérêt pour le public; Délibération du 15 janvier 2013 relative aux conditions de diffusion de brefs extraits de compétitions sportives et d'événements autres que sportifs d'un grand intérêt pour le public.*

- War and terrorist acts reporting: *Recommandation n° 2013-04 du 20 novembre 2013 relative au traitement des conflits internationaux, des guerres civiles et des actes terroristes par les services de communication audiovisuelle.*
- Pluralism / equality of treatment: *Délibération n° 2013-7 du 23 avril 2013 relative aux modalités du relevé et de la transmission des temps d'intervention des personnalités politiques sur les antennes des services de radio et de télévision; Délibération du 21 juillet 2009 relative au principe de pluralisme politique dans les services de radio et de télévision.*
- Advertising: *Délibération du 22 janvier 2013 relative aux conditions de diffusion des communications commerciales en faveur des opérateurs de jeux d'argent et de hasard ; Délibération du 31 mai 2012 prorogeant la délibération du 27 avril 2011 relative aux conditions de diffusion par les services de télévision et de radio des communications commerciales en faveur d'un opérateur de jeux d'argent et de hasard légalement autorisés; Délibération du 4 décembre 2007 relative aux incitations à utiliser des services SMS ou téléphoniques surtaxés; Recommandation du 30 mai 2006 relative aux mentions de prix dans les messages publicitaires télévisés en faveur de services téléphoniques surtaxés ou de services SMS; Recommandation du 19 décembre 2003 du CSA relative à la publicité télévisée en faveur du secteur de la presse ; Recommandation du 19 décembre 2003 du CSA relative à la publicité télévisée en faveur du secteur de l'édition littéraire.*
- Product placement: *Délibération du 16 février 2010 relative au placement de produit dans les programmes des services de télévision modifiée par la Délibération du 24 juillet 2012.*
- Health / protection of persons: *Délibération du 19 juillet 2011 relative aux caractéristiques techniques de l'intensité sonore des programmes et des messages publicitaires de télévision ; Délibération du 4 décembre 2007 relative au port du préservatif dans les programmes pornographiques diffusés par des services de télévision; Recommandation du 27 février 2002 au sujet de l'insertion d'images subliminales dans les programmes ; Recommandation du 15 janvier 2003 à l'ensemble des télévisions relative aux programmes adaptés aux personnes sourdes et malentendantes Recommandation du 14 mai 2001 sur les programmes de téléréalité.*
- Diversity: *Délibération du 10 novembre 2009 tendant à favoriser la représentation de la diversité de la société française sur les chaînes nationales.*
- Tobacco, alcohol, drugs: *Délibération du 17 juin 2008 relative à l'exposition des produits du tabac, des boissons alcooliques et des drogues illicites à l'antenne.*
- Violent sports: *Recommandation du 20 décembre 2005 sur la retransmission de certains types de combats.*
- French language: *Recommandation du 18 janvier 2005 du CSA relative à l'emploi de la langue française par voie audiovisuelle.*
- Games: *Lettre circulaire du 24 juillet 1995 relative à la remise de lots dans les émissions de jeux ou de concours.*

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public?

Yes, in certain specific areas. The Law of September 30, 1986 provides for such public consultation prior to the allocation of certain frequencies in certain situations (mainly when the relevant market can be affected).

Otherwise the consultations are decided by the CSA.

Are these consultations institutionalized (e.g. Industry Forum)?

No.

If not, does the regulator nonetheless regularly seek the views of the industry and the public?

Yes. For example:

The CSA launched, in January 2011, a public consultation on the development of local television services.

The CSA launched, in June 2009, a consultation on the elements of regulation aplicable to on-demand AVM services.

Are the responses by stakeholders made public (e.g. on the website of the regulator)?

Yes, on the website of the regulator.

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

No.

Greece

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

N/A

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

The main type of audiovisual regulatory model adopted in Greece is state regulation. The governing legislation concerning all areas of audiovisual media are covered by Laws 2328/1995, 2644/1998, 2863/2000, 3052/2002, 3021/2002, 3592/2007, Presidential decrees 310/1996 and 100/2000. The responsible regulatory authority for all audiovisual media, public and private is the National Council for Radio and Television (NCRTV).

NCRTV, which was set up by Law 1866/1989 and amended by Law 2863/2000, is a seven-member body with a president, a vice president and five members, all appointed by the Parliament. It has sole responsibility for granting broadcasting licenses, while it also exercises enforcement (monitoring, supervision and sanctioning) in the radio and television sectors. Its mandate is to guarantee that public and private broadcasters comply with domestic and European legislation. The council is responsible for supervising broadcast content regulation and is assigned the task of licensing the radio and television channels transmitted by terrestrial, cable and satellite networks in line with pre-defined criteria. As such, NCRTV's role remains limited to ensuring compliance with domestic and European Union provisions.

Greek law 2863 / 2000 (Art. 9, Chapter B) also provided for self-regulation mechanisms by instituting self-regulatory bodies in respect of radio and television services. Under the legislation, owners of public and private, free-to-air or encrypted channels must conclude multi-lateral contracts in which their parties define the rules and ethical principles governing the programmes broadcast. In this context, several codes have been developed, namely (a) the code of ethics of Greek journalists; (b) the code of conduct for news and other political programs; and (c) the Greek advertising and communication code governing the content, presentation and promotion of adverts.

The task of ensuring compliance with the rules contained in the self-regulation contracts is entrusted to the Internal Ethical Committees designated by the contracting parties themselves. In the event of violation of the rules contained in the contracts, the Ethical Committees may impose moral penalties, e.g., the obligation to broadcast messages or special programmes, etc. Failure to abide by the decisions of the Committee imposing such penalties would constitute a violation of the legislation in force, thereby incurring the penalties provided for by law, which are imposed by the NCRTV. The Internal Ethical Committees may also be entrusted with the power to investigate complaints and ensure exercise of the right of correction on the part of natural or legal persons whose honor or reputation has been damaged or whose strictly personal rights have been infringed.

The development of self -regulatory mechanisms and in particular the drafting of the above codes of conduct has been elaborated by the regulatory agency NCRTV. As such these mechanisms cannot be considered as purely self-regulatory. Instead, they can be considered as cooperative regulatory measures in the meaning of a combination of non-state regulation and state regulation in such a way that a non-state regulatory system links up with state regulation.

2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

The audiovisual regulator NCRTV is funded by the state (100%). The annual budget is decided by the Minister of Economy and Finances. Law 2863/2000 (Art. 1 & 2) provides that the regulatory body is subject to periodic external auditing by the General State Accounts Office and the Audits State Council. In recent years and in view of the economic crisis hitting Europe and especially Greece since 2009 there have been serious cut-backs to NCRTV's funding. For example, whereas the annual NCRTV budget for 2010 was €3.039m, this fell to €2.492m in 2014 and it is foreseen for just €1.657m for 2015.

In terms of management of funds, according to Art. 1 § 2 law 2863/2000 the NCRTV's Chairman submits to the Minister of Economy and Finances an annual budget plan and a copy of the budget plan is presented to the President of the Hellenic Parliament. As shown above, however, in recent years there have been various cut-backs to the NCRTV's budget. With the reduced funding available, the main concern is to avoid problems with paying the wages to the employees.

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

In terms of incompatibility rules at the appointment stage, and in particular rules to prevent conflicts of interest with government, Law 2863/2000 (Art. 3 §§ 1 & 3) and Law 3051/2002 (Art. 3 § 5) provide that the rules on incompatibilities concern: Minister, Deputy Minister, Secretary General and Undersecretary. In terms of rules to prevent conflicts of interest with political parties, the above laws stipulate that the rules on incompatibilities concern the members of the Hellenic Parliament, and, also, the persons who hold office or position in the political parties. In terms of rules to prevent conflicts of interest with the industry, the above laws state that the Chairman and the Board Members must not have any legal relationship with the media industry during the term office and 3 years after. Other obligations include the obligation to disclose participations in companies is a general transparency rule during the term of office that is applied also to the Chairman and to the Board Members of the NCRTV (see art. 3 § 9 law 2863/2000, art. 2 law 3213/2003).

In terms of rules to guard against conflicts of interest during term of office and in particular of rules to prevent conflicts of interest with government, Law 2863/2000 (Art. 1&1, 3 &&4 & 7) and Law 2051/2002 (Art. 2 & 1, 3 & 5) provide that the Chairman of the regulatory authority cannot be subject to supervision or control by governmental or administrative authorities. He/she is bound not to disclose confidential information that comes to his/her knowledge during the exercise of duties, unless to a competent court or a special Parliamentary Committee. In terms of rules to prevent conflicts of interest with political parties, Board Members cannot hold office or position in political parties. In terms of rules to prevent conflict of interest with the industry, the above laws provide that The Chairman of the regulatory authority cannot be a partner, a stock holder, a member of the board or occupy, with or without remuneration, any other position in a company or an enterprise whose activities are subject, directly or indirectly, to NCRTV's supervision.

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

The NCRTV consists of seven members (a President, a Vice-President and five Members), all appointed by Greek Parliament. The limited expertise of the members of the NCRTV Board, their part-time term of employment (only the President and the Vice-President are full-time), the lack of financial independence (as its budget has to be approved by the relevant minister), together with insufficient staff and information technology equipment has harmed the performance of the regulator. It is striking that Law 2863/2008 and Law 3592/2007 foresee total number of staff far greater than actual staff (81 staff foreseen versus 41 actual staff), whereas it has to be noted that the position of the manager has never been filled. Generally speaking, it appears that there is a big difference between NCRTV's nominal powers and its actual functioning.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

The NCRTV has a mandate for a systematic monitoring of the audiovisual market, but also ad hoc monitoring and monitoring after complaints. However, very few checks have been conducted on behalf of the regulator. A concrete example of NCRTV's insufficient monitoring of the market relates to media ownership. The Council publishes information on media ownership and shareholding, but does not really engage in a vigorous assessment of their compatibility with the law. An example demonstrating this was the lack of monitoring of the finances of former national television channel ALTER, which closed in 2012. ALTER, a national TV channel launched in 1995, closed in February 2012 declaring inability to continue operations due to debts. The closure of ALTER demonstrates the lack of proper monitoring by NCRTV, which did not undertake regular checks concerning the financial viability of ALTER. It is striking that 1999 was the final year in which ALTER underwent an audit. Although the balance sheets of ALTER in the four-year interval 2005-2009 appeared to be positive thanks to bank loans, in reality the organization accumulated a huge financial imbalance and this became apparent in the midst of the economic crisis when banks stopped giving out loans so easily.

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

The kinds of sanctions that have been imposed in practice by the regulator are warnings, formal objections and penalty payments (typically in the range of between €20,000 and €50,000) in case of non-compliance with decision. These have been imposed on infringements relating mostly to programming quotas, exceeding the advertising time, and non-compliance with the protection of minors. Information on sanctions can be found in the regulator's web site (www.esr.gr). However, as explained below, the NCRTV sanctions can be selective, and it is seen as being more accommodating towards programs that support the government.

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

The regulatory agency NCRTV publishes all licensed radio and television outlets on its website (www.esr.gr) mentioning the company name, contact details, and the scope of the

outlet's territorial coverage (national, regional/local). NCRTV is also charged with keeping record and shareholder information of media and media-related enterprises including press agencies, advertising and media research companies (see Art. 10a Presidential decree 213/1995 and Art. 10 Law 3310/2005 as amended by Law 3414/2005). Art. 6 of Presidential decree 109/2010 (which incorporated the EU Audio Visual Media Services Directive as statute) also contains rules that cater for increased transparency in the audiovisual media sector by mandating audiovisual media service providers to make their company name, address and contact details publicly available through their website or teletext service.

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

While the above information is accessible to the public through the authority's website, there is no data on the degree to which people are actually aware of it or the percentage of the population actually accessing it.

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

In reality, NCRTV has not established itself as an authoritative body that effectively regulates the audiovisual media scene or protects media independence. For example, the law gives the Council powers to grant broadcasting licenses, but in practice it is the government of the day that takes the final decision. Likewise, its sanctions can be selective, and it is seen as being more accommodating towards programs that support the government. The politicized procedure for appointing members to the NCRTV Board has compromised its independence and capability: all seven members are elected by the Conference of Presidents, a cross-party parliamentary body, with a 4/5 majority upon nomination by the governing party, something which makes renewing the Council quite cumbersome. The difficulty in meeting the 4/5 requirement has led to the automatic extension of the terms of the current council members, who have exceeded the legal duration of their term (four plus four years) by means of successive decisions of the responsible minister, though their mandate has expired. This has raised serious concerns about the legality of the Council's decisions and independence. At the same time, the members themselves are not inclined to resign on points of principle under austerity conditions.

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

Information is unavailable. To the best of the author's knowledge the regulator does not issue interpretive guidance on the application of rules contained in the AVMS Directive.

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

The NCRTV is not obliged to consult industry stakeholders and the general public. To the best of the author's knowledge there have been no institutionalized consultations. Meanwhile, there are no signs that the regulator seeks the views of the industry and the public.

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

The newly-elected left-wing SYRIZA party has pledged to enhance media transparency and the regulator's independence. This remains to be seen.

Croatia

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

Tables 1-5: Comments on general information

The number of channels available increased in relation to the previous study, as a consequence of full digital switchover. The specific numbers are available in the table.

Three changes were adopted to the main law governing the sector, the Law on electronic media.

The first change in the 2011 (NN 84/11) related to issues of restrictions of ownership and cross-ownership concentration.

The second change, in 2013 (94/13) concerned the AVMS and its transposal in law, as well as an increased attention to non-profit audiovisual media and media services, in terms of their legal boundaries and possibilities of program support thought the Pluralism fund. Of these, the third change rectified some technical/spelling mistakes in the published text of the second change.

The composition or authority of the regulatory body was not changed, and the 2009 provisions, described in the previous study, remain. (Changes in the implementation of these legal powers are noticeable, and reported in the relevant sections below). The number of technical/professional staff was doubled since the last report.

Tables 6-9: Comments on institutional framework

The institutional framework of the Council and Agency remained constant, as described above.

Tables 9-14: Comments on powers of regulatory bodies

The Council has enough powers to do its job, and uses them, although not always to the full extent. There was some public dissatisfaction of its leniency towards RTL TV in their transgressions (a couple of years ago, when their licence was to be temporarily suspended but then wasn't).

Tables 15-24: Comments on internal organization and staffing

The number of technical staff was doubled since the last study to 15, 11 of whom have university degrees. Three professional departments exist – for program monitoring, for finance, and for international cooperation. We have no information of the distribution of personnel in the departments; according to the information on the web page, the Agency has commissioned most of its research on program compliance, point to the probably under-resourced program monitoring and analysis department.

Tables 25-27: Comments on financial resources

Financial resources available are adequate, and could be put to better use in establishing a regular and systematic in-house programme monitoring and analysis, as well as in regulatory consultations.

Tables 28-35: Comments on checks and balances

The formal aspect of the oversight and accountability to the Parliament is functioning, the transparency of the activities of the Agency is improved with the publication on the web page, there is still not enough interaction of different stakeholders with the work of the Agency.

Tables 36-39: Comments on procedural legitimacy

The recent period saw an increase in the number and transparency of public consultations, workshops and round tables organized by the regulator in order to discuss its regulatory plans, legal requirements. This does not mean there is no room for improvement.

Tables 40-41: Comments on cooperation

The regulator is active in EPRA.

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

The predominant model is legal regulation, but the co regulatory model is being promoted by the regulator as a way to reach common aims without the necessity for hard regulation.

2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

As listed in the tables, the regulator is funded by a percentage of the audiovisual media revenues, and receives no money from the state budget. The numbers are included in the table, total budget decreased some 10% since the last study (a consequence of the economic crisis).

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

Yes, both are prohibited. Details are all in the tables.

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

As explained above, while the number of staff has increased, it is probably still inadequate to absorb the complexity of the regulatory task. We have no information about the expertise of the technical staff, apart from their education level.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

Both, spot checks, after complaints, and by own resources and by employing outside research agency.

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

A report on the AVMS compliance has not been published so far. In 2014 a consultation was held with the media to discuss how they will report on independent production and European works. The majority of the fines were about advertising transgressions.

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

Yes, on the web page, as part of the Parliamentary documentation (also on the web page), and in the annual report (includes both financial and work report on decisions and activities).

The regulator is not well covered, and the public is not well informed about its work. The responsibility is both on the regulator and on the media. The regulator is rather withdrawn in its probable attempt to avoid political influence, but in this misses the point of the role of the regulator, to be part of the policy debate, if not always its centre.

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

Yes, protection of children is highlighted, as is media literacy. Promotion of European works was also a topic of consultations with the audiovisual producers & media.

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

In relation to independent production and European works.

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

Yes, as explained in the tables. The consultations have increased on different issues, including protection of minors, support to non-profit media, rules of procedure for application for the non-profit support, etc. The responses are summarized on the web site.

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

While increasing in activity since the last report, the regulator is still divorced from the media policy process, by its own choice of aloof position, perhaps trying to secure its independence from politics. The regulator has not ventured into any future policy or media system vision or related consultation, even though it publishes its annual plans etc. This can perhaps be linked to their lack of media policy expertise in terms of theoretical and comparative understanding, as a consequence remaining in the everyday of the legal framework, including the AVMS.

Hungary

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

Tables 1-5: Comments on general information

Tables 6-9: Comments on institutional framework

The four members of the Media Council are nominated by an ad hoc parliamentary committee[1],which is composed of members with a voting power commensurable with the number of members in the respective parliamentary faction that elected them in turn. In the first round, members are nominated to the Media Council by a unanimous vote of the nominations committee. If a unanimous decision is unavailable, candidates are nominated by a two –third majority of the weighted votes in the second round.

This goes to show that, whenever the ruling parties hold a two-third majority in Parliament – which is the case as we speak –, the nomination and election of members to the Media Council can be accomplished without any contribution by the political opposition or any other social group. A two-third majority in Parliament is obviously an exception to the general rule, but it is an exception that happened to obtain at the time these provisions were adopted. This circumstance must not be disregarded in assessing the new regulation, if only because the Media Act was passed by the same parliamentary majority that became the beneficiary of its application.[2] In the specific case at hand, there was very little chance that the five parliamentary parties would be able to agree on four nominations by a unanimous vote. As expected, the ruling party went on to exclusively support its own nominees in the second round, who were then duly voted into office by the same two-third majority. Another example of abusing the two-third majority is the provision that, whenever Parliament fails to elect a new president to the helm of the Media Council, automatically extends the mandate of the incumbent president until such time as a new president is elected.[3]

Yet even if Parliament succeeded in agreeing on nominees by a unanimous vote, the fact should be borne in mind that the Media Council always remains free to make its own discretionary decisions by a simple majority.[4] For all intents and purposes, no nomination procedure is conceivable today without the ruling parties nominating at least two out of the four members. Along with the president of the Media Council, who is nominated by the Prime Minister, ruling-party delegates are guaranteed to hold a majority. This represents a major

[1] Mttv. Section 124.

[2] The European Council has more than once pointed out that the stipulation of the two-third majority vote in itself is insufficient to ensure that the freedom of the media will be upheld, either in the enactment of media laws or in the process of electing members to the relevant bodies. Instead, the European Council recommends that Hungary develop solutions that presuppose a genuine cooperation and consensus between the ruling parties and the opposition.

[3] Mttv. Section 216 (8)

[4] Mttv. Section 144 (4)

setback compared to the former regulations which ensured the right of each parliamentary faction to independently nominate a member, while the votes by the members of the authority were always distributed evenly among ruling-party and opposition nominees, regardless of the number of the members. The president of the predecessor authority would be nominated jointly by the Prime Minister and the President of the Republic, which arrangement alone meant a more solid protection of autonomy, not to mention the fact that the president did not use to have a voting right in the most important matters pertaining to market entry.

Another reason why the nomination of the president of the Media Council by the Prime Minister is cause for concern has to do with the rather broad scope of powers with which the president is vested. Being single-handedly in charge of appointing and relieving of duty, without explanation, the organization of the Media Council and the executive director of the Media Support and Asset Management Fund (MTVA), the president holds direct sway over the entire process of preparing for decisions. In effect, the actual decision after that comes down to a choice among alternatives presented by the organization.[5]

Equally problematic from the point of view of media freedom is the nine-year term for which members of the media supervisory agencies are appointed. The constitutional mission of these agencies is to represent social diversity in their decisions pertaining to the media. Social diversity, however, is not a static fact but a dynamic attribute in constant flux. The excessively long term of appointment increases the risk of perpetuating in media-related decisions a momentary stratification of society that will not reflect actual conditions of diversity in the more distant future.

The president of the NMHH is the president of the Media Council at once. According to the original rules of the media act, the NMHH's president, who was appointed by the Prime Minister, became automatically nominated for the office of chairperson of the Media Council at the time of appointment.[6] In 2013 the parliament modified the rules of the election. The objective of the amendment was to enshrine into law the terms of the agreement between the Council of Europe and the Hungarian government. Said agreement aimed to bring some critical aspects of the Hungarian media laws in line with the expectations put forth by the Council of Europe. According to the amendment the president of the NMHH is appointed by the State President, the Prime Minister maintains the right of nomination. A crucial element of the agreement and the resulting the amendment was the adoption of more rigorous professional selection criteria vis-à-vis potential candidates for the NMHH presidency (see below).

Tables 9-14: Comments on powers of regulatory bodies

The most significant turn in the history of Hungarian media regulation was when the new media laws extended the supervisory and sanctioning scope of the media authority relating to the printed and online press. All these, including the uncertainty of the media law situation, the prospects of severe sanctions and a broad legal scope of the authority and last but not least the newly organised media authority can pose a serious threat against the freedom of information through the media. Since the adoption of the law the rules concerned have been

[5] Mttv. Section 115

[6] Mttv, para 125 (1). Because the two posts are indeed filled by one and the same person, for the sake of simplicity hereafter we will refer to both as 'president', whether the president of the media authority or the chairperson of the Media Council is meant.

modified according to the expectations of the European Commission and the Constitutional Court. It might be relating to the rapt international attention paid to the regulation but the practice of the media authority has proved to be moderate although in many cases inconsistent. On the other hand, it is important to mention that the laws passed in 2010 have not considerably changed relating to their concept and the regulatory pressure exerted on editorial offices.

Relating to the subject of the press product the law defines neither the concept of periodicals nor that of online papers or news portals and in spite of the modifications having been carried out since the adoption of the law it does not clarify the extent of the scope of media regulation.[7] This does not fulfil the requirements of the clarity of norms and at the same time it is suitable for placing restrictions too extensively and on a larger range of information than it is constitutionally reasonable.

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

The **National Media and Infocommunications Authority** (Nemzeti Média és Hírközlési Hatóság, NMHH) is a convergent authority, which handles as regulator of the telecommunications and media markets within a single body. Its competences comprise all regulatory issues regarding the telecommunication and the media field, both infrastructure and content. Media Council is part of the NMHH, it has a distinct scope of authority to render decisions and also has a partly distinct apparatus at its disposal. The president of the NMHH is the president of the Media Council at once. The NMHH's president became automatically nominated for the office of chairperson of the Media Council at the time of appointment. The president is authorised to decide alone in telecommunications issues, and he/she is the leader of the Media Council. Being in charge of appointing and relieving of duty the organization of the Media Council and the executive director of the Media Support and Asset Management Fund (MTVA), the president dominates the entire process of preparing for decisions and influences directly the function of the public service broadcasting. Media Council decides as a body, with one vote of all members. Within the NMHH, its Office is also entitled to make decisions in certain telecommunications and media issues.

[7] Mttv. Section 203 Nr. 60

There are several **self-regulatory bodies** in Hungary that comprise media service providers. Representative of journalists are the Association of Hungarian Journalists (Magyar Újságírók Szövetsége) the Community of Hungarian Journalists and the Association of Hungarian Catholic Journalists. They have a common ethical codex, but they do not represent all of the Hungarian journalists. Representative of the media undertakings in specific media fields are Hungarian Publisher's Association (Magyar Lapkiadók Egyesülete), the Association of Hungarian Content Providers (Magyar Tartalomszolgáltatók Egyesülete), the Association of Hungarian Electronic Broadcasters (Magyar Elektronikus Médiaszolgáltatók Egyesülete) and the Advertising Self Regulatory Board (Önszabályozó Reklámtesület); they have regulatory issues within the co-regulation system (see below). A special self-regulatory organisation is the *Forum of Editors-in-Chiefs* (Főszerkesztők Fóruma), composed of editor-in-chiefs of leading media outlets of all media types, which also boasts its own ethics codex. In spite of the diversity of self-regulatory bodies there are no common ethical norms and practices, the influence of the self-regulation on the journalistic activity is weak.

The media law has established a specific **co-regulation system** as an alternative to official control. This way, the legislator and the regulatory body could moderate the constitutional and international law risks of the strong regulation of all media contents, but in the same time they could ensure the execution of the criticized laws. There was no public debate on the necessity and the form of co-regulation, alike other parts of the media laws from 2010. Excepting television and radio media services, the law made it possible for the operators of the media market to implement the regulations concerning media content within the framework of self-regulatory bodies with an exclusive legal power. According to the law the Media Council shall have the authority to conclude an administrative agreement with the se-regulatory bodies. Based on the agreement the self-regulatory body performs specific tasks related to the scope of official authority, media administration and media policy. The official scope of the self-regulatory bodies extend to the assessment of complaints concerning the activities of the service providers, the settlement of debates between media enterprises and the supervision of the operation of the service providers. The procedure on the part of the self-regulatory body has priority over the administrative procedure of the Media Council. The law emphasises that the self-regulatory body does not have administrative authority.

Since the summer 2011 four organizations have been part of the established co-regulation system such as the Hungarian Publisher's Association, the Association of Hungarian Content Providers, the Association of Hungarian Electronic Broadcasters and the Advertising Self Regulatory Board.

Part of the administrative agreement is a professional code of conduct devised by the self-regulatory body the adoption of which is requires the approval of the Media Council. It would have been the most significant result of the co-regulation system if the codes had elaborated on legal facts in a more detailed and clear way making them easier to interpret during the course of editorial work. In essence, media law views and facts have been adopted by the codes without modification and with some minor supplements. Thus the law has an ambiguous content; its directly restrictive provisions for the freedom of expression are being interpreted by lay dispute settlement forums. Real self-regulation is not realised in the system it can much more be interpreted as the outsourcing of official administrative tasks.

Issues concerning the regulation of procedures including imposable sanctions and their execution are entrusted on the self-regulatory bodies by the law without defining the

guarantee framework. This is worrying because in practice the codes regard the rights of the complainant according to the law; in fact they even restrict those who were excluded from the establishment and the implementation of the codes. The complainant is obliged to contact the media service provider within a specified period of time and confer with them. After an unsuccessful attempt at conferring with the service provider a written petition must be submitted paying attention to strict content conditions and paying the fee of the procedure; this the law itself does not imply. The most significant advantage of co-regulation for the providers is the absence of fees within its framework. The most substantial fee that can be imposed according to the codes is exclusion from the co-regulation system for a specific period of time. Further sanctions serve to ascertain, stop and publicise norm violation and to provide moral reparation. On the other hand the codes do not include provisions for the implementation of decisions made within the framework of the co-regulation system at all.

According to the law the Media Council is obliged to review all the decisions of the self-regulatory body. The authority also acts as a forum for legal remedies: if any of the parties requests the revision of the decision, the Media Council is obliged to review such decision within thirty days. If the Media Council finds that the decision of the self-regulatory body does not comply with the administrative agreement concluded with the self-regulatory body in particular the provisions of the Code of Conduct, or it violates the provisions of the relevant legislation or if the self-regulatory body is unable to enforce its decision, the Media Council establishes a procedure concerning the subject of the petition. This opens up the possibility for a judicial review as well. On the other hand, because of the ambiguous content of media law facts and the possibility of their wide range of interpretation the Media Council has a rather wide scope of revisionary authority. Furthermore, the Media Council has the authority to oversee all activities performed by the self-regulatory body under the administrative agreement, to supervise procedures and decisions extensively and as a last resort, terminate the administrative agreement.

The co-regulation system established in the media law is not in line with certain important European expectations regarding co-regulation systems. One of the most significant concern relating to the independence from financing is that the Media Council – not in accordance with the principles and aspects established and considered in the media law, on the other hand, publishing it in the administrative agreement – provided the co-regulatory bodies with financial support. Independence from market operators is threatened by the fact that experts acting in the course of complaints procedures are exclusively delegated by the enterprises concerned and in the majority of the cases they have a permanent legal relationship with the particular establishment. Although this does not endanger the impartiality of the particular procedures since there are appropriate rules for the avoidance of conflicts of interests concerning the acting committees but it is clearly dominated by the views and interests of the service providers.

2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

According to the law[8], **NMHH** covers its expenses related its functions from its own revenues and budgetary contributions. The NMHH's consolidated budget shall be approved by Parliament in a separate act. The **own revenues** of the NMHH comprise a percentage of the frequency fees, the fees charged for the reservation and use of identifiers and for official proceedings, and the supervision fees. Providers of electronic communications services and postal services have to pay supervision fees. The amount of these incomes depends on the current activity of the authority, for example in connection with frequency tendering. The president is entitled to restructure the resources between the approved allotment accounts of the integrated budget. In 2014[9], the NMHH's **budgetary contributions** was 2.2 billion forints (7 million euros), the own revenues are 30 billion forints (96 million euros).

The **Media Council** enjoys financial independence. Parliament approves the Media Council's budget as part of the NMHH's integrated budge. The Media Council shall be entitled to restructure the resources between the approved allotment accounts. The Media Council's support in 2014 is 174 million forints (560.000 euros). This amount does not contain the budget of the apparatus, which is part of the NMHH's budget.

In 2010, the last year of the functioning of previous media authority, the amount of the media authority's state funding was 1.6 billion HUF.[10] The comparison is impossible because of the completely new organisational frameworks. But it could be stated that there were no cut-backs since 2010.

A specific part of the financing of the authority is the **Media Service Support and Asset Management Fund** (Médiaszolgáltatás-támogató és Vagyonkezelő Alap, MTVA). According to the law, MTVA is a trust and monetary fund appropriated to provide support for the structural transformation of public media services, the Public Service Foundation, community media services and the public media service provider, the production and production support of public service programs, supporting cinematographic works primarily intended for showing in cinemas as well as contemporary musical works. The whole system of public service media is financed through the MTVA. It is managed by the Media Council. All employer's rights over its executive director, including appointment, determining the amount of his salary and benefits, as well as dismissal are exercised by the Media Council's president. THE MTVA's support and subsidy policy, business plan and annual accounts are approved by the Media Council. The so called public service contributions are paid for MTVA by the state[11], but this amount serves the financing of the public service media. So MTVA is part of the budget of NMHH, but the biggest part of MTVA's budget provides the

[8] Mttv. Sections 134-137

[9] Act CLXXXI from 2013. The sum was the same in 2012 and 2013.

[10] Act CXLII from 2011

[11] In Hungary there is no licence fee paid directly by the audience. The state pays the public service contributions to replace the licence fee.

financing of public service media (65 billion HUF), without any consideration of the authority. The other part of the budget of MTVA (2,7 billion HUF in 2015), support for program production, is provided for by way of public tender procedures, where Media Council is the decision maker.

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

The Media Act provides both positive and negative commitments to the members of Media Council. They must have the right to stand as a candidate in parliamentary elections, must have no prior criminal record, must not be restrained by court order from exercising the profession required for holding an executive office.

According to the **conflict of interest rules**[12], the following may not by appointed to the office of president and member of Media Council:

a) the president of the Republic, the prime minister, members of the government, state secretaries, state secretaries for public administration and deputy state secretaries, mayors of communities and metropolitan areas and their deputies, chairmen of the county general assemblies and their deputies, member of parliament, spokesman for the nationality, and members of the European Parliament;

b) the chairperson of the Board of Trustees of the *Közszolgálati Közalapítvány* (Public Service Foundation) and the chairperson and members of the Public Service Board, the executive director and deputy director of the Fund, the President, Vice President and members of the *Nemzeti Hírközlési és Informatikai Tanács* (National Council for Communications and Information Technology), the executive director of the public service media service provider, the chairperson and members of the supervisory board thereof, members of the Media Council, with the exception of the Authority's President, and persons in the employment of any of the aforesaid organizations;

c) local or county-level municipal representatives, government officials, officials of the national or territorial units of political parties, and persons engaged in any form of employment with political parties;

d) senior officials, management board members, supervisory board members of communications and media service providers, broadcasters, advertising agencies, press publishing and newspaper distribution companies;

e) persons engaged in any form of employment or other work arrangement with a communications or media service provider, broadcaster, program distributor, advertising agency, press publishing and newspaper distribution company;

[12] Mttv. Sections 118 and 127

f) persons with a direct or indirect ownership interest in a communications company, media service provider, broadcaster, program distributor, press publishing company, advertising agency or newspaper distribution company;

g) any person holding a direct or indirect ownership interest in a business association - in the case of public limited companies, holding a share of over five per cent -, as well as any person engaged under contract for some form of employment with such companies, where such company is engaged with the bodies referred to in Paragraph d) under agency or service contract;

h) the close relatives of persons covered by points a)-b and d).

Points a) and c) appoint the political and governmental incompatibles, point b) appoints the incompatibility between the positions in the organisation of public service media and the media authority, the other points are the economical incompatibility rules.

According to the professional requirements[13], candidates for the office of chairperson and members of the Media Council must have a university or college degree, and:

a) at least five years of previous experience in the supervisory control of media services or press products, or in the supervisory control of the communications sector; or

b) specializing in media or communications, an academic degree recognized in Hungary, or at least ten years of experience in teaching in an institution of higher education.

The previous experience requirement can be considered satisfied by the following:

a) regulatory activities at the office or the NMHH in the field of communications in a management position or as an administrative officer;

b) participating in redress procedures relating to the decisions of the former telecommunications authority (Nemzeti Hírközlési Hatóság) in the capacity of a judge, public prosecutor or legal counsel;

c) work performed at the former media authority (Országos Rádió és Televízió Testület) or its bodies, or at the Media Council relating to the supervision of media services in a management position or as an administrative officer;

d) participating in redress procedures relating to the decisions of the former media authority or its bodies in the capacity of a judge, public prosecutor or legal counsel;

e) membership in the board of trustees of the Magyar Rádió Public Foundation, the Magyar Televízió Public Foundation or in the Hungária Televízió Public Foundation under Act I of 1996 on Radio and Television Broadcasting (former media law), or in the Board of Trustees of the current public service media.

In 2013 the parliament modified the rules of the election.[14] The objective of the amendment was to enshrine into law the terms of the agreement between the Council of Europe and the

[13] Mttv. Section 124

Hungarian government. A crucial element of the agreement and the resulting amendment was the adoption of more rigorous professional selection criteria vis-à-vis potential candidates for the NMHH presidency. The amendment, which had been drafted in consultation with the Council of Europe, formulated strict criteria regarding the Authority's president. But some months later, within the process of nominating a new president, the Parliament adopted the amendment[15] of the media law that overrode the previous agreement with the Council of Europe and softened the professional criteria applicable to the selection of the NMHH's president. For one, in the future any type of higher education degree will suffice to meet the legally specified criteria, and the amendment also extended the range of relevant experience in public oversight to include the positions of the current and previous media and infocommunications authority's leaders and professional staff, to related judicial and other legal activities, as well as to membership in current or previous media oversight boards. This has significantly expanded the range of potential candidates.

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

The office of the NMHH is an entities with independent power, performs independent administrative tasks. In addition to independent powers the Office shall provide the president, the vice-presidents, the Media Council, and members of the Media Council with professional assistance for the performance of their duties. Detailed rules exist neither for personal competencies nor technical resources of the office staff. The authority is a convergent one (see above). In the public is not available the separate staff information about personal, technical resources related to the media regulatory part of the activity.

The financial resources of the authority are ruled by an independent act annual, but the financing of the office staff is confused. The act contents a separate budget for the office staff of Media Council (2,2 billion HUF, 6,5 million EUR),[16] but because of the organization structure of the office doesn't exist this separate office staff. The whole office budget includes this separate budget, but there is no other information about sharing between different activities. Anyway the amount available is appropriate budget for the personnel and technical background to the whole regulatory and control activity of the authority.

The planned cost of the NMHH's office was 8 billion HUF (25,8 million EUR) in the budget of the NMHH.[17] The staff of the office belongs to the highest payment category of the public administration.[18] Because of the lack of the transparency, it is not to evaluate whether it is adequate and justified. The budget of NMHH contains a huge reserve in an amount of 10,7 billion HUF (34,5 million HUF) without any exact aim. The authority seems to be over-

[14] Act XXXIII. of 2013

[15] Act CXXXI of 2013

[16] Act CXXXI of 2013

[17] Act CLXXXI of 2013

[18] Act CXCIX of 2011 Section 234

financed. In the case of the NMHH and the Media Council, this over-financing is the way of providing loyalty to the government.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

The regulator conducts monitoring of the services itself and initiates control process according to the complaints by the public. The Media Council operates a program monitoring and analysing service via the office.[19] The Media Council publishes in advance the annual market control plan, which contents topics and types of services covered by systematic monitoring activities. The monitoring process could be started by the Media Council outside the published surveillance plan. In recent years wasn't typify the indiscriminate monitoring techniques in the monitoring activity of the regulator.

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

Sanctions that can be used against products of the press and the prospective fines are still factors capable of making the operation of the certain press product impossible. The most serious sanction against dailies and online press products is a fine in the amount of 25 million forints. Audiovisual service providers can be punished by the withdrawal of its licence; the highest amount of the fine against these providers is 200 million forints in the case of a broadcaster with significant powers of influence, and 50 million forints in other cases.[20] The detailed rules – differentiated by the type of media – are the following:

The Media Council and its office may impose the following legal sanctions:

a) exclude the infringer from participating in the tender procedures published by the Fund for a fixed period of time;

b) impose a fine on the infringer subject to the following limits:

- in case of infringement by an so called linear audiovisual media service providers with significant powers[21] media service providers or a media service

[19] Mttv. Section 132 d)

[20] Mttv. Sections 185-187.

[21] SPI media service provider mean any linear audiovisual media service provider and linear radio media service provider with an average annual audience share of at least fifteen percent, provided that the average annual audience share of at least one media service they provide reaches three percent (Mttv. Section 69).

provider to whom the regulations on the limitation of media market concentration apply, the fine is of an amount up to 200 million forints,

- in case of infringement by another media service providers, the fine is of an amount up to 50 million forints,
- in case of a newspaper of nation-wide distribution, the fine is of an amount up to 25 million forints,

  in case of a weekly periodical of nation-wide distribution, the fine is of an amount up to 10 million forints,
- in case of other newspaper or weekly newspaper or periodical, the fine is of an amount up to 5 million forints,
- in case of an online press product, the fine is of an amount up to 25 million forints,
- in case of a broadcaster, the fine is an amount up to 5 million forints,
- in case of an intermediary service provider, the fine shall be of an amount up to 3 million forints;

c) the infringer may be ordered to publish a notice or the resolution on the home page of its website, in a press product or in a designated program in the manner and for the period of time specified in the resolution;

d) suspend the exercise of the right to provide media services for a specific period of time, where:

- the period of suspension may last from fifteen minutes up to twenty-four hours,
- the period of suspension in case of grave infringement may last from one hour up to forty-eight hours,
- the period of suspension in case of repeated and grave infringement may last from three hours up to one week;

e) remove the media service from the register, in which the infringement was committed, and may terminate the public contract concluded for the right to provide media services with immediate effect on repeated grave infringement by the infringer. The media service stricken from the register may not be made accessible for the public once it was deleted.

Where the infringement is considered insignificant and no re-occurrence is established, the Media Council and/or its office establish the infringement and issue a warning, andmay order the infringer to discontinue the unlawful conduct within a time limit of up to thirty days, to refrain from any further infringement in the future and act in a law-abiding manner, and may also set the conditions thereof.

In case of repeat offenders, the Media Council and its office have powers to impose a fine upon the executive officer of the infringing entity in an amount up to 2 million forints.

The severity of the sanction is of course influenced by other conditions of the sanctioning. Relating to this issue, the law includes some weak guarantees, such as the principle of gradualism and proportion,[22] but the detailed rules are, in several points, unfinished and unrefined. In the meantime the Media Council introduced a practice according to which it strictly applies the principle of gradualism and it imposes the mildest sanction against every media service provider the first time they infringe regulations regardless of other infringements committed under the previous law. The Council largely ignores other aspects of sanctioning especially the seriousness of the infringement.

The Media Council's sanctions practice was initially characterised by warnings and minor fines, apart from a few instances when more substantial financial penalties were imposed - in response to violations of child protection rules.[23] The reason for the mild punishments were basically the principle of gradualness, which was treated as a priority when applying sanctions, and the restrictive interpretation of the concept of a media outlet engaging in "repeated infringements" of the law. It emerged clearly from the Media Council's sanctions policy that starting in the summer of 2011 it opened a new chapter also in the context of media providers that have been operating in the Hungarian market for a long-time now, and had consequently likely received prior penalties. In assessing whether an infringement had occurred repeatedly, the Authority only referred to violations of the new law, even in cases when the rule in question had essentially remain unchanged as compared to the previously effective regulations. In determining its sanctions, the Media Council did not consider the penalties assessed by the previous media authority, that is the providers set out with a clean slate. By consistently following the principle of gradualness, the Authority has arrived at a point where fines - ranging in the amount of a few ten thousand forints all the way to 20 million - tend to predominate among the sanctions levied by the Authority. By the end of the period under investigation, two-thirds of the sanctions levied were fines. The Authority did not incorporate the new sanction instruments laid down in the media law into its practice, and it did not exercise its power of suspending providers' media service privileges.

According to the Media Council's last report submitted to the parliament[24], in the year 2013 there were 378 decisions in connection with the supervisory activity. It applied 215 sanctions in 158 resolutions. 68 decisions concerned the rules on protection of minors, 61 decisions concerned the rules on advertising, teleshopping, sponsoring and product placement. Mertek Media Monitor as a civil watchdog organisation also makes statistic on the decisions.[25] In the first 9 months of 2014 there were 10 resolutions in that the Media Council applied sanctions in connection to the rules on minority protection, and 15 decisions sanctioning the breach of

[22] Mttv. Section 185 (2) and 187 (2)

Repeated infringement means when the infringer committed the unlawful conduct as established in the definitive official resolution on the same legal basis and in breach of the same provisions of legislation, in the same subject, repeatedly within 365 days, not including insignificant offenses (Mttv. Section 187 (4))

[23] Krisztina NAGY / Zsófia LEHÓCZKI, A médiatartalomra vonatkozó előírások a Médiatanács gyakorlatában 2011-2013. In: Gábor POLYÁK / Erik USZKIEWICZ (eds.) Foglyul ejtett média. Médiapolitikai írások, Budapest 2014 105-148.

[24] http://nmhh.hu/dokumentum/163351/NMHH_mediatanacs_beszamolo_2013.pdf

[25] The analysis is not published yet.

advertising, teleshopping, sponsoring and product placement rules. In this period there was altogether 54 results applying sanctions.

The fines flow to the budget of the NMHH. According to the law,[26] the NMHH is entitled to appropriate all the fines collected in the previous year to fostering scientific and educational programs relating to communications and media regulations and to competition and consumer protection policies, to the training of experts in the fields of communications and media regulations and consumer protection policy, the enhancement of consumer awareness relating to communications and media policy, and to improving consumer information so as to enable consumers to make decisions and for the protection of such right,. The unused portion of the sum that remains from the amount allocated for the year may be carried over to the next year and may be used for the enhancement of consumer awareness.

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

According to the act the Media Council prepare an **annual report** for the Parliament on the operation of the Media Council and the office.[27] In the act are detailed only the obligatory elements of the Media Council annual report. In this report shall evaluate: a) the state of the freedom of speech, expression and the press, as well as balanced information provision; b) changes in the ownership status of media service providers and media service distributors; c) the status of spectrum management serving to satisfy needs for media services; d) the economic situation and changes in the financial conditions of media services. The report is published both in printed format and on the websites of the Authority[28] and the Ministry overseen by the Minister responsible for audiovisual policy.

The president of the Media Council has to submit also an other **report to the Parliament** to give account of the activities of the Authority during the previous year.[29] In this report the President shall: a) evaluate the functioning and development of the electronic communications market; b) evaluate the decisions adopted in protection of the interests of providers and users of electronic communications services, as well as measures taken in the electronic communications sector to promote the development and maintenance of fair and effective competition; c) provide information on the supervision of compliance by entities and individuals engaged in electronic communications with applicable legislation; and d) evaluate the consequences of its management of state-owned limited resources. The report is published both in printed format and on the websites of the Authority[30] and of the Ministry overseen by the Minister responsible for electronic communications.

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[26] Mttv. Section 134 (9)

[27] Mttv. Section 133

[28] http://mediatanacs.hu/tart/index/993/Orszaggyulesi_beszamolok

[29] Mttv. Section 119

[30] http://nmhh.hu/tart/index/1417/Orszaggyulesi_beszamolok

The regulator is obliged to make its decisions available to the public. Most of the decisions of the Media Council are available on the website of the regulatory, but it occurs that only the subject of the decision is published the details and the explanation are missing. Over the past years there has been a gradual decline particularly in the transparency of the tender practices. The public availability of the decisions on tender outcomes did not conform to a standardized policy. In some cases, detailed decisions including explanation were not published on the regulator's website. It occurs, that the Media Council does not respond to requests for public information submitted by press or NGOs. Due to failure to fulfill the demand of data the information can be obtained only through the court process.

Institute for Media Studies of the Media Council publishes regularly on own website the most important decision of the Media Council, and related court decisions.

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

The activity of the regulator relatively rear covered by the media. Most of the time the regulator appears in the context of its controversial decisions or of the initiated process against media service content that leads great public debate. In addition to own website appears the presentation of the activity of the regulator rarely in the public

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

The Media Council defines its rules of procedure itself.[31] Its president falls to the necessary preliminary arrangements for Media Council meetings, to arrange agenda of the board meetings.[32]

The Media Council prepares yearly an annual market control plan. The aim of the market control activities is to ensure the smooth, successful and diverse operation of the media market, to protect the interests of those engaged in broadcasting and in media services, publishers of press products, viewers, listeners, readers, subscribers and users as well as to preserve the diversity of the national culture and opinions, to promote fair and effective market competition, to learn about market trends and the comprehensive assessment, analysis and official supervision of media policy considerations.[33] The current market control plan contains – as relevant topics from the point of view of AVMS – the permanent supervision of the rule on minority protection as well as the monitoring of the activity of Hungarian-speaking broadcaster settled in other member states.[34]

[31] Mttv. Section 131

[32] Mttv. Section 111

[33] Mttv. Section 168

[34] The market control plan of 2015 see: http://mediatanacs.hu/dokumentum/165205/2015_pfterv.pdf

An important instrument of policy making could be the concept of frequency management relating to media services.[35] This concept could set the long-term framework of the frequency tenders on the radio market. But this concept does not exist, as it turned out from the answer of the Media Council to a public data request. The Council in its answer, that this concept "becomes embodied in the praxis of the frequency tenders".[36]

According to the law[37], the Media Council should take part in the legislation processes as a consultant: it provides its opinion on bills on frequency management and communications. Actually, the Council is not involved in these decision makings. The government has not asked for its opinion regarding the advertisement tax[38] law and other laws in the last years. The Media Council could present its opinion and make recommendations in media policy issues independent from the current legislative processes, but there is no relevant documents published on its website. In the frame of the regulator there is a Media Institute that designated to assist the Media Council in operations, and to pursue scientific activities. However, the researches of the Media Institute do not connect to current media policy issues.[39]

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

According to the law[40], the Media Council

- draws up recommendations for the classification of media content for the protection of minors[41],
- draws up recommendations on requirements for the effective technical solution to enable access to media content for viewers or listeners over eighteen years of age only[42],
- may publish its recommendations on ensuring compliance of product placement[43].

The legal character of the "recommendation" is not clear; the Hungarian law system does not contain this source of law. The Media Council itself qualified these documents as "soft law",

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[35] Mttv. Section 183 (1) i)

[36] Mertek Media Monitor: A megtestesült koncepció, http://mertek.hvg.hu/2015/01/23/a-megtestesult-koncepcio/

[37] Mttv. Section 183

[38] "It is noz our business" said one of the members of the Council in an interview. https://www.mediapiac.com/mediapiac/Koltay-Andras-Demonokkal-nehez-viaskodni/19734/

[39] http://mtmi.hu/

[40] Mttv. Sections 9-11, 31 and 183

[41] http://mediatanacs.hu/tart/index/824/Klasszifikacios_ajanlas

[42] http://mediatanacs.hu/tart/index/825/Hatekony_muszaki_megoldasok

[43] Mttv. Section 31

http://mediatanacs.hu/tart/index/826/Termekmegjelenites

which is applied in the case law of the Council.[44] Courts approve this practice in appeal procedures.

The recommendation for the classification of media content for the protection of minors contains the fundamental aspects of judicial principles relating to the ratings of programs, the signs to be used prior to and in the course of broadcasting the various programs and the method of communicating the rating. The recommendations on requirements for the effective technical solution contain detailed technical expectations to all types of content providers and signal transfer operators. The recommendations on ensuring compliance of product placement help the interpretation of the relevant rules.

Further, the Media Council may define the conditions of exemption from the program quota obligations, in individual contracts with the service providers.[45]

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

The media law prescribes public consultation in the following cases:

- in connection to the drawing of recommendations (see above),
- before compiling the list of designated events considered to be of major importance for society,[46]
- on the draft tender notice in the procedure of frequency tenders.[47]

The consultation on draft tender notices is regulated detailed by the law. The Media Council draws up and publishes a draft tender notice on tender conditions. Between the twentieth and thirtieth day following the publication of the draft tender notice the Council hold a public hearing. In connection with the draft tender notice anyone may make a comment during the hearing verbally or in writing, or within five days therefrom, and anyone may submit a comment or address a question to the office in writing. The minutes of the hearing are available at the office, but they are not published on the Council's website. The Media Council adopts a decision on the finalization of the draft tender notice taking into consideration the comments received and recommendations made at the public hearing where possible. There are no public results on the hearings, and the finalized frequency tenders do not contain any reference on the comments and recommendations made at the hearing, and on the reason of acceptance or disregard of them.

[44] See in the Recommendation on effective technical solution.

[45] Mttv. Section 22

[46] Mttv. Section 16

[47] Mttv. Section 50

In addition to the concrete cases of consultation, the law entitles the Media Council to hold a public hearing in every cases when it deems necessary and justified to perform its duties, to consult on issues of media regulations and the measures to enforce thereof, or to obtaining the experts' positions and opinions on laying down the groundwork for the proper application of media regulations.[48] The Media Council shall draw up and publish a summary report or minutes on the public hearing containing the comments and views presented during the hearing, except for the data that is classified as business secrets of the person presenting the opinion or recommendation. There is no public trace of applying this rule of general public hearing.

Further, Media Council can open a dialogue with the parties concerned in cases falling within its jurisdiction. To this end, the Council publishes the draft of its decision at least 15 days in advance, as well as the preparatory documents necessary for the consultations related to the decision on hand, with the exception of restricted data.[49] Within 8 days from the date of publication of the draft decision, any person may present his views, opinion or comment concerning the proposed decision in writing to the Media Council. The Media Council is not bound by the comments so received; they can be accepted for information purposes only, with no obligation on the part of the Media Council to take them into account in the decision-making process. In this case the law explicit states that Media Council is not obliged to justify the necessity to hold consultations or when consultations are held to justify the reasons for taking comments into account or for ignoring them.

The regulatory framework for the communication with the stakeholders is available but the Media Council seems not to use these possibilities actively. The impact of the hearings on draft frequency tenders is not evaluate because of the lack of public information.

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

There is a paradox that we have observed: Though the new Hungarian "super authority" was considered as formally compliant with European requirements,[50] it manifests serious anomalies in its operations. This paradox demonstrates that indicators used hitherto are insufficient for measuring independence. The interpretation of the legal conditions which regulate the authority's operations, as well as of applicable electoral, organisational, financial and procedural rules are significantly influenced by the prevailing national constitutional and political culture. Though, many analysts[51] have argued that the Hungarian media authority did not comply with the criteria for either formal or actual independence, yet the Council of

[48] Mttv. Section 157

[49] Mttv. Section 159

[50] See the agreement between the Council of Europe and the Hungarian government in Jan 2013.

[51] Of the international critiques of the media law, see especially Eve SALOMON / Joan BARATA, Expertise by Council of Europe. Experts on Hungarian Media Legislation: Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules on Media Content and Act CLXXXV of 2010 on Media Services and Mass Media (2012).

Europe has failed to present any relevant proposals for strengthening the authority's independence.

The independence of regulatory authorities cannot be measured merely by assessing the operational conditions underlying their work. The objective of independence is to ensure that all players have an equal chance: different opinions have equal chances of reaching an audience if every market player can hope for and attain equal treatment in terms of market access and potential sanctions. To measure whether equal treatment prevails, a good approach would be to complement the indicators measuring independence with conclusions derived from an evidence-based review of the authority's performance. A proper assessment of the authority's work calls for investigating transparency and reviewing how it conducts market entry proceedings and levies sanctions.

In the case of the Hungarian media authority, it is fact that all members and the president of the Media Council are nominated and elected solely by the bigger governing party. Despite of the formal guarantees in the law, the evidences derived from the analysis of the Media Council's activity clearly indicate that Media Council is biased in the frequency tenders and, in order to conceal it, it fails to fulfil the transparency expectations.

The results of the analysis[52] on the frequency tenders are followings:

The fundamental transformation of the radio market

An examination of the media authority's work over the past three years shows unequivocally that as a result of the authority's tender practices, the previous market structure was substantially transformed. The fact that the introduction of new media regulations mostly coincided with the period when the renewal of tenders affecting large segments of the radio market were issued also played a crucial role in the radical transformation of the radio market. The licenses of the radio stations that had entered the market at the end of the 90s expired between 2010 and 2012, which necessitated frequency management and media policy decisions regarding the reassignment of frequencies.

Before issuing the new tenders, the media authority failed to release a frequency management plan outlining the media policy guidelines governing its decisions, and thus neither market players nor the affected professional public or the wider general public had the chance to learn about the media policy objectives that the authority sought to follow in the process of issuing new tenders for frequencies already in use. Hence analysts could only glean information about the media authority's policy objectives by way of interpretation based on the tender notices, the tender results, and in certain cases the lack of a tender. The analyses of the past three years have shown unequivocally that the goal of the media authority is to completely restructure the radio market.

In issuing new tenders for expired licenses, the Media Council expressly failed to consider the existing market structure. All frequencies were issued as independent licenses, even if they

[52] Mertek Media Monitor analyses continuously the Media Council's activity. English summaries see: Mertek Media Monitor: Media Council redraws the radio market - Report on the frequency tendering by the Media Council, http://www.mertek.eu/en/reports/media-council-redraws-the-radio-market-report-on-the-frequency-tendering-by-the-media; Mertek Media Monitor: Gasping for Air - Soft Censorship in Hungarian Media 2014, http://www.mertek.eu/en/reports/gasping-for-air-soft-censorship-in-hungarian-media-2014

had previously operated as part of a larger radio network. In light of the tenders, it is obviously apparent that the tender methodology used has expanded the Media Council's already extensive latitude and has facilitated the comprehensive rearrangement of prevailing market structures.

The Media Council's frequency tender activities have constrained market competition, increased market concentration, and both the number and significance of local radio stations - which had previously played a crucial role in local public spheres - have diminished.

Monopoly in the national commercial radio market

New tenders for licenses to operate the two national commercial radio stations at the time had been issued by the previous media authority in 2009. Back then, the authority decided to give new market players a chance to enter the market and replace the existing operators of the stations that had used the frequencies in question. The results of the tender process at the time, which had been subject to direct party political influence, were intensely criticised, and the president of the authority resigned his position in protest, while the players who had been effectively crowded out of the market filed a suit in court. The unrealistic undertakings of the new players in their tender applications, coupled with the shifts in the political/business climate following the change in government in 2010, resulted in one of the two stations (Neo FM) going bankrupt in 2012, and the media authority revoked its license. Yet the authority did not issue a new tender for the license to operate a national commercial radio, but instead used the licenses to expand the coverage area of public radio stations. This decision marked the end of any competition in the market for national commercial radios, and since November 2012 Class FM has been the sole nationally broadcasting commercial radio station.

Previously major market players lose ground while preferred players receive support in their expansion

As a result of the transformations in the media market, stations that had previously operated successfully in the market disappeared either completely or partially. The biggest loser of the Media Council's tenders is Rádió 1, which moved from being a successful national network to becoming a local radio station. The radio that had previously operated the network went out of business. The operations of Juventus Rádió, a major Hungarian music radio, also narrowed considerably, and the owners sold the station in autumn 2013. As a result of the Media Council's actions, the talk radio Klubrádió, which is critical of the government, also lost its network (although not its license for Budapest).

In parallel with this process, new players began gaining in strength owing to the media authority's tender practices. Among the preferred players is Lánchíd Rádió, a station whose ownership structure is identical to Class FM, the national commercial station that is part of the rightwing media empire. Lánchíd Rádió saw its coverage area expand by thirteen frequencies. Four religious stations should also be mentioned: Magyar Katolikus Rádió (Hungarian Catholic Radio), Szent István Rádió, Európa Rádió, which is associated with the Reformed churches, and Mária Rádió, another Catholic station. As a result of tenders, Katolikus Rádió has sixteen new frequencies, Szent István Rádió has seven, while Mária Rádió won eight. Using these local frequencies - which they won as individual applicants - these stations will avail themselves of an opportunity specified in the call for tenders and either commit themselves to broadcasting centrally produced content or have already pledged to do so in

subsequent amendments of their agreements with the Media Council. Hence their broadcasts will not serve local public discourse but the dissemination of homogeneous centrally-produced shows.

Strong preference for religious programming

Religious stations won 30% of tenders that resulted in successful frequency assignments. One consequence of their success is that in several coverage areas there will be municipalities where only a religious radio station will be available - apart from national radios, that is. In many other instances there will be one additional, commercial, station available locally. The prevailing level of religious activity in Hungary, that is the public's level of engagement in the activities of various religious denominations, does not tend to underline the need for such a vast expansion of religious programming. According to the most recent census data (2011), there has been a massive decline in the number of those who profess to be religious since the last census took place a decade ago.[53] The results of these tenders clearly point to political considerations: Decision-makers wanted religious programmes to have a vastly expanded reach in the local radio market, and rather than having local media convey local contents on local frequencies, they wish for centrally broadcasted religious programming to be disseminated across vast coverage areas. This is such a major media policy intervention that it cannot be regarded as legitimate in the absence of public planning, debate and assessment.

Growing concentration, few new players in the local market

In the new tenders for existing frequencies a mere third of previously active market players retained their previous levels of market penetration. This indicates that the earlier structure of the radio market - which had also been subject to controversy - has been completely reshaped. Yet this transformation did not result in the market entry of a substantial number of new players. Instead, the authority's tender practices ended up boosting the expansion of certain stations that had already been active in the Hungarian radio market. The decline in the selection of available programming has at the same time clearly resulted in a constriction of local public spheres and has increased levels of market concentration.

Reduced diversity in the local public sphere

While previously competitive selections of radio programmes were typical of individual local markets - a situation that was fraught with its own conflicts - today most municipalities lack genuinely local stations, while the national frequencies only feature the programmes of those market players who have managed to expand their reach in recent years.

Narrowing competition, market mechanisms in decline

The prevailing frequency distribution practices, which have resulted in reducing the number of market players, and the process of market concentration they engender do not tend to foster diverse programme selection. Moreover, the current concentration in the radio market is not a result of market mechanisms. The stations that are currently improving their positions in the market do not owe their expansion to their successful operations or ratings, but exclusively to the Media Council's market-distorting frequency practices.

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[53] Census 2011 http://www.ksh.hu/docs/hun/xftp/idoszaki/nepsz2011/nepsz_10_2011.pdf

Declining transparency in tender proceedings

Over the past years there has been a gradual decline in the transparency tender practices. The public availability of decisions on tender outcomes did not conform to a standardised policy. In some cases, detailed decisions including the authority's opinion were not published on the authority's website. One change with an impact on transparency is that while prior to 2010 tender notices were part of the agreements which the authority concluded with successful applicants, post-2011 this contractual form was removed from tender notices. This change has encumbered both the transparency of the conditions under which the service providers operate and public oversight of the authority's activities.

Ireland

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

N/A

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

No change.

2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

No change. The Finance, Audit and Risk Committee of BAI has a range of responsibilities and duties encompassing systems of internal control, external and internal audit, risk management and financial control. Under its Terms of Reference, the Committee is required to brief the Authority not less than four times a year in respect of its various duties. [see the BAI's annual reports].

Details of the levy payable by broadcasters to BAI, how it is made and managed and oversight by the Oireachtas (Parliament) are provided for in section 33 of the Broadcasting Act 2009. The Act (sections 123 et seq.) also regulates the funding of PSBs.

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)?

Yes, in legislation – Broadcasting Act 2009.

If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

Yes. No change. These issues are covered in the Broadcasting Act 2009.

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

Due to the economic downturn in recent years there has been very little recruitment permitted in the public service generally and vacancies have for the most part remained unfilled. Given the increased duties imposed on the regulator (BAI) by, in particular,

- the Broadcasting Act 2009,
- **S.I. No. 258 of 2010** (European Communities (Audiovisual Media Services) Regulations 2010 [available at http://www.dcenr.gov.ie/ under 'broadcasting' and 'legislation'] (Article 3 and requirements for on-demand audiovisual service providers)
- the ODAS (on-demand audiovisual services) Code [available at http://www.bai.ie/index.php/documents/codes-standards/],
- **S.I. No. 67 of 2011** (Broadcasting Act 2009 (Section 26(5)) (Conferral of Additional Functions — Broadcasting Services) Order 2011) [available at http://www.dcenr.gov.ie/ under 'broadcasting' and 'legislation'] (Relates to RTÉ multiplexes),
- **S.I. No. 247 of 2012** European Communities (Audiovisual Media Services) (Amendment) Regulations 2012 [http://www.dcenr.gov.ie/ under 'broadcasting' and 'legislation'] (Article 2(4) short extracts),
  and
- the Competition and Consumer Protection Act 2014, [available at http://www.oireachtas.ie, under 'year', 28 July 2014] (media mergers)

Staffing levels in BAI are very tight and, in my opinion, inadequate.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

No change except that more use is made of electronic means of monitoring. Licensees are required to furnish information and/or programme recordings in a format and at times specified by the Authority for monitoring compliance with statutory and/or contractual conditions and for other regulatory purposes. [See Guide to Applicants for Content Provision Contracts - Section 71 of the Broadcasting Act 2009, p.9, available at http://www.bai.ie/wordpress/wp-content/uploads/Section-71-Guidelines-for-Applicants.pdf]

The Compliance Committee of BAI is responsible for the monitoring and enforcement of compliance, the investigation of complaints and a number of reporting functions.

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

The first investigation under s.53 of the Broadcasting Act 2009 was carried out following a television current affairs programme (on RTÉ, the national PSB) entitled 'Mission to Prey' which accused a Catholic priest of fathering a child with a teenage girl while working in Africa. The investigation was carried out by the Compliance Committee of the regulator, BAI. BAI first appointed an investigating officer from whom it commissioned an independent report. The report found that RTÉ failed to comply with its statutory obligations under the Broadcasting Act 2009, section 39(1)(b) and (e) relating to fairness and breach of privacy. [The report, *Investigation Pursuant to Section 53 of the Broadcating Act 2009 in respect of the programme Prime Time Investigates – Mission to Prey*, is available at http://www.bai.ie/wordpress/wp-content/uploads/20120404_S53Report_vFin_SO.pdf]

Following consideration of the report, RTÉ documentation and other submissions, the Broadcasting Authority's compliance committee found the station "seriously breached" its duties relating to fairness and breach of privacy [see http://www.bai.ie/index.php/2012/03/2190/.] On foot of these breaches, the authority's board considered that a fine against RTÉ of €200,000 was appropriate. This was close to the maximum (€250,000) allowable under the legislation.

This was the first imposition of a fine on a broadcaster by BAI under section 53 (et seq.) of the 2009 Act, the only such fine to date. The incident also led to revision of BAI's Compliance and Enforcement Policy (available at http://www.bai.ie/index.php/documents/codes-standards/).

An action for defamation by the priest concerned, Fr Kevin Reynolds, also resulted in an out-of-court settlement by RTÉ, widely reported to be in the region of €1 million.

The Compliance Committee of BAI deals with complaints of breaches of the codes, which are mandated by the Broadcasting Act 2009 and compiled by BAI. These codes cover matters arising from AVMSD, such as commercial communications and protection of children/minors. The codes are available at http://www.bai.ie/index.php/codes-standards-2/

and the decisions of the Compliance Committee in respect of individual complaints are available at http://www.bai.ie/index.php/broadcasting-complaints/decisions/.

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

No change.

The Broadcasting Act 2009 provides for transparency, requires consultation with the public in relation to draft codes etc, and requires annual and other periodic reports, all of which are made public. The BAI also has a role to play in reviewing the performance of public service broadcasters to ensure that there is transparency and accountability in the use of public funds. Transparency and accountability also extends to ensuring that compliance and enforcement measures applied by the BAI are fair, proportionate and reflect audience needs. In accordance with the Broadcasting Act 2009, BAI conducts annual and five-year reviews of public funding by PSBs.

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

Yes.

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda?

Yes, within the parameters of the Broadcasting Act 2009.

Can it determine long-term objectives? If not, who determines the policies and goals of the regulator?

The Broadcasting Act 2009 is a very detailed piece of legislation, which sets out the long-term objectives of the regulator. The Department of Communications, Energy and Natural Resources consults with the regulator in relation to new/draft legislation, where relevant, for example in relation to the Competition and Consumer Protection Act 2014. That Act deals with media mergers and includes an increased role for the regulator, BAI. It also makes provision for the drafting of guidelines in relation to the criteria the government Minister will apply when considering proposed mergers. Those guidelines were drafted by the Department of Communications in consultation with the regulator.

What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

Devising codes and standards on issues such as general commercial communications and children's commercial communications; a new revised Code of Programme Standards (2015), which includes provisions regarding violence, sexual conduct, prior warnings and symbols, protection of children (minors), incitement to hatred, etc.)

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive?

Yes. Codes, rules, etc contain or are accompanied by guidelines/ Guidance Notes.

Is this guidance binding on service providers?

The codes, rules, etc are binding and the guidance is to assist broadcasters in adhering to them.

What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

Guidance Notes relating to the Children's Commercial Communications Code can be accessed at http://www.bai.ie/wordpress/wp-content/uploads/201308_CCCC_GuidanceNotes_vFinal_DMcL1.pdf; Guidance Notes relating to the General Commercial Communications Code can be accessed at http://www.bai.ie/wordpress/wp-content/uploads/201308_GCCC_GuidanceNotes_vFinal_DMcL.pdf

Guidance Notes relating to the BAI Code on Fairness, Objectivity and Impartiality in News and Current Affairs are available at http://www.bai.ie/wordpress/wp-content/uploads/201300701_FairnessGuidance_vFinal.pdf

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public?

Yes, under the Broadcasting Act 2009.

Are these consultations institutionalized (e.g. Industry Forum)?

Those in relation to draft codes, rules, etc., take the form of public consultations in writing/online. The BAI undertakes some consultation directly and also engages the services of specialised research companies. A range of methods (e.g. formal written consultations, meetings, focus groups, interviews and surveys) is used to engage with stakeholders. Previous consultations on codes, access rules, licensing plans, strategies, funding schemes, etc., can be found at http://www.bai.ie/index.php/documents/bai-consultations/

In relation to PSBs, the Broadcasting Act 2009 provides for audience councils (s.96), advisory committees (s.97), etc.

If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

See above. Yes, the responses are made public in the form of analysis and findings reports, e.g. in relation to the Children's Code, 'Analysis and findings from relevant nutrition related responses' (http://www.bai.ie/wordpress/wp-content/uploads/201112_Nutrition_Analysis_vFinal.pdf) and 'Children's Commercial Communications Code Diet and Nutrition Rules Review - Report of Media Analyst' (http://www.bai.ie/wordpress/wp-content/uploads/201112_AdMarket_Analysis_vFinal.pdf).

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

No.

Iceland

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

N/A

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

The regulatory model adopted in Iceland in this field is a classical top-won state reulation model. A converged regulatory body has not been established in Iceland, with competencies relating to AVMS for the most part divided between the Media Commission and the Post- and Telecommunications Authority (spectrum, transmission aspects, frequency, networks and infrastructure). No distinction is made in the AVMS-implementing legislation between commercial and public operators.

What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

The internal structure of the regulator is that of a governmental committee, employing a manager and one additional expert.

2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

The regulator is solely financed by contribution from the state in the state budget, as per law (The National Budget for Year 2015, http://www.althingi.is/altext/pdf/144/s/0801.pdf p.48). This contribution is not directly performance-based or conditional, but decided on annually by

parliament, cf. the Government Financial Reporting Act No. 88/1997, Art. 20 (http://eng.fjarmalaraduneyti.is/legislation/nr/563). The commission was extablished in 2011 and has not experienced cut-backs due to the economic crisis of 2008. The commission manages the funds available to it, subject to reporting requirements (Government Financial Reporting Act No. 88/1997, Art. 20. (http://eng.fjarmalaraduneyti.is/legislation/nr/563)) and annual audits (The National Audit Act, No. 86/1997 (English translation, http://www.rikisendurskodun.is/index.php?id=183)).

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

No specific rules apply in particular to the commission, neither in guidelines or codes of conduct. However, as with other governmental entities, general competency rules apply (Administrative Procedures Act, No. 37/1993). Civil servants/members of other public bodies can enter the regulatory body.

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

The commission is a five-person body, employing a staff of two, total. The total budget for the commission's activities in the year 2015 is 38.6m ISK (€ 0.19m). In my opinion, hese resources are woefully inadequate, considering the considerable complexity of the commission's tasks, as laid out in the current legislation.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

As the commission has yet to publish its first annual report, no authoritative, public information are available to base such a determination on.

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines

flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

The commission has to date issued 11 decisions declaring a media service provider in berach of the Media Act, No. 38/2011, with one of those imposing a moderate fine on the provider in question. The provisions found to be breached related to democratic principles (Art. 26), the protection of minors (Art. 28 and 38), and subtitling (Art. 29). Any fines imposed are collected by the state treasury.

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

The regulator is not obliged to publish its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public. It has, however, published all of its decisions online (in Icelandic, http://fjolmidlanefnd.is/akvardanir-og-utgafa/akvardanir/), and plans to issue annual reports on its own initiative.

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

It is safe to say that the public is aware of the regulator, and arguably generally also of its activities, as they are commonly covered by the media.

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

The operations of the Media Commission shall be aimed at ensuring that the aims and objectives of the Media Act are achieved. It shall strive to enhance variety, pluralism and media literacy and also to defend freedom of expression and freedom of information, cf. Arat. 10 of the Act. Thereby the commission not only can but shall set its own agenda, within its mandated purpose laid out in the Act. No publicly available information exist yet, detailing the commission's prioritization or the rationale it is built on.

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

The regulator shall carry out supervision according to the Act implementing the AVMS Directive, and shall thereby interpret the provisions of the Act. Additionally, it is entrusted with setting its own "working rules", cf. Art. 8 in fine, and has met that requirement by setting Working Rules No. 1363/2011 (in Icelandic, http://www.stjornartidindi.is/Advert.aspx?ID=bbadac7d-f8e1-41f1-96f6-eaa52c3b166f).

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

The regulator is not subject to any consulting requirements with stakeholders or the public. No publicly available information exist yet, detailing the commission's consultancy efforts.

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

The task of implementing the AVMS Directive into a legislative reality of such a small nation as Iceland is formidable. Since the resulting economic realities provide for only very limited resources to be provided for operation of the regulator, a high degree of prioritization is called for. It is an open question if the regulator should be forced to conduct such extensive prioritization itself, or if it were not a more democratic approach to have the parliament itself shoulder that responsibility and take a more realistic approach to deciding what these restrained means are to be used for.

Italy

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

Tables 1-5: Comments on general information

Table 1:

PSB channels are currently the following:

Major generalist PSM channels: Rai 1; Rai 2; Rai 3;

Other generalist PSM channels: Rai 4; Rai 5

Thematic PSM channels: Rai Sport 1; Rai Sport 2; Rai News; Rai Scuola; Rai Storia; Rai Gulp; Rai Movie; Rai Premium; Rai Yoyo.

Table 2:

Since 2011, the following amendments to the rules of the Consolidated Law on Audiovisual and Radio Media Services (CLARMS, legislative decree 15 march 2010, no. 44) have been introduced in response to a pre-infringement procedure launched by the European Commission:

- Section 2(1) of Legislative Decree 28 June 2012, no. 120 (Official Journal of the Italian Republic of 30/07/2012, no. 176) amended Section 38, para 12 of the CLARMS, on time limits for advertising. Section 38(12) CLARMS originally exempted "advertising announcements" of books and European works from advertising limits. As that provision was regarded as inconsistent with the AVMS Directive, the legislature amended that exemption, which now applies to "Promotional announcements, in the framework of initiatives promoted by institutions, agencies, associations, publishers, and booksellers to encourage reading, broadcast free of charge *or on favourable terms* by television and radio broadcasters, either public or private, as well as promotional videos of upcoming European works" (emphasis added). Insofar as those announcements are made free of charge, they lie outside the scope of the AVMSD notion of "television advertising" as defined in Article 1(1)(i) AVMSD and thus do not give rise to consistency issues. However, if those announcements are broadcast "in return for payment or for similar consideration", no matter if those terms are more favourable than those applicable to "ordinary" advertising, the AVMSD rules on advertising apply. Accordingly, in spite of the cultural aims pursued by the exemption, its consistency with the AVMSD is still doubtful insofar as it sets out a more lenient framework for a certain category of advertising announcements than the one laid down at the EU level.

- Section 1(1) of Legislative Decree 28 June 2012, no. 120 (Official Journal of the Italian Republic of 30/07/2012, no. 176) amended Section 34 of the CLARMS on television broadcasting, concerning the protection of minors. The current provision appears to be consistent with the AVMS Directive, since it unequivocally bans content which might seriously impair minors.

- Sections 3(1) and 3(2) of Legislative Decree 28 June 2012, no. 120 (Official Journal of the Italian Republic of 30/07/2012, no. 176) amended Sections 44(3) 44(8) of the CLARMS on the promotion of European works. Those minor amendments concern, respectively, i) the establishment of a quota, within the one devoted to European works, for the protection of works of original Italian expression; ii) the authorities to be consulted in the context of the procedure required for the adoption of a regulation under which broadcasters can seek waivers from the European works promotion requirements.

- AGCom's current Regulation on organisation and functioning is attached to Decision no. 223/12/CONS, as amended by Decision no. 536/13/CONS. Cooperation with other European regulatory bodies is the subject of Section 35 of the Regulation in force.

Table 5: Staff and budget

AGcom's current staff count (as of 15 April 2014) is 372. The number of staff foreseen in Decision no. 315/07/CONS, adopted pursuant to Section 1, para 543, of law no. 296 of "7 December 2014 is 419.

In 2014, AGCom's contribution levied on media operators was EUR 75.400.000 + EUR 280.000 from the sale of sport broadcasting rights. The Italian Government contributed to AGCom's functioning with EUR 222.775,25. A comprehensive spreadsheet of AGCom's revenues in 2014 is available at: http://www.agcom.it/documents/10179/540225/Allegato+19-12-2013+6/91bbac33-0298-463e-92a8-84f0f7487cd5?version=1.0

The amount of AGCom's contributions for the year 2014 is laid down in Decision no. 547/13/CONS, pursuant to Section 1, paras 65-66, of Law 23 December 2005, no. 266 (the 2006 budget Law). For the year 2014, that amount is equal to 0,14% of the revenues made by media operators having taxable revenues of at least EUR 500.000, with the exclusion of companies subject to bankruptcy or winding-up procedures. It should be considered that the above mentioned contributions are currently subject to revision following the ECJ judgment of 18 July 2014 (case C-228/12 and a.), where the Court concluded for their inconsistency with Directive 2002/20.

Tables 6-9: Comments on institutional framework

Table 6:

AGCom's Regulation on organisation and functioning attached to Decision 316/02/CONS has been replaced by the Regulation attached to Decision no. 223/12/CONS, amended by Decision no. 536/13/CONS.

Tables 9-14: Comments on powers of regulatory bodies

Table 10:

In addition to AGCom, surveillance and monitoring powers are also vested in the Surveillance Committee enforcing the "Media and Minors" Self-regulation Code (hereafter: MMSC), which was adopted as a self-regulatory instrument in 2002 but was elevated to co-regulatory status by the Gasparri Law in 2004.

The legal basis for the Committee's surveillance and monitoring powers is Section 34(6) CLARMS, which reads as follows:

> "Broadcasters, including analogue broadcasters, employing any transmission platform, shall comply with the provisions on the protection of minors set out in the Media and Minors Self-Regulation Code approved on 29 November 2002, as subsequently amended. Any amendment to the Code or the adoption of new self-regulation acts are acknowledged by a decree of the Minister of economic development, adopted pursuant to Article 17, paragraph 3, the Law of 23 August 1988 no. 400, after consulting the Parliamentary Committee [on Children] established by Law 23 December 1997, n. 451, as subsequently amended.

The Surveillance Committee has not been active since December 2011 due to the failure by the Ministry to appoint its representatives within the Surveillance Committee. At the moment, the MMSC is thus enforced only by AGCom.[1]

Tables 11 and 13:

See our answer to question no. 6 below.

Table 14:

Complaints are currently handled by AGCom in accordance with Section 4 of the regulation attached to Decision no. 529/14/CONS, as amended by decision no. 529/14/CONS.

In essence, all interested parties and consumers' associations may report alleged violations of media regulation to AGCOM through the forms available on AGCOM's website or via certified e-mail. Under the penalty of inadmissibility, those complaints must include: full contact information of the author of the compliant; the alleged offender; the period during which the offence took place; supporting documents or evidence. The Director of the relevant AGCOM Directorate dismisses the complaints that are inadmissible or manifestly unfounded (e.g. concerning behaviour outside AGCom's jurisdiction). Complaints by law enforcement agencies cannot be dismissed as manifestly unfounded. AGCom may join different complaints concerning similar conducts and may dismiss them jointly. AGCom may rely on complaints as a basis to introduce new regulatory measures. Complainants, in any case, are informed of the receipt of the complaint.

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[1] http://www.cnu-agcom.it/pdf_file/pdf_docs_30.html

Tables 15-24: Comments on internal organization and staffing

Table 15:

Law 22 December 2011, no. 214, converting into law Decree law 6 December 2011, no. 201, laying down urgent measure for growth, equity and spending review, reduced the number of AGCom commissioners from 9 to 5, including the President. Hence, the Commission for Services and Products (CSP) and the Commission for Infrastructures and Networks (CIN) are currently composed of two Commissioners each. AGCom's Council, accordingly, presently includes five members: the President and four Commissioners.

Table 16:

The tasks of the CSP and the CIN are laid down in Section 1, para 6 of Law no. 249 of 1997 (establishing AGCOM), which, however, empowers AGCOM to reallocate competences among its various organs, if need be, and entrusts AGCom Council with all the powers not expressly attributed to other organs. These changes, as well as the reduction of the members of AGCom Commissions from four to two, has entailed a gradual concentration of powers in the hand of the Council.

Section 34 of decision no. 223/12/CONS, in particular, has transferred to the Council a number of powers previously attributed to the CSP and the CIN. Decision 315/12/CONS also entrusted the Council with powers on media pluralism, equal time, and surveys.

Table 24:

There have not been cases of dismissal before the term in the last five years. Commissioner Maurizio Dècina voluntarily resigned in September 2013 due to 'serious personal reasons' but endorsed the work the AGCom Council had carried out thus far. He was replaced by Commissioner Antonio Nicita, appointed on 26 November 2013.

Tables 25-27: Comments on financial resources

Tables 25-26: see comments re: Table 5 above.

Tables 28-35: Comments on checks and balances

Tables 36-39: Comments on procedural legitimacy

Table 31:

Please note that also AGCom's measures of general application (not only those involving sanctions) can be challenged before the Latium Regional Administrative Court (and, on appeal, before the Council of State). Accordingly, administrative courts can be regarded as having the power to overturn AGCom decisions.

Table 38: public consultations (by year of conclusion)

2014: 8

2013: 7

(data on earlier consultations not available on AGCom's website).

Tables 40-41: Comments on cooperation

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

The Italian legislature opted for a model of state regulation complemented by individual instances of co- and self-regulation.

As to self-regulation, regard must be had essentially to the Institute for Advertising Self-Regulation (*Istituto dell'Autodisciplina Pubblicitaria*), a non-profit organisation with legal personality, responsible for the updating, monitoring and enforcement of the Commercial Communication Self-Regulation Code (*Codice di Autodisciplina della Comunicazione Commerciale*, hereafter: CCSC*)*, as well as for the settlement of disputes which may arise from the breach of the CCSC provisions.

Turning to co-regulation, account must be taken of the Surveillance Committee responsible for the implementation and the enforcement of the 'Media and Minors' Self-Regulation Code (*Codice di Autoregolamentazione 'Media e Minori',* hereafter: the MMSC).[2] The Surveillance Committee is composed of representatives of broadcasters, institutions, and the viewers; it is funded by contributions from broadcasters' associations. Moreover, AGCom set up the Permanent Observatory on Product Placement, which is not *stricto sensu* a self-regulation "institution", but rather a contact point or a forum where AGCom and the relevant stakeholders can discuss the issues arising from the practical implementation of product placement as well as the compatibility of various forms of product placement with the EU and domestic legislation.

As far as State regulation is concerned, regulatory competences are essentially entrusted to AGCOM, an independent authority with powers encompassing all media sectors (and infrastructures) as well as all media operators (including public ones). Other attributions ins the field of media are attributed to the the Ministry for Economic Development – Department of Communications and the Parliamentary Supervision Committee.

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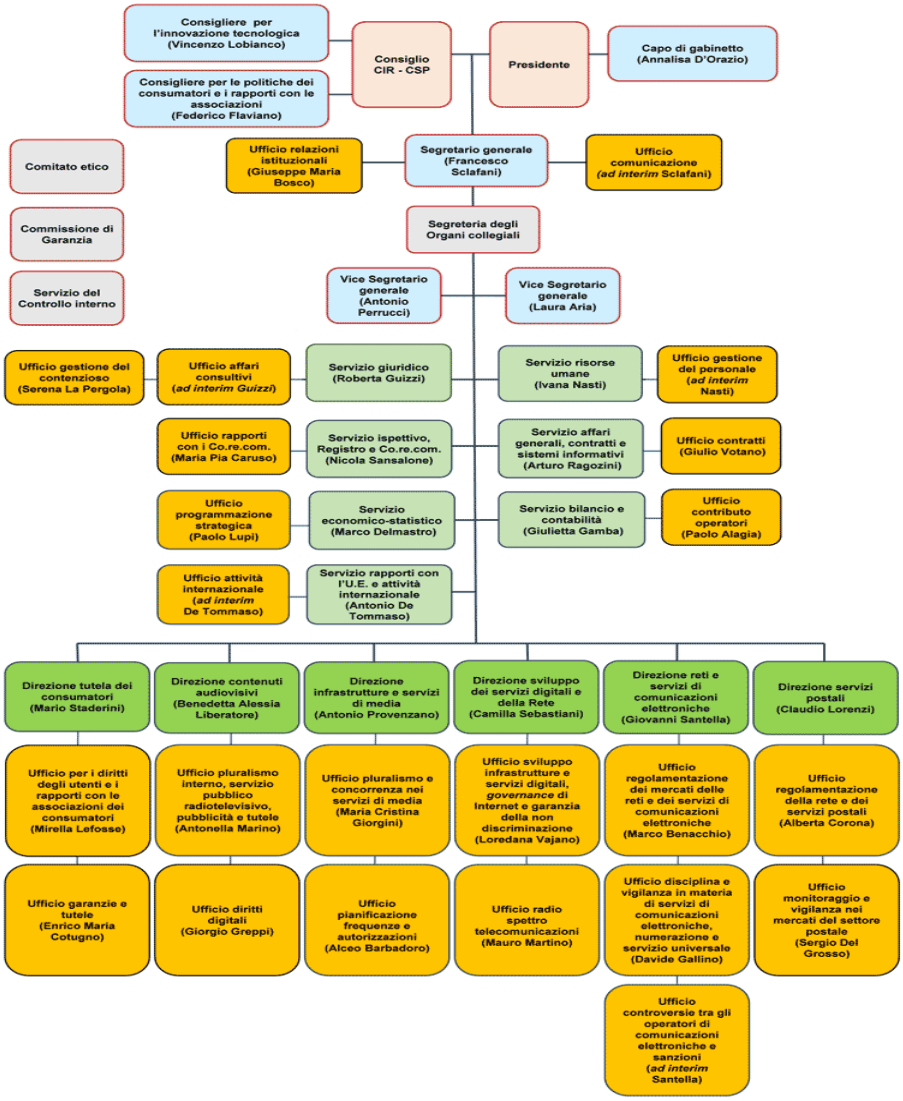
[2] The original denomination of the MMSC was 'TV and minors' Self-Regulation Code (*Codice di autoregolamentazione TV e minori*). In view of the adoption of the AVMSD, Article 6, para 1, of the Decree of the President of the Republic 14 May 2007, no. 72 changed the name of the Surveillance Committee to "Surveillance Committee of the 'Media and Minors' Self-Regulation Code". The MMSC, however, still applies to linear audiovisual media services only. The full text of the MMSC available here: http://www.aeranti.it/Articolo.php?id=792. For an unofficial translation, *see* http://goo.gl/yZRh7. Excerpts from the MMSC mentioned in this report have been translated by the author of this report.

As to the internal organisation of the regulator, AGCom is composed of four different bodies: the President, the Council, the Commission for Services and Products (hereafter: CSP) and the Commission for Infrastructures and Networks (hereafter: CIN). The Council is composed of the President and four Commissioners (also known as AGCom 'Members'); the CSP and the CIN are each composed by the President and two Commissioners. AGCom's auxiliary bodies include the National Council of Users and Regional Communication Committees.

AGCom's administrative structure, whose apex is the General Secretariat, consists of six Directorates (having sector-specific attributions, e.g. consumer protection, audiovisual contents, etc.) and seven Services (having horizontal attributions, such as legal service, human resources, budget, etc.). Each of those tier-one organisational units, in turn, comprises a number of Offices, i.e. tier-two organizational units located either at AGCom's official seat in Naples, or at AGCom's secondary seat in Rome. The Secretary General, in turn, answers to AGCom's organs for the operation of AGCom's administrative units. The Secretary General is assisted by two Deputy Secretaries General, appointed by AGCom's Council.

Please find below AGCOM's current organization chart:



2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

Initially, AGCom was supposed to autonomously manage its appropriation within the framework of a dedicated endowment of the State budget.

Law no. 266 of 23 December 2005 ('Budget Law 2006') replaced the said appropriation (about EUR 20 million) with an endowment of only EUR 3 million. AGCom, however, was also authorized to impose a fee on undertakings subject to its regulatory oversight up to 0.2% of their revenues.

In July 2013 the ECJ (Joined Cases C-228/12 to C-232/12 and C-254/12 to C-258/12, *Vodafone Omnitel NV et a.)* ruled that Directive 2002/20/EC must be interpreted as meaning that it does not preclude a financing scheme for National Regulation Authorities based on a charge paid by the electronic communication industry provided that: i) the charge is exclusively intended to cover the costs relating to the activities incurred by that authority for the purposes of the regulation ex ante of the market which leads to the grant of authorizations as per Directive 2002/20/EC, ii) that the totality of the income obtained in respect of that charge does not exceed the total costs relating to those activities and iii) that that charge is imposed upon individual undertakings in an objective, transparent and proportionate manner.

Accordingly, in January 2014 (Judgment no. 2534/2014), the Latium Regional Administrative Court determined that AGCom's financing mechanism failed to meet the three above requirements, in that it was designed to cover also costs unrelated to the regulation of electronic communications, it allowed AGCom to turn a profit for several successive years, and it failed to comply with the principle of proportionality. AGCom appealed that judgment before the Council of State, but to no avail. In judgments no. 1273/2015, 1274/2015, and 01224/2015 the Council of State upheld the trial court's ruling that AGCom's financing mechanism is illegal.

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

Section 2(8) of Law 14 November 1995, no. 481 sets out detailed rules to avoid possible conflicts of interest with the government, political parties and industry. AGCom's President and Commissioners cannot, under the penalty of dismissal, exercise, directly or indirectly, any professional or consultancy activity, cannot be directors or employees of public or private entities, cannot hold public offices of any kind, including elective offices, or act as representatives of political parties, cannot have direct or indirect interests in companies operating in a sector falling under AGCom's jurisdiction.

At the first meeting of AGCom's Council, AGCom Members must aver, under their responsibility, that their appointment to AGCom does not give rise to any situation of incompatibility. Should one of those situations arise, the Council, after hearing the Member concerned, sets a deadline by which that Member must decide whether he or she wishes to retain his or her appointment or the office or employment giving rise to the situation of incompatibility. If the Member fails to take a decision by the deadline, the President of the Council of Ministers and the Minister of Communications or the Chairs of the House of Representatives and the Senate are informed of the matter so that they may replace the Member concerned.

Section 2(9) of the above Law lays down a cooling-off period of four years, during which former AGCom President and Commissioners cannot, either directly or indirectly, establish any employment, collaboration, or consultancy relationship with companies operating within AGCom's purview. Failure to comply with that requirement may result, without prejudice to the application of criminal provisions, in the imposition of a fine.

AGCom also adopted a Code of Ethics, attached to Decision no. 577/10/CONS, laying down detailed rules on the conduct of AGCom's members and employees, including, *inter alia*, rules on the acceptance of gifts, conduct in personal relationships, compulsory and voluntary abstention cases etc. The revision and enforcement of the Code are entrusted to the Ethics Committee, which reports cases of alleged violations to AGCom's Council, so that it may initiate a disciplinary proceeding against the employee(s) concerned. For the members of AGCom's Council, the attributions of the Ethics Committee are exercised by the Council itself, on the basis of opinions by the Ethics committees that are requested by the Council on the basis of a proposal by AGCom's President.

In spite of the commendable goals pursued by the Code of Ethics, its application to the members of the Council by the Council itself calls into question the effectiveness of that instrument, due to its failure to comply with the principle *nemo iudex in re sua*.

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

According to AGCom's 2014 Annual Report, AGCom's staff comprises four different tiers of public servants, namely 39 top-tier positions (*dirigenti)*, 220 second-tier positions (*funzionari*), 119 third-tier positions (*operativi*), and 35 bottom-tier positions (*esecutivi*), for a total of 372 employees out of a nominal staff of 419 units. Most of the staff is employed on the basis of contracts of indefinite duration; 64 out of the current 372 employees, instead, are on fixed-term contracts.

In our view, the nominal staff count seems proportionate to AGCom's current tasks and responsibilities. It is thus to be hoped that AGCOM reaches its nominal employment level as soon as possible.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

AGCom's organ in charge of the monitoring of advertising legislation is the CSP, assisted by the Directorate for Media Services. As far as the provisions concerning the protection of minors are concerned, monitoring is carried out by the CSP in cooperation with the Media and Minors Surveillance Committee, which relies on the logistic support, facilities and staff of the Ministry.

AGCom carries out monitoring *ex officio*, but also relies on complaints by users, stakeholders, or public entities. In particular, the Media and Minors Surveillance Committee must report to AGCom any infringement of the rules concerning the protection of minors of which it becomes aware.

AGCom carries out its monitoring activity in respect of nation-wide broadcasters essentially in two manners: i) for digital terrestrial broadcasters and analogue broadcasters, AGCom records all their broadcasts and subsequently catalogues and screens them; ii) for satellite broadcasters, due to the significant cost of the necessary equipment, AGCom performs spot checks and random checks.

Monitoring of local broadcasters is instead entrusted to the Communications Regional Committees (hereafter: CO.RE.COM.s), which are established in every Italian Region. CO.RE.COMs rely both on spot checks and complaints. If a CO.RE.COM suspects an infringement of sector regulation by a local broadcaster, it opens an infringement proceeding and, after hearing the broadcaster, submits to AGCom a draft decision that either establishes the breach (and imposes a fine) or closes the proceeding. AGCom is not bound by the assessments made by CO.RE.COMs., but often follows their determinations.

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

According to Section 51(1) CLARMS, AGCom has a general competence to impose sanctions for failure to comply with statutory requirements concerning programming, advertising, and audiovisual contents. In the field of advertising, in particular, Section 51(2)(a) empowers AGCom to impose fines ranging from € 10'329 to € 258'228. Those sanctions are reduced to one tenth if the offender is a local broadcaster. The violation of provisions concerning the protection of minors may result in fines ranging from € 25'000 to € 350'000 and, in the most egregious cases, in the suspension of the broadcasting concession or authorisation for a period ranging from 3 to 30 days (Section 35(2) CLARMS). The offending

operator must inform the public of the sanctions, typically by reporting them in a news programme broadcast in prime time.

AGCom's Annual Report for the year 2012, on page 313, contains a table outlining AGCom's enforcement activity of the rules of audiovisual commercial communications against nation-wide television broadcasters in the May 2011 - April 2012 interval:

Type of Infringement	Broadcaster	Infringement letter	Dismissal decision	Order-Injunction	Fine (EUR)
1. Advertising limits for the PSM Operator	RADIO 2	Cont. 77/11/DIC		26/12/CSP	20.658
2. Advertising limits for commercial broadcasters	FOX		214/11/CSP		
	SKY SPORT 1			233/11/CSP	10.329
	Canale 5	Cont.95/11/DIC	Annulment by internal review		
3. Product placement	RAI 2		162/11/CSP		
	RAI 1		192/11/CSP		
4. Advertising detrimental to the development of minors	ITALIA 1	Cont. 65/11/DIC	296/11/CSP		
	SPORTITALIA	Cont.107/11/DIC	Annulment by internal review		
	Italia 1	Cont.105/11/DIC	74/12/CSP		
	Rete 4	Cont. 106/11/DIC	75/12/CSP		
	Canale 5	Cont. 110/11/DIC	77/12/CSP		
	MTV	Cont. 111/11/DIC	78/12/CSP		
	La7	Cont.112/11/DIC	79/12/CSP		
	Sportitalia	Cont.122/11/DIC	81/12/CSP		

AGCom 2014 Annual Report provides the following data on sanctions adopted between May 2013 and April 2014 in the audiovisual media sector. First, AGCom reported that in the reference period, it initiated five proceedings against nation-wide broadcasters for infringement of the rules on advertising limits (two were dismissed, three resulted in a fine of EUR 10.329 each). Second, AGCom reported that 6 proceedings concerning teleshopping of cartomancy and lottery services, 1 proceeding on advertising limits, and 3 proceedings on advertising breaks were brought against local and nation-wide broadcasters on the basis of complaints filed by AGCom's auxiliary bodies and law enforcement agencies. Third, in the reference period AGCOM: i) initiated 88 infringement proceedings in commercial communications matters; ii) dismissed 4 proceedings in the same matters; iii) initiated 32 orders-injunctions in matters related to the protection of minors iv) dismissed 5 proceedings in the same matters. The Annual Reports also provides information as to AGCom's infringement proceedings in matters related to the right of reply, programming obligations, and sport broadcasting rights.

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

AGCom's transparency obligations are laid down in the Regulation attached to AGCom Decision no. 605/13/CONS. According to that Regulation, AGCOM must publish in its website i) the legal provisions governing its establishment, organization and activities; ii) AGCom's decisions concerning its organization, functions, objectives, procedures iii) AGCom's decision that interpret or apply legal provisions falling within AGCom's remit iv) Codes of conduct.

As to the Annual report, the CLARMS requires AGCom's Council, by 30 June of each year, to submit to the President of the Council of Ministers for submission to the Parliament a report on the activity carried out by AGCom and its goals. That report contains, *inter alia*, data as to technological development, resources, revenues, capital, media pluralism in the sectors subject to AGCom's jurisdiction and illustrates AGCom's measures taken in those sectors.

The public is generally aware of AGCom's activities as they are often covered by the media, both of a general and sectoral type.

Moreover, as per Section 9 of the Transparency Regulation attached to Decision no. 605/13/CONS (implementing the transparency obligations set out in Legislative Decree 14 March 2013, no. 33), AGCom issued a Three-year Program on Transparency and Integrity (TPTI). As part of that Program, AGCom appointed a 'person responsible for transparency' for each level-one unit within AGCom's directorates. These individuals must ensure that publications obligations are complied with and that published information is complete and up-to-date. AGCom, furthermore, established a 'Committee for online communication', which defined the procedure and timeframe for the publication of data and documents that are the subject of publication obligations. That Committee has also launched a wide-ranging initiative on the subject of open data and open government.

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

AGCom is an independent authority and, as such, sets its own agenda, within the boundaries set by the law, that is to say by the Parliament or by the Government with the Parliament's subsequent (decree-laws) or prior sanction (legislative decrees).

AGCom has consistently affirmed its authority not only to enforce the laws governing media matters, but also to implement them, specify their requirements and provide interpretative guidance. In particular, AGCom's CSP can adopt acts of general application to implement statutory provisions in the fields of advertising and teleshopping. In this connection, regard must be had, notably, to AGCom's (binding) Regulation on Television Advertising and Teleshopping (hereafter: the Advertising Regulation)[3] and AGCom's (non-binding) Interpretative Notice Concerning Several Aspects of Television Advertising Rules (hereafter: the Advertising Notice).[4] Moreover, the Council may solicit the Government to take legislative or regulatory measures, also in the field of advertising, to reflect technical and legal developments occurring in the media sector.

It must be noted, however, that AGCom's discretion in interpreting and implementing the law is not without limits: should any person concerned (such as broadcasters or users) deem that AGCom acted *ultra vires* or in a manner inconsistent with the law or with the underlying constraints imposed by EU law, complaints can be brought before the Latium Administrative Tribunal which, if need be, may annul those measures.

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

Generally speaking, AGCom consults stakeholders and the general public on a voluntary basis. There are, nonetheless, cases where Acts of Parliament or AGCom acts require AGCom to do so. For instance, Section 11 of the Electronic Communications Code (Legislative

[3] AGCom Decision no. 538/01/CSP of 26 July 2001 as amended by Decisions 250/04/CSP, 34/05/CSP, 105/05/CSP, 132/06/CSP, 162/07/CSP, and 12/08/CSP.

[4] Decision no. 211/08/CSP

Decree no. 259 of 2003) requires (the Ministry as well as) AGCom to hold consultations when it seeks to adopt measures in application of that Code that may have a significant impact on the relevant market. That provision also requires AGCom to publish i) the act declaring the consultations open ii) the draft regulatory measure iii) the outcome of the consultations (except for confidential data) on its official bulletin and internet website. By the same token, Section 16 of AGCom's Regulation on infringement procedures and commitments (attached to Decision 529/14/CONS) requires AGCom to publish the commitments proposed by the alleged offenders so that stakeholders may submit their observations for 30 days.

In some cases, consultations are institutionalized. For instance, AGCom set up the Permanent Observatory on Product Placement, a forum where AGCom and the relevant stakeholders can discuss the issues arising from the practical implementation of product placement as well as the compatibility of various forms of product placement with the EU and domestic legislation. That Observatory, in particular, developed a toolbox to apply the notion of 'undue prominence' in the context of product placement and a number of criteria to set the boundaries between that type of audio-visual commercial communication and sponsorship.

Responses by stakeholders are usually made public on AGCom's website. For instance, on 18 December 2014 AGCom launched a consultation on its draft Regulation for the protection of users in the context of contracts concerning the provision of electronic communications products and services (Decision no. 645/14/CONS). Stakeholders were given 45 days to submit their observations. A number of telecommunications operators and consumers associations did so. Their contributions are publicly accessible on AGCom's dedicated webpage: http://www.agcom.it/-/avvio-del-procedimento-di-consultazione-pubblica-in-ordine-all-approvazione-del-regolamento-recante-disposizioni-a-tutela-dell-utenza-in-materia-di-co

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

In our opinion, many of the independence and impartiality concerns highlighted in the previous INDIREG report have either been solved or are in the process of being remedied. Nonetheless, it is our submission that two criticalities still remain.

First, due to the peculiarities of Italy's political landscape, one of AGCom's Commissioners is still the expression of a political party (Forza Italia) whose leader (Mr. Silvio Berlusconi) controls Italy's main commercial broadcaster (RTI) and media corporate group (Mediaset). Whilst that source of concern for AGCom's impartiality is the result of deficiencies in the rules governing conflicts of interest between politics and corporate interests in the media sector, the current rules governing the appointment of AGCom's Commissioner appear unable to rectify such a situation. In that connection, it is noteworthy that a sitting AGCom Commissioner, prior to joining Forza Italia worked as an executive in Mediaset's advertising concessionaire Publitalia '80.

Second, although Section 2(8) of Law 14 November 1995, no. 481 expressly states that the members of independent authorities, including AGCom, must be chosen among 'individuals having high and recognised skills and competence in the sector', it appears that such a requirement has not been effectively implemented in practice. As a matter of fact, although AGCom's current Commissioners have held a number of prestigious positions in government and academia, not all of them can be said to have specific experience in the media and communications sector. It is suggested that a different appointment procedure, possibly involving a public call for applications and the disclosure of candidates resumes' prior to their appointment as well as auditions before the relevant parliamentary committees, could contribute to bolster the epistemic legitimacy of the authority.

Lithuania

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

Tables 1-5: Comments on general information

Table 2

LRTK is the main body charged to supervise commercial and public radio and TV, and VoD service providers.

Other bodies (e.g. Council of the LRT, Inspector of Journalist Ethics, State Consumer Rights Protection Authority, etc.) can also have limited regulatory powers on a particular subject (e.g. PSB) of issue (e.g. hate speech, advertising of alcohol, consumer protection).

Most provisions of the Audiovisual Media Service Directive were transposed in Lithuania by the **amendments of the Law on Provision of Information to the Public of 30 September 2010** (No IX-1046) [in Lithuanian], which came into force on 18 October 2010. These amendments implemented the AVMSD provisions related to information requirements, audiovisual commercial communications, sponsorship and product placement, promotion of European works, provisions on TV advertising and teleshopping, etc.

The amendments also introduced requirements for VoD services, which were previously not regulated by the Law on Provision of Information to the Public. The requirements concern registration of VoD service providers, protection of minors, European works quotas and commercial communications in on-demand services.

To implement the new legal provisions, LRTK adopted in December 2010 the following acts:

Rules for publishing information about audiovisual media service providers (LRTK Decision No. KS-117, 22 December 2010)

Rules for registration of on-demand audiovisual service providers (LRTK Decision No. KS-120, 29 December 2010)

Rules for implementation of requirements for audiovisual commercial communications, advertising and sponsorship (LRTK Decision No. KS-120, 29 December 2010)

The list of events of major importance for society [in Lithuanian], prepared by LRTK in 2010, was adopted by the Government in April 2013.

The issues related to protection of minors are regulated by the Law on the Protection of Minors against the Detrimental Effect of Public Information of 10 September 2002, last amended on 21 October 2011, and by the Rules for the categorisation and dissemination of information that might have a detrimental effect on minors, adopted by the Government on 21 July 2010.

Table 5

The **amendments of the Law on Provision of Information to the Public of 14 June 2012** (No XI-2071) [in Lithuanian], which came into force on 1 January 2013, changed the LRTK's status, structure, requirements for appointment of members, their terms of office, financing rules. The number of LRTK members was reduced from 13 to 11. The maximum number of Administration staff was fixed by the Parliament. LRTK became a state budgetary institution – its budget is now set every year by law.

Tables 6-9: Comments on institutional framework

No comments, just some additional information or small corrections added.

Tables 9-14: Comments on powers of regulatory bodies

Table 10

Correction:
Information collection powers – LRTK has not only a general power "to collect information about broadcasters", but also has a right "1) to obtain free of charge from broadcasters and re-broadcasters of radio and/or television programmes, providers of on-demand audiovisual media services, managers of the information society media, state and municipal institutions and agencies as well as other legal persons information, including information constituting a commercial secret, necessary for the exercise of the functions of the Commission; 2) to obtain from broadcasters and re-broadcasters of radio and/or television programmes, providers of on-demand audiovisual media services, managers of the information society media, state and municipal institutions and agencies as well as other persons documents and other information necessary for investigation of violations of the relevant laws which are assigned to the competence of the Commission; 3) upon receiving court authorisation, to carry out on-the-spot checks" (Law on Provision of Information to the Public, Article 48 paragraph 3)

Table 12

Update:
The law amendments of 30 September 2010 included the investigation of viewer complaints concerning radio and TV broadcasters, re-broadcasters and VoD providers, as one of the LRTK's functions. In its annual reports, the LRTK indicates a number of complaints received (e.g. in 2014 there were 43 complaints concerning alleged violations).

Table 13

Statistical data about suspended or revoked licences is not included in the table, because the information available in the LRTK annual reports does not distinguish between licences revoked at the request of the broadcasters and those revoked after the decision to impose a sanction.

No available information about penalty payments or publications of decisions in TV programmes or VoD services.

Table 14

Electronic form to submit a complaint concerning audiovisual media service providers is available on the LRTK website since 2010.
Complaints are handled in accordance to the procedure laid down in the Rules on examination of applications, approved by the Government and applicable for all public institutions.

Tables 15-24: Comments on internal organization and staffing

The previously mentioned law amendments of 14 June 2012 changed the composition of the LRTK:

Appointed by	**Previously**	**Since 2013**
Parliament	3	3 (1 from opposition)
President	1	2
Civil society	9	6
Total	**13 members**	**11 members**

Previously, the Chairman of the LRTK was elected by the members of the LRTK. Now, the Chairman and Deputy Chairman are both appointed from the LRTK members by the Parliament.

Before the amendments, the terms of office of the LRTK members were linked to the terms of office of the appointing institutions. Now, the term of office is 4 years (renewable once) for all members of the LRTK.
The terms of office of the Chairman and Deputy Chairman were 2 years (renewable) until 31-12-2014. Following the recent law amendments of 18 December 2014, which came into force on 01-01-2015, the terms of office were changed to 4 years (renewable).

The law amendments of 14 June 2012 introduced professional requirements for the LRTK members: university education, good reputation, at least 5 years of experience in similar field. New rules to prevent conflicts of interest were included in the law: persons who held management position in regulated bodies less than a year ago cannot be appointed as LRTK members, nor persons who are linked or their family members are linked with audiovisual media service providers by contractual relations or who have participating interest in the AVMS providers. All LRTK members have to present their private interest declarations to the Chief Official Ethics Commission.

Tables 25-27: Comments on financial resources

Amendments of 14 June 2012 have changed the financing model of the LRTK. It is still financed from the income of AVMS providers (fee reduced from 0.8% to 0.6%), but because of its status as a state budgetary institution, the LRTK has to transfer this money to the state budget and then receive the financing from the state on the basis of the long-term strategic

plans and expenditure forecasts, prepared by the LRTK and approved by the LRTK Chairman. The annual budget is set by the Parliament in the law every year, based on the LRTK strategic plan.

Tables 28-35: Comments on checks and balances

LRTK is accountable to the Parliament and has to submit its annual activity report and financial statements to the Parliament for approval. If one of these documents is not approved, the Parliament may ask the appointing organisations to decide whether the LRTK members appointed by them should continue their work at the LRTK.

Since 2013 (Law amendments of 14 June 2012), the LRTK is subject to the annual audit by a private auditor, selected by the LRTK itself in a public procurement procedure.

Table 32:

Change:
Since January 2011 (Amendments to the Code on Administrative Offences, adopted on 18 November 2010, No XI-1142 [in Lithuanian]), the appeals in the cases of administrative offences (concerning fines) are assigned to the district courts and regional courts, not administrative courts.

Tables 36-39: Comments on procedural legitimacy

Since 1 January 2013 (law amendments of 14 June 2012), the LRTK is obliged to submit any draft decision that establish legal norms (rules, regulations) to public consultations (PIP Art. 47 para. 14). The consultation period cannot be shorter than 10 days (Regulations of the LRTK Art. 32). There is no requirement to publish consultations responses.

Tables 40-41: Comments on cooperation

Updated information on cooperation.

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

AVMS regulation Lithuania has attributes of both state regulation and self-regulation models. With regard to the issues related to AVMS Directive, the state regulation model is more prominent.

State regulation

The main regulator for AVMS is LRTK, which works under the legal framework set by the state and has sanction powers granted by law (it can impose fines, revoke licences). LRTK is a state budgetary institution, accountable to the Parliament. Its Chairman and Deputy Chairman are appointed by the Parliament.

The LRTK has competence for all radio and TV broadcasters, re-broadcasters and on-demand audiovisual media services providers in Lithuania, including PSB. It does not deal with spectrum-related issues, for which the competent body is the Lithuanian Communications Regulatory Authority (RRT).

Self-regulation

The main body for the self-regulation is the Ethics Commission of Journalists and Publishers - a collegial self-regulatory body of producers and disseminators of public information (PIP Art. 46). It supervises how producers and disseminators of public information (including TV broadcasters) abide to the Code of Ethics of Lithuanian Journalists and Publishers. If the Ethics Commission finds that a journalist or other disseminator of public information has violated the provisions of the Code of Ethics, such decision must be published immediately in the same media wherein the Ethics Commission has established these violations.

For the PSB, the Council of the National Radio and Television of Lithuania (LRT Council) is also supervising how the LRT (PSB) adheres to the requirements raised for broadcasters by law (Law on LRT Article 10 para. 1 subpara. 5)).

Broadcasters can also have their own codes of ethics. For example, one of the biggest TV channels, TELE3 has its Code of Ethics and Board of Ethics, which accepts complaints from the viewers. However, this is not necessarily effective: TELE3 received 3 warnings from the LRTK in 2014 for violations of legal provisions on protection of minors (the total number of warnings issued by LRTK in 2014 was 10).

2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

The LRTK is financed from 0.6% of the revenues of broadcasters, rebroadcasters and providers of VoD services (except for the public-service broadcaster, which is regulated by the LRTK, but does not pay the fee). The payments are made quarterly. Since the LRTK is a state budgetary institution, it transfers the money received from the audiovisual services providers to the state budget and then gets the financing from the state budgetary appropriations. LRTK prepares 3-year strategic plans with description of its strategic goals, activity programmes, objectives, performance measures and expenditure forecast. These strategic plans are approved by the LRTK Chairman and serve as a basis for the Parliament to set the budget allocations for the LRTK.

In 2009, the broadcasters' revenues dropped by almost 40% because of the economic crisis. Since the LRTK is financed from the broadcasters' income, its budget also decreased in 2009 (by 15%) and recovered only in 2012.

Until 2012, the LRTK was managing its funds itself, without passing through the state budget. However, following the recommendations the National Audit Office, which carried out an audit of the LRTK in 2011, the Parliament decided to clarify the legal status of the LRTK and to change its structure and financing rules, in order to bring more transparency. The Law on the Amendment of Article 47 of the Law on the Provision of Information to the Public, adopted by the Parliament on 14 June 2012, in force since 1 January 2013, reduced the amount of the fee paid by audiovisual services providers to the LRTK from 0.8% to 0.6% and established that the LRTK was a state budgetary institution.

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

The rules against the conflict of interest are set in Article 47 paras 4 and 9 of the Law on the Provision of Information to the Public (PIP).

Members of the Parliament, Government or public servants of political or personal confidence cannot be appointed to the LRTK. A person, who is appointed as a member of the LRTK, has to suspend membership and participation in the activities of political parties.

In order to prevent conflicts of interest with industry the law prohibits appointing as LRTK members:

- persons who less than a year ago held a position in the management bodies of organisations regulated by the LRTK and who may have interest in those organisations;

- members of the Council of the National Radio and Television of Lithuania;
- persons who themselves or their family members are linked with broadcasters, re-broadcasters or providers of VoD services by employment, copyright agreement relations or other contractual relations;
- persons who themselves or their family members have a participating interest in the broadcasters, re- broadcasters or VoD service providers.

In addition, Article 40 of the Regulations of the LRTK provides that in case when LRKT is going to examine a question where a member of LRTK might have a private interest, this member have to inform the LRTK in written before the meeting and he must withdraw from the examination of this question.

All LRTK members have to present their private interest declarations to the Chief Official Ethics Commission.

Chairman and Deputy Chairman of the LRTK cannot hold any other position and cannot get any other remuneration except for research and pedagogical work or creative activities not related to AVMS providers. The prohibition to hold other posts does not apply to other 9 members of the LRTK as they are not regular employees of the LRKT (they receive remuneration only for participation in the meetings). In any case, the posts cannot be related to AVMS providers.

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

Currently, the LRTK Administration has a staff of 18 people, plus Chairman and Deputy Chairman. Other 9 members of the LRTK assist in the meetings and consultations.

It is not clear what kind of technical facilities are available in the LRTK, but the annual report of 2014 mentions the modernisation of the technical facilities of the Monitoring Division, allowing recording of more radio and TV programmes, including remote recording of local programmes.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

The LRTK conducts monitoring of audiovisual services itself, in accordance with the Procedure for monitoring of radio and TV programmes, approved on 1 July 2012 by the LRTK.[1]

The Monitoring Division currently has 7 employees (until 2013 they were only 4). The monitoring is carried out by quarterly plans, approved by the Director of LRTK Administration. Monitoring is also conducted under a request of LRTK members; before examining modifications of licences; after complaints, or in other cases when necessary.

The radio or TV programme in question is recorded by the Monitoring Division. When this is not possible, a written request is sent to the service provider asking to submit the recording of that programme to the LRTK.

The LRTK monitoring activity is briefly presented each year in its annual reports. Since October 2014, the LRTK also publishes monthly monitoring results on its website[2]. The number of checks has recently increased significantly (2011 – 76 checks, 2012 – 184, 2013 – 159, 2014 - 371), mainly because of improvement of the LRTK's technical monitoring capacities and because of monitoring of violations of Article 19 of the Law on the Provision of Information, which prohibits instigation of war or hatred (130 checks out of 371 in 2014; data from the LRTK Annual Report for 2014, page 37).

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

According to Article 47 para. 1 subpara. 13) and 16) of the Law on the Provision of Information to the Public, the LRTK can impose the following sanctions:

- issue a warning,
- suspend the licence for a period not exceeding three months,
- revoke the licence,
- impose fines prescribed by the Code of Administrative Offences,
- refer to court regarding the suspension or termination of activities of the information society media

[1] http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=430136

[2] http://www.rtk.lt/lt/naujienos/stebesenos_rezultatai

- suspend the provision of services produced by foreign providers of audiovisual media services within the territory of Lithuania.

The most often violated provisions are the ones related to advertising and protection of minors.
The fines (which are paid to the state budget) are usually imposed for the violations of requirements for TV advertising. In 2010, when the control of requirements for TV advertising was LRTK's priority area, the LRTK issued 9 fines to the broadcasters who were not respecting these requirements. In 2014 there were no fines, but LRTK issued 10 warnings, 8 of which were for the violations of the Law on the Protection of Minors against the Detrimental Effect of Public Information.

Concerning services produced by foreign providers, in 2014 the LRTK suspended for 3 months the retransmission of two Russian-language programmes because of the instigation of war, hatred and dissemination of disinformation (violations of Article 19 of PIP).

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

a. Yes, according to Article 47 para. 14 of the Law on the Provision of Information to the Public, the LRTK is obliged to publish its decisions which are regulations in the Register of Legal Acts and its individual decisions on the LRTK website.

Annual activity reports are submitted to the Parliament and published on the LRTK website. Annual reports contain statistical information about audiovisual sector (lists of radio and TV programmes, audience share), information about the LRTK work (legal acts prepared, decisions taken, monitoring results, decisions on sanctions, overview of national and international cooperation), and financial report.

b. Recently, the LRTK has got much attention from media because of its decisions to suspend the retransmission of certain TV programmes following the events in Ukraine. For more information on this issue, see LRTK news in English: http://www.rtk.lt/en/news/news/metai/2014

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

a. Yes, the LRTK prepares its strategic plan (usually for 3 years), where its goals, activity programmes, objectives, priorities and performance measures are set. The strategic plan is approved by the LRTK Chairman.

Since the transposition of the AVMS Directive, the LRTK has prioritised the issues of protection of minors, digital TV transition, control of requirements for TV advertising and sponsorship in TV programmes.

b. Yes, the LRTK can issue guidance on the application of rules contained in the AVMS Directive. For example, the LRTK issued in December 2010 the Rules for publishing information about audiovisual media service providers and the Rules for implementation of requirements for audiovisual commercial communications, advertising and sponsorship – both are binding on service providers.

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

According to the Article 47 paragraph 14 of the Law on the Provision of Information to the Public, the LRTK has to launch public consultations on all draft decisions that establish legal norms[3]. According to the Regulations of the LRTK, the drafts for public consultations are published in the Parliament's database of draft legal acts and on the LRTK website. The period to submit comments cannot be shorter than 10 days (Article 32 of the Regulations of the LRTK).

There is no requirement to publish the stakeholders' responses.

[3] This provision was introduced by the Law on the Amendment of Article 47 of the Law on the Provision of Information to the Public of 14 June 2012.

Examples:

- December 2014 – February 2015: Public consultation on the draft Procedure of modification of terms and conditions of broadcasting and rebroadcasting licences.
- 2011: Public consultation on the draft Rules for the Implementation of the Requirements for Audiovisual Commercial Communications and Sponsoring of Audiovisual Media Services
- 2011: Public consultation on the draft decision on the definitions used in broadcasting licences
- 2010: Public consultation on the list of events of major importance for society

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

N/A

Links to main laws:

Law on the Provision of Information to the Public (PIP)
2 July 1996 No I-1418, last amended on18 December 2014:
https://www.e-tar.lt/portal/lt/legalAct/TAR.065AB8483E1E/ZCQmAhfsMw (in Lithuanian),
English translation only available for the version valid until November 2013:
http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=458157

Law on Lithuanian National Radio and Television (Law on LRT)
18 October 1996 No I-1571, last amended on 23 September 2014:
https://www.e-tar.lt/portal/lt/legalAct/TAR.1559303036A8/ndaxPqgibv (in Lithuanian)
English translation only available for the version from 2000:
http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=120115

Law on the Protection of Minors against the Detrimental Effect of Public Information
10 September 2002 No IX-1067, last amended on 21 October 2011
http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=410974 (in English)

Law on Advertising
18 July 2000, No VIII-1871, as last amended on 7 November 2013:
http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=460628 (in Lithuanian)
English translation only available for the version valid until July 2013:
http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=414814

Law on Alcohol Control
18 April 1995, No I-857, as last amended on 23 December 2014:
http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=1002465 (in English)

Luxembourg

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

N/A

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

The *Autorité luxembourgeoise indépendante de l'audiovisuel* (Independent Audiovisual Authority of Luxembourg, ALIA) was established by the law of 27 August 2013[1] amending the Law of 27 July 1991 on Electronic Media[2] (LEM) as amended. Previously, audiovisual media services were jointly regulated by the *Service des Médias et des Communications* (Media and Communications Service, SMC) attached to the government and the *Conseil National des Programmes* (National Programme Council, CNP). In broad terms, the CNP supervised the content standards set out in the LEM and specified in providers' *cahier des*

[1] Loi du 27 août 2013 modifiant la loi modifiée du 27 juillet 1991 sur les médias électroniques en vue de la création de l'établissement public «Autorité luxembourgeoise indépendante de l'audiovisuel (Mém. A – N° 163, 9.9.2013, p. 3114. See for further information Cole/Metzdorf, 2013, Bill on the creation of a new media authority, IRIS Merlin Newsletter 1/2013, available at http://merlin.obs.coe.int/iris/2013/1/article28.en.html, Cole/Metzdorf, 2013, Act on the creation of a new media authority, IRIS Merlin Newsletter 10/2013, available at http://merlin.obs.coe.int/iris/2013/10/article32.en.html.

[2] Loi du 27 juillet 1991 sur les médias électroniques (Mém. A- N° 47, 30.7.1991, p. 972, as amended by Loi du 2 avril 2001 (Mém. A- N° 42, 17.4.2001, p. 924), Loi du 19 décembre 2003 (Mém. A- N° 189, 31.12.2003, p. 3990), Loi du 8 juin 2004 (Mém. A- N° 85, 8.6.2004, p. 1202), Loi du 23 avril 2008 (Mém. A- N° 55, 29.4.2008, p. 760), Loi du 17 décembre 2010 (Mém. A- N° 241, 24.12.2010, p. 4024), Loi du 8 avril 2011 (Mém. A- N° 69 of 12.4.2011, p. 1120), Loi du 27 août 2013 (Mém. A- N° 163, 9.9.2013, p. 3114). A consolidated version is available in French at http://www.mediacom.public.lu/legislation/textes_nat_vig/Loim__dias__lectroniquestextecoordonn__.pdf and in an unofficial translation of English at http://wwwen.uni.lu/recherche/fdef/droit_des_medias/texts.

charges (book of obligations pertaining to the license). The SMC ensured the implementation of the government's audiovisual policy and monitored compliance with advertising standards. In order to set up a separate regulatory body and enhance its independence, a reform of the institutional framework was carried out in 2013. Against this background, ALIA has formally existed for roughly one and a half years and been actually operational for even less. The fact that ALIA is a rather young regulator will have to be taken into account when analysing ALIA's independence.

ALIA's mandate covers the regulation of electronic media, a term which encompasses audiovisual (linear and non-linear) and sound media (radio) services. It thus oversees all kinds of providers including providers of public service media[3] as well as commercial operators. Art. 35 (2) LEM specifies ALIA's competencies. Moreover, ALIA is composed of two main bodies, the executive constituting the Board of Directors (hereinafter, the board) and the Consultative Committee, both of which are assisted by the Director. The board comprises five members nominated by grand-ducal order and the Consultative Committee has at most 25 members representing different groups of civil society as outlined in a grand-ducal order.[4] A Director who is supported by additional staff (max 3 persons) serves as connecting link between the board and the Consultative Committee. The Director manages the authority on a day-to-day basis. The Director, board members as well as the members of the Consultative Committee are nominated for a term of five years.[5] In general, the board prepares investigations and verifies admissibility of complaints by third parties. Consultation of the Consultative Committee is obligatory regarding investigations pursuant to Art. 26bis LEM (prohibition of incitement to hatred), Art. 27ter, 28quater and 28quinquies LEM (protection of minors in linear, non-linear and sound media services).

In contrast to the previous distribution of power between the SMC and the CNP, ALIA resembles the typical example of a national regulator established in the sector of audiovisual media. However, it is not a converged regulator. Instead, other regulatory bodies with precisely determined mandates have been set up. Above all, the *Institut Luxembourgeois de Régulation* (Luxembourg Regulatory Institute, ILR) is responsible for the regulation of electronic communications networks and services within the meaning of Art. 75 of the *Loi du 27 février 2011 sur les réseaux et les services de communications électroniques*[6] (Law on electronic communications networks and services). With regards to data protection, the *Commission Nationale pour la Protection des Données* (National Data Protection Commission, CNPD) functions by virtue of Art. 32 *Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel* (Law on the protection of individuals with regard to the processing of personal data)[7]. For the printed

[3] Apart from the public service radio 100,7 there is no dedicated public service broadcaster for television but the RTL group (CLT-UFA), being the leading broadcaster on the market, has entered into an agreement with the government dedicating to the provision of services of public nature.

[4] Arrêté grand-ducal du 17 janvier 2014 portant nomination du Conseil d'administration de l'Autorité luxembourgeoise indépendante de l'Audiovisuel (Mém. B- N° 10, 31.1.2014, p. 398) ; Arrêté grand-ducal du 21 novembre 2014 fixant la liste des organisations représentées au sein de l'Assemblée consultative de l'Autorité luxembourgeoise indépendante de l'Audiovisuel, (Mém B- N° 122, 4.12.2014, p. 2134).

[5] Art. 35bis A (2) and B (1) LEM and 35ter (1) LEM.

[6] Loi du 27 février 2011 sur les réseaux et les services de communications électroniques (Mém. A- N° 43, 8.3.2011, p. 610.

[7] Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel, modifiée par la loi du 31 juillet 2006, la loi du 22 décembre 2006, la loi du 27 juillet 2007, texte

press, the Press Council as a pure form of self-regulation has been granted the right to pass a code of conduct which is acknowledged by the *Loi du 8 juin 2004 sur la liberté d'expression dans les medias* (Law on freedom of expression in the media) as amended in 2010.[8]

In addition, a self-regulatory model is employed in the field of protection of minors in audiovisual media services. This is specified in a *règlement grand-ducal* (grand-ducal regulation) of 8 January 2015.[9] Accordingly, all providers of audiovisual media services (linear and non-linear) are responsible for classifying their content pursuant to five age categories outlined in Art. 1 of the grand-ducal regulation. Stricter obligations apply to providers of linear services (labelling and inclusion of warnings). Providers of non-linear services are required to install parental controls systems and separate closer groups for content classified as unsuitable for minors aged below 18. The responsibility for ensuring the protection of minors is incumbent on service providers and ALIA supervises the self-regulatory system.

2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

Currently, ALIA is financed exclusively by the state budget. The Board of Directors prepares a yearly budget which is submitted to the government. The LEM does not prescribe any conditions to receive state funding. The proportion allocated to ALIA is integrated in the overall state budget which is outlined in a law and debated and voted on by the *Chambre des Deputés* (Parliament).[10]

What is more, Art. 35quinquies (2) LEM grants ALIA discretion to introduce a tax imposed on all providers of audiovisual media or sound media service for all expenses not covered by the state budget. A grand-ducal regulation which determines the amount of the tax to be paid by providers of linear and non-linear services as well as radio services has been adopted in early February 2015.[11] To this effect, service providers are required to pay an amount of

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coordonné (Mém. A- N° 91, 13.8.2002, p. 2339), consolidated text in French available at http://www.cnpd.public.lu/fr/legislation/droit-lux/doc_loi02082002mod_fr.pdf.

[8] Loi du 8 juin 2004 sur la liberté d'expression dans les médias (Mém. A- N° 85, 8.06.2004, p. 1202), amended by Loi du 11 avril 2010 (Mém. A-N° 69, 30.04.20010, p. 1324), consolidated text in French available at p.5, http://www.legilux.public.lu/leg/textescoordonnes/compilation/code_administratif/VOL_5/PRESSE.pdf.

[9] Règlement grand-ducal du 8 janvier 2015 relatif à la protection des mineurs dans les services des médias audiovisuels (Mém. A- N° 7, 15.01.2015, p. 44). For further information see Cole/Metzdorf, 2015, Draft grand-ducal regulation on protection of minors in audiovisual media services, IRIS Merlin Newsletter 2/2015, available at http://merlin.obs.coe.int/iris/2015/2/article27.en.html; Cole/Metzdorf, 2015, grand-ducal regulation on protection of minors in audiovisual media services, IRIS Merlin Newsletter 4/2015.

[10] Loi du 19 décembre 2014 concernant le budget des recettes et des dépenses de l'Etat pour l'exercice 2015, Mém. A- N° 255, 24.12.2014, p. 4839, see in particular Art. 41.013, p. 4889.

[11] Règlement grand-ducal du 2 février 2015 fixant le montant et les modalités de paiement des taxes à percevoir par l'Autorité luxembourgeoise indépendante de l'audiovisuel en matière de surveillance des services de médias audiovisuels et sonores, Mém. A- N° 21, 10.02.2015, p. 238.

approximately EUR 1350,00 to ALIA in form of an annual tax due in January of each year. The grand-ducal regulation is applicable as of 2015 requiring service providers to pay the charge for the first time in 2015.

The board manages the funds available to ALIA. In 2014, ALIA's resources were fixed at roughly EUR 589.000 while in 2015 its budget amounted to EUR 724.000.[12] This is considerably more than the approximately EUR 71.000 previously attributed to the CNP in 2009 for instance.[13] The substantial difference is due to the fact that ALIA pays its staff directly whereas the CNP's personnel were paid by the SMC.

Since ALIA was only set up in 2013, when the worst of the economic crisis had already passed, it is unclear as to whether any future deterioration of the Luxembourg economy will affect ALIA's budget.

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

Conflict of interest rules regarding board members are stipulated by Art. 35ter A (2) LEM. The rules include the prohibition to be remunerated by a service provider and the prohibition to hold a political office. More precisely, board members may not be members of the government, the national or European Parliament, the State Council or hold any office in a municipality. In addition, board members may not hold a position nor have an interest (direct or indirect) in a company supervised by ALIA.

The Consultative Committee of ALIA represents the various groups of civil society. To this end, they include representatives of the major political parties (PCSL, POSL, DP and Déi Gréng), the University of Luxembourg, the environmental movement, trade unions, the chamber of commerce and other groups of the economic sector. Membership of the Consultative Committee is, above all, honorary.

Conflict of interest rules will further be detailed by executive measures taken by the bodies of ALIA. Both, the board (pursuant to Art. 35bis A (1) No. 7 LEM) as well as the Consultative Committee (pursuant to Art. 35ter (3) LEM) are entitled to set out their own internal regulations and are currently in the drafting process.

[12] Loi du 29 avril 2014 concernant le budget des recettes et des dépenses de l'Etat pour l'exercice 2014, Mém. A-65, 30.4.2014, p. 685, see in particular Art. 41.013, p. 732.

[13] Loi du 19 décembre 2008 concernant le budget des recettes et des dépenses de l'Etat pour l'exercice 2009, Mém. A- N° 200, 23.12.2008, p. 2771, see in particular Art. 12.300, p. 2819.

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

ALIA's full-time staff comprises 4 persons: the Director and his support staff (up to three persons of different ranks as indicated in Art. 35quater LEM). In addition, the board consists of 5 members and a secretary who work part-time and receive a monthly allowance from ALIA. If necessary, external experts may be employed on an ad hoc and short term basis by virtue of Art. 35quater (3) LEM. A contract would specify their tasks and remuneration. Since ALIA has only been created one and a half years ago, it is expected that the current structure will be altered in the coming months and additional staff will be recruited. In addition, the members of the Consultative Committee (maximum of 25 persons) met every two weeks in the inception phase and will in future meet every six/eight weeks to give an opinion where mandated by the law or where issues arise. In view of the roughly 70 linear and non-linear services established in Luxembourg, the LEM equips ALIA well to conduct its tasks efficiently.

ALIA's offices are located in the city centre of Luxembourg. It is well equipped in terms of technical infrastructure.

With regards to its funding, ALIA's budget was augmented from approximately EUR 590.000 in 2014 to EUR 724.000 in 2015. The rise can be attributed to the fact that ALIA gradually began functioning and required more funding. In comparison with previous funding allocated to the CNP, ALIA's financial resources have substantially increased. This is explained by the fact that ALIA's staff is directly paid by ALIA's budget while previously, CNP members were funded through the SMC. Still, the increase in comparison with past budgets is significant (in times of volatile economic growth rates) which underlines ALIA's budgetary independence and the government's willingness to establish an autonomous regulator.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

The LEM does not specify the monitoring techniques of ALIA. It can nonetheless be derived from the LEM that ALIA may initiate investigations on its own motion (according to Art. 35bis B (2) LEM). Such proceedings are commenced by the board and managed by the President. In order to prepare investigations, ALIA relies on spot checks rather than far-reaching systematic monitoring. In addition, third parties may bring a complaint to ALIA in line with Art. 35sexies. These may be individuals or companies resident in Luxembourg or abroad as well as NRAs of other EU Member States.

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

The sanctions ALIA may impose are set forth in Art. 35sexies LEM. This provision applies a graduated sanctioning regime. Hence, sanctions range from a warning, a warning with the obligation to publish an announcement to fines of between EUR 250 and 25.000.[14] If the infringement is not brought to an end by the service provider, the amount of the fine may be doubled or the service may be temporarily suspended or, in serious cases, the license may be withdrawn.[15] The Minister responsible for ALIA will enforce the suspension or otherwise revocation of the license upon recommendation by ALIA.

Due to its recent construction, ALIA's practice is still limited to this date. In November 2014, ALIA issued a warning to RTL Belux for violation of Art. 27ter LEM which guarantees the protection of minors in television broadcasts.[16] A viewer had complained about a programme entitled "*Indices*" ("Evidence") on RTL TVi which was originally broadcast on Belgian television. The Belgian authorities transmitted the complaint to Luxembourg where RTL Belux as the license holder for RTL TVi is established. The programme was disseminated in April 2014 at 20:30. It portrayed Belgian adolescents immigrating to Syria to support Islamists in their war. The programme contained exceedingly violent scenes such as mass executions, decapitations, crucified persons, torture and other degrading acts, some of which were blurred. The programme was categorized as unsuitable for minors below 12. The complaint contested this categorization, arguing that the programme was harmful to minors including those older than 12 years. In its decision, ALIA pointed out that the programme was of exceedingly violent nature unjustified by editorial purposes and thus unsuitable for minors aged 12. Since the broadcaster had not taken any measures to ensure that minors would not normally hear or see the programme, ALIA found that RTL Belux had breached Art. 27ter (2) LEM. As the service provider had violated this rule for the first time, ALIA imposed a warning, the first sanction enumerated in Art. 35sexies. This case illustrates ALIA's sanctioning powers and is to be regarded as an example. ALIA is currently considering further sanctioning measures so that future sanctioning decisions are to be expected.

[14] Art. 35sexies (3) a.-c. LEM

[15] Art. 35sexies (5) LEM.

[16] Décision N° 12/2014 du 5 novembre 2014 du Conseil d'administration de l'Autorité luxembourgeoise indépendante de l'audiovisuel concernant une plainte déposée par XXX à l'encontre du service de télévision RTL TVi, available at http://www.alia.lu/holding/2014-11-05-decision-n12-2014-plainte-N206_EC_fournisseur.pdf. See also Cole/Metzdorf, 2015, Regulator Imposes Warning on RTL for Breach of Rules on Protection of Minors over Syrian War Coverage, IRIS Merlin Newsletter 1/2015, available at http://merlin.obs.coe.int/iris/2015/1/article27.en.html.

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

ALIA is only obliged to publish certain types of decisions. These include sanctioning decisions pursuant to Art. 35sexies LEM as well as decisions ordering additional investigations.[17] The LEM does not specify the kind of publication so that ALIA publishes such decisions on its website. In addition, decisions (taken by the government upon consultation of ALIA) to revoke a license are published in the *Mémorial* (official journal of Luxembourg) in accordance with Art. 35sexies (6) LEM. In spite of the absence of any legal obligation, in an effort to enhance transparency, ALIA has decided to publish any opinion as well as any decision (also those determining not to commence investigations) on its website thereby allowing the public to closely monitor its activities.

Furthermore, ALIA is not required to prepare and publish annual reports. It is, however, obliged by Art. 35quinquies (6) LEM to publish its annual accounts in the *Mémorial*. The CNP, ALIA's predecessor published its annual reports on its website lacking a formal legal obligation. These summarized the activities of the CNP in national and international context and detailed its investigations led by the CNP and complaints brought to it by third parties. The CNP's report of 2013 also included statistics on total viewing time spent on television.[18] It is expected that ALIA will follow suit. Possibly, contributions by the Consultative Committee will be included in the publications.

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

By virtue of Art. 35sexies (3) b. LEM, ALIA may oblige service providers to air an announcement as part of its sanctioning powers. By this mechanism, the public is directly informed by service providers about violations of the LEM.

Furthermore, ALIA's activities are covered by the media. The main Luxembourg newspapers, above all, the leading daily *Luxemburger Wort* regularly report on its practice.[19] No further information is available on reports about ALIA disseminated on TV or radio.

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[17] Art. 35bis A (3) LEM.

[18] See rapport annuel du CNP – 2013, available at http://cnpl.lu/de/2014/01/09/le-rapport-annuel-du-cnp-2013/.

[19] See for instance several articles published in the online version of the newspaper *Luxemburger Wort* about the application process concerning the radio frequency 107,7 currently being subject to a tender: "Medienpolitik: Zwei neue Radiosender" of 5.1.2015, http://www.wort.lu/de/politik/medienpolitik-zwei-neue-radiosender-54aa34740c88b46a8ce4fa3e, "Ehemalige DNR-Frequenz: Vier Bewerber im Rennen" of 9.2.2015http://www.wort.lu/de/politik/ehemalige-dnr-frequenz-vier-bewerber-im-rennen-54d898070c88b46a8ce532ce, "Freie Radiofrequenz: "Vorwurf unbegründet"" of 16.2.2015, http://www.wort.lu/de/politik/freie-radiofrequenz-vorwurf-unbegruendet-54e1c4040c88b46a8ce539c4. See also on a decision of ALIA rejecting plans for a new French-speaking radio station under an existing license of S.à.r.l. (Société de Radiodiffusion Luxembourgeoise): "Aufsichtsbehörde verweigert RTL2 die Genehmigung" of 4.3.2014, http://www.wort.lu/de/lokales/aufsichtsbehoerde-verweigert-rtl2-die-genehmigung-53159cd7e4b01171e9aa488a, "Kein Einspruch gegen ALIA-Entscheidung of 27 May 2014,

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

Art. 35 (1) LEM underlines that ALIA "operates totally independently" in pursuance of the objectives stipulated in the LEM and its competencies there under. Thus, ALIA determines its own agenda including long-term objectives. Since its establishment, two issues have been prioritized.

First, the selection of a new radio service for the frequency 107,7. In February 2014, ALIA rejected the request by the *S.à.r.l. Société de Radiodiffusion Luxembourgeoise* to modify its license for the radio station "DNR".[20] S.à.r.l. intended to alter the target audience of the service, directing its programmes to the French-speaking Community in Luxembourg. DNR had previously disseminated its programmes in the Luxembourgish language. In addition, the structure of shareholders would be modified into a joint venture by S.à.r.l. and CLT-UFA (which was envisaged to be reflected in the change of name to "RTL 2"). ALIA made clear that the substitution of one service by another relying on a substantially different format and structure required a competitive process involving other market participants. Thus, the government published a call for tender at the beginning of January 2015.[21] Four companies (PLG s.à.r.l., LOR'FM Luxembourg s.à.r.l., Radiolux S.A. and NRJ Luxembourg S.A.) submitted their applications which are currently being reviewed by ALIA. Upon receipt of the opinion of ALIA, the government will decide upon the attribution of the frequency.[22]

Second, ALIA sought to enhance protection of minors in linear and non-linear audiovisual media services. To this end, it issued a warning to RTL in respect of a programme of excessively violent nature (see under 6). What is more, a grand-ducal regulation on the protection of minors was adopted by the government in January 2015 specifying the types of classifications for different age groups as well as the pictograms and warnings respectively applicable.[23] Non-linear services are required to provide parental controls.[24] In addition, material considered unsuitable for minors below 18 years can only be offered in separate sections of the website and only after verification that the user is of age.[25] The grand-ducal

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http://www.wort.lu/de/politik/radio-dnr-rtl-2-kein-einspruch-gegen-alia-entscheidung-53858662b9b398870802c92d. ALIA's decision in this case is available at http://www.alia.lu/holding/ALIA-decision-DNR-RTL2-du-27.2.2014.pdf.

[20] Décision N° 4/2014 du 27 février 2014 du Conseil d'administration de l'Autorité luxembourgeoise indépendante de l'audiovisuel concernant une demande présentée par la S.à.r.l. Société de Radiodiffusion Luxembourgeoise, available at http://www.alia.lu/holding/ALIA-decision-DNR-RTL2-du-27.2.2014.pdf.

[21] Appel public de candidatures pour l'octroi d'une permission pour service de radio sonore à émetteur de haut puissance pour la fréquence FM 107,7 MHz à Blaschette, available at http://www.mediacom.public.lu/institutions/Institutions_nationales/smc/Appelpublic_012015.pdf.

[22] See Fréquence 107,7 – candidatures reçues suite à l'appel public, Communiqué 9.2.2015, available at https://www.gouvernement.lu/4431138/09-frequence-candidatures?context=971444.

[23] Règlement grand-ducal du 8 janvier 2015 relatif à la protection des mineurs dans les services de médias audiovisuels, Mémorial 15.01.2015, A – N° 7, p. 44. See Art. 1-7 grand-ducal regulation.

[24] Art. 10 grand-ducal regulation.

[25] Art. 11 and 12 grand-ducal regulation.

regulation also takes into account the large number of service providers being located in Luxembourg but targeting other countries. Such providers can rely on equivalent systems of classification provided that ALIA confirms an adequate level of protection.[26] Briefly, in all cases concerning audiovisual media services as well as cinematographic works, ALIA constitutes the sole competent body ensuring protection of minors.

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

The LEM does not explicitly provide for the competence of ALIA to issue interpretative guidance on the rules contained in the law. Art. 35 (2) LEM which lists ALIA's duties is formulated in broad terms. Accordingly, ALIA may "develop proposals" for increased diversity and plurality of media, "encourage" providers to ensure certain standards, "supervise, control and ensure compliance with the law, regulations and specifications by audiovisual and sound media services that fall within the scope of the Luxembourg authorities under this law". To this effect, ALIA may adopt interpretative guidelines to clarify the obligations incumbent on service providers. Any such guidance would be binding on service providers. So far, however, ALIA has not become active in this respect.

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

Under the LEM, ALIA is not obliged to consult industry stakeholders or the general public before taking its decisions. So far, no public consultations have been organized which does not exclude such consultation in the future.

In spite of the absence of institutionalized consultations, the regulator is closely connected to stakeholders and the general public through more informal channels. Although access to the regulator is facilitated, such methods lack transparency.

[26] Art. 8 (1) and 9 (1) grand-ducal regulation.

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

When evaluating ALIA's independence, its historical genesis should be taken into account. The shift from the past regulatory structure involving the SMC, a governmental service and the CNP, a body closely attached to the government towards a self-standing regulator with a wide scope of competencies to regulate audiovisual and audio services can indubitably be regarded as a significant step forward. The establishment of ALIA which bears the adjective "independent" in its denomination and which is underpinned twice in the legal basis contained in the LEM[27] acknowledge the government's willingness to create a separate, autonomous regulatory entity.

It is apparent that the reference to independence in the LEM is of formal character and that ALIA, by its actions and practice will have to assert its independence granted by the law. At this state, it is too early to give any indications regarding its independence vis-à-vis the government or the industry, although there is no indication that it will not use its powers as can be seen already from the actions taken also against important Luxembourgish broadcasters in the short time of its existence. An expression of ALIA's independence is the funds allocated to ALIA as a proportion of the state budget. ALIA receives a contribution which is substantially higher than that previously granted to the CNP. In addition, the competencies are no longer split between the SMC and the CNP but ALIA is responsible for the application and enforcement of the rules set out in the AVMSD as transposed in the LEM. An important characteristic which enhances ALIA's powers is also its capacity to issue sanctions outlined in Art. 35sexies LEM. While its predecessor, the CNP lacked any kind of sanctioning instruments, ALIA has the means at its disposal to enforce the LEM.

When taking a global look at the level of independence granted to ALIA, it is clear that there is still room for enhancing transparency and public awareness of its activities. Some features of the regulatory structure as well as the underlying regulatory culture ALIA inherited and those may be more difficult to change. The lack of consultations held by ALIA may be explained by the fact that a constant dialogue takes place between ALIA on the one hand and service providers and other stakeholders on the other hand. In a small country like Luxembourg, institutionalized forms of consultation may be considered less relevant or unnecessary due to the regulator's links with the industry. When assessing ALIA's independence, the specificities of Luxembourg, its size, geography and culture thus play a role.

[27] Art. 35 (1) LEM.

Latvia

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

N/A

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

There is state regulation in Latvia. Latvia has a single audiovisual media regulatory authority: the National Electronic Mass Media Council (the Council), a state body. The Council is a fully autonomous and independent state institution. The Council is competent for all issues, except infrastructure, with respect to audiovisual media, both with respect to commercial media and public media and including television, radio, on-demand and other audiovisual services. The Council also allocates the frequency spectrum in case of scarce resources, however, it does not regulate the underlying infrastructure. The electronic communication networks and respective operators (which may be also broadcasters) are supervised by the Public Utilities Commission, another state body.

The regulator is organized as a collective body, consisting of five council members. The council members are all elected by the Saeima (the Latvian Parliament). They adopt decisions by a simple majority vote, and the chairman (elected by themselves) has a casting vote. The council is assisted by a secretariat, including lawyers and monitoring experts.

2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

The regulator is financed almost exclusively by state budget. According to the Electronic Mass Media Law, the means for the fulfilment of functions of the Council, including the ensuring of the public remit, are granted by the state budget. Some minor income is received by organizing the tender for issuing licenses, but this is meant mainly to cover the costs for the organization of such tenders.

The Council has to apply annually to the Ministry of Finance, indicating the necessary amount of funding to fulfil its functions. The Ministry of Finance prepares the draft annual Law on State Budget, which it submits for the review of the Cabinet of Ministers. The Law on Budget and Finance Management provides that the Cabinet of Ministers listens directly to the arguments of the Council (along with other independent institutions) in its hearing. The Law on State Budget is finally approved by the Saeima (the Parliament).

The Council is consequently free how to manage and use the allocated funds in order to fulfil its functions. The state budget funding for year 2015 is EUR 446 783. In comparison, for year 2012 it was LVL 11 441 592 (ca. EUR 16 279 918.73). Thus, the funding has been significantly reduced in recent years.

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

Strict conflict of interest rules exist in the legislation: in the Electronic Mass Media Law, as well as in the Law on Prevention of Conflict of Interests in Activities of Public Officials. According to the Electronic Mass Media Law, a Council member may not be an official of a political party and a shareholder of an electronic mass medium. In addition, the employment in the Council must be the main occupation of a Council member.

The Law on Prevention of Conflict of Interests in Activities of Public Officials provides an exclusive list of what additional positions a Council member may take, including an occupation in a scientific and educational field.

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

The Council is assisted by a secretariat, which includes lawyers and monitoring centre experts. Currently the secretariat has 11 employees, including 3 lawyers and 3 experts of the monitoring centre (2 of them – half time).

The Council itself has publicly expressed its opinion that its resources are inadequate to fulfil its tasks in the monitoring of content of broadcasters and to ensure compliance with law. On 18 December 2014 the Council published a press announcement, in which it informed that the Council has requested to provide additional EUR 106 000 to its budget for year 2015 in order to strengthen the capacity of monitoring centre: this would enable the Council to employ two additional experts. Otherwise, according to the Council's statement, it can monitor only around 1% of all broadcasted content in its jurisdiction. However, the Saeima (Parliament) denied the Council's request for additional funding.

According to publicly available information, the Council does not have any specific technical facilities. The monitoring centre is equipped with numerous television sets and recording devices.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

According to the Electronic Mass Media Law, the regulator's functions include the performing of the monitoring of services. Thus, the regulator is conducting monitoring itself, carried out by the secretariat: monitoring centre, consisting of three experts. In addition, a specific programme may be monitored following complaints by the public. The monitoring centre conducts it monitoring by recording and analysing the contents of the programmes.

The specific plan of programmes and features to be monitored is approved by the Council once in a quarter. Changes in the plan may be made, following complaints to the public, or taking into account the capacity of the monitoring centre (The Regulations of the Monitoring Centre, approved by the Council on 6 September 2012).

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

In practice, the Council has imposed sanctions for various infringements of the Electronic Mass Media Law: for example, in year 2013 there were 18 administrative violation cases initiated; and 9 administrative penalties applied.

There is no full statistics publicly available what have been the most frequent violations, but, taking into account press statements by the Council, it seems that the most frequent violations established have been for the violation of advertising rules. The advertising rules in the Electronic Mass Media Law are largely based on the AVMS Directive, with some local additions. For example, in year 2014 there have been several penalties applied for broadcasting of prohibited advertising (indirect advertising of gambling; surreptive advertising); for advertising for children, which violates the applicable rules.

Also, there have been penalties applied for inappropriate contents of the broadcasts, which violate the law. For example, in year 2014 a penalty has been applied for broadcasting movies including violent scenes before the legal time-shield. Also, in year 2014 several penalties have applied for broadcasting "unilateral, non-objective" information, mainly in relation to Russian – Ukrainian conflict.

No full statistics for year 2014 is available at the moment, but from the review of the press statements of the Council it seems that the track-record might be increased in comparison to year 2013.

The imposed fines are qualified as administrative penalties according to the Latvian Code of Administrative Violations, thus the relevant amounts flow directly to the state budget.

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

There is no explicit obligation to make the regulator's documents public in the Electronic Mass Media Law. However, the general provisions of the Freedom of Information Law apply. This means that unless specific information held or generated by public institutions has been classified as restricted access (e.g., containing state or commercial secret, private information, etc.), it is publicly accessible information and everyone may get acquainted with it.

In practice, the regulator has a very extensive website (www.neplpadome.lv), in which it has published most of its publicly accessible documents: internal operation rules; annual reports; annual budgets; recommendations; agendas of meetings; information on the adopted decisions. The decisions are published on ad hoc basis: the Council would publish in its webpage a decision, which is applicable to more than one addressee, e.g., to all cable operators. A decision addressed to single specific addressee is not published.

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

The published annual reports have become more extensive in recent years. The report for year 2013 lists the summery of the main statistics with respect to the Council (the number of decisions adopted; the volume of monitoring performed), as well as informs on the main topics of the agenda of the Council in this year, what has been performed and achieved.

We are not aware of a survey where the public's awareness of the regulator would have been assessed. However, the activities of the regulator are commonly covered by media (both audio-visual and printed), thus is may be guessed that most of public understands the role of the Council at least at a basic level. This is evidence also by the fact that Council commonly reviews complaints of audio-visual services received from the public.

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

Yes, the regulator can set its own agenda, and it does it by adopting the National Strategy for the Development of Electronic Mass Media. The National Strategy is a binding legal act prepared for a period of 5 years, and it lists the main goals, policies and long-term objectives of the regulator. The current National Strategy covers the period between 2012 and 2017.

Since the transposition of the AVMS Directive the following issues have been prioritised: the strengthening and reforming of public media (this has been the topical issue for the last several years, evidence by the development and adoption of the Concept for Public Media in 2013); enhancing the production of local Latvian and European content and improving the quality of audio-visual content; improving the rules for cable operators and cross-border media established in the jurisdiction of Latvia to ensure that all of their contents confirm with the Latvian law and AVMS (the topic enhanced in year 2014 due to Russian – Ukrainian conflict).

No, the regulator is not entitled by the law to issue imperative guidance. However, in practice the Council has issued several guidance and recommendations on the application of the Electronic Mass Media Law. For example, there are guidelines for production of broadcasts within the pre-election time (when special rules for political advertising apply); for application of the Latvian language rules; for calculation and application of advertising slots; for the application of advertising and sponsoring rules.

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

According to the Electronic Mass Media Law, there is a public body established by the Council: the Public Consulting Council. The main duty of this Public Consulting Council is to ensure the participation of the society and public opinion in the development of public remit conditions, as well as in the development of the National Strategy.

In addition, the Council on regular basis invites other stakeholders and experts to express their opinion on more strategic issues developed by the Council, for example, within the process of developing the Concept for Public Media (approved in year 2013), there were several working groups and expert panels organised. The reports of such working groups and experts are normally published in the Council's webpage (www.neplpadome.lv), however, there are no clear guidelines when it is done and when not. For example, the webpage does not contain any reports (at least, they cannot be found under the general headers) of the work performed by the Public Consulting Council.

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

The Latvian regulator has a sufficient independence and powers provided in the law to enforce the rules of the AVMS Directive. However, due it insufficient funding certain of its functions, such as monitoring and ensuring compliance, cannot be performed in an optimum level. Also, it often seems that the Council members lack an appropriate authority within the public, as there have been public complaints, e.g., by some members of Parliament, that the Council is too "week" and inactive.

Another issue is that some stakeholders, especially within commercial media, argue that the Council in itself is in conflict of interests, as it simultaneously is a regulator of all electronic media, but also a shareholder of public media. It has also often seemed that the Council devotes most of its energy in developing and strengthening public media (e.g., the Concept of

Public Media in year 2013), whereas the commercial media are left to struggle on their own and only monitored with respect to formal compliance with law. There is also a debate ongoing if the Council is using its powers appropriately in dividing the funds for public remit: according to the law, up to 15% of public remit funds may be granted to commercial media.

Montenegro

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Tables 1-5: Comments on general information

Montenegro implemented AVMS Directive through the new Law on Electronic Media, along with the necessary changes to the accompanying Law on Electronic Communications in 2010. These legislative changes in the field of audiovisual policy brought Montenegro's legislation largely in line with the Audiovisual Media Services (AVMS) Directive.[1] According to the new legislation, the Montenegrin Broadcasting Agency (renamed Agency for Electronic Media) continued to work as the Agency responsible for electronic media and the allocation of broadcasting frequencies by public procedures.

This legislation put an end to the confusion created by previous legal provisions from 2008, which deprived the Broadcasting Agency of several important competencies and did not provide any specific alternative. The same legislation prescribed the foundation of a new regulatory body, the Agency for Electronic Communications and Postal Affairs, but the competencies of the two Agencies were not clearly distinguished. This caused a significant amount of criticism from the European Commission's Delegation in Montenegro regarding the uncertainty connected to the procedure for the assignment of broadcasting frequencies, which was believed not to be in line with European standards.

Now, AEM issues licences for provision of AVM services (broadcasting licence and on-demand AVM services provision licence); but still has to cooperate with the regulatory body responsible for electronic communications (EKIP) in planning the use of the radio-frequency band, in the section designated for terrestrial broadcasting and in drafting the radio frequency allocation plan, as regards terrestrial broadcasting.

Tables 6-9: Comments on institutional framework

The Broadcasting agency was transformed to the Agency for electronic media, but the general concept remained the same. The agency is founded by the state; it is controlled by the Parliament, and its independence is highlighted in the Law.

Tables 9-14: Comments on powers of regulatory bodies

Transposition of AVMS directive give regulators powers to adopt bylaws and other regulation pursuant to the Law aligned with AVMS directive. New Law raised the amounts of fines prescribed for broadcasters and AVM service providers.

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[1] EC's Screening report Montenegro, Chapter 10–Information society and media, May 2013, http://ec.europa.eu/enlargement/pdf/montenegro/screening_reports/screening_report_montenegro_ch10.pdf

Tables 15-24: Comments on internal organization and staffing

Significant change in new legislation was that that Government representative was excluded from the governing body of the Agency. Instead the governing board is consisted of 5 member elected among the academia, professional organizations and civic sector.

Also, director's mandate was limited to two 4 year terms.

Rules on conflict of interest were made more strict. New Law introduced the provision that a Council Member must not be a founder of an AVM service provider or in any other way participate as an applicant for obtaining a licence for AVM service provision within 12 months after the termination of his/her term.

The Law also brought the possibility that the Parliament can dismiss the whole Council as the governing body of regulator in case it fails:

1) to meet for more than six months without a justified reason, or

2) to make publicly available, by posting it on the AEM's website AEM Activity, financial and Audit Report for the previous year, not later than by the end of June of the current year.

Tables 25-27: Comments on financial resources

The Parliament continued to be responsible for adoption of financial plans and report of regulator contrary to the EC recommendations. It also practiced it power to modify financial plans of regulator.

Tables 28-35: Comments on checks and balances

Law obliges regulator to involve public in important decisions making processes, but the practice explained below shows that this doesn't function in practice. On the other hand, regulator shows commendable initiative in keeping it work transparent and publicly available through its website.

Tables 36-39: Comments on procedural legitimacy

Tables 40-41: Comments on cooperation

Montenegro became a member of the European Audiovisual Observatory in June 2012, and Mediterranean Network of Media Regulatory Authorities – MNRA.

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

Regulatory organ in Montenegro - Agency for Electronic Media of Montenegro (AEM) is founded by the State as "an independent AVM service regulatory body with public authorities"[2]. According to the founding act (law on electronic media) it is an autonomous legal entity, functionally independent from any state authority, and any legal and natural persons engaging in production and broadcasting of radio and TV programmes, or provision of other AVM services. Rights of the founder are exercised by the AEM Council as its governing body. Council members are elected by the Parliament among the candidates delegated by Universities, non-governmental organizations, Pen centre and associations of commercial broadcasters. Agency's competencies cover both public, commercial and on demand AVM services providers. This system has been established in late 2010. and promoted as an act of legal alignment in this area with international standards which provide political, institutional and financial independence of the Agency for Electronic Media.

This solution was adopted only after more than two years of legal confusion created in 2008 with the adoption of the Law on Electronic Communications, according to which a new Agency for Electronic Communication and Postal Affairs (EKIP) was to take over responsibility for issuing licenses to the broadcasters from the Broadcasting agency (today's AEM). At the time, that meant that a system in which only one member of the Broadcasting Agency Council was a government representative with one that would be controlled entirely by the Government. Current Law on electronic media was adopted following the severe criticism from the EU, OSCE and international organizations such as Article 19. The discussion in the national Parliament that preceded the adoption of the Law, unveiled a dilemma as to whether this solution was a compromise made by the Government in order to keep the control over the other regulatory body, the Agency for Electronic Communications and Postal Affairs, which controls primarily the area of telecommunications with an annual turnover of over EUR 300 millions. [3]

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[2] Law on Electronic Media, Official Gazette of Montenegro 46/10, 40/11, 53/11

[3] EKIP's independence is still a disputable issue. For example, the Constitutional Court has yet to rule on EKIP's appeal of a 2011 law that mandates the automatic dismissal of its board and executive director if the parliament fails to approve its financial reports. In its 2013 progress report on Montenegro, the EC noted that the lack of a ruling cast doubt on EKIP's independence.

Self-regulation has never been discussed as an option in this area. Self-regulatory mechanisms in Montenegro, established as watchdogs of media abeyance of the Journalists' Code of Ethics (2002) have been fragile until today. In 2010, Journalistic Self-regulatory Body stopped working and a new body was formed in 2012, but several major media still refuse to participate in its work.

2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

AEM is financed from direct revenues assigned to it by the Law on electronic media. Regulator thus acquire funds from non-recurrent fees for registration of AVM service providers and annual fees payable as per issued licenses for AVM service provision (transmission fee, on-demand AVM service provision fee). The amount of the fee is determined by Council, on the basis of AEM's annual activity and financial plan. More detailed methodology for determining the amount and method of payment of the registration fee for AVM service providers and the fee payable upon issued license for provision of AVM service shall is determined in special document adopted by the Council, following a public debate. The document is published in the Official Gazette of Montenegro and posted on AEM's website. The state doesn't contribute to its funding and since the adoption of Law on electronic media from 2010 which returned the licensing competencies to the Agency, regulator operates with slight surpluses[4].

Financial crises have, however, left significant mark on the revenues on both broadcasters and AVMS providers, and the regulator. Due to the large amount of unpaid broadcasting fees piled up during 2009 and 2010 that threatened functioning of electronic media in Montenegro, in March 2011, the Government adopted Aid program for electronic media which included debt write off owned to the Agency for electronic communications and postal affairs (previous regulator from 2008-2010) in the amount of over 1 million of Euros and to the Broadcasting center (broadcasting infrastructure lease) in the amount of 3.4 millions of Euros. Despite the state aid package, the broadcasting fee collection remained poor. In 2013, AEM decided to give a 15% discount to broadcasting fees, for last tri quarters of the year, but the percentage of total collection of fees was only 32, 4%. In the end of 2013, total amount owed by broadcasters and AVM service providers amounted to around 0,6 millions of Euros, while the overall annual revenues of AEM for the past 4 years amount to around 1 million Euros.

Due to the restrictions the government imposed in public finances, the salaries in the Agency were cut back, and their financial plans were revised by both Ministry of finances who gives opinion to the plan in the first instance, and later by the Parliament who adopts it. The fact that the Parliament forced the Agency to modify its financial plans for 2013, according to

[4] Financial reports available at www.ardcg.org

both Freedom House and the EC Progress report, „clearly undermines the AEM's independence[5].

In January 2013, the legislature approved amendments to the law on electronic media that requires the nominally independent AEM to return budget surpluses to the state budget.

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

The Law on electronic media from 2010 prescribes clear rules on conflict of interest. It forbids the Council members to be members of the national Parliament and local councils; persons elected, nominated or appointed by the President, the Parliament or the Government of Montenegro; political party officials; persons holding a stake, share-holders, members of management, employees, contracted persons, etc, having a stake in legal entities engaged in production, transmission and/or distribution of radio and/or television programmes or other AVM services and related activities (advertising, electronic communications, etc); and their family members. According to the same Law, Council member is obliged to inform other Council members of the existence of conflict of interest in any such situation. These issues are also regulated by the Code of Conduct in the Agency. The Law also forbids a Council Member to be a founder of an AVM service provider or in any other way participate as an applicant for obtaining a licence for AVM service provision within 12 months after the termination of his/her term.

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

The Agency currently employs 19 permanent staff and 3 trainees. The organization includes director and its 3 advisors, and the rest of the agency is divided into two sectors: Legal, financial and joint affairs with 10 employees and Monitoring sector with 5 employees. This sector operated with only 3 employees and decision to introduce two additional media analysts was brought only in July 2014. The need to reinforce the monitoring sector was highlighted in EC Progress Reports for 2012 and 2013[6]. Improvements also included strengthening of technical capacities.

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[5] https://freedomhouse.org/report/freedom-press/2014/montenegro#.VQ-tZOEYGh5; http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/mn_rapport_2013.pdf

[6] „The overall capacity of the Agency to fulfil its tasks is weak, and in particular its monitoring capacity remains limited", EC Progress report 2013.

The Agency uses Government's owned premises on a temporary basis, and according to 2013 financial report the value of its property (including equipment) amounts to around 70 thousand Euros.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

The monitoring sector of the Agency records and archives programme of 24 radio stations in Podgorica, and in two mobile stations with 16 channels in Bijelo Polje and Bar. The Agency's head offices receives signals of 5 cable TV operators with 700 channels. New equipment enables simultaneous monitoring of 50 selected channels. Recording capacities have memory of 27TB which allows keeping the recordings for up to 90 days. Archiving capacities amount to 7TB. AV signals are transmitted through optic fibers, as well as Internet connection of 50 mb/s.

Agency is obliged to monitor abeyance of minimum program standards, commercial AV communications and other legal rules with regard broadcasted programme, give profssional opinion on potential cases of braches of program rules, and keeps record of citizens complaints.

Besides complaints received by end users, the Agency conducts sporadic analyses of program standards (one or twice a year). Typical analyses include measuring the amount of own production in national broadcasters, monitoring of quotas for commercial AV communications within broadcasters programmes. Last year, the Agency introduced practice of semiannual analyses of television coverage of events/topics of special interest. In 2014. Those were local elections and Pride Parade.

Interesting fact is that in April 2014, the Parliament convened a control hearing of the Agency management including Council members and director.[7] The Parliamentary committee was dissatisfied with the quality of implementation of the law on electronic media. The complaints referred to the lack if initiativeness within the Agency in monitoring program breaches such as defamatory and hate speech, very small number of complaints and general involvedness of the public in media regulation, as well as impermissible tolerance for nonpayment of broadcasting fees. The Agency managers responded that lack of capacities unable them to give more results in monitoring program standards, that they were considering to launch a campaign for boosting citizens use of complaints to the work of broadcasters, and that the abeyance of the legal provisions regarding the payment of broadcasting fees would mean closing of more than a half broadcasting media in Montenegro. The hearing also opened a debate on Parliament's improper meddling with Agency's independence, since there were no

[7] Minutes from the Parliamentary hearing: http://www.skupstina.me/~skupcg/skupstina/cms/site_data/25%20saziv%20ODBORI/ODBOR%20ZA%20POLITICKI%20SISTEM/Izvjestaj%20sa%20kontrolnog%20saslu%C5%A1anaja%20preds_%20A%20za%20EM.pdf

legal basis for Parliament to organize questioning of AEM's board nor influencing them to act in any specific manner other than legally prescribed.

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

The largest number of sanctions to broadcasters/AV service providers refer to warnings issued for default payment of obligatory broadcasting fee -33 out of 38 in 2014. Similar trend is present for several past years. According to Agency's activity report for 2013, within the breaches regarding the program standards 5 warnings were issued to broadcasters. They referred to improper commercial placements, application of parental guidelines and shifting certain contents to different time slots. All of the warnings were fully accepted and mistakes corrected by broadcasters. Another 28 warnings were issued for unduly payment of broadcasting fees, but common practice of the Agency is to tolerate deadline breaches and only rarely turn to courts for debt collection. The last fine collected by the Agency was in 2011. In the amount of 5000 Euros which referred to breach of intellectual property rights.

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

The Agency for electronic media is legally obliged to publish not later than by the end of June of the current year, its Activity and Financial Reports for the previous year, as well as the audit report from an authorized auditor.

Also, regulator is obliged, without delay, to make all documents pertaining to rights and obligations of legal or natural persons available to the public, accompanied by a statement of reasons. Document are made publicly available, by posting it on the AEM's website

Additionally, methodology for determining the amount and method of payment of the registration fee for AVM service providers and the fee payable upon issued licence for provision of AVM service must be published in the Official Gazette of Montenegro and posted on AEM's website.

Statute of the Agency also prescribes that the following documents and information must be published on its website:

1. Statute and other general documents adopted by the Agency;
2. decisions and other administrative documents of the Agency;
3. public calls and invitations to public consultations;
4. professional opinions and explanations related to implementation of the Electronic Media Law;
5. statistical and other indicators related to the development of the AVMS sector;
6. annual report and financial plan of the Agency, together with its agenda;
7. decision of the Parliament of Montenegro on the appointment and revocation of the Council members;
8. the details of the Chairman and members of the Council, Agency Director and other employees of the Agency;
9. decisions following the public calls for awarding the rights to provide AVM services.

According to the Activity report for 2013, almost 500 new documents were posted to AEM's website, which presented 225% rise in comparison to previous year. Number of website visits was 129.430, with 10.786 unique users a month. This was 28% more than 2012.

Annual report contains overview of legislative changes and activities undertaken in this field, performance of AEM's responsibilities envisaged by the Law, such as licenses issued/revoked, sanctions, complaints received, monitoring results, market data and trends, international activities that the Agency took part in and financial data.

General public is not very familiar with the work of the regulator, and media only rarely follow its work.

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

Development Programme for AVM services sector is drafted by the regulator, but is adopted by the Government.

Since the transposition of the AVMS directive it is only visible that the Agency sporadically issues warnings to broadcasters who breach the program standards regarding the minors protection, authorship rights and commercial communication.

Agency adopts bylaws and other regulation such as rulebooks on specific areas covered by AVMS directive. Examples of these are the Rulebook on conditions for realization of

minimum program quota for European audiovisual works and Rulebook on conditions for realization of minimum program quota for audiovisual work of independent production. [8]The rulebooks are binding for service providers.

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

The Agency is legally obliged to organize public debate when drafting Development Programme for AVM services sector, when determining the amount and method of payment of the registration fee for AVM service providers and the fee payable upon issued licence for provision of AVM service.

AEM is also obliged, when adopting legal acts governing in more details the rights and obligations of AVM service providers and regulations pursuant to the main Law, to send invitation to all interested entities to give their comments, proposals and suggestions within a deadline which may not be shorter than 15 days.

The practice of this provisions can be illustrated on the example of above mentioned Rulebook on quotas for European and independent productions. The invitations for public debate on these Rulebooks were posted to AEM's website on September 22 2014 accompanied by draft Rulebooks. The invitation stated that comments could be given in written form by October 8 2014. Next information on the topic was a release from Council meeting stating that the Rulebooks were adopted with no information on comments received or participation of any other interested parties.

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

Previous topics cover it all.

[8] Rulebooks available online at: http://www.ardcg.org/index.php?option=com_docman&task=cat_view&gid=51&Itemid=26

Former Yugoslav Republic of Macedonia

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

Tables 1-5: Comments on general information

TV Broadcasters on a national level: 11

TV broadcasters on a regional level: 26

TV broadcasters on a local level: 26

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audio-visual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

There is one media regulation authority in the Republic of Macedonia – the Agency for Audio and Audio-visual Media (www.avmu.mk), which regulates the electronic media (TV and radio), print media and non-linear media services no matter if the media service providers (broadcasters) are commercial or public entities. Since 2013 also the print media are subject to basic regulation. The Law on Media[1] provides the regulatory standards for all 'media publishers'. The audio services (radio) and the audio-visual media services are regulated by the Law on Audio and Audio-visual Media Services[2].

More specifically the tasks of the Agency are listed in the Law on Audio and Audio-visual Media Services, Article 6:

"Agency competencies:

- be responsible for ensuring public access to the operations of the broadcasters;
- be responsible for the protection and development of pluralism in the audio and audiovisual media services, encourage and support the existence of diverse and independent audio and audio-visual media services;
- undertake measures in accordance with this Law in cases of violation of the provisions of this Law or the regulations adopted thereof, and the conditions and obligations arising from licenses;
- be responsible for ensuring protection of minors;
- adopt acts arising from this Law;
- be responsible for protecting the interests of the citizens in the audio and audiovisual media services;
- determine the existence of illegal media concentration;
- decide on awarding, revoking or extending licenses for television or radio broadcasting;
- undertake measures for timely termination of transmission and reception of audio and audio-visual media services from third countries on the territory of the Republic of Macedonia according to article 45 of this Law;
- adopt a list of events of high significance for the public in the Republic of Macedonia;

[1] Law on Media: http://www.avmu.mk/images/LAW_ON_MEDIA_as_published_in_the_Official_Journal.pdf

[2] Law on Audio and Audio-visual Media services: http://www.avmu.mk/images/Law_on_Audio_and_Audiovisual_Media_Services_as_published_in_Official_Journal.pdf

- encourage media literacy;
- perform supervision according to articles 28, 29 and 30 of this Law;
- maintain the registries referred to in this Law;
- conduct research and analysis related to issues concerning the audio and audiovisual media services; and
- conduct measuring of the viewership and number of listeners of the programmes, i.e. the programme services of the broadcasters in Republic of Macedonia and
- perform other activities referred to in this Law.

(2) The Agency shall define the way of measuring the viewership or the number of listeners of the programmes, i.e. the programme services of the broadcasters in Republic of Macedonia."

The management structure of the Agency for Audio and Audio-visual Media Services (AVMU) is consisted of a Council of seven members and a Director, who may participate in Council's sessions, but with no right to vote. The Director and the Deputy Director are appointed by Agency's Council. There is no co-regulation mechanism. Both associations of journalists nominate one member of the Council each, but as a legal obligation, and not as a part of co-regulatory mechanisms.

The Agency for Electronic Communications (www.aek.mk) regulates the electronic communication networks and among the other is responsible for frequency management in the DVB-T area as well for regulation of the telecom market. For proper functioning of the media, the advertising and the electronic communications markets and for competition protection on these markets the Competition Protection Commission (www.kzk.gov.mk) is the relevant regulatory entity. These three regulation authorities set the backbone of the media regulation in the country.

2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

AVMU's financing is regulated by the Law on Audio and Audio-visual Media Services. The law defines the following financing possibilities for the Agency:

- The annual broadcasting license fees, according to formula in the Art. 80 from the Law on Audio and Audio-visual Media Services;

- The public broadcasting fee, administered by the public broadcasting service – MRT. AVMU gets 6% of the total collected funds as in Art. 140;

- The operators of public communication networks (cable TV, IPTV operators etc.) in height of 0,5% of total operators' revenues from the previous year as in Art. 142.

As envisaged in Art. 8 AVMU is obliged to provide the National Parliament with an Annual Report on its work, which will include a report on its financial work by 31 March following year at latest. The Broadcasting Council adopts the report, which is proposed by AVMU's director. The Annual Report must also include an Audit Report, prepared by an international audit office and Audit Report from the National State Audit Office, if the State Audit Office has decided to perform an audit control on AVMU's work. AVMU's Annual Report must also include a Work and Financial Programme for the following year. The annual reports must be published on AVMU's website. The unused funds from the previous year shall be included in the financial plan of the following year.

No cut-back due to economic crises have been noticed, on contrary due to legislation changes new legal provisions have been introduced, which impose the operators of electronic communication networks (cable TV, IPTV etc. operators) to pay 0,5% of their annual revenues.

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

The *Law on Prevention of Conflict of Interests*[3] and the *Law on Prevention of Corruption*[4] set the general framework for prevention conflict of interests in the state and public sector. The members of Agency's Council as well as the Director are obliged to submit Statements on Interests to the State Corruption Prevention Commission (SCPC), which initiates prosecution, if it detects corrupt behaviour or conflict of interest. So far, there were two initiatives for criminal investigation submitted to the Public Prosecutor's Office by SCPC against high ranking officials from the previous composition of the media regulation authority. Apart the public officials the higher ranking managing staff on the administration level submit Asset Declarations and Interest Declarations not to SCPC directly, but they are kept in Agency's archive. This solution hinders SCPC to directly prove or control in a routine manner, if conflict of interest may arise in Agency's work on the middle management level.

Beside the previously mentioned laws, the *Law on Audio and Audio-visual Media Services* (Art. 16) more specifically regulates, who may/may not be appointed member of Agency's Council:

"Appointment requirements

(1) The Council members may be persons who are citizens of the Republic of Macedonia, have a University degree, have at least five-year work experience in the relevant field, and have become publicly prominent in the field of communications, journalism, electronic

[3] Law on Prevention of Conflict of Interests: http://www.dksk.org.mk/index.php?option=com_content&task=view&id=23&Itemid=43

[4] Law on Prevention of Corruption: http://www.dksk.org.mk/index.php?option=com_content&task=view&id=14&Itemid=42

communications, information technologies, culture, economy, law or similar fields relevant to the realisation of the Council competences.

(2) The following persons may not be appointed as Council members:

- member of Parliament, member of the Government of the Republic of Macedonia, person appointed by the Parliament, or Government of the Republic Macedonia, person who manages a local self-government unit, director or a member of the management or supervisory board of a public enterprise;
- persons executing duties within the bodies of a politi cal party or a religious community;
- person who is co-owner or shareholder, member of a management body or person who has direct or indirect interest in a legal person involved in audio or audio-visual media services or in a company conducting similar activities (advertising, electronic communications, production and sales of audio and audio-visual technical goods and similar) related to audio/audio-visual media services and operators and/or providers of public electronic communications networks and services;
- person, whose family members are co-owners or shareholders or members of management bodies of broadcasters and
- person lawfully sentenced to a term in prison longer than six months, or person that has been sentenced to a prohibition of performance of profession, activity or duty for a period longer than six months until the sentence or measure would not be deleted from the register in accordance with the law.

(3) Employees of other legal persons may be appointed as Council members, except in cases when it is a conflict of interests pursuant to this Law.

(4) The Council members must not receive any gifts and accept any services from, nor get involved in relations that may result in conflict of interest with broadcasters, audio-visual media service providers on demand and from operators of public electronic communication networks which transmitting and retransmitting programme contents."

The term of the member of the Council who has conflicting interests shall be terminated in accordance with Article 17 of the Law on Audio and Audio-visual Media Services.

Conflicting interests implicitly may hinder person of being appointed Agency's Director or Deputy Director, in accordance with Article 21, provision (c):

"Dismissal of the director

(1) The director may by dismissed by the Council only in the following cases:

a) upon his/her request;
b) if he/she is prevented by illness to perform his/her duties for a period longer than six months;
c) if he/she accepts a position or a job which are incompatible with his/her appointment as director;
d) if he/she was sentenced for a criminal offence for which a term in prison longer than six months is prescribed, or if he/she was sentenced to a prohibition to perform a duty for a period longer than six months;

e) if he/she acts in violation of this Law or the provisions thereof which may be determined from the Annual Report on the operations of the Agency; or
f) if he/she abuses the position as determined in the Audit Report referred to in Article 8 of this Law.

(2) The director, against whom there is an on-going procedure for dismissal, shall be granted the right to defend himself/herself in front of the Council.

(3) The decision for dismissal of the director shall, inter alia , contain the reasons for his/her dismissal, explained in details, and shall be published on the Agency web-site within seven days from its adoption.

(4) If the director has been dismissed, and the procedure for selecting a director has not been completed, the function director shall be performed by a person employed in the Agency expert service, who will be authorised accordingly by the Council for a period not longer than three months.

(5) The provisions in paragraphs (1), (2) and (3) of this Article shall equally apply for the deputy director of the Agency."

Although the Law on Audio and Audio-visual Media Services envisages provisions which regulate Director's dismissal, there is no legal reference in which stage in the internal processes the competent authority SCPC should be involved, when dealing with cases of conflicting interests.

Article 22 sets the basic rules for members of Agency's administration or professional staff:

"(5) An employee in the expert service shall be obliged to refuse an order to act contrary to the provisions of this Law, the regulations adopted thereof and other acts of the Agency, even in cases when such order is issued from a superior and shall inform the director, the Council President, and other Council members thereof.

(6) The conduct of the employees in the Agency expert service, during the execution of their duties, as defined in this Law, the regulations adopted thereof and other acts of the Agency, shall be regulated in more details in the Code of Conduct for the employees of the expert service, which would be adopted by the Agency and would be published on its web-site."

The execution of these provisions is regulated in the Code of Ethics[5], which was recently drafted. The only possibility given to the employees to report on misbehaviour is moving upwards in the hierarchy, so in the case the Director is the one who issues unlawful action, the employees will have to report this back to the Director (?!). There are also no provisions, which would protect the whistle-blowers from possible mobbing, dismissal or other ways of pressures. The lack of this protection does not encourage the employees to report unlawful behaviour of Agency's Director and members of the Council.

[5] Draft version: avmu.mk/images/Nacrt_-_Kodeks_za_odnesuvanje_na_clenovite_na_Sovetot_na_Agencijata_i_vrabotenite.pdf

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

Beside the two managing structures, the Council and the Director, the Agency also has specialists staff, who are professionally employed and who belong neither to the state nor to the public administration. The Law on Audio and Audi-visual Media Services provides the basic framework in the Article 22:

"Organisation and employment in the Agency

(1) The expert, normative-legal, administrative, supervisory, material-financial, accounting, IT and other affairs of the Agency shall be managed by an expert service the internal organization of which, as well as scope of work and employment conditions shall be regulated in the acts on internal organisation and systematisation of posts and assignments, in accordance with Labour Relations Law.

(2) The provisions in the Law on Civil Servants shall not apply to the employees of the Agency.

(3) Within the Agency expert service there must be an organisation unit which will conduct programme supervision (monitoring) of the programme transmitted by broadcasters, on-demand audio and audio-visual media service providers on demand and the programme packages of the operators of electronic communication networks which retransmit programme services in regards to the compliance with the provisions of this Law, the bylaws and other acts adopted by the Agency, the licenses and issued registration certificates, in accordance with the Annual Plan for programme monitoring and the Methodology for programme monitoring defined in the Agency bylaw.

(4) The expert service shall be independent and unbiased while performing the activities within its scope of competence, and shall abide to the procedures defined in this Law and the regulations adopted thereof.

(5) An employee in the expert service shall be obliged to refuse an order to act contrary to the provisions of this Law, the regulations adopted thereof and other acts of the Agency, even in cases when such order is issued from a superior and shall inform the director, the Council President, and other Council members thereof.

(6) The conduct of the employees in the Agency expert service, during the execution of their duties, as defined in this Law, the regulations adopted thereof and other acts of the Agency, shall be regulated in more details in the Code of Conduct for the employees of the expert service, which would be adopted by the Agency and would be published on its web-site."

Parallel with the change of the previous highest management fluctuations in the staff was also noticed. There were some reports on politically motivated dismissals. Additional staff was also employed, which strengthened Agency's capacities and new systematisation was adopted. Although not all envisaged positions are occupied, the number of staff seems to be fine to execute the main legal obligations. The technical equipment is on a pretty high level

and above the country's average. The IT monitoring centre has the capacity to monitor all national and Skopje based media and in the meantime a nationwide network is set up, which will allow the Agency real-time monitoring of local and regional broadcasters on the territory of the whole country.

In comparison to previous years, Agency's budget has been significantly increased due to the changes in the legislation. Now, 6% of the broadcasting fee is transferred to the Agency (previously it was 4%), and the operators of public electronic networks are also obliged to pay 0,5% of their annual income to the Agency. The permanent source of income is also the annual fee from broadcasters' licensing.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

The media regulation authority conducts monitoring both proactively (based on self-initiated monitoring, determined in the Annual Monitoring Plan) and reactively (upon complaints). The monitoring of the media restricts not only on the broadcast media programmes/content, but also on other aspects of the broadcasters' work, as defined in Article 27:

"Types of supervision

(1) The Agency shall perform programme, administrative and expert supervision.

(2) The Programme and the administrative supervision may be:

Systematic supervision;

Ad-hoc supervision; or

Control supervision.

(3) The Systematic supervision is done on the basis of an Annual program on performing the programme, i.e. administrative supervision, while when it comes to programme supervision it is also done in accordance with the Methodology on performing programme supervision adopted by the Agency.

(4) Ad hoc supervision is based on initiative filed by the state authorities, legal or natural persons, and ex officio in case of persisting doubt by the Agency.

(5) Control supervision is conducted after the expiry of the deadline determined in the individual act adopted by the Agency for the purpose of determining whether the supervised subject:

- Complied with the act in its entirety;
- Complied with the act partially or
- Did not comply with the act."

Programme Supervision: Programme supervision is performed on the programmes of broadcasters as well as providers of on-demand audio-visual media services and the programme packages retransmitted by operators of electronic communication networks from point of view of compliance with the provisions of the law, licenses, issued registration certificates, by-laws and other acts adopted by the Agency. The programme supervision is carried out by employees within the Agency's expert service (professional staff). A written report is composed for each conducted Programme supervision and submitted to the Agency Director within three days of the date of implementation of the Programme supervision. Should the programme supervision verifies violations and breaches, the written report shall contain proposed sanctioning measures.

Administrative supervision. Administrative supervision is performed on the operation of media publishers from the aspect of the harmonization of their work with the conditions laid down with the Law on Media, this law and the regulations on its basis. The administrative supervision over the work of the publishers of print media and electronic publications refers only to the compliance of their work with the obligations determined with articles 6, 7, 8, 10, 14 and 15 of the Law on media. The Administrative supervision is performed by employees in the Agency's professional service. A written report is composed for each conducted Administrative supervision which is submitted to the Agency's Director within three days of the date of implementation of the administrative supervision. Should the Administrative supervision verifies violations and breaches, the written report shall contain proposed sanctioning measures.

Expert supervision. Expert supervision of broadcasters is performed by the employees in the expert service of the Agency authorized by the Agency Director (authorized person), for the sole purpose of verification of realization of the technical, spatial and personnel requirements as per the Request for granting a permit for television or radio broadcasting. The Expert supervision is to be performed only within 30 days, after thirty days have expired following the date of business initiation set out in the television and radio broadcasting license, as well as after a change of the premises location where the programme is being produced (studios) or by expanding with new studio premises. Authorized person to perform this supervision may be an employee in the Expert service within the Agency who have graduated higher education and has a professional experience of minimum three years.

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

The possible non-compliance with the Law on Audio and Audio-visual Media services will result with sanctioning measures, regulated in the Article 23**.**

“Measures in case of violation of regulations

(1) If the Agency establishes violation of the provisions of this Law and the bylaws adopted thereof, as well as the conditions and obligations laid down in the license and other Agency acts, the Agency Director may undertake measures against the media publisher, the audio and audio-visual service provider on demand or the operators of electronic communication networks which retransmit programme services as follows:

- Adopt a decision with written warning;
- file a complaint for initiating a misdemeanour procedure in cases where despite the adopted warning decision, continues with the same violation that incurred with the written warning during the year;
- will submit proposal to the Council for revoking a license, or
- will adopt a decision for deletion from the registry in accordance with this Law.

(2) The undertaken measures referred to in paragraph (1) of this Article shall be published by the Agency on its web-site, including a detailed rationale, within three days from their execution. ”

Agency’s decisions adopted in cases of violation of the provisions of the law, licenses, registration certificate, by-laws and other Agency acts are final. The decisions may be subject to administrative dispute before a competent court. In this case the administrative dispute complaint must be submitted within a period of 30 days from the reception of Agency’s decision.

Overview over the sanctions against media outlets for the period 1 July – 31 December, 2014

Sanctioning measure - Warning: 55 warnings in total were issued due to breaches of the Law on Media, Law on Audio and Audio-visual Media Services and the Rulebook on Minors’ Protection.

Violations against the Law on Audio and Audio-visual Media Services: In total 36 Warnings were issued. Most common violations were against Article 50, par. 3 (absence of visual and audio categorization of the programming) and Article 98, par. 1. (broadcast of advertisements without clear separation from the rest of the programming) – 7 Warnings.

Other most frequent violation was exceeding the advertising time of 12 minutes per hour programming, Art. 100, par. 1 from the Law on Audio and Audio-visual Media Services – 5 Warnings.

Surreptitious advertising according to Art. 53, par. 2 from the Law on Audio and Audio-visual Media Services was detected in two cases in documentary and children’s programming and warnings were issued – 2 Warnings.

Not fulfilling the quota on at least 40% of instrumental music, created by Macedonian composers or composers who belong to the non-majority ethnic communities, vocal and/or vocal-instrumental music (Art. 92, par. 13) and for broadcast of advertisements and teleshopping in children’s programming – 2 Warnings.

Commercial communication, which is not honest and truthful (Article 54, par. 2) – 1 Warning.

Violation of Article 92, par. 4 – not fulfilling of the obligation for equal distribution of the broadcast music – 1 Warning.

Violation of Article 99, par. 15 – not fulfilling the quota of minimum 40% instrumental, vocal or vocal-instrumental music to be produced by Macedonian authors in Macedonian language or in the language of the non-majority ethnic groups – 1 Warning.

Violation of Article 97, par. 2 – absence of identification of broadcaster's sing within one hour of programming – 1 Warning.

Violation of Article 99, par. 5 – too many advertising blocs in children's programming, which lasts more than 30 minutes, not including the advertising and teleshopping times – 1 Warning.

Violation by the PBS against the advertising rules in primetime from Article 103, par. 4 – 1 Warning.

Violation of Article 50, par. 3 – absence of an acoustic warning prior to broadcasting of programming with excessive violence, pornography or content, which may be harmful to minors.

Violations of the Media Law – 19 Warnings related to violation of Article 12, par. 1, not publishing of all requested data in all printed outlets (like address, publisher, editor in chief and editors in accordance with the internal systematization, number of circulation, name and address of the print house).

Misdemeanour procedure. Misdemeanour procedure is initiated by the Agency in those cases, where after the receipt of the Warning, the media publisher (print, broadcast) or an operator of public communication network continues to violate the same provisions of the law.

During the reporting period the Agency has initiated in total 16 misdemeanour procedures, out of which 14 against operators of public electronic communication networks and 2 against broadcasters: one due to violation of Article 50, par. 3 from the Law on Audio and Audio-visual Media Services, meaning absence of visual and audio categorisation of the programming and the second one broadcast of commercial communications, which are not clearly separated from the rest of the programming, Article 98, par. 1.

Revocation of the broadcasting license. Non-compliance to the licensing conditions, according to Article 82, par. 1/5 from the Law on Audio and Audio-visual Media Services.

Deletion from the Registry of Broadcasters. 3 broadcasters have been deleted from the registry after their licenses had been previously revoked.

The fines are paid directly to the state budget.

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

Yes. The Agency is obliged by the Law on Audio and Audio-visual Media Services to publish its decisions, sanctions, draft bylaws on its website. General provisions regards Agency's transparency are given in Article 9

"Transparency in the Operations of the Agency

(1) The Agency shall be obliged to conduct public research and analysis in regards to the developments and the situation on the audio and audiovisual media services market.

(2) The Agency shall be obliged to organize public meeting at least once in three months within the year in order to allow all interested parties to express their positions and opinions regarding the development of the audio and audiovisual media services in the Republic of Macedonia, and especially regarding:

- the status of the market for the audio and audiovisual services in Republic of Macedonia;
- realization of the activities aimed at achieving the objectives from the Annual Programme for the operations of the Agency.

(3) The positions and opinions mentioned in paragraph (2) of this Article received by the Agency and its position thereof shall be published on the web-site of the Agency within seven days from the date of the public meeting.

(4) The Agency shall more closely regulate the following with a bylaw:

- the manner and procedure for receiving proposals from interested parties;
- manner and place for publishing public competitions, and other information related to the procedure for awarding licenses;
- data and information published by the Agency, as well as the access thereof in accordance with the Law."

Before adopting or amending a bylaw within its scope of competence, and before adopting the Annual Operation Programme for the following year, the Agency is obliged to publish on its web-site the proposed bylaw, that is, the Annual Operation Programme, in order to allow a public debate, in order to allow all interested parties to express their opinions, views and positions regarding the proposed bylaw and the proposed Annual Operation Program for the following year. The deadline for public debate must not be shorter than 30 days from the moment of publication of the acts. After the deadline expires, and before the adoption of the bylaw, the Agency is obliged to publish on its web-site the received opinions and comments as well as the Agency position thereof.

Accountability for the operations of the Agency

The Agency is accountable for its operation to the Assembly of the Republic of Macedonia by submitting a Report on its work. The Agency is also obliged to publish this report on its web site and will submit the latter to the Assembly of the Republic of Macedonia for its consideration not later than 31st of March in the current year.

The Report must contain information on the following content:

a) Annual Report on Agency's work for the previous year and

b) Annual Programme for the Agency's work for the following year.

The Annual Report for the Agency's work for the previous year must particularly contain:

- Report on the conducted activities defined in the Annual Programme for operations of the Agency for the previous year, which should show the implementation of the Annual Plan for Programme monitoring;
- Financial Report on the implementation of the Financial Plan for the previous year and the Annual Account, including data on revenues, expenses, receivables and liabilities for the previous year grouped by structure and organizational units within the Agency;
- Audit Report from independent international authorized auditor and audit report from the State Audit Office, if the audit was provided by the latter as well as the position of the Agency regarding the audit results.

The Annual Programme for the operations of the Agency for the following year must define the tasks and objectives which should be conducted by the Agency during the following year and it shall particularly contain the Programme of planned activities and Financial Plan for the following year, including data on the implementation of planned activities, planned revenues and expenses of the Agency in the following year grouped by structure and organizational units within the Agency, as well as the envisaged capital investments of the Agency for the following year.

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

According to the current law and the practice the Agency is oriented more towards the regulated entities and to a lesser extent to the general public. The Agency still does not have a Communication Strategy and there is a lack of a proactive approach with the public. The PR-approach with the media is rather reactive (reactions on media reporting) and instinctive (ad-hoc).

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

In general the media regulation authority is free to define its own priorities and the Law on Audio and Audio-visual Media Services provides a wide and solid ground to the regulatory authority to set long-term goals in a proactive manner. Moreover, having a relative long mandate the members of Agency's Council and the Director may set and implement at least mid-term goals for strategic development of the broadcasting sector. The previous Law on Broadcasting Activity (not in force now) envisaged adoption of a National Broadcasting Strategy, where the main priorities were defined, which now is not the case.

After the AVMS Directive has been transposed in the Law on Audio and Audio-visual Media Services the transparency has been focused more on a working level – publishing of Council's and Director's decisions on Agency's website, whereas the Agency does not invite the public and all interested parties to the Council's sessions in a regular manner, which was the case before (when the previous Law on Broadcasting was in force).

So, one could conclude that on the surface there are legal provisions on transparency and accountability (but just in front of the political instances – the Parliament), but there is a lack of interactive approach with the general public and civic organizations.

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

Yes. The regulatory authority can issue so called Rulebooks (secondary or bylaw legislation acts), which are also binding for the broadcasters as well as the law itself.

Such secondary level regulatory acts have been adopted by the Agency and limit themselves not only to the AVMSD provisions:

1. Rulebook on Broadcasting European Audiovisual Works and Works by Independent Producers (http://www.avmu.mk/images/Rulebook__on_EU_Works.pdf)

2. Rulebook for Minor's protection (http://www.avmu.mk/images/2007_Comments_Rulebook_minors.pdf)

3. Rulebook of the manner of sponsors' identification in radio and TV programs (http://www.avmu.mk/images/stories/Podzakonski_akti_na_angliski/Rulebook_of_the_manner_of_sponsors_identification_in_radio_and_TV_programs.pdf)

4. Rulebook on European works (http://www.avmu.mk/images/stories/Podzakonski_akti_na_angliski/Rulebook_on_European_works.pdf)

5. Rulebook on implementation of provisions pertaining to the protection and nurturing of cultural identity (http://www.avmu.mk/images/stories/Podzakonski_akti_na_angliski/Rulebook_Cultural_identity.pdf)

The guidelines/manuals serve the purpose to explain the implementation of certain provisions. The Agency has adopted the following document:

1. Guidelines on the Right to Short Reporting on Events Where Exclusive Right For Broadcasting have Been Acquired (http://www.avmu.mk/images/2007_Guidelines_for_short_reporting.pdf)

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

Yes. The regulatory authority must hold public sessions with the industry at least once every three months – as stipulated in Article 9:

"Transparency in the Operations of the Agency

(1) The Agency shall be obliged to conduct public research and analysis in regards to the developments and the situation on the audio and audiovisual media services market.

(2) The Agency shall be obliged to organize public meeting at least once in three months within the year in order to allow all interested parties to express their positions and opinions regarding the development of the audio and audiovisual media services in the Republic of Macedonia, and especially regarding:

- the status of the market for the audio and audiovisual services in Republic of Macedonia;
- implementation of the activities aimed at achieving the objectives from the Annual Programme for the operations of the Agency.

(3) The positions and opinions mentioned in paragraph (2) of this Article received by the Agency and its position thereof shall be published on the web-site of the Agency within seven days from the date of the public meeting.

(4) The Agency shall more closely regulate the following with a bylaw:

- the manner and procedure for receiving proposals from interested parties;
- manner and place for publishing public competitions, and other information related to the procedure for awarding licenses;

- data and information published by the Agency, as well as the access thereof in accordance with the Law."

In accordance with Article 10 of the Law on Audio and Audio-visual Media Services before adopting or amending a bylaw within its scope of competence, and before adopting the Annual Operation Programme for the following year, the Agency is obliged to publish on its web-site the proposed bylaw, the Annual Operation Programme, in order to allow a public debate, that is, to allow all interested parties to express their opinions, views and positions regarding the proposed bylaw and the proposed Annual Operation Program for the following year. The deadline for public debate must not be shorter than 30 days from the moment of publication of the acts. After the deadline expires, and before the adoption of the bylaw, the Agency is obliged to publish on its web-site the received opinions and comments, as well as the Agency position thereof.

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

In general the AVMS Directive has become an integral part of the media legislation. Since, the whole media framework has been thoroughly changed, big part of the experts' critics are diverted not towards the AVMS Directive, but towards the political influence on the regulatory authority, the dominant position of the Government on the advertising market, the political advertising as an instrument to influence the editorial policies and the media ownership structure, which remains close to political centres. There are no planned strategic activities of the regulatory authority, which would address the excessive Government's advertising with public funds and in unclear tender procedures. The excessive Government's advertising was also noted in EU Progress Report[6] as one of the most problematic areas, which limits the freedom of expression: "As regards public advertising, the transparency provisions in the Law on Audio and Audiovisual Media Services should be respected in full and greater care needs to be taken to ensure that public funds are used to provide information of genuine public interest, rather than to promote government activities".

There are also no mechanisms offered, which would ensure Agency's independence primarily from political centres. The 2014 OSCE-ODIHR Report also noticed the week professional capacities of the appointed members in Agency's Council: "The majority of AVMS members, including the chairperson, have no prior media or broadcasting experience. This has raised concerns among OSCE/ODIHR EOM interlocutors over the professional capacity of the

[6]The former Yugoslav Republic of Macedonia, Progress Report, 2014: http://www.google.de/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCkQFjAA&url=http%3A%2F%2Fec.europa.eu%2Fenlargement%2Fpdf%2Fkey_documents%2F2014%2F20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf&ei=EQ0QVYb5MeW6ygPjtIDoAw&usg=AFQjCNGp_GC2h2-FMTx0TthCHn2wVm8V_g&bvm=bv.88528373,d.bGQ

AVMS (Agency) to carry out its duties[7].” The ODIHR Mission also noted that the Agency had restrained from fining broadcasters, which are closer to the ruling political structures and recommended: “The AVMS (Agency) should initiate misdemeanour procedures against identified violations in a timely manner in order to increase public confidence and provide complainants with effective remedy. Sanctions should be clearly defined and commensurate with the gravity of the violation committed”.

[7] The former Yugoslav Republic of Macedonia, Presidential and Early Parliamentary Elections, 13 and 27 April 2014: Final Report http://www.osce.org/odihr/elections/fyrom/121306

Malta

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

N/A

II. Additional Questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned? What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

The Maltese media accountability system depends on a measure of self-regulation and regulation through legislation. A very weak process of self-regulation is managed by a Press Ethics Commission set up by the Institute of Maltese Journalists but the lack of a common professional ethos uniting journalists undermines the work of this Commission. Moreover, media owners do not support the process of self-regulation minimising further reducing the effectiveness of the process.

Co-regulation does not exist. This contrasts sharply with the position pushed forward by the European Union for stronger self-regulatory and co-regulatory structures that provide for effective enforcement and can play an important role in delivering a high level of consumer protection (AVMS Directive 2007).

State regulation enforced through laws and regulations is the only effective means of media accountability, particularly in the broadcasting sector.

The two main regulators of the broadcasting sector are the Broadcasting Authority and the Malta Communications Authority. Put simply, the first is responsible for the management of content while the latter is responsible for the management of the spectrum. It is also responsible, for example, for the postal services,

The Broadcasting Authority was set up in 1961 through Ordinance XX. The independence of the Broadcasting Authority was then further safeguarded through a number of constitutional provisions when Malta became independent in 1964. Articles 118 and 119 of the Constitution enshrine the existence and functions of the Authority in Malta's supreme law. These provisions of the Constitution can only be changed by a two-thirds vote of Parliament.

According to Article 118. (1) of the Constitution, there shall be a Broadcasting Authority. The Authority is set up as "a body corporate having a distinct legal personality and shall be capable, subject to the provisions of this Act, of entering into contracts, of acquiring, holding and disposing of any kind of property for the purposes of its functions, of suing and being sued, and of doing all such things and entering into all such transactions , commitments and obligations, as are incidental or conducive to the exercise or performance of its functions" (Broadcasting Act article 4 [1])

The constitution assigns to the Authority two main functions:

- to ensure that, so far as possible, in such sound and television broadcasting services as may be provided in Malta, due impartiality is preserved in respect of matters of political or industrial controversy or relating to current public policy;

- and that broadcasting facilities and time are fairly apportioned between persons belonging to different political parties."

(Constitution Article 119 [1])

When the Constitution was enacted, there was only the state owned broadcaster operating. In the beginning of the 1990's broadcasting pluralism was introduced. The provisions of the Constitution to-day are valid for all broadcasters however the Broadcasting Act introduced provisions which in practical terms make the supervision of the new broadcasting organisations (including those owned by political parties) less strict than those governing the public service broadcaster.

The Constitution also stipulates that the Broadcasting Authority can have other functions and duties conferred upon it by law (Article 119, 2). The Broadcasting Act Chapter 350 adds the following functions and duties to the Authority.

- It appoints radio and television station licensees and contactors.
- It decides which stations qualify for a General Interest Object licence and those that qualify for a commercial licence..
- Monitors these stations and regulates their performance in terms of their legal and licence obligations.
- Ensures that the system consists of public, private and community elements that offer varied and comprehensive programming to cater for all interests and tastes.
- Is responsible for supervising the application of the rules by on-demand audiovisual media service providers.
- Has the power to impose administrative fines on offending stations. This meant that there was now no need to go to Court to get offending stations to respect the decisions of the Authority.

The Authority "shall consist of a chairman and such number of other members not being less than four as may be prescribed by any law for the time being in force in Malta" (Constitution Article 118, 1)

Currently, and for many years, the board of the Authority is made up of four members and a Chairman.

The Constitution stipulates that "the members of the Broadcasting Authority shall be appointed by the President, acting in accordance with the advice of the Prime Minister given after he has consulted the Leader of the Opposition" (Article 118, 2).

The President is obliged to follow the advice of the Prime Minister. The agreed practice is for the Prime Minister to choose two members and for the Leader of the Opposition to choose the two other members thus having an Authority with equal members for both sides of Parliament. The Prime Minister consults the Leader of the Opposition on the Chair before advising the President. Although most of the time there is agreement on who should be appointed chairman, the final de facto decision is that of the Prime Minister. .

It does not follow that a person so appointed will act as an agent of government. There were instances when, for example, a Chair nominated without the concurrence of the Leader of the Opposition would end up being more criticised by the party in government than that in opposition.

Though members are not appointed as representatives of the political groupings which appointed them, it very often happens that on political issues voting is done on party lines. Thus on several instances, the vote of the Chairman is decisive.

The Constitution establishes a number of other criteria which are intentioned to strengthen the independence of the Authority from Government.

Members have a level of security of tenure so much so that "a member of the Broadcasting Authority may be removed from office by the President, acting in accordance with the advice of the Prime Minister, but he may be removed only for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour" (Constitution Article 118, 6).

No member has ever been removed during his tenure.

Article 118 (8) further strengthens the independence of the regulator when it specifies that "In the exercise of its functions under article 119 (1) of this Constitution the Broadcasting Authority shall not be subject to the direction or control of any other person or authority."

The functions mentioned in that paragraph refer to the observance of due impartiality and fair apportionment of time between parties. On the other hand, the relationship of the Authority to Government on other aspects of its work is not so clearly set out.

Authority has, for example, the function of establishing standards and good practice in broadcasting. In pursuance of this aim the Broadcasting Authority published a

number of guidelines and several legal notices were enacted. These include guidelines or legal notices on news, current affairs, phone-in programmes, and several aspects about advertising, the coverage of tragedies and the portrayal of people with disability. There are instances when these standards and practices are established by the Minister responsible for broadcasting policies (i.e. the Minister for Culture) together with the Broadcasting Authority. However there are other instances when the Authority does so on its own. Some legal experts say that the line which demarcates the different competencies is not always very clear.

Administratively the Authority falls under the Prime Minister. The relationship is not always totally clear as at certain times, the Prime Minister can make regulations without the involvement of the Authority while at other times, regulations can be made by the Prime Minister only after consultation with the Authority and at other times only after reaching agreement with the Authority.

The clarification of these issues would surely be beneficial.

2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

The Authority depends for its budget mainly on an annual allocation by Government. The Broadcasting Act mandates a minimum contribution by government but as can be seen from the audited accounts for 2014 government did in fact contribute more than obliged by law (confer answer to table 25) proving that there were no cutbacks because of the economic crisis. The second source of income accrues from the payment of licences and thirdly from fines collected from offending stations.
The funds are managed by the regulator with no interference whatsoever by government or any other body.

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

The Constitution and the Broadcasting Act lay down provisions to guard against conflict of interest thus safeguarding both transparency in operations as well as independence from Government. Article 118 (3) of the Constitution aims to distance the Authority from the executive and the legislative arm. It states that “a person shall not be qualified to hold office as a member of the Broadcasting Authority if he is a Minister, a Parliamentary Secretary, a member of, or candidate for election to, the

House of Representatives, a member of a local government authority or if he is a public officer."

Independence from broadcasting organisations is stipulated in the Broadcasting Act, in fact no member of the Authority "shall regularly take part in broadcasting" or "shall be a shareholder in any broadcasting operator, licensee or contractor, nor may he be involved in the management of any broadcasting service" (Broadcasting Act Article 8 [5] – 8 and 9). There have never been reports that this proviso was infringed.

Transparency in commercial dealings is provided for as members of the Authority are expected to declare and register any direct or indirect interest members have in any contract and desist from taking part in the decision process of the Authority on such matters (Broadcasting Act Article 8 [5] – 5 and 6)

The same provisions apply for the Chief Executive of the Authority.

There were never any allegations of infringement of the conflict of interest clauses.

The Constitution also stipulates that "A member of the Broadcasting Authority shall not, within a period of three years commencing with the day on which he last held office or acted as a member, be eligible for appointment to or to act in any public office" (Article 118, 4)

Independence and political parties

It was noted above that both political parties have their own radio and TV stations. The Authority's interpretation of broadcasting legislation together with the political appointment of its members creates the perception that the interests and needs of the political stations are taken into account by the Authority when it is making its deliberations. The Authority is often criticised that it leans in favour of these needs.

Article 13 (2) (f) of the Broadcasting Act states that the Authority, in the exercise of its responsibilities to ensure due impartiality in the broadcasting media "shall be able to consider the general output of programmes provided by the various broadcasting licensees and contractors, together as a whole." The Broadcasting Authority is not strictly obliged to follow the proviso and can, with immediate effect, insist on due impartiality within each station as it insists with the stations of the public service broadcaster. It has chosen not to do this and it *de facto* considers that one political station balances the other.

The Authority is of the opinion that "however, it is obvious that local public opinion is generally not sympathetic to such an approach" (Broadcasting Authority, 2008b, Circular 42/08, Para. 2). On November 1, 2008, Subsidiary Legislation 350.14 aimed at curbing the excessive political slant in news bulletins and current affairs programmes produced by the political stations, was published.

While this writer agrees that stations owned by the political parties cannot be treated or regulated as stringently as public service organizations are treated or regulated,

notes that the provisions published were not followed by adequate enforcement and the excessive bias of the political stations is still rampant. The perception with the industry and the public is still that the Authority is very cautious when issues regarding politically owned stations are raised.

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

Twenty eight people are employed by the regulator. As noted above in relationship to financing, 'everyone asks for more.' But I think that the regulator is adequately staffed to perform its duties.

the staff of the Authority are divided thus: General Administration (10 employees); Financial (3); Monitoring (13) and Research and Communication (2).

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

The regulator conducts its own monitoring but it also welcomes and investigates complaints made by the public. As noted under the previous heading, the monitoring department is the one most staffed out of all sections of the Authority.

All programmes on all TV stations are recorded 24/7. Monitors then watch a selection of programmes following a risk analysis they do of the potential problems that can emanate from particular programmes. But in the case of the public service broadcaster all news and current affairs programmes are regularly monitored.

The Authority is equipped with the latest computerised hardware and software system for the capture of audio-visual signals. This makes its monitoring system a very efficient one.

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

The regulator can issue warnings, suspended fines or fines. This depends on the gravity of the infringement. It can in very extreme circumstances even suspend a station's licence.

Fines are paid directly to the regulator. The most common infringements concern advertising and product placements.

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?
b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

The regulator is obliged to present an annual report to Parliament. This is made public and anyone interested can get a copy free of charge. The report and the financial statements are also available on the website of the regulator.

Such annual reports are very detailed. For example the report for 2013 is 64 pages long and accompanying it there is the financial report which is published concurrently. The report gives all needed information about the work of the Authority.

Besides, the Authority regularly publishes press releases which are given quite a good coverage by the media.

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?
b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

Broadcasting policy is the remit of government but the regulator is the catalyst of this policy.

In the past five years the regulator gave importance to the provisions about product placement, the setting up of general interest objective (GIO) stations, the good use of the Maltese language, the regulation of on demand services and the protection of minors.

The regulator is empowered to issue interpretative guidance on the application of rules contained in the AVMS Directive and such guidance is binding on service providers.

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

Although the regulator is not legally obliged to consult industry stakeholders and the general public it does nonetheless regularly seek the views of the industry and the public. Sometimes the problem lies not with the efforts of the regulator to consult but with the lack of enthusiasm shown by the industry and the general public.

10. Concluding Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

The existing legislative framework gives adequate formal powers to the Authority to act independently of government. Staffing and funding can always be improved but the present level of staffing and funding of the Authority should not in anyway interfere with its required level of independence from Government and does not prevent the Authority from efficiently fulfilling its core functions.

Independence depends more on the character and the culture of the persons responsible for the running of the regulator than on material resources. The Authority has had several persons of such inclination.

Structural considerations are, however, also very important. The process through which the Authority's members are chosen ties it too much to the party political establishment and has the limitations. Civil society is, for example, totally absent from the composition of the governing board of the Authority. In the last five years initiatives were taken to address this problem but they never led to any fruition.

However, it has to be recorded that the current level of independence and efficiency of the Authority enables it to effectively enforce the rules in the AVMS directive.

Netherlands

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

N/A

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned? What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

The Commissariaat voor de Media (CvdM) was established by state regulation as an independent administrative authority and is not subject to instructions by the government (Media Act 1988). Its current legal basis can be found in the Media Act 2008 and it is governed by the general statutory rules which apply to all independent administrative authorities. When carrying out its duties, the CvdM depends on the state's legal framework set up in the Media Act 2008 as well as co-regulation (for example the protection of minors with NICAM) or self-regulation (on the content of advertising with SNRC/RCC). The CvdM is competent for all audiovisual media (Media Act 2008).
Within the internal structure of the CvdM, decisions are made by the board (article 7.5 jo. 7.3 Media Act 2008). Officially, the board decisions are made by majority. In practice, the board uses general agreement when deciding. The board does have the possibility and power to issue a decision-making mandate to one or more of its members for the implementation of their tasks.

2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

The CvdM is financed according to a budget proposal which has to be send to, and then approved by the Minister of Education, Culture and Science (article 7.6 Media Act 2008). A substantial part of this budget is funded by the government. The CvdM further receives funds from surveillance fees (Annual Report 2013 page 12 and

http://www.cvdm.nl/praktisch/toezichtskosten-2/). The CvdM has to report annually to the Minister about the management of the funds (article 7.7 Media Act 2008).

The government has cut back on the media budget in view of the economic crisis. The CvdM has therefore started a reorganisation. Because most of the regulators expenses consist of labour costs, the most substantial cut-backs have been made in that area (Annual Report 2013 page 13).

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

Yes, rules about conflict of interest do exist. The board and its chairman are prohibited to hold a public/political office (article 13 Framework Act Independent Administrative Authorities and article 7.4 Media Act 2008). These rules are not obligatory to senior staff but in practice the same rules apply. Senior staff are prohibited to be hierarchically subordinate to the Minister (article 16 Framework Act Independent Administrative Authorities). Furthermore, members of the board are prohibited to be remunerated by third parties, unless the Minister has approved this additional function (Article 10 Regulation on the compensation of the Commissariaat voor de Media and Stimuleringsfonds voor de Pers: http://wetten.overheid.nl/BWBR0025062/geldigheidsdatum_01-01-2015).

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

At the end of 2013, the CvdM was equipped with a staff of 50, equivalent to about 43 fte (Annual Report 2013 page 13). During the year the CvdM had € 6.8 million at its disposal for the costs made in terms of staff and other facilities (Annual Report page 54). At the moment the level of staff is appropriate to the complexity of tasks and to the number of services regulated. However, with more budget cuts on the horizon, the CvdM does fear that, with the ever developing media world and with more tasks being assigned to the regulator, the level of personnel in the future may not be adequate for the complexity of tasks and to the number of services being regulated.
As for technical facilities, the CvdM holds consultation hours by phone every work day from 11:00 am until noon and offers the possibility to submit complaints via its website.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

The CvdM conducts its monitoring of the services itself, but it also responds to complaints made by the public. The regulator monitors in a systematic manner, but can also resort to more ad-hoc monitoring if the circumstances so require. Furthermore, the CvdM can respond to complaints made by the public or requests from within the industry to enforce the rules.

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

The CvdM can issue warnings, impose fines and suspend or revoke a licence. The latter power is not used in practice as it is usually considered to be disproportionate. The CvdM can issue their sanctions on all commercial and public services regulated. Sanctions imposed in practice have been warnings, fines and penalty payments.

On January 1, 2014, the tools for enforcing their policy have been expanded. The CvdM now also has the possibility to issue penalty payments for each determined unit of time a public service broadcaster does not comply with the rules concerning the non-commercialism of the public service channels. In the past the CvdM did not have this possibility.

The money from fines is transferred to the ministry, but has to be used for purposes of media policy in the widest sense (article 7.13 Media Act 2008). The rules of the AVMS Directive that have been violated most frequently, have been the rules concerning audiovisual commercial communication, sponsorship and product placement (http://www.cvdm.nl/besluiten/).

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

The CvdM is not obliged to make its decisions available to the public, but the CvdM does publish its decisions on its own initiative. The CvdM publishes the decisions on its website (http://www.cvdm.nl/besluiten/).

The CvdM is obliged to make its annual report available to the public (article 7.7 Media Act 2008). The annual reports are also published on the regulators website (http://www.cvdm.nl/over-het-commissariaat-voor-de-media/publicaties/). The annual report describes how the CvdM exercised its duties and policy in the past year (article 34 jo. 18 Framework Act Independent Administrative Authorities, and Regeling financiële verantwoording Commissariaat voor de Media: http://wetten.overheid.nl/BWBR0026328/geldigheidsdatum_01-03-2015).

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

The public is aware of the activities of the CvdM. The activities, especially when a decision involves the possibility of a large fine, are commonly covered by the media (for example: http://nos.nl/artikel/264649-commissariaat-geeft-nos-15-ton-boete.html). Decisions or plans to grant or revoke licenses are also commonly covered by the media (for example: http://www.rtlnieuws.nl/nieuws/binnenland/te-nauwe-banden-omroep-wnl-en-telegraaf).

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

According to article 7.1 paragraph 3 of the Media Act 2008, the CvdM is assigned its duties in accordance with the Media Act 2008. The government creates the rules the regulator has to apply. The CvdM has no general policy-setting powers, but the regulator has policy-implementing powers and sets its agenda within the legal framework. They do have an obligation to make their intended policy for the following year available to the Minister and they do so through their 'letter of enforcement' (article 7.20 Media Act 2008).

Since the implementation of the AVMS Directive, the CvdM prioritized and focused on the promotion of European works, the protection of minors and the broadcasting time of television advertising as can be read in the annual reports (Annual Report of 2013).

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

In areas where the law has left room for interpretation, the CvdM can issue interpretative guidance on the application or the explanation of rules contained in the AVMS Directive. The CvdM has made good use of this power and has issued many interpretative guidance's. For example, the CvdM has issued interpretative guidance on sponsorship and on sanctioning (http://www.cvdm.nl/regelgeving/beleidsregels-cvdm/).
This guidance explains to service providers how the CvdM is going to respond to violations and

how the service providers should act. The guidance is not binding for the service provider, the law is binding for the service provider. The CvdM has an obligation to act in accordance with their given guidance, but if the circumstances so require they can deviate from their interpretative guidance (article 4:84 General Administrative Law Act).

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalised (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

The CvdM is not obliged to consult industry stakeholders and the general public. Nonetheless, the CvdM does regularly seek the views of the industry and tries to implement these views as much as is possible when they are drafting new guidelines (Annual report 2013 page 5). After consulting the stakeholders and after the new guideline is issued, the regulator starts informing the stakeholders about the new guideline and listens to comments made by stakeholders. Previous consultations have been made for example about new focus areas for the book industry (http://www.cvdm.nl/nieuws/consultatie-boekenbranche-over-prioriteringsbeleid-en-aandachtsgebieden-vaste-boekenprijs/) and the regulator continues to innovate its monitoring on the ever changing media world including the use of public consultations. (http://www.cvdm.nl/veelgestelde-vragen/?vv=hoe-kan-het-commissariaat-toezicht-houden-op-commerciele-mediadiensten-op-aanvraag-mede-gezien-de-dynamiek-omvang-en-het-geintegreerde-karakter-van-deze-diensten).

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

An important focus area for the CvdM is monitoring public service channels for not infringing the so called 'dienstbaarheidsverbod' (article 2.141 Media Act 2008). This article prohibits public service channels to participate in the profits made by third parties. Their programming or associated activities should be without profit, for them or third parties. This 'non-commercialism' of the public service broadcasters is to assure a level-playing field on the broadcasting market.

The CvdM monitors the finances of the public service broadcasters (article 2.171 and article 2.173a Media Act 2008). The Minister finances the public service channels, but cannot monitor or influence the way the public service channel decides to spend its funds. The task appointed to the CvdM is to monitor the annual financial reports made by the national, regional and local public service channels and check on how the funds are being spent.

Furthermore, the number and the complexity of the tasks appointed to the CvdM has been increasing. Since January 1, 2014 the CvdM has been given the task by the State Secretary to enforce the 'must-carry' rule on the cable companies (article 6.13 Media Act 2008). Cable companies and other providers now have an obligation to include at least 30 channels, with a number must-carry channels, in their TV packages. The CvdM has been examining throughout 2014 if this new rule has had any effect on the diversity of packages and on consumer satisfaction. In 2016 there will be an evaluation of the results (Annual Report 2013, page 11 & 47).

And finally a very recent development shows the CvdM not only monitors within the borders of its own country, but also has to look across its borders. Since February of 2015 the Netherlands has become the place of business for Netflix in Europe. Netflix now has to follow the rules for commercial on-demand services of the Media Act 2008. For this reason, the CvdM now has the task to not only monitor Netflix's content in the Netherlands, but also Netfix's content across Europe. If complaints arise from other countries, the CvdM, as the regulator, now has to deal with those complaints. http://www.cvdm.nl/nieuws/commissariaat-voor-de-media-toezichthouder-op-netflix-europa/

Poland

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

N/A

II. Additional Questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

Polish regulatory model for audiovisual media services is based on state regulation. The regulatory body competent in this field is *Krajowa Rada Radiofonii i Telewizji* (KRRiT – National Broadcasting Council). Its competences cover radio and television broadcasting as well as on-demand audiovisual media services, including both private and public service media. KRRiT is also competent for the retransmission of programme services and "web-TV", i.e. television programme services disseminated in IT networks. The body responsible for telecommunications, including such infrastructure used for radio and television broadcasting, is the President (*Prezes*) of *Urząd Komunikacji Elektronicznej* (UKE – Office for Electronic Telecommunications). Law provides for different forms of co-operation of both relevant bodies, taking into account competences of KRRiT in the field of electronic media (content) and of UKE with regard to telecommunications (infrastructure).

KRRiT was established in 1993 on the basis of the Broadcasting Act of 29 December 1992.[1] Its status is also regulated in general terms in the Constitution of the Republic of Poland of 1997,[2] according to which KRRiT *shall safeguard the freedom of speech, the right to*

[1] Original text – Official Journal of 1993, No 7, item 34. Consolidated text: Official Journal of 2011, No 43, item 226, with amendments. Unofficial English translation of the consolidated text: http://www.krrit.gov.pl/Data/Files/_public/Portals/0/angielska/Documents/Regulations/broadcasting_act_28022013.pdf

[2] The Constitution of Republic of Poland of 2.4.1997, Official Journal, No 78, item 483, with amendments, Articles 213-215. English translation – available at: http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm

information as well as safeguard the public interest regarding radio broadcasting and television.[3] KRRiT, on the basis of relevant provision of the Constitution and Broadcasting Act, was synthetically described by the Consitutional Court as *constitutional body with a position outside the scheme of tripartite separation of authorities.(…) Though the tasks of KRRiT are related to administrative and executive activities, it is situated as between executive and legislative authorities, with clear distance from the government*.[4]

KRRiT consists of 5 members, including 2 appointed by the *Sejm* (lower house of Parliament), 1 by the *Senat* (upper house of Parliament) and 2 by the President of Poland.[5] KRRiT elects from amongst its members the Chairman, and - upon his motion – the deputy. The term of office of KRRiT is 6 years, and except special circumstances members of the body may not be revoked.[6] KRRiT submits its annual report to the Parliament and only in case of rejection of the report by both the *Sejm* and *Senat*, and confirmation of the rejection by the President, the term of office of KRRiT expires.[7]

The Chairman of KRRiT directs its work, represents the Council and performs the tasks specified in the Broadcasting Act, in particular issues as the administrative body the decisions on broadcasting licences and decisions ordering providers of media services to cease activities infringing the Act or the licence, and decisions on fines.[8]

KRRiT performs its tasks with the assistance of its Office. The organisation and operational procedures of the Office are laid down in the internal rules of procedure adopted by KRRiT.[9] The office is led by the Director of the Office, who reports to the Chairman of KRRiT. The Office of KRRiT consists of 7 departments for: 1) Presidential Matters, 2) Strategy, 3) Regulation, 4) Monitoring, 5) Public Service Media, 6) Budget and Finances, 7) Legal Affairs - each led by the respective director; other units of the Office are: Bureaus of Members of KRRiT, the bureau of the Director of the Office, the Team of the Spokesperson of KRRiT, the Internal Auditor, the Plenipotentiary for Protection of Confidential Information.[10]

The regulatory model for radio and television, based on state regulation, but with clear intention to separate the broadcasting, including PSBs, from the political power of a day, was chosen in 1990-ties as a part of democratic transformation in Poland.[11] Consequently, the system of "buffers" between political world and broadcasting was built, in which KRRiT was designed to play a central role. That is why its status is regulated in the Constitution and the legal framework includes a number of concrete solutions aimed to safeguard KRRiT's independence, despite the fact that its composition emanates from the political world (the Parliament and the President). State regulation of the broadcasting and on-demand

[3] Art. 213 (1) of the Constitution.

[4] Judgement of the Constitutional Court of 23.3.2006, K 4/06.

[5] Art. 214 (1) of the Constitution and Art. 7 (1) of the Broadcasting Act.

[6] Art. 7 (4)-(7) of the Broadcasting Act.

[7] Art. 12 of the Broadcasting Act.

[8] Articles 10, 33 (3), 53-54 of the Broadcasting Act

[9] Article 11 (1) and (2) of the Broadcasting Act.

[10] Organigram and the rules of procedure of the Office of KRRiT are available (in Polish) at:
http://www.krrit.gov.pl/krrit/biuro-krrit/schemat-organizacyjny/

[11] With regard to public service broadcasting – see the resolution of the Constitutional Court of 13.12.1995, W 6/95.

audiovisual media corresponds to the role of the state as the *ultimate guarantor of pluralism* as recognised under Art. 10 of the ECHR by the European Court of Human Rights.[12] Normative regulation in the field has in principle statutory nature, according to Polish constitutional requirements.[13] KRRiT has however in the concrete matters the power to enact regulations that serve the fulfilment of statutory provisions and make them more concrete in detailed matters, that in fast moving media world, require faster regulatory intervention. KRRiT competences do not cover telecommunications. This field is regulated separately under the different statutory act[14] and with different regulatory body (UKE). There were several discussions on possible merger of both regulators. However the concept of separation of electronic media law and telecommunications law, and of a separate regulatory body for each of these fields, prevailed. In particular the cultural, social and democratic specificity of media and the need of their independence were taken into account. Also the constitutional status of KRRiT played the important role, as there were doubts about whether the possible merger with UKE would not require the amendment of the Constitution.

The scope of the Broadcasting Act and consequently KRRiT competences were extended in 2013 to on-demand audiovisual media services, in effect of implementation of the Audiovisual Media Services Directive (AVMSD).[15] This revision was based on broad understanding of KRRiT's constitutional empowerment for *radio broadcasting and television (radiofonia i telewizja*).

Polish regulatory model for audiovisual media services based on state regulation is progressively supplemented by self- and co-regulation.[16] The Broadcasting Act, as amended in 2011 and 2012 in process of implementation of the AVMSD, stipulates that it is a task of KRRiT to *initiate and support self-regulation and co-regulation in the area of provision of media services*.[17] Moreover the Broadcasting Act invites providers of media services to create and adhere to codes of good practices in view of performance of obligations set out in the Act.[18] The matters on which the law particularly encourages such measures include: 1) identification of programme services, 2) limitations of commercial communications for

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[12] Judgment of 24 November 1993, *Informationsverein Lentia and others v. Austria*, Series A No. 276, point 38; judgment of 17 September 2009, *Manole and Others v. Moldova*, No. 13936/02, points 99 and 107.

[13] Art. 31(3) of the Consitution.

[14] The Act of 16.7.2004 Telecommunications Law (consolidated text: Official Journal of 2014, item 243, with amendments). English translation: https://en.uke.gov.pl/files/?id_plik=41

[15] The Act of 12.10.2012 amending the Broadcasting Act (Official Journal item 1315), which entered into force on 28.2.2013. This was the second part of implementation of the AVMSD, that concerned non-linear audiovisual media services. The AVMSD standards with regard to linear services were implemented by the act of 25.3.2011 amending the Broadcasting Act (Official Journal No 85, item 459, that entered into force on 23.5.2011.

[16] The first attempt of this kind was the agreement of Polish TV broadcasters concluded upon the initiative of KRRiT in 1999 called Friendly Media (*Przyjazne media*) and concerned the protection of minors. KRRiT found the fulfilment of the agreement unsatisfactory. In effect more specific provisions on the protection of minors in programme services were added to the Broadcasting Act and supplemented by the detailed regulation by KRRiT.

[17] Art. 6 (2) p. 12 of the Broadcasting Act. Neither self- nor co-regulation is defined in the Broadcasting Act.

[18] Art. 3a (1) of the Broadcasting Act, which refers to the codes of good practices in the meaning of the the Act of 23 August 2007 on Combating Unfair Market Practices (official journal No. 171, item 1206, with amendments), which defines such codes in Art. 2 p. 5 as *sets of rules of conduct, in particular ethical and professional standards, of enterpreneurs who undertook to be bound by them in relation to one or more commercial practices*.

unhealthy foods or beverages - accompanying children's programmes, 3) accessibility of programme services and on-demand audiovisual media services for visually and hearing impaired persons by appropriate facilities, 4) protection of minors against harmful content in on-demand audiovisual media services.[19] In most of these matters KRRiT may, but is not obliged, to enact regulations,[20] with the assumption that this could be done, if satisfactory self- or co-regulatory solution has not been achieved. Such a possibility constitutes an additional encouragement for media services providers to adopt self- or co-regulatory measures. So far in practice this system proved to be quite fruitful. In 2013 broadcasters of terrestrial television programme services concluded the agreement concerning facilities for impaired persons.[21] In 2014 major TV broadcasters concluded the agreement on avoidance of commercial communications for unhealthy food and beverages accompanying children's programmes.[22] Also in 2014 the code of good practices on detailed rules concerning protection of minors in on-demand audiovisual media services was adopted.[23] Those agreements and the code have in principle nature of self-regulatory measures. However the role of KRRiT in inspiring their adoption and consulting their content, and taking them into account in its monitoring activities, is the element characteristic for the co-regulation.

[19] Art. 3a (1) with references to Articles 14a, 16b (3a), 18a, 47e and 47g of the Broadcasting Act. Moreover Art. 3a (2) stipulates that with regard to on-demand audiovisual media services, *the National Broadcasting Council in cooperation with the minister responsible for information technology shall initiate, support and promote the creation of codes of good practice referred to in paragraph 1.*

[20] Articles 14a (3), 16b (3b), 18a (2), 47e (3) of the Broadcasting Act. This however does not concern the accessibility of on-demand AV services for impaired persons (Art. 47g).

[21] Agreement of 23.6.2013 on facilities for television programme services for visually and hearing impaired persons, signed by TVP, Telewizja POLSAT, Telewizja TVN, Telewizja PULS, Polskie Media (TV4), ATM Grupa, Stavka: http://www.krrit.gov.pl/krrit/aktualnosci/news,1208,porozumienie-nadawcow--dotyczace-udogodnien-dla-niepelnosprawnych.html

[22] Agreement of television broadcasters of 29.10.2014 on rules of dissemination of advertising and sponsors' identifications concerning food products or beverages containing ingredients excessive intakes of which in the every day diet are not recommended. The agreement has been signed by ITI Neovision, Telewizja Polsat, TVP, Telewizja Puls, TVN, VIMN Poland, The Walt Disney Company (Polska), Stavka. It provides for their commitment that as of 1.1.2015 programmes that are addressed to children (in the age below 12) shall not be accompanied by advertisements for foods and beverages that do not fulfil nutrition criteria as set by Polish Federation of Food Producers and accepted by the Ministry of Health. The criteria are annexed to the agreement. http://www.krrit.gov.pl/krrit/aktualnosci/news,1641,krrit-chroni-dzieci-przed-reklamami-tzw-niezdrowej-zywnosci.html

[23] Adopted on 26.6.2014 by the Assosiation of Internet Employers - IAB Polska, signed by i.a. Cyfrowy Polsat, Onet Group, Wirtualna Polska Group, Iplex, Cineman, Ipla, TVP – which according to KRRiT represent around 80% of the market share of VOD services. The code was submitted to KRRiT on 13.10.2014. KRRiT was consulted on the draft code and welcomed its adoption. The text of the code is available at: http://iab.org.pl/standardy-i-dobre-praktyki/kdp-vod-nieletni/ . The position of the KRRiT: http://www.krrit.gov.pl/dla-abonentow-i-konsumentow/ochrona-maloletnich/aktualnosci-o-ochronie-maloletnich/news,1667,ochrona-maloletnich-w-internecie--kodeks-dobrych-praktyk.html

2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

Costs of operations of KRRiT and its Office shall be borne by the state budget.[24] Budget of KRRiT is determined for each year by the budgetary act, as adopted by the Parliament upon the proposal of the government prepared by the Minister of Finance. According to the public finances law KRRiT belongs to state bodies (such as certain courts, Supreme Chamber of Control, Ombudsman) with so called budgetary autonomy. It manifests in a duty of the Minister of Finance to include in the draft budgetary act for the following year expenditures and income of KRRiT as it predicts them.[25] In parliamentary works they may however be changed. All income generated by the activities of KRRiT (e.g. broadcasting licences fees, fines) flows to the state budget. Also all expenditures of KRRiT are borne by the state budget. During the last 5 years there was certain growth of expenditures of KRRiT as provided for in the respective budgetary acts.[26] This is related in particular to extension of tasks of KRRiT following the implementation of the AVMSD. Funds from the state budget that are available to KRRiT are administered by the Council itself, in the sense that KRRiT keeps the accounts as a state budgetary unit, separately for its income and expenditures. KRRiT receives on its account for expenditures, according to the financial plan, resources from the account for expenditures of the state budget, which is administered by the Minister of Finance.

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

Pursuant to the Constitution a member of KRRiT shall not belong to a political party, a trade union nor perform public activities incompatible with the dignity of his function.[27] Moreover the Broadcasting Act stipulates that during the term of office of members of KRRiT their membership in governing bodies of associations, trade unions, employers' associations, as well as church or religious organisations, shall be suspended.[28] The act prohibits to combine the function of a member of KRRiT with holding an interest or shares, or with any other involvement, in an entity which is a media service provider or a radio or television producer, as well as with any other gainful employment, except educational or academic positions of an

[24] Art. 11 (3) of the Broadcasting Act.

[25] Art. 139 (2) of the Public Finances Act of 27 August 2009, consolidated text: Official Journal of 2013, item 885, with amendments.

[26] 2010 – 15 742 000 PLN; 2011 – 18 890 000 PLN; 2012 – 20 045 000 PLN; 2013 - 20 756 000 PLN; 2014 – 21 686 000 PLN (c. 5 087 863 000 EUR on the basis of the average rate as per 31.12.2014 published by NBP, Narodowy Bank Polski – Polish National Bank: 1 EUR = 4,2623 PLN).

[27] Art. 214 (2) of the Constitution.

[28] Art. 8 (3) p. 2 of the Broadcasting Act.

academic tutor or lecturer or performing creative work.[29] The employer of a member of KRRiT, at his/her request, is obliged to grant him/her a leave of absence, without pay, for the time of holding an office. The time of the leave shall be accounted towards the duration of the member's employment, on the basis of which other benefits resulting from the relation of employment are derived.[30]

In addition to legal obligations KRRiT adopted in 2004 its rules of ethics which declare i.a. that members of KRRiT: 1) independently of their views, shall not engage in any political party activity and do not follow any political interests; 2) shall keep impartiality vis-a-vis authorities, market participants or other interested parties; 3) shall not make any commitments or actions, which may create the risk of conflict of interest and endanger the primacy of public interest and objectivism.[31]

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

KRRiT performs its tasks with the assistance of its Offices. As already explained the Office of KRRiT consists of several departments specialised according to main functions of KRRiT. The Office of KRRiT has c. 140 employees.[32] Staffing in 2014 included 7 additional posts for performance of extended tasks of KRRiT concerning non-linear audiovisual media services.[33] KRRiT's budget (expenditures) for 2014 was 21 686 000 PLN (c. 5 087 863 EUR).[34]

Stuffing and resources of KRRiT are generally sufficient to secure the performance of recently extended tasks of regulatory body. More resources would however allow KRRiT to broaden analytical works, including market analyses. The situation with KRRiT's headquarters is not optimal. KRRiT uses space in buildings in different parts of Warsaw. Its main location is in the building shared with other institutions.

[29] Art. 8 (4) of the Broadcasting Act.

[30] Art. 8 (1) of the Broadcasting Act.

[31] The rules of ethics concerning the work of KRRiT adopted on 24.6.2004, available at: http://www.krrit.gov.pl/krrit/informacje-o-krrit/zasady-etyczne-pracy-krrit/.

[32] KRRiT annual report for 2014 informs on the average employment of 141 persons (including 5 members of KRRiT). According to information received from KRRiT in March 2015 - 142 persons are employed in the Office of KRRiT (excluding members), but including both persons on maternity leaves and persons employed as their substitutes.

[33] KRRiT annual report for 2014.

[34] KRRiT annual report for 2014. The significant growth is planned for 2015 (PLN 34 542 000 - 8 104 075 EUR) - the Budgetary Act for 2015 – of 15.1.2015, Official Journal item 153. Smaller amounts are planned for next 3 years.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

KRRiT conducts monitoring both on its own initiative and on the basis of complaints by the public. Monitoring of services conducted by KRRiT covers in particular quotas, commercial communications, facilities for impaired persons, protection of minors. This activity of KRRiT is carried-out by the Department of Monitoring in the Office of KRRiT. As far as quotas are concerned television broadcasters are obliged to keep a record of transmission time devoted to programmes (works) relevant for quotas.[35] Such records are controlled by KRRiT.[36] Similarily obligation to keep a record exists with regard to: 1) transmission time of advertisements and teleshopping,[37] 2) sponsored programmes,[38] 3) programmes with product placement.[39]

Monitoring by KRRiT includes 3 main types of control: 1) current control – analysis of telemetric data and messages from viewers and listeners; 2) planned control – analysis of selected hours (normally 4) of transmitted programme service and of records kept by broadcasters;[40] 3) thematic control – analysis of specific contents (e.g. electoral broadcasts, advertising accompanying children's programmes).

KRRiT also conducts surveys among chosen categories of media services providers[41] or the public.[42]

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[35] Regulation of KRRiT of 12.7.2011 concerning the manner of keeping a record by the broadcaster of transmission time of programmes originally produced in the Polish language, European works and European works produced by independent producers, as well as the period of storage of such record, Official Journal Nr 160, item 962. English translation:

http://www.krrit.gov.pl/Data/Files/_public/pliki/regulations/12-july-2011_-ew.pdf

[36] For example the annual report of KRRiT for 2014 informs that KRRiT controlled 322 extracts of such records.

[37] § 11 of the Regulation of KRRiT of 30.6. 2011 concerning principles of advertising and teleshopping in radio and television programme services (consolidated text: Official Journal of 2014, item 204). English translation: http://www.krrit.gov.pl/Data/Files/_public/pliki/regulations/30-june-2011-rekl.pdf

[38] § 5 of the Regulation of KRRiT of 6.7.2000 (785) concerning sponsoring of programmes and other broadcast (consolidated text: Official Journal 2014, item 203). English translation: http://www.krrit.gov.pl/Data/Files/_public/pliki/regulations/7_december_2010_nowy.pdf

[39] § 4 of the Regulation of KRRiT of 30.6.2011 concerning detailed conditions of product placement, Official Journal No 161, item 977. English translation:

http://www.krrit.gov.pl/Data/Files/_public/pliki/regulations/30-june-2011.pdf

[40] In 2014 – 90 planned controls (298 hours) concerning commercial communications in TV programme services; in 2013 – 75 such planned controls (264 hours). Source: KRRiT annual reports for 2014 and 2013.

[41] In 2014 KRRiT conducted the survey among 240 cable broadcasters, concerning i.a. weekly and daily transmission time, presence of local content, programme genres. 111 broadcasters responded to the survey. Source: KRRiT annual report for 2014.

[42] For example in 2014: the survey concerning viewership and evaluation of local cable programme services in smaller cities. Source: KRRiT annual report for 2014.

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

Measures provided for in the Broadcasting Act in case of infringement of the provisions of the act implementing the AVMSD include: 1) a call and an order to cease the infringing activity;[43] 2) a fine upon a broadcaster in the amount of up to 50% of the annual fee for the right to use the frequency allocated for providing the programme service, or a fine of up to 10% of the revenues generated by the broadcaster in the preceding tax year;[44] 3) a fine upon a provider of an on-demand audiovisual media service in the amount of up to twenty times the average monthly remuneration in the corporate sector, in the preceding quarter;[45] the fine may be imposed again after 30 days, if the infringing activity is continued. All these sanctions are imposed by the decision of the Chairman of KRRiT, who also may impose a fine upon a person who directs the media service provider's activity in the amount of up to the person's six-month remuneration, in case of failure to carry out the decision ordering to cease the infringing activity.[46] Moreover providers of on-demand audiovisual media service have an obligation to submit annual reports to KRRiT on compliance with duties with regard to protection of minors and promotion of European works, including those produced originally in the Polish language.[47] In case of failure to deliver the report, the Chairman of KRRiT may issue a decision imposing a fine upon the person who directs the activity of the provider of the on-demand audiovisual media service in the amount up to PLN 1,000 (c. 235 EUR). The fine may be imposed again after 30 days in case of continued non-compliance with the obligation to deliver the report.[48]

All the fines imposed by the Chaiman of KRRiT flow directly to the state budget.[49]

In practice the vast majority of sanctions are fines imposed on broadcasters (52 amongst 57 decisions on sanctions in total in 2010-2014). The amount of a fine according to the law should depend on the degree of harmfulness of the breach, the former operations of the broadcaster and its financial capacity.[50] There is no fixed interrelation between infringements of the specific provision of the Broadcasting Act implementing the AVMSD and the specific amount of a fine. Individual circumstances of a case are decisive and the Chairman of KRRiT should take into account mentioned criteria. In practice there is big diversity of amounts

[43] Art. 10 (3)-(4) of the Broadcasting Act.

[44] Art. 53 of the Broadcasting Act.

[45] Art. 53c of the Broadcasting Act. The relevant average monthly remuneration in the corporate sector referred to in this article shall include profit distribution. For the last quarter of 2014 it amounted to 4139,42 PLN. This gives a fine limit of 82 788,4 PLN (19 423,41 EUR – according to the rate of 31.12.2014).

[46] Art. 54 (1) of the Broadcasting Act.

[47] Art. 47j of the Broadcasting Act.

[48] Art. 53d of the Broadcasting Act. In practice, in all 3 decisions imposing such fines in 2014 their amount was 500 PLN.

[49] Art. 55 of the Broadcasting Act.

[50] Art. 53 (1) *in fine* of the Broadcasting Act.

imposed as fines, with the lowest amount of 1000 PLN and the highest of 300 000 PLN, in 2010-2014. In this period the average amount of a fine was 48 156 PLN and the most frequently imposed fine was of 50 000 PLN (in 9 decisions amongst 52 in total).

The sanctions are applied most frequently with regard to infringements concerning rules on commercial communications (28 cases in 2010-2014), including limits of advertising time, surreptitious commercial communications (including self-promotion), limitations of advertising of certain products, in particular of alcohol, and more recently - product placement. The second category of the most frequent infringement cases, in which sanctions have been applied, concerns the rules on protection of minors and public order, including the ban on incitement to hatred (16 cases in 2010-2014) and the third type concerns quotas (8 cases in 2010-2014).

Information on decisions imposing sanctions is customarily included in an annual report of KRRiT.

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

KRRiT is obliged to submit by the end of March each year, to the Sejm, the Senate (lower and upper house of Parliament) and the President an annual report on its activities during the preceding year, as well as information concerning key issues in radio and television broadcasting.[51] Although there is no legal obligation for KRRiT to publish its annual report and information, it is a customary practice of the regulator to make them available to the public on its website.[52] An annual report of KRRiT includes information on the regulators' activities in each field of its competences. Typical structure of a report in recent years covers: 1) KRRiT in key figures; 2) achievement of main goals of KRRiT according to its regulatory strategy; 3) contribution to the law-making process, in particular KRRiT's regulations; 4) broadcasting and retransmission of programme services and making available of on-demand audiovisual media services; 5) control of media providers; 6) supervision over the public service media; 7) relevant courts' rulings; 8) participation in works of international institutions and organisations, 9) public relations as well as informative and educational activities of KRRiT.

KRRiT is not obliged to publish its decisions. However the most important decisions are made available on KRRiT's website. This includes in particular decisions on broadcasting

[51] Art. 12 (1) of the Broadcasting Act.

[52] Indeed all annual reports and information by KRRiT are available at: http://www.krrit.gov.pl/krrit/sprawozdania/

licences.[53] Moreover KRRiT normally informs on its website on most important decisions on sanctions. A list of such decisions issued in the preceding year is included in an annual report of KRRiT and made available to the public on its website. Also positions (standpoints) by KRRiT taken in regulatory matters are published on its website.[54]

Since 2011 KRRiT adopts and publishes its regulatory strategy for 3 years, that presents assumptions, goals and directions of KRRiT policy in the field of electronic media.[55]

The public seems well informed on the activities of the regulator. Its decisions and actions are regularly covered by the press and other media.

It is worth noting that in March 2015 KRRiT's website was awarded with the title *Website Without Barriers 2015*, in the category of public institutions' website services of more than 100 subpages, for accessibility for persons with disabilities and other persons exposed to digital exclusion.[56]

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

According to the Broadcasting Act KRRiT should draw up, in agreement with the Prime Minister, the directions of the State policy in respect of radio and television broadcasting.[57] This rule was explained by the Constitutional Court as reflecting the autonomy of KRRiT vis-a-vis the government, and equal, partner relationship of KRRiT and the Prime Minister in setting mass media policy of the State.[58] In reality this rule is used with regard to concrete specific matters (like digitalisation of terrestrial broadcasts) rather than for setting the holistic media policy. Despite the fact that KRRiT shall or may enact regulations in the fields specified in the Broadcasting Act, the regulator does not have legislative initiative and may not propose formally the amendments to the statutory acts. In such cases KRRiT normally co-operates with the competent ministry, most often with the ministry of culture.

KRRiT sets for itself both long-term objectives and it own agenda within the scope of its competences.

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[53] www.krrit.gov.pl/dla-nadawcow-i-operatorow/koncesje/wykaz-koncesji-i-decyzji/

[54] http://www.krrit.gov.pl/dla-mediow-i-analitykow/publikacje/stanowiska/

[55] http://www.krrit.gov.pl/dla-mediow-i-analitykow/publikacje/strategie/

[56] http://www.widzialni.org/konkurs-strona-internetowa-bez-barier,new,mg,6,143

[57] Art. 6 (2) p. 1 of the Broadcasting Act.

[58] Judgement of the Constitutional Court of 23.3.2006, K 4/2006.

Long-term objectives are set for 3 years in a regulatory strategy that KRRiT adopts since 2011. This is a self-initiative document by KRRiT that is not required under the law. The regulator decided to establish the practice of preparing and adopting it to improve the transparency and predictability of its activities. So far 2 regulatory strategies were adopted by KRRiT - respectively for the periods of 2011-2013[59] and 2014-2016.[60]

According to the Broadcasting Act KRRiT adopts its internal rules of procedure.[61] Pursuant to the rules KRRiT enacts its monthly plans of sessions and sets key subjects of its deliberations in each period. The agenda of the specific session is proposed by the Chairman of KRRiT, who informs other members of the body about the agenda not later than 24 hours before the session, except in cases of listed important subjects (including adoption of a regulation, a resolution on a broadcasting licence or another listed important matter) for which 7 days notice is established. Members of KRRiT may make proposals for changes in the agenda and KRRiT adopts the agenda for a given session.[62]

KRRiT has been dealing with practically all matters covered by the AVMSD since its implementation by amendments of 2011 and 2012 to the Broadcasting Act. The priority is given by KRRiT to the protection of minors, both in general in linear and non-linear services and in the context of advertising, including for the unhealthy food.[63] Other AVMSD relevant priorities include needs of impaired persons, promotion of European works and protection of the Polish language, listed events, standards for commercial communications (in particular product placement), media literacy, co-operation with foreign regulators.[64]

KRRiT adopts its standpoints on key issues covered by its competences. This is also self-initiative practice by KRRiT, not required by the law, but serving the improved transparency and predictability of its policy and decision-making practice. The guidance given by KRRiT in its standpoints is not formally binding on service providers. However it indicates in which direction KRRiT could go in its decision-making practice, e.g. imposing sanctions. Media service providers may question KRRiT's positions in appeals to courts against its decisions. Courts are not bound by KRRiT's standpoints, however they may take into account reasons for a given position explained by KRRiT in its standpoints.

In 2010-2014 KRRiT took 42 standpoints on different matters.[65]

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[59] http://www.krrit.gov.pl/Data/Files/_public/pliki/publikacje/strategie/strategia_110420.pdf

[60] http://www.krrit.gov.pl/Data/Files/_public/Portals/0/sprawozdania/strategia.pdf

[61] Art. 9 (3) of the Broadcasting Act.

[62] § 2 and § 3 of the Rules of Procedure of KRRiT:
http://www.krrit.gov.pl/Data/Files/_public/Portals/0/KRRiT/informacje/regulamin_pracy_krrit_160296.pdf

[63] The Regulatory Strategy of KRRiT for 2014-2016, p. 57-60.

[64] The Regulatory Strategy of KRRiT for 2014-2016, p. 44, 61-65, 70-72.

[65] The standpoints of KRRiT are available at: http://www.krrit.gov.pl/dla-mediow-i-analitykow/publikacje/stanowiska/

The standpoints on matters related to the AVMSD in this period include:

- the standpoint of 18.5.2010 on broadcasting charity messages, allowing their broadcasting outside the advertising blocks and advertising time limits, unless they promote a product or commercial service,[66]
- the standpoint of 27.4.2011 on broadcasters' presence in the Internet, in particular on social media services and informing about it in radio and TV programme services, stating that such references should have informative character without features of advertising or promotion of Internet portals or services; if the later is the case, KRRiT will react as in cases of surreptitious commercial communications;[67]
- the standpoint of 17.4.2012 on possible interference of retransmitting operators in retransmitted programme services explaining that retransmission shall be simultaneous, complete and unchanged, operators should not introduce any changes in retransmitted programme services and thus should not conclude agreements requiring such changes;[68]
- the standpoint of 5.9.2012 on listed events in the context of matches of Polish national football teams, in which KRRiT reminded about the provisions of the Broadcasting Act on listed events and possible sanctions in case of their infringement, and highlighted that broadcasting of a listed event in a non-qualified programme service is allowed only if no broadcaster of a qualified programme service was ready to conclude the relevant sublicensing agreement, in assessment of which it is necessary to check, whether the offer of such a sublicense was not simulated (i.e. made without the real will to conclude an agreement);[69]
- the standpoint of 26.2.2013 on the qualification of pay-per-view services in the light of the AVMSD, stating that such services (for example *ad hoc* service of paid broadcasts of a sports event – listed event) shall be qualified in the light of the directive as programme services (television broadcasting / linear audiovisual media services) and their providers as broadcasters, with the consequence of application of the provisions on listed events and sanctions in case of infringements.[70]

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

KRRiT is not generally obliged by the law to consult industry stakeholders and the general public. However the regulator regularly seeks views of the industry and the public on major regulatory matters.

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[66] http://www.krrit.gov.pl/Data/Files/_public/Portals/0/stanowiska/st2010/przekazy_charytatywne.pdf

[67] http://www.krrit.gov.pl/Data/Files/_public/Portals/0/stanowiska/st2011/110427_st_nadawcy_w_internecie.pdf

[68] http://www.krrit.gov.pl/Data/Files/_public/Portals/0/stanowiska/st2012/stan_170412_ingerencja.pdf

[69] http://www.krrit.gov.pl/Data/Files/_public/Portals/0/stanowiska/stanowisko_w-sprawie_transmisji-_meczow_.pdf

[70] The standpoint is available at: http://www.krrit.gov.pl/dla-mediow-i-analitykow/publikacje/stanowiska/

In 2012 KRRiT adopted on its own initiative the resolution on the rules of procedure for public consultations.[71] The rules refer to the constitutional principle of social dialogue and different acts aimed to openness of public bodies, as well as to European standards for consultations as set in the European Commission Communication of 11.12.2002, COM(2002) 704. According to its rules KRRiT shall conduct public consultations in *regulatory policy matters of significant importance for radio, television and electronic media markets*. Consultations shall start with a publication by the Chairman of KRRiT of a notice on consultations in the Public Information Bulletin. KRRiT should also, when possible, strive to ensure broad availability of information on consultations conducted by electronic means with the use of other forms of public communication. An announcement on consultations shall be also disseminated with the use of facilities for visually impaired persons. Thus the rules declare the open nature of consultations. An announcement on consultations shall determine in particular: 1) the subject matter of consultations; 2) the deadline for written submissions, not shorter than 15 days and not longer than 8 weeks; 3) if possible - proposed solutions. In consultations KRRiT takes into account opinions that are identified, by including: in case of physical persons – the first name, family name and address, and in case of legal persons and other entities – a name, seat and address. KRRiT shall publish in the Public Information Bulletin a summary of results of consultations proceedings within 30 days after the deadline for submissions or - in cases justified by the significant number submitted opinions – within maximum 60 days. The summary may include submitted opinions, if participants of consultations agreed for processing of their personal data. In case the consultations have not led to finding of a satisfactory solution, KRRiT may announce next consultations in the same matter. In justified cases KRRiT may organize a public hearing, conduct consultations directly with interested stakeholders, appoint an expert group with the participation of interested stakeholders.

In 2010-2014 KRRiT conducted consultations in particular concerning:

- possibility to include television programme services in digital terrestrial multiplexes (2010 and 2012);
- possible regulation on identification of programme services and their broadcasters (2011);
- digital radio broadcasting (2011-2012);
- the first assessment of fulfillment by retransmitting operators of must-carry provisions (2011-2012);
- expectations and needs of clients with regard to packetizing of programme services by retransmitting operators (2011-2012);
- the draft amendments to the regulation by KRRiT on presentation in channels of public service broadcasters of standpoints of political parties and unions (2012);
- the draft amendments to the regulation by KRRiT on advertising and teleshopping activities in radio and television programme services (2012);
- the draft amendments to the regulation by KRRiT on accounting documentation and reports of public service broadcasters (2012);
- selected directions of media law revision (2012);
- the draft regulation by KRRiT on the lower level of the quota for European works (2012);

[71] http://www.krrit.gov.pl/krrit/informacje-o-krrit/zasady-postepowania-konsultacyjnego/

- loudness of advertising – the amendment to the regulation by KRRiT on advertising and teleshopping activities in radio and television programme services (2012);
- the draft regulation by KRRiT on the list of major events – supplementing the statutory list (2012 and 2013);
- protection of minors in VOD services – the draft regulation by KRRiT (2013);
- lower percentage of programmes with facilities for visually or hearing impaired persons than set in the Broadcasting Act – the draft regulation by KRRiT (2013);
- financial and programming plans of public service broadcasters (2013 and 2014);
- fulfillment of must-carry rules – questions to clients of retransmitting operators, to operators and their chambers of commerce (2013);
- the draft Regulatory Strategy of KRRiT for 2014-2016 (2014);
- the draft amendments to the regulation by KRRiT on electoral broadcasts in public service broadcasting programme services (2014).[72]

KRRiT normally publishes on its website a summary of consultations results that sometimes includes extracts from submitted opinions.

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

N/A

[72] The list of consultations with relevant documents and summaries of results is available at: http://www.krrit.gov.pl/regulacje-prawne/konsultacje-krrit/index,1.html

Portugal

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

N/A

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

Portugal has adopted a clearly **state regulation** model for the media. There is not a converged regulatory body, and therefore the competences for media regulation in all its domains are split between two different bodies: the Regulatory Entity for the Media (ERC), and the National Authority for Communications (ANACOM). This last authority takes care of the spectrum, regulating all electronic communications in the country, access, distribution, frequencies, technical infrastructure, etc. ERC, on the other side, supervises and regulates everything that has to do with media content (in television, both public and private, both open-access and by cable, as well as in radio, in press and even in press agencies). Licenses to operate in the media business must also be granted by ERC, who also takes care of registrations of all media outlets. And the obligations committed to the media in the sequence of the AVMS Directive (protection of fragile publics, access to disabled, right to information, defense of the language, promotion of European independent work, limitations in the area of advertisement, etc.) also fall under the range of action of ERC. Television operators regularly must send their indicators to ERC and the regulatory authority monitors them, producing an annual report – within the more general Regulation Report – with the evolution of the situation (the report for 2014 has not been published yet, and the report for 2013 is available only on a preliminary copy).

Among the competences of ERC is the obligation "to promote co-regulation" and "to stimulate the adoption of mechanisms of self-regulation" by media companies, unions and other associations of the sector (ERC Statute, art. nr. 9). But not much has been done on the

subject. There are a few examples of self-regulation in the advertisement business and among the Television open-access channels, but for very specific situations.

In what regards professional journalists, we could say there is a self-regulatory instrument – an Ethics Council – but working within the Journalists' Union. Since less than a half of the Portuguese journalists are members of the Union (application is voluntary), this Council is not regarded by the whole professional group as an institution for all.

Since 2008, in the sequence of some changes introduced in the Journalists' Statute (which is a law approved by the Parliament), a "Commission for the Journalists' Professional Card" was created. It has the power to renew or not to renew the Journalists' Card – which is mandatory if you want to work as a journalist – as well as the power to impose disciplinary sanctions in the case of ethical misconducts. Since a group of journalists also participate in this Commission (presided by a judge), some argue that this is a self-regulatory instrument. The fact is that this commission was imposed by law, and so it should more properly be regarded as an example of state regulation or an example of the so-called "regulated self-regulation".

The Regulatory Entity for the Media (ERC) is led by a Regulatory Council, composed of five persons – four of them elected by the Parliament through a qualified majority of votes, and the fifth co-opted by the other four. An Executive Commission, composed by the President, the Vice-president and the Executive Director runs the day-by-day life of ERC.

2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

The main source of funding for the regulatory entity is the state. Every year, there is an important transfer from the Parliament, which corresponds roughly to 37 % of ERC's annual budget. Another important share of money (about 20 % of the budget) comes from ANACOM – the official regulator for telecommunications in the country. This means that nearly 60 % of the total annual budget come from the state. The other 40% come from taxes directed collected by ERC, particularly the "regulation and supervision tax" that must be paid every year by all media companies (of all sorts) in the country, according to their dimension.

The funding scheme is not regulated by specific legislation, with the exception of the "regulation and supervision tax", that was defined by law, according to the dimension and trade volume of media companies. As for the budget in general terms, it is defined every year by the Parliament, from whom the regulatory entity somehow depends (and to whom it is accountable).

There has been some reduction in ERC's budget in recent years: specifically in 2012, it didn't receive the usual transfer from ANACOM (1 million euros, about 20% of its budget), but it got it back again in 2013. In the last five years, ERC's staff suffered some cuts (from 72 people on 2009 to 65 in 2013), but not in very severe terms.

The funds available to the regulator are managed by the Regulatory Council, in total independence, according to its statute: ERC is defined by law as "an independent administrative entity", with "financial and administrative autonomy". The rules on budget adjustment are decided by the regulatory board together with the Parliament (and to some extent with the Government, because of the taxes). However, the decision on the amount to be transferred annually from ANACOM to ERC is taken by the Government. In terms of control and accountability, a permanent auditor is appointed by the Parliament. And ERC must publish (and give to the Parliament) an annual report of all its activity and budget, in a very detailed form.

This is the structure of ERC's budget (income) in 2013 – which, in general terms, is not very different of the structure (and amount) of previous years:

	Values	**% of the total**
Regulation and supervision taxes	€ 1.963.621	40,1%
Taxes for services	€ 64.154	1,3%
Taxes for emission of licenses	€ 60.526	1,2%
Administrative taxes	€ 20.094	0,4%
Fines and penalties (material sanctions)	€ 0.000	0,0%
Transfer from the Parliament	€ 1.788.394	36,5%
Transfer from ANACOM	€ 1.000.000	20,4%
TOTAL	***€ 4.896.790***	***100%***

Source: ERC – Activities and Accounts Report for 2013 (preliminary)

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

Yes, all the five members of the Regulatory Council are submitted to strict incompatibility rules. According to the law (see ERC's Statute – Law Nr. 53/2005, from 8th November – available at < http://www.erc.pt/documentos/legislacaosite/lei53.pdf >), they must be functionally independent and cannot be subject to any specific instructions or guidelines. They do the job in exclusivity and are not allowed to work in any other activity, with the exception for teaching (and only in part-time).

No one can be appointed to the Regulatory Council in the case of having been, for the previous two years, a member of Government (on a national, regional or local level).

Likewise, no one can be appointed in the case of having worked, for the previous two years, at the executive board of media companies, media unions or media business associations.

During the term of office, they cannot hold interests of a financial nature or shares in media companies. And after the term of office, for a period of two years, they are forbidden to carry out any executive functions in companies, unions, confederations or business associations in the media sector.

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

The regulator seems to be fairly well equipped in terms of staff (both in number and in technical capacities), as well as in terms of financial resources. There was some reduction in staff in the last five years, but not very significant (from 72 to 65 persons). Most of the staffers have high education (a university degree) and an important number has technical expertise, be it in juridical affairs, in data analysis or in media monitoring.

As for resources (see above), they seem to be adequate to the tasks performed by the regulator. Actually, it usually finishes the year with a positive economic and financial report (a profit of more than 1 million euros in 2013, nearly the same in 2012). In previous years, ERC was more active in terms of funding and publishing different kinds of works about media (most of them ordered to universities and academic research centers). If it doesn't do it so often nowadays, it doesn't seem to be for lack of material resources.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

There are two kinds of monitoring activities here: the controversial situations or complaints that ERC deals with, and the permanent monitoring of some aspects of the media activity.

As for the former, ERC may act either in response to requests or complaints, or by its own initiative, when considering that some aspect of the laws and rules may have been broken. During 2013, for example, ERC opened a total of 1045 procedures, although only 276 cases, after the preliminary analysis, gave sequence to a formal deliberation by the Regulatory Council. From these 276 deliberations, a total of 56 had to do with administrative procedures (authorizations for new programs or for changes of scope in radio stations, for example), 55 had to do with some kind of controversial media content, 51 were related to proper or not proper respect for the "right of reply" and 31 had to do with possible fines for irregular procedures (too much time for advertising in television or unannounced changes in the programming timetable, for instance). Concerning media content, the clear majority (45) of the deliberations came in the sequence of complaints presented by citizens (a total of 186

complaints were presented during the year, most of them regarding programs of open-access television).

As for the second kind of monitoring activity, ERC observes, by its own initiative, most of the television and radio programs. In general terms, it has to do with the need to check if the laws and norms (particularly those brought by the implementation of the AVMS Directive) are being respected, but also with a specific task that was decided by the regulator some years ago: to scrutinize how pluralism and diversity are dealt with in the biggest television stations, both those who have obligations from the Public Service contract (RTP 1, RTP 2, RTP Informação) and the two private, commercial open-access channels (SIC and TVI) that have been granted a concession to operate in the radio-electric spectrum. In order to operationalize these monitoring activities, a Television Portal was created in ERC's website (only accessible to authorized entities) where all the licensed television program services must put the detailed information about their day-by-day operations. Besides that, ERC defines every year a sample of programs from the five TV stations referred above, in order to produce a report on pluralism and diversity. The methodological design to this specific monitoring activity is available for consultation in ERC's reports.

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

The media regulator in Portugal is not particularly prone to material sanctions, namely money penalties. The vast majority of the processes run by ERC end up with an admonition, a kind of public warning, followed by the expression of the wish that the situation will not repeat. To our knowledge, this has to do with a clear option to be more pedagogical than materially punitive, together with the acknowledgment that media operators, in general, belong to very weak and small companies, and the payment of penalties could bring serious problems to many of them, in economic terms.

There are material sanctions sometimes, anyway. One of the rare ones, in the year 2013, punished a television operator for broadcasting films classified as not proper for persons under 16, without any specific warning, as the law obliges. This operator did it repeatedly during a month and, in the end, was convicted to the payment of a fine of 20.000 euros (see Deliberation 187/2013 (CONTPROG-TV-PC), available at ERC's site, in <http://www.erc.pt/download/YToyOntzOjg6ImZpY2hlaXJvIjtzOjM5OiJtZWRpYS9kZWNpc29lcy9vYmplY3RvX29mZmxpbmUvMjI4MC5wZGYiO3M6NjoidGl0dWxvIjtzOjM0OiJkZWxpYmVyYWNhby0xODcyMDEzLWNvbnRwcm9nLXR2LXBjIjt9/deliberacao-1872013-contprog-tv-pc>.

Still, the convicted media or companies often appeal to a court of law and, given the fact that justice doesn't work quickly in Portugal, the process against them has serious chances to be extinguished when it finally reaches a decision.

According to ERC's annual Regulation Reports, the most frequent infringements to the laws (and specifically to the new Television and On-Demand Audiovisual Services Law, through which the AVMS Directive was implemented) have to do with the protection of sensitive publics, namely children and young persons. Another frequent motive for complaints has to do with unexpected changes in programing, without proper and timely warning to the audience.

As for the obligation of television operators to respect certain quotas for programs in Portuguese language and for European production, the regulator monitors their activity and gives an account in its annual report. Regarding 2013, for example, (the last available data), it says this:

> *„In 2013, a total of 42 [television] programs services were evaluated and, in general terms, their global performance was positive, since the share of European works exceeded the defined quota in 31 of those services, including all those devoted to general content (…). The remaining 11 services, which are all thematic (…), didn't reach the pre-determined quota for European works (…). As for recent creative European works from independent producers, the general trend is descending, because only 29 program services reached the goal of 10% of broadcasting time devoted to these works,(…), while the remaining 14 services didn't reach that goal" (ERC's Regulation Report 2013, p. 299-300).*

In what concerns advertisement – another area of stricter regulation in the sequence of the AVMS Directive – the Portuguese regulator says that „in general, television operators proved to be compliant with the rules" (*ibidem*), with a few exceptions here and there.

All fines flow directly to ERC's own budget. But it is a very small portion of it, and in 2013 (see chart above) not a single cent flew from that source.

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

a) All the rules, regulations, decisions and deliberations of the Regulatory Entity must be published in ERC's website (see art. 65 of ERC's statute). And they are, in fact. And all the decisions and deliberations of previous years remain there for consultation. Besides that, two major reports are published every year, after having been presented to the Parliament, from whom the regulator formally depends: the "Regulation Report" and the "Activities and Accounts Report".

The "Regulation Report" gives a general account of the media situation in the country (the main existing groups, media supply and demand, pluralism and diversity, advertisement, audiovisual production, radio, television, pluralism and diversity, compliance to the existing laws and norms), together with a synthesis of the regulator main deliberations.

The "Activities and Accounts Report" is more internal, showing the institution in figures, the staff and its evolution, the services, the budget and all the accounts (profits and losses).

All these data are available at ERC's website after they are published.

The annual reports are usually finished somehow late. For example, only now (March 2015) is the "Activities and Accounts Report" for 2013 available, but with restrictions, since it is still being revised in some details. As for the "Regulation Report for 2013", it was published in ERC's website only on the 4th March 2015.

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

b) The public at large is not aware of the usual activities of the regulator, unless there is some controversy that brings him/her to the public arena (as it already happened in the recent past). The information exists in the website, a newsletter is (more or less) regularly distributed by e-mail among all those interested, but the institution is not very present in the daily debates. We could say that the present five members of the Regulatory Council cultivate an image of "low profile" (the previous team was much more exposed in the public debates and even in the media). The Regulatory Entity as such is not very popular in the country: media and journalists (not always for the same reasons) often criticize their alleged 'excessive power' on matters that should be more properly self-regulated, while others suggest that there is too much political influence in their appointment and, arguably, in their behavior.

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

a) Yes, the regulator can set its own agenda – to some extent, though. The amount of tasks it has to deal with is large: as said before, ERC's scope of intervention includes all radio and television operators, but also all press titles and even the press agencies. Apparently simple questions such as the "right of reply" – that previous ERC members tried, with reduced success, to transfer to the domain of self-regulation – are responsible for lots of complaints and take much deliberation time. In spite of that, for years the institution tried to develop a series of studies and pieces of research (sometimes in cooperation with universities) to help the country to know better the media present situation and its major future challenges. Issues such as media literacy and media education, privacy and violence in the media coverage, local and regional press, immigration and ethnic diversity, television and children, just to quote a couple of examples, were treated in deep studies and investigations, and offered to the public. This effort, however, seems to be less stimulated in ERC's present days, more concerned with its obligations of monitoring and scrutinizing media routinely.

Within the large scope of intervention that laws reserve to ERC, the regulator seems to be especially concerned (as can be seen in the Regulation Reports) by: (1) the protection of sensitive audiences, particularly minors; (2) the respect for the rights of the public that impose

limits to the freedom of programming; (3) the defense of products written and spoken in Portuguese, be it in information, in fiction or in entertainment; (4) the defense of products from European origin and from independent creators.

Another good example of ERC's agenda setting is the study (now developed on a regular basis) on political pluralism and diversity in television. For some time, it only involved the public service channels, but later it also involved the two open-access commercial TV channels. In the first developments, it consisted of a merely quantitative approach of the political pluralism issue ("how much time does this channel devote to this or that party?"), but it eventually turned more complex and methodologically more demanding, with the introduction of qualitative indicators too. Furthermore, ERC's deliberations always insist in the compliance of the media operators with these rules, which somehow works as "guidance" too.

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

b) To our knowledge, no particular guidance on the application of rules contained in the AVSM Directive were issued by the regulator. And perhaps it was not necessary. All the rules contained in the Directive, in the different fields of the media activity, were transferred to the Portuguese laws – namely to the Television Law and to the Advertisement Code. The Television Law (amended in 2011 and designed to be fully implemented from the 1st January onwards) even changed its name from "Television Law" to "Television and On-Demand Audiovisual Services Law", including new rules for protection of minors, for better media access for disabled, for defense of the language, for protection and stimulus of European works, for limitations to advertisement time and product placement, etc. And the systematic monitoring of these issues is being made by ERC, through its Television Portal and the regular reports it publishes on the subject.

As for enforcement of the rules, the regulator has all the legal means and the authority to force the operators to respect them. But it seems that ERC prefers persuasion and positive enhancement to sanction and material penalty – which is understandable, even given the difficult circumstances that the media business is going through, in an era of great changes and major challenges.

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

Yes, the regulator is obliged to consult the general public and the industry stakeholders, through the "Consultative Council" that exists from the beginning of ERC. This "Consultative Council", according to ERC's Statute, is composed of about 20 members, in representation of

the most diverse organizations and areas: the universities, the industry, the media business associations, the consumers associations, the journalists union, the advertisers associations, etc. The Council has ordinary meetings twice a-year and is supposed to be consulted, on a non-binding basis, about the general activities of the regulator.

Apart from that, the regulator sometimes makes larger public consultations to prepare some new projects or laws to be submitted to the Parliament. In the last months, it has led a consultation about new media and the "re-definition of the notion of medium" in the digital environment we live in. Whoever was interest could make his/her comments and put them ion ERC's website, and some experts were directly invited to give their opinion.

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

N/A

Romania

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

Tables 1-5: Comments on general information

No changes happened, I only updated or completed the tables 1 - Market Data, 2 - Audiovisual laws and regulatory bodies and 5 - Staff and overall budget.

Tables 6-9: Comments on institutional framework

No changes happened, I only updated, completed or made more explicit the tables 6 - Legislation establishing and governing the regulatory body, 7 - Legal status, and 9 - Regulatory powers

Tables 9-14: Comments on powers of regulatory bodies

No legal changes occurred; I have only updated with newer data and information available some tables: 9 - Regulatory powers, 11 - Powers of sanctions (the minimum and maximum amounts of fines and their conversion to the Romanian currency), 13 - De facto use of formally granted sanction powers (the number of sanctions in 2013, according to the last available CNA yearly activity report), 14 - Complaints handling (the link to the online Complaint Form)

Tables 15-24: Comments on internal organization and staffing

No changes happened, I only extended the explanations for some tables, I have extended the quotes from the Audiovisual Law and I have corrected the tables 15 - Highest decision-making organ – composition, 16 - Highest decision-making organ – competences and decision-making process and transparency, 20 - Rules to guard against conflicts of interest – Appointment process, 21 - Rules to guard against conflicts of interest – during term of office, 23 - Rules to protect against dismissal, 24 - Dismissal before term.

Tables 25-27: Comments on financial resources

I have updated the Table 25 - Sources of income with the 2013 and 2014 CNA budget and I have updated the Table 27 - Financial accountability – auditing, with the provisions from the

CNA Rules of Organization and Operation approved on 12 September 2014 and modified on 17 December 2014 and 27 January 2015

(http://www.cna.ro/IMG/doc/ROF_APROBAT_septembrie_2014_mod_27_ianuarie_2015.doc)

Tables 28-35: Comments on checks and balances

No changes occurred to my knowledge. I have added more legal provisions for the tables 28 - Formal accountability, 29 - Reporting obligation, 30 - Auditing of work undertaken.

Tables 36-39: Comments on procedural legitimacy

No changes occurred. No clear and comprehensive information available for the public consultations launched during 2009-2013 in none of the yearly reports, nor on the Council's website.

Tables 40-41: Comments on cooperation

I have completed, updated and made more clear the table 40 - Cooperation with other regulatory authorities and 41 - International cooperation.

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

There is in Romania a unique regulator in the field of audiovisual media.

According to the Audiovisual Law Art. 10 (2) The National Audiovisual Council is the unique regulatory authority in the field of audiovisual media services under the terms of and by observing the provisions of this Law. The CNA has full competences for both public and commercial broadcasters.

The National Authority for Management and Regulation in Communications (ANCOM) is the body that protects the interests of the communications users in Romania, by promoting competition in the communications market, ensuring the management of scarce resources and encouraging innovation and efficient investments in infrastructure.

The Council is made up of 11 members, proposed by the President of Romania, the Government and the 2 Chambers of the Parliament (Senate and Chamber of Deputies) and it is approved by the Parliament. The members of the Council are the warrantors of the public interest and do not represent the authority that proposed them. The Council is managed by a President, assimilated to the position of a Minister, appointed by the vote of the Parliament from among the members of the Council, on their proposal. The mandate is of 6 years. In the absence of the President, the management of the Council is ensured by the Vice-President.

2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

The Council is state funded. The economic crisis has hit the Council after 2010, but the budget recovered step by step. The 2014 budget is almost as big as the 2010 budget.

According to the Audiovisual Law Art.16 (1) The activity of the Council is financed from the state budget. (2) The President of the Council is a main credit accountant.

Year	Budget in €	Budget in lei (Romanian currency)
2014	1,954,000	8,685,000
2013	1,878,000	8,299,000
2012	1,654,000	7,371,000
2011	1,637,00	6,940,000
2010	2,030,000	8,703,000

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

Yes, conflict of interest rules exist in the Audiovisual Law, in the Code of Ethics for the members of the National Audiovisual Council (available in Romanian at: http://www.cna.ro/IMG/pdf/Cod_Membrii_CNA_131113.pdf), as well as in the Ethical Code of Conduct for the staff of the National Audiovisual Council (available in Romanian at: http://www.cna.ro/IMG/pdf/COD_DE_CONDUITA_ETICA-2.pdf). There are provisions with regard to the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office.

The Audiovisual Law provisions in this respect:

Art.12

(1) The members in the Council have the position of a public office assimilated to the position of a State Secretary.

(2) The position of a member in the Council is incompatible with any other public or private office, save for didactical ones, provided they do not result in conflicts of interests.

(3) The members in the Council may not be members of political parties or other political structures while exerting their mandate.

(4) The members of the Council may not directly or indirectly hold shares or social parts in companies with activities in fields where they would be in conflict of interests with the capacity of a member in the Council.

(5) Members of the Council who at the moment of appointment are undergoing one of the situations stipulated in paragraphs (2) to (4) dispose of a maximum 3-month term to renounce the respective positions or shares, a period wherein they are not entitled to vote in the Council.

(6) In case of failing to observe the provisions of this Article, the concerned person is rightfully dismissed and his position becomes vacant and is to be occupied by the deputy on the proposal of the specialised standing commission of the Parliament.

Art. 18

(1) The Council draws up its own organizing and operating regulation that shall be approved by the vote of the majority of its members.

(2) With a view to exerting its attributions, the Council sets up its own operational structure, including territorial control and monitoring structures, as stipulated in the organization and operating regulation.

(3) The specialized personnel of the Council is composed of civil servants and personnel employed with an individual labor contract (…).

(4) The civil servants of the Council may not be members in the board of directors of providers and distributors of audiovisual program services and they may not exert positions or hold shares or social parts in a company holding an audio-visual license.

(5) For the purpose of applying the provisions from paragraph (4), civil servants within the Council shall submit with the President of the Council a conformation statement on own liability.

The Code of Ethics for the members of the National Audiovisual Council provisions as follows:

Art. 2 Criterion on political neutrality:

The CNA members will act in exercising their duties independently and equidistant from political factor, regardless of their personal beliefs; they will not engage/involve in any political activity.

The Ethical Code of Conduct for the staff of the National Audiovisual Council provisions as follows:

I. Provisions for civil servants

Art. 2.6 Political activity

In public office, civil servants are prohibited:

a) to participate in fundraising for political parties;

b) to provide logistical support to candidates for public office;

c) to cooperate outside their employment with moral and legal persons donating or sponsoring legal political parties;

d) to show, inside public authorities and institutions, symbols or objects with logo or name of the political parties or of their candidates.

Art. 2.7 Use of own image

In consideration of public duties, civil servants are forbidden to allow the use of their name or image in advertising actions promoting a commercial activity that relates to their basic activity, as well as for electoral purposes.

Art. 2.10 Ban on accepting gifts, services and advantages

Public servants shall not solicit or accept gifts, services, favors, invitations or any other advantages to them personally, for their family, parents, friends or for people with who, previously holding public office, they had business or political relations, that can influence their impartiality in exercising public functions held or may constitute a reward for these functions.

II. Provisions applicable to Contract Staff

General Rules of Professional Conduct for Contract Staff

Art. 6 Political Activity

In public office, contract staff is prohibited:

a) to participate in fundraising for political parties;

b) to provide logistical support to candidates for public office;

c) to cooperate outside their employment with moral and legal persons donating or sponsoring legal political parties;

d) to show, inside public authorities and institutions, symbols or objects with logo or name of the political parties or of their candidates.

Art. 7 Use of own image

In consideration of public duties, contract staff is forbidden to allow the use of their name or image in advertising actions promoting a commercial activity that relates to its basic activity, as well as for electoral purposes.

Art. 10 Ban on accepting gifts, services and advantages

Contract staff shall not solicit or accept gifts, services, favors, invitations or any other advantages to them personally, for their family, parents, friends or for people with who, previously holding public office, they had business or political relations, that can influence their impartiality in exercising public functions held or may constitute a reward for these functions.

III. Provisions of Ethics for the Internal Auditor

Fundamental Principles

E. Political Neutrality

1. Internal auditors should be politically neutral in order to impartially fulfil their activities; to this end they must maintain independence from any political influence.

2. Internal auditors are obliged, in exercising their duties, to refrain from expressing or manifesting their political beliefs.

Rules of Conduct

2. Independence and objectivity

c) Internal auditors are prohibited, during their mission, to receive from the audited persons or companies material or personal benefits that may affect the objectivity of their evaluation.

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

According to the CNA 2013 yearly activity report, the organisational chart of the Council allows a maximum of 141 employees, including the 11 members of the Council. The averages staff was in 2013 of 128, ~10% below the maximum number. In my opinion the staff is barely sufficient to fulfill the legal tasks. The financial resources are quite enough for the functioning

of the Council and of the staff. No information is available about the technical facilities other than the monitoring centres and equipments.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

The monitoring has two components: systematic monitoring and in reaction to public complaints. In 2013, there were monitored in a systematic way or randomly, following complaints and ex officio, programmes from 58 central television stations, 19 radio stations, as well as stations in the territory.

For the TV stations, they were completed 1,377 monitoring reports, containing findings, analysis and synthesis that assessed the compliance of TV programs with the legal provisions. 43,732 hours of programmes of central generalist, news and other kind of TV stations were monitored in 2013. 17.5 employees were used for TV monitoring. As for central radio stations, 5,980 hours of programmes were monitored. 3.1 employees were used to monitor the radio stations.

The Council also answered in 2013 to 6,793 petitions submitted in writing, as well as to a big number of complaints submitted by telephone. In 2013 there were performed 2,101 inspections and checks to the TV and radio stations, to CATV networks, due to complaints, decisions of the Council, due to checks for issuing the approval or renewal ascertain, and to gather CNA sanctions compliance data.

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

In accordance with the legal provisions, money from fines go to the state budget. In 2013, the Council has issued 250 sanctions (101 fines, 132 public warnings, 13 decisions for granting the right of reply, 2 decisions to withdraw the broadcasting license, 2 decisions to withdraw the retransmission notice). Most of the CNA sanctions were applied for the breaches of audiovisual legislation with regard:

- to the protection of human dignity and the right to their own image, and the fundamental human rights and freedoms (73 sanctions)
- to protection of children (64 sanctions)
- to lack of correct information and pluralism (62 sanctions)
- to violation of the sponsorship, advertising and teleshopping rules (32 penalties).

22 sanctions were applied to audiovisual services distributors for non-compliance with the legal provisions on the modification of rebroadcasting notice and with the "must carry" principle; 7 fines were applied for the retransmission of program services without holding rebroadcasting rights; 7 summons were given for retransmission of adult programmes services and two decisions to withdraw the rebroadcasting notice were issued for rebroadcasting programmes services without permission.

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

The Council is obliged according to the Audiovisual Law to send to the Romanian Parliament a yearly activity report:

Art 20

(1) The activity of the Council is analyzed by the Parliament by debating upon the annual report that is presented for the previous year and whenever the specialized commissions of the Parliament request from the President of the Council specific reports.

(2) The annual activity report of the Council is forward to the specialized commissions of the Parliament until April 15th.

(3) When the specialized commissions vote down the annual report of the Council, the latter must produce to the reunited commission a program of substantial measures for the remedy of the shortcoming within 30 days, a program that shall be subjected to the debate and approval of the specialized commissions of the Parliament.

(4) The report of the specialized commissions regarding the annual activity report of the Council and, as the case may arise, the program of measures shall be subjected to the debate in the session of the reunited Chambers of Parliament, in the presence of the members in the Council.

(5) The members of the Council must appropriate the conclusions resulting from the debates and assume the liability for the fulfilling of the program of measures established by the decision of the Parliament.

(6) The report of the specialized commissions refers to the lawfulness of the Council's activities, as well as to the accuracy and transparency of the financial operations.

(7) In fulfilling its mission of a guarantor of public interest, the Council must publish periodical reports regarding the way it exerts its attributions.

The annual report include: a general presentation of CNA's yearly activity in the given year; the general audiovisual trends; the regulatory activity; Council's contribution to the elaboration of the annual report with regard to the steps forward done by Romania in the frame of the MVC report; the events of the year; CNA's events in the examined year; the involvement and influence of the Council in the audiovisual and social space; Council's campaigns and petitions; the European relations; the Public Relations and Communication; the TV monitoring; the Radio monitoring; Control and Digitalization; the Legal Activity; the Disputes Situation; Human Ressources Policy; the Economic-Financial Activity; the Internal Audit; Appendices.

According to the transparency legislation, the publication of the decisions, recommendations, annual reports or similar documents summarizing CNA's activities is made in the Official Journal of Romania or, respectively, on Council's website, www.cna.ro .

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

The public is aware of the activities of the Council, mainly through the radio and TV stations, whose activity is covered, in fact, by the Audiovisual Law, but also through the news agencies and the print media. The big subjects of disputes and discussion are largely covered by all the important media (TV, radio, online, press agencies, print - quality and tabloid).

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

The Council can set its own agenda and long-rerm objectives, in the frame of the Audiovisual Law and of the AVMS Directive.

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

The Council can issue interpretative guidance on the application of rules contained in the AVMS Directive and this guidance binding on TV and radio stations.

Here is a list of the most important Decisions issued by the CNA after the AVMS Directive entered into force:

- Decision no. 220 of 24 February 2011 regarding the Regulatory Code of the Audiovisual Content: http://www.cna.ro/DECIZIE-Nr-220-din-24-februarie,6076.html

- Decision no. 141 of 28 March 2013 for the modification and completion of the Decision no. 220 of 24 February 2011 regarding the Regulatory Code of the Audiovisual Content: http://www.cna.ro/article6004,6004.html
- Decision no. 320 of 29 May 2012 on the supply of on demand audiovisual media services: http://www.cna.ro/Decizie-nr-320-din-29-mai-2012,5314.html
- Decision no. 459 of 28 June 2011 for the completion of the CNA Decision no. 220/2011 regarding the Regulatory Code of the Audiovisual Content: http://www.cna.ro/Decizie-nr-459-din-28-iunie-2011.html
- Decision no. 286 of 14 April 2014 with regard to the publication of the codes of professional conduct adopted by the audiovisual media services providers: http://www.cna.ro/Decizie-nr-286-din-14-aprilie-2011.html

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

The Council is obliged to launch public consultations on all its main initiatives. The draft documents for consultation are published on CNA's website.

Public consultation documents and examples:

- Draft Decision on the principles and rules of conduct in audiovisual partial parliamentary election campaign as voted at the meeting of the Council of 25 March 2014;
- Draft decision on the classification of audiovisual programs by genre, as voted at the meeting of the Council of 13 March 2014;
- Draft decision on rules of conduct in audiovisual campaign for the election of Romania in the European Parliament;
- Draft Decision amending and supplementing CNA Decision no. 277/2013
- Draft Decision amending and supplementing National Audiovisual Council Decision no. Regulation 220/2011 on the Code of audiovisual content, with further modifications and completion
- Draft Decision on the procedure for granting, and the failure to extend the validity of the license and the decision of audiovisual authorization, except for broadcasting digital terrestrial and conditions for local broadcasting, retransmission or downloading programs other broadcasters.

The responses are not clearly made public. They are introduced in the consolidated draft of the Decision, which is then discussed and adopted by the Council.

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

I would propose the Parliament to be able to dismiss the whole Council in the event of bad management or professional errors, starting with the Council's President, not to revoke only individual members of the Council.

I would propose the NGOs with recognised activity in the fields of mass-media and human rights to be allowed to propose 3 members out of 11, and that the Presidency, the Government and the two Chambers of the Parliament (Senate and Chamber of Deputies) propose two members each one.

Serbia

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

Tables 1-5: Comments on general information

Table 1: In October 2012, one of the national (free to air) broadcasters – TV Avala has lost its license due the fact that it failed to fulfil its financial obligations towards the regulator. In April 30, 2013, Regulator initiated Public Tender Procedure, despite the intentions of the Republic Agency for Electronic Communications and the ministry responsible for telecommunications to use the vacant frequencies for the purpose of facilitating switchover process from analogue to digital TV broadcasting. In 2014, regulator tried once again to auction vacant frequencies for a new broadcaster that would replace TV Avala, but the tender failed again. Afterwards, regulator decided not to call tenders until the DSO process is completed. DSO is planned to be completed by June 17, 2015.

Table 2: Most of the requirements set in the AVMSD were implemented in the new Law on Electronic Media, adopted by the National Assembly in August of 2014. Numbers of solutions are rather new in the Serbian media regulatory framework, thus additional time is required to assess their real life implementation.

Table 3: Ministry of Culture and Media has the authority to supervise the enforcement of the Law on Public Information and Media, which provides a general legal framework for media. However, in the field of electronic media, most of the regulatory tasks are solely performed by the Regulatory Body for Electronic Media, not the ministry. That is the reason why the analyses focused on the Regulatory Body for Electronic Media.

Table 4: Pursuant to the Law on Electronic Media, Regulatory Body for Electronic Media is responsible both for linear (radio and TV) and non-linear (On Demand) electronic media services, and for both linear and non-linear media service providers (hereinafter referred to as MSPs). There is no separate regulatory body for public media service providers. Serbia doesn't have convergent regulatory body, since the regulator for the field of electronic communications is a separate entity – Republic Agency for Electronic Communications (RATEL). Technical aspect of media service is regulated mostly by the Law on Electronic Communications, and therefore, rules regarding EPG and API, are prescribed by the Article 102 of the Law on Electronic Communications. Implementation of these rules is under the competences of RATEL. Must carry obligations also depend on the decisions of RATEL. However, regulatory body for electronic media is authorized to issue the list of Must Carry Channels, pursuant to the Article 106 of the Law on Electronic Media.

Table 5: Staff of the Regulatory Body is not dealt by the law or the statute. It is an issue of internal regulations (*Rulebook on Internal organization of Jobs and Tasks within the Regulator*). According to Information booklet published by the Regulator in September 2014, the Regulatory Body for Electronic Media has 82 employees (see in detail in Part II below).

Tables 6-9: Comments on institutional framework

Table 6: Republic Broadcasting Agency (RBA) was founded in July 2003, under the Law on Broadcasting as the independent body performing the regulatory tasks in the field of broadcasting (radio and TV). Pursuant to the new Law on Electronic Media, Republic Broadcasting Agency (RBA) changed its name into the Regulatory Body for Electronic Media (hereinafter: RBEM). According to the transitional provisions of the Law on Electronic Media (Article 114), Republic Broadcasting Agency established by the Law on Broadcasting *shall continue to work as a Regulatory body for the electronic media, in accordance with the provisions of the Law on Electronic Media.* Employees of the Republic Broadcasting Agency shall continue to work as employees of the RBEM, in the positions which they previously held, and the members of the Council of the Republic Broadcasting Agency shall continue to operate as members of the RBEM Council. By these provisions continuity of the regulator has been preserved. On the other hand, RBEM was granted more regulatory tasks to perform. According to the Article 115 of the Law on Electronic Media, RBEM is obliged to *align the Statute and its other acts within 90 days of the date of enactment of this Law*, as well as to form *new, or update existing registers, records and databases and prescribe forms for entering and editing data*, and *to adopt new bylaws within six months from the date of enactment of this Law*. In the transitional period, existing bylaws and regulations are still in force, except for those contravening the Law. Deadline for the adoption of the new Statute expired of November 13, 2014 but the Council failed to adopt it timely; thus the old Statute from 2005 is still in force. The deadline for the adoption of bylaws for implementation of the Law expired on February 13, 2015.

Table 7: Pursuant to the Article 5 of the Law, RBEM is *an independent Regulatory organization operating as a legal entity that exercises public authority* for the purpose of: *the effective implementation of the defined policy in the provision of media services in the Republic of Serbia, improving the quality and variety of electronic media; contribution to the preservation, protection and development of freedom of opinion and expression, in order to protect the public interest in the field of electronic media and the protection of electronic media users, in accordance with the provisions of this Law...* Same provision also prescribes that RBEM is *functionally and financially independent of governmental bodies and organizations, media service providers and operators*. RBEM's legal nature is not clear yet. It is founded by the law as *sui generis* independent body, however some provisions of the Law on Electronic Media and Law on Public Administration do restrict this independence to some extent (see explanation regarding question 10 below).

Table 9: Pursuant to the Article 23 of the Law on Electronic Media, RBEM in cooperation with the Regulatory authority for electronic communications and authority for the protection of competition, determines a *Proposal of the strategy for audiovisual media services development*, for a period of seven years, having considered *different needs of citizens and community groups at the national, regional and local level for information, education, cultural, sports and other content, in Serbian and languages of national minorities*. It is a major change comparing to the Law on Broadcasting, which prescribed that the regulatory body adopts the Strategy on its own, only with the consent of the Government. New provision states that RBEM is only authorized to draft the Proposal, and the Government can take into account that proposal, but at the end it can be altered during the adoption process. Provision is step back regarding policy initiatives by the regulator, but it must be stated that the constitutionality of the former provision of the Law on Broadcasting was rather controversial.

This was the case since the Constitution of the Republic of Serbia in its Article 123, prescribes that the Government is responsible to *determine and pursue the policy*, while the Law on the Government prescribes in its Article 45, that all development strategies in the areas of jurisdiction of the Republic of Serbia, should be adopted by the Government itself.

Tables 9-14: Comments on powers of regulatory bodies

Table 9 (General Policy Implementing Powers): The most important tasks are:

- General monitoring of fulfilment of the obligations of MSPs;
- Issuing of the licenses for providing media services;
- Adoption of rulebooks, instructions and general binding instructions (bylaws for the implementation of the law);
- Providing the opinion to the competent state authorities related to the accession to international conventions related to the field of providing electronic media services;
- Initiating the adoption and changes of laws, regulations and general acts for the effective performance of tasks within their scope of work.

With regards to the measures, RBEM is authorized to impose: remonstrance, warning, temporary ban on publication of the program content (new measure) and revocation of the license due to a violation of the obligations from the law, as well as due to a violation of the conditions set forth in the license.

RBEM is also authorized to initiate the adequate proceedings before competent courts or other public authorities, against the media service provider or the person responsible if their act or omission has the character of an offense punishable by law (for example misdemeanour, commercial offense, crime, etc.).

Table 11: Before the adoption of the Law on Electronic Media, advertising rules were prescribed completely by the Law on Advertising, regardless of the platform for distribution of advertising messages. Since the adoption of the Law on Electronic Media, most of the provisions regarding audiovisual commercial communications (including product placement, TV advertising and sponsorship) are set in that law. Law on Advertising provides only the general principles and restrictions. This also changes the "tools" that RBEM may use. Until August 2014, RBEM was only authorized to initiate the misdemeanour proceedings, while the court was the one deciding upon the existence of the misdemeanour and a fine. Since August 2014, RBEM may initiate misdemeanour proceedings, but may also impose measures (remonstrance, warning etc.) directly. Currently, there is the new Draft of the Law on Advertising, which will be soon on the public debate. It is not clear how the relation between two laws will be established and it is not certain that RBEM will keep its jurisdiction to impose measures regarding the audiovisual commercial communication.

Table 13: Data on imposed measures are mostly available regarding the measures taken under the Law on Broadcasting. However, there are few measures that have been imposed under the Law on Electronic Communications (7 remonstrances and 3 warnings). Measure of temporary

prohibition of the program content has not been imposed yet, and all the measures of revocation of the licenses have been imposed under the Law on Broadcasting.

Table 14: RBEM hasn't adopted the bylaw that should regulate in details the procedure regarding the complaints, but the general procedure was set by the law. Also, the similar procedure existed under the Law on Broadcasting and it is available on the RBEM web site.

Tables 15-24: Comments on internal organization and staffing

Table 16: Main bodies of RBEM are Council and President (Chairman) of the Council. Chairman is at the same time member of the council, chairman of the council, as well as person representing the RBEM and the one responsible for implementation of decisions of the regulator. This solution is rather strange due to the accumulation of the powers in one person without justified reason. At the initial stages of the law drafting, in May 2012, done by the Working Group of the Ministry of Culture and Media supported by OSCE mission in Serbia, there was an idea to provide for two separate bodies, the Council and Director. According to that Draft, Council was responsible for the major policy issues, adopting the regulations and performing other important tasks (like issuing licenses). Director, on the other side, was to represent the Regulator, bear responsibility for the legality of work, decide on the rights and obligations of employees, organize *"every day work"*, preparing and implementing decisions of the Council, adopting the rules on organization and number of employees and performing other tasks prescribed by the law. In other words, Council was seen as management body and Director as an executive body. However, this solution was abandoned later during the drafting process. Law on Electronic Media defines obligations of the President of the Council in the Article 21 and those include responsibilities for the activities and legality of work of the Regulator, representation of the RBEM, managing the work of the RBEM, signing decisions of the Council and ensuring their implementation, ensuring the transparency of the work of the RBEM and performing other tasks prescribed by the law. Thus, the President (Chairman) combines and mixes up management powers (as Chairman to the Council) and executive powers (as "director"), therefore raising issues regarding the internal democracy, and *checks and balances* within the regulatory body.

Table 17: Appointment process is the same for all 9 members of the Council. The authorized stakeholders (see table 17) nominate candidates and upon their nominations candidates list is compiled by the competent committee of the Parliament, and Parliament elects candidates from that list. Chairman and Deputy Chairman are appointed by the elected Council members themselves, on the Council session by 2/3 majority (6 votes out of 9 members are required).

Table 20-22: In the Law on Electronic Media there are a few provisions on the conflict of interest; however, general rules provided in the Law on Anti-Corruption Agency are still applicable (incompatibility, obligations toward the Anti-Corruption Agency etc.). Also, same rules apply during the appointment procedure and after the appointment. Pursuant to the Article 38 of the Law on Anti-Corruption Agency, *during the period of two years after termination of public office, the official whose office has terminated may not take employment or establish business relations with a legal entity, entrepreneur or international organisation engaged in activity related to the office the official held, except when approved by the Agency.* Therefore, rules on conflict of interest are applicable even after the termination of Council membership, unless the Anti-Corruption Agency grants its consent before the expiration of 2 years period.

Tables 25-27: Comments on financial resources

Table 24: In the reporting period, there were no dismissals before the expiration of the term of office for any Council member. One personal change happened in May 2014, when Chairman Porfirije Peric resigned from the position of Chairman only, but kept his membership in the Council. New Chairman and Deputy Chairman have been elected at same occasion. Current members of the Council have been appointed under the Article 26 of the former Law on Broadcasting, with the 6 years terms of office.

Even though the Law on Electronic Media didn't prescribe explicitly that the current Council continues its work as a Council of RBEM until expiration of the respective terms of office of the each Council individually, it is generally accepted that the new appointment procedures shall be implemented once the term of office of the current Council members, appointed in 2009, 2010 and in 2011, expires, i.e. in 2015, 2016 and 2017 respectively.

Tables 28-35: Comments on checks and balances

Table 25: There is no end-users fee for commercial broadcasting, only for Public Media Service Providers (one on the national level, and one on the level of Autonomous Province of Vojvodina). According to the Law on Public Media Services, monthly fee that end-users are obliged to pay is 500 RSD, which is approximately 4.5 Euros. However, pursuant to the Article 61 of the Law on Public Media Services, that fee will be applicable as of January 1 2016.

Tables 36-39: Comments on procedural legitimacy

Individual decisions of the regulator are not subject to revision of any state body, except the Administrative Court. According to the Law, most of the RBEM decisions are *final*, which means that they only could be re-examined before the Administrative Court. Some kind of appeal is allowed on decisions on granting the licenses, but it is not real deciding in *second instance*, having in mind that same body of the Regulator (Council) decides both in the first and second instance.

Law on Administrative Disputes regulates the Administrative court procedure against final decisions (including the RBEM decisions). The only specific provision that is prescribed by the Law on Electronic Media (Article 42) is the one that states that Administrative court cannot decide in the *dispute of full jurisdiction*, which means that the Court is not authorized to decide on its own on the matter if it is related to the issuing of license, and it can only remit it back to regulator for a new decision. In other cases, general rules are applicable and the court has the power to cancel the decision and decide on its own.

Tables 40-41: Comments on cooperation

N/A

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)?

State regulation is still predominant way of regulation. Rules of conduct are prescribed in relevant laws and bylaws. However, Article 56(9) of the Law on Electronic Media has introduced some kind of co-regulation with regards to the audiovisual commercial communication dedicated to the kids: *In the area audiovisual media service providers may, with the consent of the Regulator, individually or jointly establish rules of conduct in relation to inappropriate audiovisual commercial communication broadcast immediately before, during or after a show exclusively aimed at children, or as part of a program intended for recommending to children food or beverage containing ingredients with dietary or physiological effect whose excessive consumption is not recommended, especially fats, trans - fatty acids, salt/sodium or sugar.* This provision is probably misinterpretation of the Article 9 (2) of the AVMSD which prescribes encouragement of the MSPs to *develop codes of conduct regarding inappropriate audiovisual commercial communications* within children programs which is more related to creating the conditions for development of self-regulation not co-regulation.

What is the scope of competence of the individual regulator(s) i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

RBEM is regulator for all audiovisual media (linear, non-linear, commercial and public service, including also commercial and public service radio). However, RBEM is not competent for infrastructure, or in general for the technical aspects of the media services. Those (for example spectrum monitoring, EPG, API etc.) are under the competence of RATEL (electronic communications regulator).

What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

2. Financing

How is the regulator financed?

Pursuant to Article 34 of the Law on Electronic Media, Regulator is financed in accordance with the financial plan adopted by the Council for each year, which defines the total income and expenses of the Regulator, contingency reserves, as well as elements of a comprehensive overview of the wage and employment policies of the Regulator. Main source of financing are fees that commercial media service providers do pay to the Regulator.

Does the state contribute (partly or exclusively) to its funding?

Only if the difference between income and expenditure is negative, the missing funds are provided from the Budget of the Republic of Serbia, according to the Article 34 (9).

If yes, are there conditions to receive state funding?

There are no additional conditions.

Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator?

N/A

Is the funding scheme regulated by legislation?

Yes.

Please specify the legal basis.

Law on Electronic Media, Articles 34 to 37

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)?

Yes, there are general rules prescribed in the Law on Anti-Corruption Agency. Anti-Corruption Agency is the independent institution that monitors implementation of the rules on conflict of interest. According to the Article 2 of the Law, conflict of interest is defined as *a situation where an official has a private interest which affects, may affect or may be perceived to affect actions of an official in discharge of office or official duty in a manner which compromises public interest,* and private interest is defined *as any kind of benefit or advantage to the official or associated person.* Pursuant to the Article 27 of the Law, An official shall discharge the duties of public office in a manner which shall not subordinate the public interest to private interest.

If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office?

Pursuant to the Article 12 of the Law on Electronic Media *a member of the Council shall not be a person who performs a public function or one in a political party in terms of legislation governing the rules relating to the prevention of conflicts of interest in the exercise of public functions.*

Prohibition to be remunerated by a service provider hasn't been clearly stated anywhere. According to the Article 20 of the Law on Electronic Media member of the Council during the mandate *exercise the rights arising from the employment* within the Regulator. President of the Regulator (Chairman) is entitled to compensation in the amount of three times the

average monthly net salary in the Republic of Serbia, i.e. Council members are entitled to compensation in the amount of double the average monthly net salary in the Republic of Serbia. Other compensations are not mentioned. Law on Anti-Corruption Agency prescribes that any *situation where an official has a private interest which affects, may affect or may be perceived to affect actions of an official in discharge of office or official duty in a manner which compromises public interest* has to be reported to the Anti-Corruption Agency which decides on existence of a conflict of interest. Furthermore, during the mandate any other compensation that is not the one prescribed in the Article 20 of the Law on Electronic Media could be treated as *gift* according to the Law on Anti-Corruption Agency, which is defined as *money, thing, right and service performed without adequate compensation and any other benefit given to the official or associated person in respect to discharge of public office*. An official has to report any gift received in connection with discharge of public office to the state or other body, organisation or public service wherein he/she holds public office.

Please also indicate and, where possible, explain where information is unavailable.

Law is available in English on: http://www.acas.rs/law-and-regulations/laws/law-acas/

Other valuable information could be also found on: http://www.acas.rs/en/

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources?

Regulator has 82 employees, from which: **39** in the Monitoring Department, **9** in the Legal Department, **10** in the Office of the Council, **4** in the Financial Department and **21** in Department of General Affairs (according to the *Republic Broadcasting Agency Information booklet*, 2014). RBEM leases the business premises of some 960 square meters in the centre of Belgrade (Trg Nikole Pasica 5). Technical conditions are sufficient for performing tasks. Average monthly salary per employee was **78.372** RSD NET in 2013 (approximately 640 Euros). According to the official data published in the Official Gazette of the Republic of Serbia, average monthly salary in Serbia at the end of the 2014 was **49.970** RSD (approximately 400 Euros). Monthly salaries of the members of the boards were about 160.000 RSD (approximately 1.300 Euros).

In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

Level of personnel was appropriate for the tasks that have been performed under Law on Broadcasting. Also, current average salary corresponds with the tasks that should be performed in the regulator. Law on Electronic Media introduced various new tasks that do require more skilled employees and more expertise on AVMSD. In addition to that, according to the former regulatory framework, salaries of employees with the Regulator were determined autonomously, and "salary caps" from the Law on Public Servants were not applicable. However, Article 5(5) of the Law on Electronic Media prescribes that *regulations governing the rights and duties of the civil servants shall be applied to the rights and duties of the employees with the Regulator.* This means that salaries will decrease to be adjusted with the salaries of civil servants that are generally lower. Absurdly, salaries of the employees

employed with the Regulator will go downward, at the same time as their workload shall increase due to the changes in the regulatory framework. Consequently this could affect the quality of the regulation.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public?

RBEM's monitoring department conducts monitoring that includes recording, analysing and notifying Council on possible violations of the law. Capacity of RBEM's monitoring department allows regular monitoring only of major players in the industry (public service broadcasters and national commercial broadcasters). Each year department issues the report on the fulfilment of general obligations stemming from the law, as well as the reports on fulfilment of the MSP's obligations during the electoral campaigns. Those are available on the Regulator's web site at: http://www.rra.org.rs/english/brodcaster-activity-supervision. Other MSPs are subject to the monitoring mostly upon complaints.

How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

RBEM is not entitled to conduct spot checks, besides in cooperation with inspections (e.g. for electronic communications, trade inspections etc.). Control is performed by recording and analysing of broadcasts, as well as with the data acquired from those submitting complaint, or from the MSPs themselves.

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements?

From 2003, according to the Law on Broadcasting and Law on Electronic Media, regulator imposed warnings, remonstrances and revocations of the licenses.

Warnings were imposed in relation to the violations of the rules on broadcasting during the election campaigns, violations of the rules on broadcasting on paranormal activities, privacy infringements, failures of broadcaster to provide information related to the ownership structure, violations of the rules on protection of the minors, for broadcasting without licenses and abuse of the spectrum.

Most of *remonstrances* were related to the violations of the Broadcasting Code with regards to the rules on presentation of political parties during and outside the election campaigns (53 times). Same measure was imposed once for hate speech, two times for the content that was not appropriate for minors, once for copyright infringement, four times for broadcasting pornographic content and fortune telling, once for the violation of the obligation to provide objective information to the public, breach of obligation to secure the consent of the parents/guardians for the inclusion of children and youth in the program and once for the

violation of obligation to provide special protection when a minor is a victim or a perpetrator of violence or other criminal act.

Revocations of the license were imposed under the Law on Broadcasting in accordance with:

1. Article 61(1)(1): "If a broadcaster notifies the Agency in written form that it no longer intends to broadcast its program";

2. Article 61(1)(3): "If the telecommunications regulatory authority revokes the issued radio station licenses in respect of the provisions of a separate telecommunications law due to the occurrence of any reason envisaged by that law";

3. Article 61(1)(4): „If the broadcaster didn't start broadcasting of the program in the period prescribed by the law";

4. Article 61(1)(6): „If the broadcaster stopped providing the service for the period prescribed by the law";

5. Article 61(1)(8): "If the broadcaster fails to comply with the conditions prescribed in license";

6. Article 61(1)(9): "If the broadcaster has not paid the broadcasting license fee despite a warning issued in a written form";

7. Article 8 and Article 41: "If the publisher of media loses its legal status".

Number of initiated misdemeanour proceedings according to the Law on Advertising, in 2013 there were 19 proceeding related to some 1.710 alleged misdemeanours, mostly due to the exceeding of the maximum allowed time for advertising, and rarely for due to the content of advertising messages.

Which rules of the AVMS Directive have been violated most frequently?

Analyses of imposed measures show that the rules on protection of the minors haven't been respected.

*NOTE: AVMS has been fully implemented in the Law on Electronic Media which entered into force only on August 13, 2014.

What is the "track record"?

Source: RBEM website (www.rra.org.rs)

Imposed Measure	Law on Broadcasting	Law on Electronic Media (from August 2014)
Warning	14	1
Remonstrance	67*	7
Revocation of license	196	0

Do fines flow, directly or indirectly, to the state budget?

Fines are direct income of the state budget.

Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

* Remonstrances were not published under the Law on Broadcasting. The information has been acquired from the RBEM directly, in accordance with the Law on Free Access to Information of Public Importance.

Regarding the misdemeanour, RBEM only publishes number of initiated proceedings; there are no available data on any final decisions reached by the court.

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

Yes, all mentioned documents are publicly available via the web site of the regulator: www.rra.org.rs.

According to the Article 38 of the Law on Electronic Media, all documents have to be available free of charge, in according with the law that regulates access to the information of public importance and in particular: Strategy for audiovisual media services development in the Republic of Serbia; regulations for the implementation of Law and other general acts of the Regulator; public competition for granting licenses; decisions made at public competitions, with reasoning; data from Registers and records; judgments of the Administrative court against RBEM decisions; decisions imposing measures in accordance with the Law, with reasoning; annual reports of the Regulator; financial plans, financial

reports and auditor's reports; decisions on complaints of natural and legal persons; expert opinions, studies and analyses commissioned for the Regulator; invitations and programs of public hearings and reports on the public hearings; minutes of meetings of the Council.

Pursuant to the Article 39 of the Law on Electronic Media, Annual Report in particular contains: data on completed tasks and duties from the scope of the Regulator in the previous year; a financial plan, financial reports and the auditor's report; a report on the decisions on complaints of natural and legal persons; other information in connection with the law's enforcement.

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

Public is regularly informed on the activities of the regulator via public statements and through the Regulator's web site. But the general public awareness is rather low. Media coverage depends on the topic that is relevant to the media. For example, there were many TV, radio and newspapers reports on the work of RBEM related to the failed Public Tender for the national commercial license in April 2014 or on speculations on the future Board of Directors and a Director General of the public service broadcaster, but just a few on the public hearing for three bylaws important for the implementation of the Law on Electronic Media.

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, and promotion of European works)?

Regulator can only propose the Strategy for audiovisual media services development in the Republic of Serbia, while the Government is authorized to adopt this act. RBEM prioritized the issues related to the protection of minors, having in mind that first warning under the new Law on Electronic Media was related to the breach of these rules (decision available in Serbian: http://www.rra.org.rs/uploads/useruploads/Izrecene_mere/Mera-upozorenja-TV-Pink.pdf) , and that one of the first draft of the bylaw for implementation of the Law was the one related to the protection of minors (information available in Serbian on: http://www.rra.org.rs/cirilica/poziv-za-ucesce-u-javnoj-raspravi).

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

The RBEM can issue interpretative guidance, but those are not legally binding and are not recognized by the Law on Electronic Media.

Following the adoption of the Law on Electronic Media, there was a need for interpretation of the rules on audiovisual commercial communications. Council adopted a non-binding Interpretative Communication on application of those rules, but some provisions on the

advertising of alcoholic beverages were contradicting the Law on Advertising. This created some confusion.

Interpretative Communication is available in Serbian at:

http://www.rra.org.rs/uploads/useruploads/PDF-VESTI/Saopstenje-nacin-primene-odredaba-ZEM-o-AV-kom-komunikaciji-%D0%9C.pdf

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

According to the Article 40 of the Law on Electronic Media, RBEM is obliged to perform a public hearing in the process of preparation of a general act (bylaw) directly related to media service providers. Besides that, there is no legal obligation to consult industry stakeholders and the public. Regulator is only obliged to provide *insight into the current and completed public debates in a separate section that is dedicated to public hearings on its website.* Currently we cannot be sure that RBEM respects its obligation having in mind that only one public hearing was performed in the August-December 2014 period.

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

The legal status of independent regulatory bodies in Serbia is not sufficiently clear. In accordance with the Constitution and the provisions of the general administrative law, tasks performed by the regulatory bodies are considered to be tasks *delegated* to those bodies only. Therefore, ministries responsible for particular fields are entitled to *take back such tasks* under certain conditions, which clearly create a "legal road" for the violation of regulator's independence. Sure, such practice is extremely rare (never happened to the broadcasting regulator, and just once to the telecoms regulator), however the threat exists. Even more since regulatory bodies are, in accordance with the general administrative law, required to submit all their bylaws to their respective ministries and receive their opinion on the constitutionality and legality of the bylaw. However, regulatory bodies are not bound by those opinions.

Other major concern is the expected decrease of salaries of those employed with the RBEM. This is a consequence of the governmental position that those employed with independent regulators should be also bound by austerity measures and general decreases of salaries in public sector. However, this might seriously affect any regulator's capacity building efforts.

Sweden

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Tables 1-5: Comments on general information

A new Radio and TV Act (2010:696) came into force in Sweden on 1 August 2010, replacing the old Radio and TV Law (1996:844). The scope of the law was expanded to include on-demand services. The areas of responsibility given to the Swedish Broadcasting Authority were therefore widened to include such services. One of the main reasons behind the new law was to provide improved transparency through an altered structure of the law;[1] as a result the content of the Act's provisions has not changed dramatically, but rather the division of content within the legislative act.

As mentioned in the original study a new authority, the Swedish Broadcasting Authority (*Myndigheten för Radio och TV*), replaced the previous Radio and Television Authority and Swedish Broadcasting Commission in 2010.[2] The new authority came into being on the same date as the new Radio and TV Act (1 August 2010). The Broadcasting Authority supervises radio and television programme services, on-demand services and teletext. The new authority currently has 25 staff[3] and an annual budget of approximately € 3 million.[4]

Product placement, which was not covered in the older law, is now regulated in the new Radio and TV Act.[5] Provisions on accessibility to people with a disability have been updated; such services shall now be developed so that they are accessible to people with disabilities.[6]

An amendment to the Copyright Act (1960:729) has been made in the form of two new sections regulating access to short news reports (Article 15 AVMS Directive). Broadcasted works may be reproduced in the form of excerpts provided that the extract is no longer than is justified and is not reproduced for a longer time following the event than is justified. This broadcast right is included in the new Radio and TV Act, by way of reference to the Copyright Act.[7]

According to the European Audiovisual Observatory, there are now 276 linear commercial services in Sweden, and 142 non-linear commercial services.[8] This is a large increase from the 2011 figures, where data on non-linear commercial services was unavailable. The number of public service channels remains the same (4).

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[1] Government Proposal 2009/10:115.

[2] In the initial country table this was referred to as the Swedish Radio and TV Authority. Although this is a direct translation of the Swedish title, *Myndigheten för Radio och TV*, the official English title of the authority is the Swedish Broadcasting Authority. See http://www.radioochtv.se/om-oss/ for information.

[3] See http://www.radioochtv.se/om-oss/organisation/.

[4] See http://www.radioochtv.se/Documents/Styrdokument/Regleringsbrev-2015.pdf?epslanguage=sv.

[5] Chapter 6 Radio and TV Act (2010:696).

[6] Chapter 5 Section 12 Radio and TV Act (2010:696).

[7] Chapter 5 Section 10 Radio and TV Act (2010:696).

[8] http://mavise.obs.coe.int/country?id=26#section-6b

Tables 6-8: Comments on institutional framework

The institutional framework has not changed greatly, other than by implementing the necessary changes due to the new Broadcasting Authority. For example, an act was needed to govern the new authority.[9] The authority is still a regulator under the Ministry of Culture.

Within the Swedish Broadcasting Authority is a decision-making body in the form of a review board (*granskningsnämnden*). This is referred to in English, somewhat confusingly, as the Swedish Broadcasting Commission, even though it is no longer a separate entity but a board within the Swedish Broadcasting Authority.[10] The review board monitors whether the content of radio and television programmes adheres to the broadcasting regulations.

The authority remains independent from outside pressure by the Government or the Ministry of Culture. Its application of law and individual decisions cannot be influenced by outside factors. This independence is regulated in many laws, most notably the Instrument of Government, which forms part of the Swedish Constitution.[11]

Tables 9-14: Comments on powers of regulatory bodies

The regulatory powers of the authority have remained the same, with a mix of policy implementing powers and third party decision-making powers. The recent use of the authority's competences and powers can be found on the authority's website.[12]

Monitoring occurs on an ad-hoc basis or after complaints have been made to the authority. Such complaints must be made within three months of a broadcast. The Chairman of the Review Board decides which complaints will be investigated. Decisions of the Review Board may not be appealed.[13]

Tables 15-24: Comments on internal organization and staffing

The Swedish Broadcasting Authority's Review Board is made up of a chairperson and six other members. There have however, been some developments in the number of board members. Two vice chairpersons are now included in the board, as opposed to one;[14] the number of substitute members is no longer fixed, but decided by the government of the day.[15]

The decision-making process of the Review Board remains the same. The formal elements, such as the appointment process, term of office and professional qualifications of the members, also remain unchanged.

As a public authority, the Swedish Broadcasting Authority must adhere to the administrative rules for public authorities. This includes rules relating to for example conflicts of interest, as covered in the Administrative Procedure Act (1986:223).

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[9] See Table 6; The Act with Instructions for The Swedish Broadcasting Authority (2010:1062).

[10] This will, for the sake of clarity, be referred to as the Review Board hereinafter.

[11] Chapter 11 Section 7 Instrument of Government.

[12] http://www.radioochtv.se/sok-arende/granskning/ and http://www.radioochtv.se/sok-arende/tillsyn/

[13] See http://www.radioochtv.se/en/content-regulation/why-monitoring/

[14] Section 24 Act with Instructions for The Swedish Broadcasting Authority (2010:1062).

[15] Chapter 16 Section 14 Radio and TV Act (2010:696).

Tables 25-27: Comments on financial resources

The financing of the new authority has not changed dramatically in comparison to the previous authorities. The Swedish Broadcasting Authority is funded primarily by the state. In addition, a proportion of the money collected via license fees is given to the authority each year. Broadcasters' fees in the form of application and license fees are collected, along with fines, which are also used as a source of income for the authority.

The Parliament decides on the authority's annual budget, and the authority is audited annually by a state auditor.

Tables 28-35: Comments on checks and balances

The Swedish National Audit Office provides a check on the Swedish Broadcasting Authority. The authority reports on a yearly basis to the Government. The authority falls under the Ministry of Culture and as a result is also accountable to this ministry. It must therefore submit its annual report to the Ministry of Culture. These reports are available on the authority's website.[16]

The authority cannot be told how to decide specific cases by Government/Parliament; only general framework instructions can be given to the authority. This is because political intervention in the activities of authorities is not allowed according to the Swedish Constitution.

Decisions of the authority can be appealed to the administrative courts according to Chapter 20 Radio & TV Act (2010:696). As a rule, the decision of the authority stands pending appeal.[17]

Tables 36-39: Comments on procedural legitimacy

External advice and public consultation by the authority is not specifically regulated. There are therefore no specific requirements applicable to the Swedish Broadcasting Authority. However, as any other authority, administrative procedures must be followed, for example in relation to public tenders.

The authority publishes cases and decisions on its website. As a public authority it has an obligation to motivate its decisions.[18]

Tables 40-41: Comments on cooperation

The Swedish Broadcasting Authority consults with the Competition Authority and the Post and Telecom Authority (PTS) on matters relating to licensing etc. PTS is the Swedish supervisory authority for electronic communications (telecommunications, IT and radio). The Broadcasting Authority therefore also consults PTS in relation to broadcasting standards.[19]

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[16] http://www.radioochtv.se/publikationer-blanketter/publikationer/

[17] Chapter 20 Section 1 Radio & TV Act (2010:696).

[18] Administrative Procedure Act (1986:223).

[19] http://www.radioochtv.se/om-oss/samverkan-med-andra-myndigheter/

The international cooperation carried out by the Broadcasting Authority remains for the most part the same. Particular cooperation exists between Great Britain and the Netherlands, as this is where some of the main broadcasters are established; supervision is therefore carried out by the British and Dutch authorities. However, information regarding this international cooperation that is available on the Authority's website has not been updated since 2010.[20]

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

State regulation has been adopted in Sweden. The Swedish Broadcasting Authority is competent for radio and television licensing and broadcasts, on-demand services and teletext. Both public service broadcasters and private broadcasters are covered by the Broadcasting Authority. However, another supervisory authority exists for electronic communication infrastructure (telecommunications, IT and radio), the Post and Telecom Authority (PTS).

State regulation reflects the setup of the Swedish administrative structure on a more general level. There are hundreds of public authorities with specific areas of competence in Sweden.[21] From a Swedish perspective, it is therefore natural to have one authority that has competency within the area of television and radio broadcasting. The scope of the authority has expanded recently, as mentioned previously, to include on-demand services.

Self-regulation was discussed as a supplement to legislation in the Government preparatory works that introduced the new Broadcasting Authority.[22] The suggestion was for the state to refrain from imposing broadcasting conditions in areas covered by effective self-regulation. However, this cannot be viewed as an active step towards self-regulation, but arguably rather a more cautious attitude and consideration of the future possibility of such regulation.

The Broadcasting Authority is fairly small, consisting of 25 employees. There are three departments within the authority: the Licensing Department, the Supervisory Department, and the Administrative Department.[23] The Licensing Department issues licenses for the broadcasting of television, radio and occasional broadcasts. It also issues regulations and

[20] http://www.radioochtv.se/om-oss/internationellt-samarbete/

[21] Kirchberger, *Cyber Law in Sweden*, 2nd Edition, 2014, Kluwer, page 26.

[22] Government Proposal 2009/10:115.

[23] See further http://www.radioochtv.se/om-oss/organisation/.

decides on the requirements for accessibility for people with disabilities. The Supervisory Department monitors and reviews broadcasts to ensure that broadcasters and other media service providers follow the broadcasting rules; it receives complaints from the public and prepares cases for the review board. The Administrative Department is responsible for operational planning and development, finance and personnel, archiving, market monitoring etc. There is also a Transparency Council, whose task is to give the authority advice on matters of transparency in operations (i.e. it does not make decisions); the members are appointed by the Government for their knowledge and experience.

2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

The regulator is financed primarily by the state. There are no conditions to receive state funding, but the amount is decided upon by the Government yearly. The Government sets the budget, which is then approved by Parliament. The authority must provide a yearly report on its operations to the Ministry of Culture, which in turn reports to the Government. There are no indications to suggest cut-backs in view of the economic crisis.

In addition to the state's funding, the authority receives financing indirectly from license fees. For 2015 this amounts to approximately 24 % of the authority's yearly budget. The authority also receives applications fees from broadcasters, which is used for the authority's operations. Fines are an additional source of income for the authority.

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

There are no specific rules for the Broadcasting Authority relating to conflict of interest. Rather, the same rules apply as for any other public authority in Sweden. The Administrative Procedural Act (1986:223) is applicable, in particular Section 11 on impartiality. As the Government appoints members of the Review Board, any general conflicts of interest will be taken into account and concurrent offices approved.

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

The number of staff currently stands at 25. As such, it is a fairly small public authority that has to deal with wide-ranging tasks. The staff is divided into three departments, as mentioned previously, which leads to limited resources for each department. As the competence of the authority has expanded to include on-demand services, it would seem appropriate that the number of staff would have increased to deal with this additional workload. However, the number of staff has actually decreased since the initial study, although this is only a minor change and could be due to the fact that two authorities were replaced with one.

The financial resources of the authority can be deemed as adequate, with approximately € 3 million in a yearly budget from the state,[24] together with additional resources from license and broadcaster fees.

Within the Administrative Department there is an information officer who is responsible for external and internal information in the form of the authority's website, publications, statistics, press inquiries etc. The Administrative Department is also responsible for the maintenance and development of IT systems and other technical equipment.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

The regulator conducts monitory of the services itself as well as relying on complaints by the public. Monitoring therefore occurs on an ad-hoc basis or after complaints have been made to the authority. There is however, no more specific information regarding how the regulator conducts its monitoring; the Supervisory Department of the authority simply "takes the initiative" to review the broadcasting activities of media service providers in order to ensure that the rules are followed.[25]

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

[24] http://www.radioochtv.se/Documents/Styrdokument/Regleringsbrev-2015.pdf?epslanguage=sv

[25] http://www.radioochtv.se/om-oss/organisation/

A mixture of sanctions has been imposed by the Broadcasting Authority. Warnings are the most common, in relation to rules on advertising and the protection of minors. However, some penalty payments in relation to advertising have also been imposed, following a decision by the Administrative Court. Fines issued by the court go indirectly to the state, and are recovered by the Broadcasting Authority.[26]

Cases and decisions can be found on the authority's website.[27] However, it is not easy to gain such an overview on which sanctions are imposed for which infringements from the website's search possibilities. The yearly reports (*årsredovisningar*) contain some additional information in this regard,[28] although they mainly focus on total number of cases and finances of the authority.

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

There is no specific requirement for the regulator, or public authorities in general in Sweden, to publish their decisions. However, according to Chapter 2 Freedom of the Press Act, which forms part of the Constitution, these documents are publicly accessible due to the overriding principle of openness that exists in Sweden. The role of the Transparency Council is also important in this regard. The regulator does tend to publish such documents on its own initiative. For example, annual reports can be accessed electronically or ordered in paper copy via the authority's website. The annual reports include information on the authority and its organisation, processing times, financial information, fees and registrations, supervision carried out by the authority, developments in the media field, etc.

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

The public is generally aware of the existence of specific authorities. It is, however, doubtful that the majority of the public is aware of the regulator's specific activities. One reason for this is the existence of so many different public authorities. In general such activities are not commonly covered by the media. Other authorities, such as the Consumer Agency, and the TV and Radio Licensing Authority (*Radiotjänsten*) are more commonly referred to by the media.

[26] http://www.radioochtv.se/Documents/Styrdokument/MRTV-Arsredovisning-2013.pdf page 21.

[27] http://www.radioochtv.se/sok-arende/

[28] http://www.radioochtv.se/publikationer-blanketter/publikationer/

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

The regulator is governed by the Radio and TV Act (2010:696) and the Act with Instructions for The Swedish Broadcasting Authority (2010:1062). Outside of this basic framework, and provided it follows these governing regulations, the regulator can set its own agenda. It cannot be pressured by the Government or Ministry of Culture in this regard. Its operations are otherwise primarily restricted in terms of budget. The authority can therefore set its own agenda and set short and long-term objectives to quite a great extent. The authority has issued such objectives, in the form of activity plans,[29] inspection plans,[30] media monitoring plans[31] etc. These plans are for a given year, and therefore have a more short-term focus.

No particular issues have been prioritized from a formal standpoint. However, the authority has issued reports relating to completed assignments since the transposition of the AVMS Directive, which can give an indication of where focus has been placed. These assignments have included the availability of television services for people with disabilities along with advertising times on radio and television.[32]

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

Interpretative guidance on the application of rules contained in the AVMS Directive is not covered by the authority's mandate.[33] It may issue so-called *remissvar* or consultation guidance to the Government in response to particular legislative proposals and suggestions. However, this is not binding on the Government in any sense, and resulting legislation may or may not reflect the recommendations of the authority. No general guidance to service providers has been issued by the authority.

[29] http://www.radioochtv.se/Documents/Styrdokument/MRTV%20VP%202015.pdf?epslanguage=sv

[30] http://www.radioochtv.se/Documents/Styrdokument/Tillsynsplan%202014%20(bilaga%20till%20VP%202014).pdf?epslanguage=sv

[31] http://www.radioochtv.se/Documents/Styrdokument/Plan%20för%20omvärldsbevakning%202014%20(bilaga%20till%20VP%202014).pdf?epslanguage=sv

[32] http://www.radioochtv.se/om-oss/uppdrag/slutforda-uppdrag/

[33] The Act with Instructions for The Swedish Broadcasting Authority (2010:1062).

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

No, the regulator is not obliged to consult industry stakeholders and the general public. Neither is it common for the views of the industry and the public to be sought (see Tables 37-38). If such consultation is made, the responses are in general made public on the website of the regulator, in keeping with the general Swedish principle of openness.

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

Although a new Broadcasting Authority has recently been established, the regulatory framework and the scope of responsibilities has largely remained the same. As a natural development, on-demand services are now included within the regulator's scope, making for a more harmonised regulation. The independence of the regulator is protected through the general Swedish administrative law. The mandate given to the authority is flexible enough for focus to be placed on problematic areas as they arise. It is therefore hoped that the authority continues to investigate and monitor such areas by carrying out specific assignments and publishing reports on these areas of interest.[34]

[34] Such reports are published at http://www.radioochtv.se/om-oss/uppdrag/slutforda-uppdrag/.

Slovenia

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

Tables 1-5: Comments on general information

In Slovenia, major change was introduced with the adoption of the Audiovisual Media Services Act in October 2011. It has changed the role and power of regulators, giving the major role in overseeing the areas covered by AVMS Directive to the converged regulator – Agency for Post and Electronic Services - APEK (which in 2014 changed its name to Agency for Communication Networks and Services - AKOS, following the new Electronic Communication Act adopted in 2012).

AVMS Act (2011) in Slovenian language is available at: http://www.uradni-list.si/1/objava.jsp?urlid=201187&stevilka=3715.

See the revised table 2, 3 and 4 in the attachment.

Number of staff of AKOS recently increased on the basis of the Annual Work Programme for 2015 approved by the Government. Since 2009, there was Government Decree limiting the employment of public servants, including the Agency. The number of the Agency employees was limited to 75, and is now being increased for 15 via new employments in departments dedicated to telecommunications regulation and monitoring, radio spectrum monitoring, infrastructure investment monitoring and postal services regulation. Number of staff of the Agency working in the areas of AVMS has not changed: 11 working on audiovisual matters, and additional 5 on broadcasting spectrum management.

Tables 6-9: Comments on institutional framework

Major change in the institutional framework in Slovenia has been introduced with the adoption of the AVMS Act which entrusted to the Agency (APEK, since 2014 renamed into AKOS) powers of administrative supervision and inspection regarding almost all areas covered by AVMS Directive. Much of this was earlier the power of the Media Inspector/Ministry of Culture. The role of the Broadcasting Council as independent expert body administratively supported by the Agency is in the AVMS Directive context limited to defining the list of major events for broadcasting, and to providing preliminary opinions in the procedure of linear AVMS licensing. Media Inspector preserves the overseeing power only in the right to reply area, as it is kept part of the Mass Media Act. Ministry of Culture continues to perform the role in policy setting, but specifically to the AVMS areas it preserves the role in promotion of European works, in providing accessibility of AVMS to people with a disability, and in supporting media literacy.

In our revised tables (see in the attachment) we focus on the AKOS role.

Tables 9-14: Comments on powers of regulatory bodies

Based on the adoption of the AVMS Act, the supervision and monitoring power of AKOS increased to include systematic monitoring, ad-hoc monitoring, information collection power and monitoring only after complaints for the following areas: quotas, advertising, and protection of minors. Ministry of Culture preserves part of the information collection powers in the area of European works quotas (reporting to the EC, and decision making whether the reasons for quota non-compliance by AVMS providers/broadcasters are justified or not – based on that opinion the Agency acts towards the AVMS providers/broadcasters).

AVMS Act also assigned AKOS with powers of sanctions (regarding quotas, advertising and protection of minors) which range between 6.000 and 60.000 EUR for the provider and 600 EUR for its reponsible person. AKOS published every decision on sanctions on its web site. AKOS *de facto* make use of the formally granted powers, which includes also systematic monitoring. In the 2010 country table for Slovenia it was misunderstanding what is considered a systematic monitoring and „no“ answer was wrongly reported.

Since the adoption of the AVMS Act, AKOS is *de facto* using formally granted sanction powers.

Reflecting the increased powers of AKOS in overseeing the areas covered by AVMS Directive, compliants are now handling entirely by AKOS. There is online form for complaints by viewers available on the AKOS web site.

Tables 15-24: Comments on internal organization and staffing

Despite new Electronic Communication Act (ECA) was adopted in 2012 introducing new collective body in the governing and supervising structure of AKOS, the powers given to the body (AKOS Council) are not sufficient neither to take over decision making powers from the director, nor to take over the decisive role of the Government in appointing the director. The director is still individual decision making organ, still appointed by the Government, with the AKOS Council having the role to propose appointment of the director to the Government after a public competition.

The rules for early dismissal of the AKOS director has changed in 2012 ECA, allowing less room to the Government for dismissal on political grounds, as it was the case in the past when with each change of the Government the director of the regulator (Agency) was changed. The provisions now specify: "*The director shall be subject to early dismissal only if: -he so requests; -he no longer meets the conditions for appointment referred to in the first paragraph of Article 182 of this Act, , except for the condition referred to in the ninth indent of the first paragraph of Article 182 of this Act; - he permanently loses the working capacity to hold the post of director; - if, in accordance with its competencies under the act governing the court of audit, the Court of Audit of the Republic of Slovenia issues a call for his dismissal.*" (Art. 185, ECA)

Current director of AKOS was appointed in 2011 and has not been dismissed despite three changes of the government since then.

Tables 25-27: Comments on financial resources

Source of income of AKOS are still the fees: spectrum fees, licence fees paid by broadcasters, and also (as it is converged regulator) notice fees, number lincence fees, postal lincence fees, railway fees.

Total planned revenue of AKOS in 2015 from radio broadcasting licence fees for DVB-T is 333.520 EUR. It presents 32,88% of total income of AKOS regulatory activities in audiovisual area. Total planned revenue in 2015 from AVMS fees is 680.955 EUR. It presents 67,12% of total income of AKOS regulatory activities in audiovisual area. Fines imposed by AKOS go directly to the state budget and are not source of income of the regulator.

The Agency prepares financial plan for the next year no later than October 31 each year, presents it to AKOS Council and submits it for approval to Government of the Republic of Slovenia. The new step in the procedure is AKOS Council.

Tables 28-35: Comments on checks and balances

No major changes.

Tables 36-39: Comments on procedural legitimacy

AKOS annual budget foreseen for external advice regarding regulatory matters related to AVMS areas is 30,000-40,000 EUR, and is *de facto* used several times per year.

Public consultations: In some cases (e.g. issuing the tariff for the fees which shall cover the costs incurred by the Agency in the implementation of the provisions of the Audiovisual Media Services Act) the regulator is obliged to consult the relevant parties. However the regulator regularly seeks the views and opinions of industry stakeholders and the general public. The responses by the stakeholders are made public through publishing them on the website of the regulator. Latest consultations were focused on product placement[1] (http://www.akos-rs.si/delavnica-o-promocijskem-umescanju-izdelkov-in-sponzoriranju) and protection of minors[2] (http://www.akos-rs.si/predavanja-in-delavnice-delavnica-o-zasciti-otrok-in-mladoletnikov-na-tv-in-vod). In addition to those, important topics of the consultations in the last few years were also: opportunities for the local channels in the digital environment, quotas on EU audiovisual works, the challenges related to the delocalized TV channels operating on the national TV market, uniform classification and information system for television programmes concerning the protection of minors, increase of the effectiveness of monitoring in case of small regulators (http://www.akos-rs.si/medijska-ucilnica).

Number of public consultations conducted by AKOS:

[1] Splošni akt o promocijskem umeščanju izdelkov in sponzoriranju (http://www.uradni-list.si/1/content?id=108893)

[2] Splošni akt o zaščiti otrok in mladoletnikov v televizijskih programih in avdiovizualnih medijskih storitvah na zahtevo (http://www.uradni-list.si/1/objava.jsp?urlurid=20133113)

2014: 2; 2013: 2; 2012: 5; 2011: 0*, 2010: 0*; 2009: 1; 2008: 3; 2007: 6; 2006:3.

*Lack of public consultations in 2010 and 2011 is explained by AKOS with the argument that it was the period of internal consultations related to the attempted changes of media legislation within the Agency and among the relevant state bodies.

The AVMS Act was adopted in 2011 without any public consultations organised by the Ministry of Culture or any other body in Slovenia. It was submitted to the Parliament by the Govenment as a matter urgency after the new Mass Media Act which initally integrated also AVMS Directive provisions did not gain sufficient support in the Parliament. Under the threat of fine by the European Commission, the fast legislative procedure without public consultations was taken to adopt the AVMS Act.

Publication of regulator's decision: The law does not require from AKOS to publish any decision deriving from its remit in the audiovisual field, but AKOS regularly publishes all the decisions on imposed sanctions.

Tables 40-41: Comments on cooperation

Most of mechanisms/ways of cooperation between bodies with various powers in media regulation remain as described earlier, except that cooperation between Media Inspector and the Agency (earlier APEK, now AKOS) in terms of proposals for initiation of the procedures is not necessary any more since meanwhile – in accordance with the 2011 Audiovisual Media Services Act – AKOS has gained administrative supervisory and inspection powers and powers of sanctions, earlier assigned only to Media Inspector.

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

The regulatory model is dominantly state regulation. There are some elements of self-regulation in advertising (within the Advertising Chamber), in journalism (within Association and Union of Journalists) at public service broadcasting (Viewers' and Listeners' Ombudsman at RTV Slovenia). As described above, with the adoption of the AVMS Act in 2011 the converged regulator – Agency for Communication Networks and Services/AKOS, has gained major powers in overseeing the areas covered by the AVMS Directive. AKOS is a "converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure)", and within its power it covers both private and public broadcasters, and providers of other AVMS.

It now has central place in the regulatory

2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

AKOS is financed through various fees specified in the Electronic Communication Act. No state funding is provided. There have been restrictions in employment since 2009 but this has changed with the 2015 Annual Work Programme. The funds are managed on the basis of the annual financial plan which has to be approved by the Government. At first, the AKOS director presents the financial plan for the next year no later than October 31 each year to the AKOS Council for consent. After that the financial plan is submitted for approval to the Government of the Republic of Slovenia. AKOS director is responsible for managing the Agency, including its finances, and for adopting the financial plan of the Agency prior to its submission to the AKOS Council and the Government.

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

Yes, conflict of interest rules for director are specified in the Electronic Communications Act as follows: "The director, his/her deputies, and their spouses or partners in accordance with the law which regulate same-sex partnerships, and their direct relatives up to the second branch, may not perform activities in the areas covered by the Agency, be members of the supervisory board of the organisation performing the activities directly subject to arrangements within the competence of the Agency, or hold equity in organisations engaged in activities directly subject to arrangements within the competence of the Agency or organisations with equity holdings in such organisations." (Art. 183, ECA)

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

Technically, AKOS has increased its capacities to perform the tasks of overseeing AVMS regulation. It has technical capacities for monitoring. Even more, in 2014 it purchased the licence for NICAM's software for classification and labelling of programming in terms of protection of minors (the Dutch system Kijkwijzer). The system has been adapted to the Slovenian rules and regulations. The regulator organised training sessions for own staff, broadcasters and providers of nonlinear services, and is now putting in place a protocol of cooperation among stakeholders. The idea behind these efforts is unification of practices of classification. On generally, there was expectation that the number of staff – 11 employees responsible for AVMS regulation – won't be sufficient after the adoption of AVMS Act which increased powers of the Agency. However, the number of staff has not been significantly changed. The Agency seems to keep low (public) profile in implementing the regulation, not being pro-active and not challenging the existing frameworks, practices and power relations within the regulatory framework or within the media industry and media system as such.

Still, pro-active engagement is obviously taken in some AVMS areas such as above mentioned protection of minors, aiming to enable all actors for better implementation of the regulation.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

AKOS conducts own regular monitoring of the services according to the plan which defines annual priorities and sample. In addition to that, ad hoc monitoring is conducted when particular problems occur.

Collection of records and data on broadcasted content (i.e. telemetric data with specified amount of advertising, lists of the broadcasted songs and recorded content of main TV and radio providers) is partly outsourced for both radio and television, while monitoring, codification and analysis of the programmes is being done exclusively by AKOS. Monitoring is technically supported by an advanced system for recording, archiving, indexing, playing and exporting of records and metadata.

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available).

In 2014, AKOS imposed sanctions regarding the EU audiovisual work quotas, advertising, impressum and obligation to keep the records of the broadcasted programme. Fines in total amount of 200.000 EUR were imposed. The fines directly flow to the state budget. Most frequently violated rules were rules on EU audiovisual work quotas and advertising. Each decision on sanction is published on the web site of the regulator (see http://www.akos-rs.si/nadzor-vsebin-postopki-inspekcijskega-nadzora and http://www.akos-rs.si/nadzor-vsebin-prekrskovni-postopki).

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

Electronic Communication Act in the Article 205 specifies obligations of AKOS to publish on its web site: annual program of the Agency, financial plan and annual report. Additionally, in

the Article 206, there is detailed specification of other information and documents related to the procedures of the Agency which have to be published on the Agency's web site.

Annual reports of AKOS are available on its web site (see http://www.akos-rs.si/annual-reports) and include brief information about the current state of the relevant area/market/, which is followed by brief description of the activities which have been realized.

The Agency publishes each decision on sanctions on its web site on own initiative.

The work of the Agency is covered by the media mostly in the field of telecommunications and particularly in cases of the regulator's decisions affecting some of the big players in that market, or affecting citizens/users. Work of the Agency related to the AVMS areas is less known to the public. However, some cases of controversial programming have provoked more intense media reporting and public reaction about the role of the regulator, mainly, in such cases, complaining about the passive role of the regulator.

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

The regulator can set its own agenda and priorities in own annual program. In broader terms, general media policy goals are arising from the National Program for Culture (prepared by the Ministry of Culture and adopted by the Parliament each four years) and from the legislation changes developed by the Ministry of Culture. AKOS has prioritised the following AVMS issues: promotion of European works, commercial communications, protection of minors, and establishment of registry of non-linear services.

If statutory instruments (secondary legislation) can be considered "interpretative guidance on the application of rules contained in the AVMS Directive" then AKOS can issue such instruments. In such cases, these instruments are binding. Secondary legislation has been provided for protection of minors and product placement, as well as methodology for overseeing the implementation of content regulation by AVMS providers.

All secondary legislation is published in the Official Gazette, and is also specified and available on the web site of AKOS: http://www.akos-rs.si/podzakonski-akti, specifically the one on protection of minors is available here: http://www.uradni-list.si/1/objava.jsp?urlurid=20133113, the one on product placement: http://www.uradni-list.si/1/content?id=108893, and the one on methodology for implementation of AVMS content regulation: http://www.uradni-list.si/1/objava.jsp?urlid=201231&stevilka=1350.

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

In some cases (e.g. issuing the tariff for the fees which shall cover the costs incurred by the Agency in the implementation of the provisions of the Audiovisual Media Services Act) the regulator is obliged to consult the relevant parties. In addition to that the Agency regularly seeks the views and opinions of industry stakeholders and general public. The responses by the stakeholders are made public by publishing them on the website of the Agency. Latest consultations were focused on product placement (http://www.akos-rs.si/delavnica-o-promocijskem-umescanju-izdelkov-in-sponzoriranju) and protection of minors (http://www.akos-rs.si/predavanja-in-delavnice-delavnica-o-zasciti-otrok-in-mladoletnikov-na-tv-in-vod).

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

In comparison with the previous INDIREG report there are some improvements in terms of clarity of the powers related to AVMS areas which are now predominantly given to one regulator – AKOS. This means that AKOS also gained inspection and sanction powers. The improvements are result of the AVMS Act (enforced in autumn 2011). The new law on electronic communications – Electronic Communications Act, adopted in 2012, also contributed to more narrow grounds for potential earlier dismissal of the director of AKOS by the Government. Earlier, this was not the case and directors have been changed with changes of the Government. In practice, the current director has been appointed in 2011 and has not been changed despite the Government has changed three times meanwhile. The new law on electronic communications also introduced a new body – Council of the Agency (AKOS) to have certain role in between the Government and director, but it is not a collective decision making body, and the appointment of director of the Agency is still power of the Government (the Agency Council is nominating the director/proposing the appointment of director to the Government, selecting him/her on the basis of public competition).

Slovakia

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

N/A

II. Additional Questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)?

State (public) regulation (sui generis)

What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

It should be noted here, that regulation of broadcasting is separated from regulation of telecommunications, and there are also two independent regulatory bodies in Slovakia: Council of Broadcasting and Retransmission and Regulatory Authority for Electronic Communications and Postal Services . Thus, for example, the decision on granting the license shall be issued after agreement with the Regulatory Authority for Electronic Communications and Postal Services about the allocation of frequencies and about other technical conditions of the broadcasting which have to comply with the plans for the utilization of frequencies for broadcasting of a radio programme service and a television programme service.
Theoretically, also supervisory board of PSM – the Council of RTVT (Radio and Television of Slovakia) is obliged to supervise whether PSM respect ALL existing media regulatory legislation.

Furthemore, some partial duties and/or cooperation are shared or supervised by/ with the Ministry of Finance, Ministry of Culture, Ministry of Transport.

What is the hierarchical structure internal to the regulator?

There is the Board (Council) which has 9 members elected by the Slovak Parliament. The members of the RVR are elected for 6 years term with one third of the members changing every 2 years. The head of the RVR is its chairperson. He/she represents the RVR in the public and presides over its meetings that take place usually twice a month.
Day-to-day business of the RVR is carried out by the Office of the RVR that has approximately 30 employees.

If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

2. Financing

How is the regulator financed?

The Council is financed from the State budget and its budget must be approved by Parliament on an annual basis.

Does the state contribute (partly or exclusively) to its funding?

Yes, all the money come from the State budget. Even collected fines must go back to the State buget. There is expected income from fines which the RVR must collect each year. For example in 2013 the annual income from fines was expected to be 160, 000 EUR and real additional income from fines was actually 426, 250 EUR.

In 2014, the expected income from fines was 350,000 Eur and this was actually also the final result. Theoretically, if the RVR does not collect enough money from fines as expected, the Ministry of Finance could lower the budget of the RVR. However, this has not yet happened.
There is additional statistical problem with fines – some of them actually come from previous year.

If yes, are there conditions to receive state funding?

The budget must fulfill conditions stated in Act on budgetary 523/2004 Coll rules of public sector

Have there been any cut-backs in view of the economic crisis?

There have been only mininal cut-backs in the last years.

If so, please specify.

There is no problem with the budget – it is sufficient.

Who manages the funds available to the regulator?

The RVR sumbmitts to the Ministry of Finance budget proposal for coming years. It must include cost justification. The draft of the budget is approved by the Parliament after previous discussion in a committtee of the Parliament. Actually, there are two such drafts, one is submitted as part of State budget by the Ministry of Finance directly to the Parliament, and the other draft budget, is submitted by the RVR directly to the Committee of the Parliament, Obviously, these two draft budgets should be identical, but it happened that there were differences. At the end, the draft approved by the Parliament must everybody accept.

Is the funding scheme regulated by legislation? Please specify the legal basis.

The budget and its use / spending must fulfill conditions stated in Act on budgetary rule Act 523/2004 Coll les of public sector . Otherwise the RVR is free to suggest its own budget and according to its own structure.

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)?

Yes, there are rather detailed criteria in the law which make a candidate not eligible for membership.

If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office?

Both case are applied. However, the members of the RVR can hold some public offices – for example in self-governing municipalities (but they are explicitily banned from having poistion of a mayor). They can also hold political office – can be local deputies (elected members of local councils or regional parliaments (councils), if they are independent candidates.

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources?

There are finances available for up to 33 employess, but the Office has had on average about 30 employess only.

The budget in 2014 was 1,114,864.00 EUR, actual spending was just below this limit. Thus, the 2014 budget was 27,544.97 EUR lower in comparison with 2013 budget.

The budget in 2013 was 1,142,605.00 EUR, actual spending was just below this limit. Considering that in 2012 the budget was lower by 47,500 EUR, the finances and technical resources are sufficient.

In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated?

Yes, it is.

What kinds of technical facilities exist? (Technical resources/facilities include all resources needed to carry out the work of the body, except personnel and budget, e.g. computers, databases, and in particular any tools required to monitor the compliance of an audiovisual media service provider with the provisions of the national legislation transposing the AVMSD.)

There is standard PC equipment for each employee. The monitoring staff (15 members) has available standard technology for video-recording. The office has four TV sets. The office also has a single but complex piece of technology for continual recording of for up to 45 days of broadcast of eight programme services.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public?

The monitoring is planned as well as it relies on complaints by the public as well as on the initiative the members of the RVR.

How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

The regulator may ask the broadcaster to submit recordings of particular programmes or monitors broadcasting using its own recording devices and staff.

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements?

All major types of sanctions allowed according to Law have been applied.

What is the "track record"?

2011 NATIONAL and LOCAL TVs, AVMS

Broadcaster/Sanction	**Commercial communication** **§ 31-35**	**Ballanced Coverage** **§16 sec 3 or b**	**Human Dignity/ Protection of Minors** **§ 19- 20**
Private	"Warnings": 38	"Warnings":9	"Warnings":0
	Fines: 58/ 185 640	Fines:Number/Amount: 0/0	Fines: 16/96 840
PSM	"Warnings": 2	"Warnings":5	"Warnings":0
	Fines: 4/12 500	Fines:Number/Amount 0/0	Fines:2/53 400
AVMS			Fines:0/0

2012 NATIONAL and LOCAL TVs, AVMS

Broadcaster/Sanction	**Commercial communication** **§ 31-35**	**Ballanced Coverage** **§16 sec 3 or b**	**Human Dignitiy/ Protection of Minors** **§ 19- 20**
Private	"Warnings":7	"Warnings":14	"Warnings":0
	Fines:36/ 316 677	Fines:Number/Amount 0/0	Fines: 24/ 104 319
PSM	"Warnings":1	"Warnings":1	"Warnings":0
	Fines:0/0	Fines:Number/Amount 0/0	Fines:0/0
AVMS			Fines:2/600

2013 NATIONAL and LOCAL TVs, AVMS

Broadcaster/Sanction	**Commercial communication** **§ 31-35**	**Ballanced Coverage** **§16 sec 3 or b**	**Human Dignity/ Protection of Minors** **§ 19- 20**
Private	„Warnings“:10	„Warnings“:22	„Warnings“:0
	Fines:37/203 956	Fines:Number/Amount 0/0	Fines:27/128 119
PSM	„Warnings“:0	„Warnings“:3	„Warnings“:0
	Fines:0/0	Fines:Number/Amount 0/0	Fines:3/5 000
AVMS			Fines:1/2500

Which rules of the AVMS Directive have been violated most frequently?

Financial sanctions in the case of Commercials (commercial communications) and protection of minors/human dignity.
In the case of balanced coverage there were issued “warnings.”

Do fines flow, directly or indirectly, to the state budget?

Yes, as mentioned, this is the case.

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public?

Yes. However, some data – e,g, related to media literacy – have not been included into annual reports or made public.

If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)?

Publication on the website of the regulator.

What information is included in the annual report?

The annual report is rather detailed, it has about 350 pages including appendices.

b. Is the public aware of the activities of the regulator?

A part of the public is aware, but sometimes it confuses the electronic/digital regulator with specific PSM regulator.

Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

Yes, they are covered by online webportals focusing on the media. They are irregularly covered but especially sanctions - fines - issued by the RVR are very much read and covered. The journalists take inspiraration from this website.
Examples:
http://www.omediach.com/radio/item/6093-radio-europa-2-dostalo-pokutu-za-vulgarnosti-v-pesnicke
http://www.omediach.com/tlacove-spravy/item/6087-tlacova-informacia-zo-zasadnutia-rvr-24-2-2015
http://www.omediach.com/tlacove-spravy/item/6002-tlacova-informacia-zo-zasadnutia-rvr-112-2015

http://medialne.etrend.sk/televizia/k-referendu-prislo-devat-staznosti-na-sajfu-tv-lux-ci-rtvs.html?utm_source=medialne&utm_medium=hp&utm_campaign=listing

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda?

Yes, it can and does.

Can it determine long-term objectives? If not, who determines the policies and goals of the regulator?

Yes, it can and does.

What issues of the regulation of audiovisual media services have been prioritized by the regulator

since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

Protection of minors (as focus of interest)
Commercial communications (the most frequent topic)

Otherwise, the most problematic regulatory issues were actually related to application of the Television without Frontiers Directive (TWFD). The RVR was asked to comment on survey documenting supposed breaches of article 18 (1) and (2) of the TWFD by various broadcasters under Slovak jurisdiction during two months period from November 1, till the end of 2007. The objective of the survey was to examine the level of compliance of the Slovak broadcasting market with the abovementioned provisions of TWFD. The survey identified 22 violations of article 18 (1) and 314 violations of article 18 (2) of the TWFD

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive?

Yes, it does so.

Is this guidance binding on service providers?

Not de iure, but de facto

What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

Legislation on Campaign in the Media before referendum in February 2015
http://www.rvr.sk/sk/spravy/index.php?aktualitaId=2856

Commentary on Campaign in the media before Elections to the EP in 2014
http://www.rvr.sk/sk/spravy/index.php?aktualitaId=1448

Commentary on Campaign in the media before Presidential Elections in 2014:
http://www.rvr.sk/sk/spravy/index.php?aktualitaId=2368

Retransmission via the Internet and IPTV, 2013
http://www.rvr.sk/sk/spravy/index.php?aktualitaId=2138

Statement of the RVR with Respect to Campaign in the Media before Elections to Self-governing bodies, 2013
http://www.rvr.sk/sk/spravy/index.php?aktualitaId=2129

Reaction of the RVR to the Public Call by the Minister of Culture with respect to Increasing Vulgarity and Lack of Ethics in Broadcasting, 2012
http://www.rvr.sk/sk/spravy/index.php?aktualitaId=1684

Commentary on Campaign in the media before Parliamentary Elections in 2012
http://www.rvr.sk/sk/spravy/index.php?aktualitaId=1448

Commentary on Campaign in the media before Local Elections in 2012
http://www.rvr.sk/sk/spravy/index.php?aktualitaId=1449

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public?

This duty is only very vague, indirect or rather missing – there is only

a) a duty to cooperate with self-regulatory bodies in the area of broadcasting, retransmission and providing AVMSoD in creating efficient self-regulatory systems. However, this does not work efficiently. There is no permanent cooperation or consultation with the Advertising Council. There is natural conflict of interest with the Association of Independent Radio and Television Stations.

b) when awarding sanctions, it should consider sanctions issued by self-regualtory bodies in this area

Are these consultations institutionalized (e.g. Industry Forum)?

No, there are no institutionalised consultations, although there exist for example, in addition to above mentioned, Creative Industry Forum. This should be involved in issues related to copyright and AVSoD.

If not, does the regulator nonetheless regularly seek the views of the industry and the public?

The regulator consults ad hoc issues with the industry.

For example, there was consultation among the chairperson of the RVR, the chairperson of Association of Independent Radio and Television Stations, and the chairperson of International Press Institute in February 2014 with respect to expectations of the Parliament related to fines to be collected in 2014 year. It was expected, according to the Plan approved by the Parliament, that the RVR would collect fines in total value 340,000€ which was approximately double of annual averagae. (http://www.anrts.sk/wp/?p=636)

In general, the industry would prefer abolishing any regulation rather than to work on its improvement.

Are the responses by stakeholders made public (e.g. on the website of the regulator)?

Yes, this is done according to the Law.

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

a) There is a long-term problem with incosistency of rulings of the Administrative Court with respect to appeals lodged by broadcasters against decisions issued by the Council for Broadcasting and Retransmission.

b) The major broadcasters generally complain that the setting of of RVR and fines issued by RVR are "outside of this world." This was said publicly by the director general of PSM in January 2015. (https://dennikn.sk/24109/sef-rtvs-lampa-uz-takto-pokracovat-nemoze/?ref=top).

However, the director general never explained, inspite our repeated requests, what exactly he meant by this (emails sent to gr@rtvs.sk, 16 and 26 January 2015).

Neither the chairperson of the Association of Independent Television and Radio Stations in personal interview on January 27, 2015, was able to provide further explanation on this issue.

c) There was raised an issue that inspite of duty to consider sanctions issued by other selfregulatory bodies, this is not happening. The RVR claims that it is not informed about sanctions issued by selfregulartory bodies, while the executive director of the Advertising Bureau (AB), Eva Rajčáková, argued that all minutes and verdicts issued by the AB are available on their website as well as disseminatet via other communication tools. The AB does forward complaints that do not belong into competency of the AB to the RVR.
Be that as it may, there may be a problem that some issues may be tackled simultaneously by both bodies. The AB does not condition its self-regulatory activity by not providing the same complaint to official regulatory body.

For information, the major issue of complaints related to commercials in the case of AB were truthfulness of advertising, followed by incomprehensability and multiple meaning of adds, as well as explitcitly or implicitly sexual commercial messages and human dignity in general.
The AB deals increasingly also with adds in the Internet, including Youtube, search engines and PR articles and spam.

Moreover, the AB deals with complaints targeting its members but also non-members. While in the case of its members it has almost 100 % acceptance of its verdicts, in the case of non-members it is about 50 %. (Telephone interview on March 5, 2015).

Turkey

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

N/A

II. Additional questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

As set out in the applicable Law no. 6112 on the Establishment of Radio and Television Enterprises and Their Media Services (hereinafter "Law no. 6112")[1], the Radio and Television Supreme Council (hereinafter "RTÜK" or "Supreme Council") is the regulatory body that is established as an administratively and financially autonomous and impartial public legal person for the regulation and supervision of radio, television and on demand media services sector[2] in Turkey.

State regulation has been the main body of regulation in Turkey. However *"RTÜK, along with the supervision carried out within the scope of the law, believes in the importance of co-regulation and self-regulation to be carried out by media service providers."*[3] This has been further indicated in the Law no. 6112 in which the Supreme Council was given the power to determine co-regulatory and self-regulatory mechanisms and general strategies for the sector.[4]

As known, "Protective Symbol System" and "Viewer Representative" mechanisms are considered as self-regulatory mechanisms. "Viewer Representative" mechanism allows the audiences and listeners deliver their recommendations, likes and criticisms regarding a

[1] Adopted on 15 February 2011 and published in the Official Gazette on 3 March .2011, no. 27863; The English text of Law no. 6112 is available at http://www.rtuk.org.tr/Home/SolMenu/5386#

[2] Article 34, Law no. 6112.

[3] Booklet on RTÜK, p.40 (available at http://www.rtuk.org.tr/Home/SolMenu/5386#)

[4] Article 37 (1)(k), Law no. 6112.

program directly to the broadcasters, enabling the broadcasters to make some kind of quality control (i.e. ombudsman method). Protective Symbol System, on the other hand, imposes the duty of "informing the viewers about the content of programme services through sound or written announcement by using protective symbol system" where symbols are "classified according to the categories of age and content" on the media service providers. Both mechanisms are established under Law no. 6112 and they are further regulated in details in the By-Law adopted by the Supreme Council, Radio and Television Supreme Council By-Law on the Procedures and Principles of Media Services. [5]

Furthermore, "Ethical Principles", which is generally considered as a sort of co-regulation model, have been adopted in Turkey. "Ethical Principles", which form a common behaviour

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[5] Published in the Official Gazette on 2 November 2011, no. 28103.

Article 22 [Viewer representatives and their duties] - (1) Media service providers shall have a viewer representative. Viewer representatives shall be appointed from among the persons who have at least ten years of professional experience in the field of broadcasting and have credibility on the viewers. Media service providers shall announce to the public the viewer representative's identity and the information regarding where and how to complain about the programme by appropriate means at the end of the programme.

(2) Viewer representatives;

a) shall ensure the establishment of the necessary infrastructure to receive viewers' feedbacks.

b) shall have a viewer representative's link on the official website of media service provider and they shall provide information about the feedbacks that they received from the website and their evaluations.

c) shall separately evaluate the feedbacks collected from the viewers and sent by the Supreme Council. They shall respond for the feedbacks on the principles for media service and commercial communications in media services.

ç) shall report their studies on viewer feedbacks to the executive board of media service provider at the end of each month, shall announce on their official website and shall broadcast these studies to share with the public if the broadcasting schedule allows.

d) **shall primarily evaluate and conclude the complaints and opinions submitted by the Supreme Council in the framework of self-regulation.**

Article 23 [Protective Symbol System] - (1) Media service providers shall inform the viewers about the content of programme services through sound or written announcement by using protective symbol system.

(2) The symbols shall be classified according to the categories of age and content. The process of classification shall be conducted according to the procedures and principles in the Coders' Application Guide prepared, and updated when required, by the Supreme Council. Coders' Application Guide shall be published on the Supreme Council's website.

(3) Protective symbols indicate whether or not a programme includes a potentially harmful content and/or which age category it is convenient for.

(4) If a programme content includes violence and fear, sexuality and attitudes which may constitute negative modelling such as discrimination, excessive use of alcohol and cigarette, usage of illegal substance, illegal behaviours and coarse and bad speech, symbols of "Violence/Fear", "Sexuality", "Bad Behaviours" attached in Annex 1 shall be inserted in order to identify the programme which may likely include a harmful content

(5) Convenience of the programme content in terms of the age groups shall be defined with the symbols of "General Viewer", "Age 7", "Age 13" and "Age 18" attached in Annex 1 which has been established by taking into consideration age groups' vulnerability levels. The symbols of "Age 13" and "Age 18" shall be displayed continuously during the programme at one of the corners of the screen. The symbol of "7+" means a programme can be broadcast in any hours of the day, the symbol "13+" means a programme can be broadcast after 21:30, the symbol "18+" means the programme cannot be broadcast out of the time interval between 24:00-05:00 hours.

(6) Whether a programme includes a harmful content and which age group it is convenient for shall be determined automatically by the system itself as a result of the responses supplied by the certificated coders designated by the media service providers and trained in advance on the system by the Supreme Council by means of filling the Sample Coding Form on the official website of the Supreme Council.

baseline on media service providers, were *"developed as a result of the joint study initiated in 2007 by RTÜK and Association of Television Broadcasters (Televizyon Yayıncıları Derneği: TVYD)"*. The aim of the Ethical Principles are to strengthening the broadcasting, enhancing the quality of broadcasting, increasing the credibility of broadcasting, and proposing solutions to common ethical problems affecting the majority of the public in broadcasting area. In this regard, Council of Media Ethics, founded as an association in 2007, monitors the implementation of these principles in the sector. It further helps regulating both the press and visual public content as well as promoting individuals' rights as viewers and readers. This practice could be deemed an example of voluntary self-regulatory method that exists in Turkey.

Despite having these other mechanisms in Turkey, it should be underlined that the Supreme Council primarily appears as an example of a state regulation model and the scope of its competence reads as follows[6]:

a) to take essential precautions, in the field of media services, for securing freedom of expression and information, diversity of opinion, media pluralism and competition environment, on the condition that the functions and powers of Turkish Competition Authority are reserved; for avoiding media concentration; and for protecting public interests.

b) to make or to have them made and to deploy the television channel and radio frequency planning in the framework of frequency bands for the terrestrial radio and television broadcasts allocated to the Supreme Council in the national frequency plan according to the provisions of the Law No. 5809 dated 5/11/2008 on Electronic Communications.

c) to determine the required administrative, financial and technical standards for enabling media service providers to request a broadcasting licence; to grant broadcasting licences to those of such companies which fulfil the required qualifications; to supervise them and to revoke the broadcasting licences when required.

ç) on the condition that the functions and powers of the Information Technologies and Communication Authority are reserved, to determine the administrative, financial and technical standards that have to be accomplished by the platforms, multiplex, infrastructure operators and the transmitter installation and operating company regarding their activities of the transmission of radio and television broadcasting services and on-demand media services; to grant them broadcast transmission authorization and to cancel the authorization when required.

d) to determine the broadcasting licence fees, and the usage fees for annual television channel, multiplex capacity and radio frequency, which shall be provided by the terrestrial network, to be collected from the radio and television broadcasting enterprises and on-demand media service providers; and broadcast transmission authorization fees to be collected from the platforms, multiplex, infrastructure operators and the transmitter installation and operating company.

e) to and supervise the broadcasts of media service providers which are established in the territories of Republic of Turkey in accordance with the provisions of this Law and the international treaties to which Turkey is party to.

[6] Article 37, Law no. 6112.

f) to ensure the compliance of the broadcasts of the media service providers, which are not established in the territories of Republic of Turkey but are under the jurisdiction of Republic of Turkey, with the provisions of this Law and the international treaties to which Turkey is party to; and to cooperate with the competent bodies and institutions of other states when required.

g) to set-up the required monitoring and recording systems, if necessary by also placing devices in the studios of the broadcasters, for monitoring and supervising the media services.

ğ) to determine the procedures and principles regarding the protective symbols which shall be used in the broadcast services by the media service providers.

h) to impose relevant sanctions in case of any infringement of this Law and other relevant legislation or violation of the standards of broadcasting licence is ascertained on the broadcast services of the media service providers and services of the platforms, multiplex, infrastructure operators and the transmitter installation and operating company.

ı) to make or to commission public opinion polls concerning media services and to share the results of these polls with the relevant parties and the public.

i) to determine the procedures and principles for the execution and the supervision of the viewing or listening rating measurements of the media services; to determine the sanctions to be applied to the companies and the institutions not in compliance with these procedures and principles.

j) on the condition that the provisions of the Electronic Communication Law No. 5809, dated 5.11.2008 and related legislation are reserved and excluding the methods of communication for personal purposes, to make regulations concerning media services including new broadcast transmission methods emerged with the technological improvements; and to give permissions for test broadcasts.

k) to keep abreast of the developments concerning the media services; to determine co-regulatory and self-regulatory mechanisms and general strategies for the sector; to conduct studies and to provide incentives in order to ensure improvement of media services in the country; to coordinate educational and certification programmes for employees of media service providers, and to issue certificates.

l) to deliver opinions about the draft legislations prepared in the field of media services.

m) to make secondary regulations on the matters that fall under the scope of its authority.

n) on the condition that the functions and powers of the Ministry of Foreign Affairs and the Information Technologies and Communication Authority are reserved, to represent the state before the institutions, that have legal personality under international law in relation to the media services; to carry out the duty of representation at the international institutions who do not have a legal personality under international law, in which media service providers are not members and to sign duly the documents, that are prepared under this sub-paragraph and do not constitute an international treaty, following the collection of opinions from the relevant ministries and institutions.

o) to prepare Supreme Council's strategic plan and to determine its performance criteria, aims and targets, standards of service quality; to establish its human resources and employment policies.

ö) to encourage taking the essential precautions for facilitating the access of the elderly and the disadvantaged people to the media services and new technologies.

p) to take resolutions on the matters regarding the sale, purchase, lease and dedication of the real estates.

r) to collaborate with the other public institutions, particularly leading with the Ministry of National Education, in order to widespread the media literacy so that all society segments are covered.

s) to collect any kind of information, documentation and recordings from the media service providers under the scope of their duties, to supervise media service providers onsite and to shut down the devices failing to comply with the licence requirements by sealing.

ş) to purchase, services when necessary for temporary tasks or tasks which require a certain specialty.

t) to determine the nominees for the General Directorate and the membership of the Board of Directors of the Turkish Radio Television Corporation.

u) to determine professional and ethical principles that the members of the Council and its personnel shall conform to.

ü) to discuss and take resolutions on the Supreme Council's budget prepared in conformity with its main strategy, aim and objectives.

v) to determine the matters that will be required in order to fulfil the duties and responsibilities in events of declaration of mobilization and war by means of a by-law to be issued in coordination with the Ministry of National Defence, and to communicate it to the media service providers and to supervise them.

y) to fulfil other duties assigned by the legislation.

2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

Pursuant to Article 41 of Law No. 6112, the Supreme Council has different sources of revenue for its budget. The primary revenues are a) broadcasting licence fees from media service providers b) annual usage fees for television channel, multiplex capacity and radio frequency to be collected from public and private media service providers broadcasting

through terrestrial network c) broadcast transmission authorization fees to be collected from platform, multiplex and infrastructure operators as well as the transmitter installation and operating company which are engaged in the transmission of broadcasts and d) a three percent share of monthly gross commercial communication revenues of media service providers excluding their sponsorship revenues.

The State contribution to the budget is also possible. As indicated in Article 41, treasury aid can be obtained from the budget of the Presidency of the Turkish Grand National Assembly (hereinafter "Turkish Parliament") when needed. In this case, the Supreme Council shall prepare a program for the work it will perform each year and submit the amount of appropriation required to be earmarked from the budget of the Presidency of the Turkish Parliament to the Presidency of the Turkish Parliament.

Within the procedures and principles established for its own budget, the Supreme Council is entitled to freely utilize the financial resources allocated to it within the framework of the procedures and principles established in Law no. 6112 and Law no. 5018 on Public Financial Management and Control, to the extent required by its duties and powers. In addition, properties of the Supreme Council are deemed properties of the State, and may not be attached.[7]

The final budget of the Supreme Council is approved by the Turkish Parliament. The Supreme Council is subject to inspection by the Turkish Court of Accounts.[8]

The collection of revenues regarding the Supreme Council's budget is thoroughly regulated under Article 42 of Law no. 6112.[9] As for the funding scheme, the revenue obtained through the broadcasting licence fees from media service providers is laid down in the By-Law on Administrative and Financial Conditions with which Media Service Providers and Platform and Infrastructure Operators are required to comply[10] in which the latter explicitly indicates the minimum sum of payments that each media service provider applying for acquiring for a broadcasting license for the purpose of providing radio, television and on demand broadcast services is obliged to pay.[11] Furthermore, the applicable principles and procedure as to the

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[7] Article 34 (3), Law no. 6112.

[8] Article 34 (5), Law no. 6112.

[9] **Article 42 [Collection of the revenues]** (1) Provided that the first instalment shall be collected before issuing of the licence, the broadcasting licence fees shall be paid in ten equal instalments until february in the following year and the broadcast transmission authorisation fees shall be collected in equal instalments within six months following the grant of the licence and authorisation document.

(2) Television channel, multiplex capacity and radio frequency annual usage fees shall be paid in four equal instalments every year in January, April, July and October in accordance with the subparagraph (b) of the first paragraph of Article 27; and the shares to be allotted from the commercial communication revenues as stipulated in subparagraph (ç) shall be paid by the relevant media service providers on the twentieth of the third month at the latest following the month that those revenues are derived in.

[10] By-Law on the Administrative and Financial Conditions with which Media Service Providers and Platform and Infrastructure Operators are required to comply (hereinafter "By-Law on the Administrative and Financial Conditions") , 15 June 2011, Official Gazette no. 27965.

[11] Article 4 (3) of the By-Law on the Administrative and Financial Conditions reads as follows:

(3) Each media service provider applying for acquiring for a broadcasting license for the purpose of providing radio, television and on demand broadcast services is obliged to have a sum of paid in capital not less than the sums as stated below:

Supreme Council's revenue deriving from the three percent share of monthly gross commercial communication revenues of media service providers is regulated under the By-Law on the Supervision of the Commercial Communication Revenues of Media Service Providers and the Procedure regarding the Payment of the Shares Allocated to the Supreme Council[12].

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

Pursuant to Article 37(1) (a) of Law No.6112, the Radio and Television Supreme Council has to "to take essential precautions … for securing … diversity of opinion, media pluralism and competition environment and for avoiding media concentration." Keeping this in mind, conflict of interest rules exist in Article 38 (1) of Law No. 6112. Members of the Supreme Council and their relatives by blood or by marriage up to and including to those of the third degree a) shall not enter into any contracting business pertaining to matters that fall under the duties and powers of the Supreme Council within the field of media services; b) shall not be shareholders or managers in media service providers or in the enterprises that have direct or indirect partnership affiliation with these companies.

Furthermore, Article 38 (2) envisages occupational prohibitions to the members of the Supreme Council. Accordingly, The Supreme Council members shall not a) undertake any civil service or private post, not be a party directly or indirectly in matters within the field of duties and powers of private or public media service providers and not derive any material benefits in such matters, b) be a member of a political party. Duties carried out in associations and foundations whose area of activities is social aid and education, co-operative partnerships as well as scientific publication, giving lectures and conferences, carrying out jury and commission membership that are not impede their principal duties remains out of the scope of this provision.

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a) For national terrestrial television : 8.320.000TL

b) For regional terrestrial television : 1. 385.000TL

c) For local terrestrial television : 250.000TL

ç) For national terrestrial radio : 1.000.000TL

d) For regional terrestrial radio : 250.000TL

e) For local terrestrial radio : 70.000TL

f) For cable television : 275.000TL

g) For cable radio : 50.000TL

ğ) For satellite television : 275.000TL

h) For satellite radio : 50.000TL

ı) For on demand broadcast service : 100.000TL

[12] By-Law on the Supervision of the Commercial Communication Revenues of Media Service Providers and the Procedure regarding the Payment of the Shares Allocated to the Supreme Council, 28 August 2011, Official Gazette no. 28037.

Article 38 of the Law No. 6112 lays down further rules regarding conflict of interest. For instance, The Supreme Council members, before they start to serve, have to dispose of all kinds of shares or securities belonging to media service providers and legal persons providing media service or their subsidiaries, other than the debt securities issued by the Undersecretariat of Treasury, by selling or transferring to those other than their relatives by blood up to the third degree or by marriage up to the second degree within thirty days from the start of their terms. Likewise, members of the Supreme Council and personnel of the Authority cannot disclose confidential information related to the Authority and all kinds of secrets belonging to media service providers and real and legal persons providing media service, even if they leave their offices and cannot use them in their or others' interest. Lastly, the Supreme Council members are not permitted to participate in negotiations or voting on the matters about themselves or their relatives by blood or by marriage up to and including those of the third degree. This situation shall be specifically stated in the resolution text.

In case of violating these principles under Article 38, the Supreme Council members shall be deemed as resigned. The Supreme Council shall take a resolution on this case by on its own initiative or following the evaluation of an application and report it to the Turkish Grand National Assembly Presidency in order for the required actions to be taken[13].

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

The number of posts and the break-down of posts according to occupation are explicitly determined under Law no. 6112. In the appendix, it is indicated that there are 669 posts allocated to the Supreme Council's organizational structure. According to the 2013 Annual Report of the Supreme Council[14], there are currently 421 staff members working within the organization. The overall number of staff as well as the technical facilities can be regarded as sufficient in view of the tasks assigned to the Supreme Council. Furthermore, the institution has modern premises and is well equipped.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

The Supreme Council carries out its monitoring duties both itself and based on the complaints lodged by the public. As a general rule, the content and transmission of the media services

[13] Article 38 (6), Law no. 6112.

[14] 2013 Annual Activity Report, available at http://www.rtuk.org.tr/Icerik/DownloadReport/5179

cannot be subject to a priori interference or supervision.[15] Law no. 6112 further establishes[16] "*Viewer representatives*" who are assigned by media service providers in order to establish co-regulation and self-regulation mechanisms, to submit the evaluations on the complaints obtained from viewers and listeners to the broadcasting board of the company. When a complaint is submitted to the Supreme Council, it is transferred to the viewer representative of the concerned media service provider.

Furthermore, the Supreme Council has the power[17] "to set-up the required monitoring and recording systems, if necessary by also placing devices in the studios of the broadcasters, for monitoring and supervising the media services". Monitoring of the broadcast is conducted a posteriori by experts of the Supreme Council. Experts regularly monitor all broadcasts which are recorded within the scope of Digital Recording, Archives and Analyze System (Sayısal Kayıt, Arşiv ve Analiz Sistemi (SKAAS); they also run spot checks due to public complaints submitted via the service line 444 1 178 and www.rtuk.org.tr . In case of any violation found during monitoring of the complained broadcast, experts submit a report of the violation to Supreme Council.

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

Sanctions adopted and executed by the Supreme Council are a) suspension of licence/annulment of authorization, b) revocation of licence, c) administrative penalties, d) administrative injunction such as programme suspension and compulsory broadcasts e) judicial sanctions such as imprisonment, judicial fine. Law no. 6112 thoroughly regulates the

[15] **Article 6 [The independence and liability of the media service provider]** (1) The content and transmission of the media services shall not be subject to a priori interference and the content of the media services shall not be supervised in advance.

[16] **Article 22 [Viewer representative]** (1) Media service providers shall assign a viewer representative who has at least ten years of professional experience in order to establish co-regulation and self-regulation mechanisms, to submit the evaluations on the complaints obtained from viewers and listeners to the broadcasting board of the company and to follow up the conclusions. The assigned viewer representative shall be announced to the public by appropriate means and notified to the Supreme Council..

[17] **Article 37 [Functions and powers]** (1) The functions and powers of the Supreme Council are:
c) … to supervise them (media service providers) and to revoke the broadcasting licences when required.
g) **to set-up the required monitoring and recording systems, if necessary by also placing devices in the studios of the broadcasters, for monitoring and supervising the media services.**
ı) to make or to commission public opinion polls concerning media services and to share the results of these polls with the relevant parties and the public.
i) to determine the procedures and principles for the execution and the supervision of the viewing or listening rating measurements of the media services….
k) … to determine co-regulatory and self-regulatory mechanisms and general strategies for the sector; …
s) to collect any kind of information, documentation and recordings from the media service providers under the scope of their duties, to supervise media service providers onsite and to shut down the devices failing to comply with the licence requirements by sealing.

applicable sanctions, both administrative[18] and judicial[19], for infringements and consecutive fines. There are also two By-Laws adopted by the Supreme Council in which the sanctions

[18] **Article 32 [Administrative sanctions]** - (1) Media service providers which violate the broadcasting principles in subparagraphs (a),(b),(d),(g),(n),(s) and (ş) of the first paragraph of Article 8 of this Law shall be penalised, taking into consideration the gravity of violation as well as the broadcasting network and coverage area, with an administrative fine from two percent up to five percent of total gross commercial communication revenue within the month preceding the month when the violation is identified. The sum of the administrative fine shall not be less than one thousand Turkish Liras for radio enterprises and ten thousand Turkish Liras for television enterprises and on-demand media service providers. Additionally, as an administrative injunction, the broadcast of the programme subjected to the violation shall be decided to be suspended up to five times and as for on demand media services the programme subjected to the violation to be removed from the catalogue. By taking into consideration the nature of the violation, an administrative fine together with the administrative injunction may be imposed in accordance with the provisions of this paragraph, or only an administrative fine or an administrative injunction may be imposed.

(2) Media service providers which conduct broadcasts in violation of the principles, obligations or prohibitions stipulated in other subparagraphs of the first paragraph of Article 8, as well as in the second and third paragraphs and other Articles of this Law shall be warned. If the violation is repeated after the notification of the warning to the concerned enterprise, the media service provider shall be penalized with an administrative fine from one percent up to three percent of the total gross commercial communication revenues within the month preceding the month when the violation is identified by taking into consideration the gravity of violation, broadcasting network and coverage area. The amount of the administrative fine shall not be less than one thousand Turkish Liras for radio enterprises and ten thousand Turkish Liras for television enterprises and on-demand media service providers.

(3) If a violation of an obligation or a ban constitutes an offence, without being subject to the condition of conducting an investigation or a prosecution against the parties involved due to the offence, an administrative fine or an administrative injunction shall be imposed in accordance with the provisions of this Article.

(4) Instead of the suspended programmes due to the enforcement of an administrative injunction, programmes which are provided by the Supreme Council on education, culture, traffic, women's and children's rights, physical and moral development of young people, struggle against drugs and harmful habits, proper use of the Turkish language, education on environment, problems about disadvantaged ones, health and similar subjects useful for the public shall be broadcast during the same broadcasting period and without any commercial communication. If a programme suspension decision as an administrative injunction is taken because of the violation of the ban or the obligation, the producer of the programme or if there is any, its presenter responsible for committing the act that caused the sanction shall not make or present any other programme under any name in the same or different media service provider enterprise during the suspension period.

(5) If the same violation is repeated within a year following the notification of the sanction decision resulting from the violation of the principles in subparagraphs (a) and (b) of the first paragraph of Article 8, it will be resolved that the broadcast of the media service provider shall be suspended up to ten days; and in case of the second repetition, its broadcasting licence shall be revoked.

(6) In case of losing one of the conditions foreseen under this Law in order to be granted a broadcasting licence, the related media service provider shall be given thirty days for fulfilling this condition. The broadcasts of the enterprise failing to fulfil this condition within the given period shall be suspended for three months. If the relevant enterprise does not fulfil the condition during the course of this period, its broadcasting licence shall be revoked and its channel and frequency usage shall be ceased.

(7) The broadcasting licence of an enterprise shall be revoked if it is found to have attained the required conditions by fraud for being granted a broadcasting licence. The broadcasting licence fee and annual usage fee for channel and frequency collected from the enterprise whose broadcasting licence has been revoked shall not be reimbursed.

(8) The Supreme Council is authorized to impose an administrative fine or an administrative injunction in accordance with the provisions of this Law.

(9) Against the administrative sanction decisions imposed in accordance with the provisions of this Law, a legal action can be taken in accordance with the provisions of Administrative Trial Procedure Law No 2577 dated 6/1/1982. Additionally, a lawsuit shall be filed with an administrative court within fifteen days following the notification date of action. The fact that a cancellation lawsuit has been initiated before the administrative court shall not stop the execution of the decision.

regimes are further laid down. In the framework of Radio and Television Supreme Council By-Law on Broadcasting via Satellite[20] , the sanctions in the course of broadcasting via satellite are regulated. [21]Similarly, Radio and Television Supreme Council By-Law on

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(10) The warning decisions taken by the Supreme Council in accordance with the provisions of this article shall be notified by sending to the electronic mail addresses that are communicated to the Supreme Council by the media service providers. If the electronic mail address has been changed and this change is not communicated to the Supreme Council, the notification to the previous address shall be deemed as valid.

(11) The administrative fines regulated in this Law shall be paid within one month following the notification.

[19] **Article 33 [Judicial sanctions]** - (1) The real persons and the members of executive board and general director of legal persons who broadcast without obtaining a broadcasting licence from the Supreme Council or despite the temporary suspension of their broadcasts or revocation of their broadcasting licence shall be punished by an imprisonment from one to two years and an judicial fine from one thousand to five thousand days. Additionally, the security precautions under Article 60 of the Turkish Penal Law No 5237 shall be applied against legal persons. Broadcasting equipment and premises that continue to operate without authorization shall be sealed and shut down by the Supreme Council.

(2) If media service providers having broadcasting licences conduct broadcasts out of the scope of their licence type and install the transmitters without permission, they shall be warned by the Supreme Council, the provision of the first paragraph shall be enforced against those that continue broadcasting without permission despite the warning.

(3) The private media service provider's manager in charge who fails to keep recordings of broadcasts for one year in accordance with Article 25 or who fails to submit them within the due period and faithfully to their original despite the request by the Supreme Council or by the Chief Prosecutor's Office, shall be punished by a judicial fine from one thousand to five thousand days.

(4) If the sent recordings are not the ones demanded by the Supreme Council in terms of its content or the recording is distorted, abstracted, deleted and etc., the private media service provider's manager in charge shall be punished by a judicial fine from five thousand to ten thousand days.

[20] Published in the Official Gazette on 15 June 2011, no. 27965.

[21] **Article 10 [Revocation of satellite broadcasting license, administrative and juridical sanctions]**– (1) If one of the licensing requirements sought under the Law disappears; the related media service provider shall be allowed a period of thirty days to restore its conformity with that requirement. Broadcasts of an enterprise that does not meet the requirement despite the time allowed shall be suspended for a period of three months. If the requirement is not met within the course of that time, the broadcasting license of that organization shall be revoked and its broadcasts shall be suspended.

(2) If the conformity of a satellite broadcasting license with the required provisions is proven to have been acquired by an enterprise through fraudulent means, the satellite broadcasting license of that enterprise shall be revoked.

(4) The provision stated in Article 33 of the Law shall be implemented for the enterprises sustaining their services with their annulled broadcasting license or with no satellite broadcasting licenses,

(5) If a media service provider, although it has owned a satellite broadcasting license, provide broadcasts that fall outside of its license type or installs a terrestrial transmitter without any authorization it shall be warned by the Supreme Council and for the anyone still sustaining such unauthorized broadcasts in spite of all the warnings, the provision of the Article 33 of the Law shall be implemented.

Article 13 [Liabilities of satellite infrastructure operators and sanctions] – (2) Satellite infrastructure operators shall suspend in seven days at the latest following the notification of the Supreme Council's resolution, the transmission of broadcast services of the media service providers who have not acquired a satellite broadcasting license or whose satellite broadcasting licenses have been revoked by the Supreme Council, and the transmission of the media service providers that are under the jurisdiction of another country but whose broadcasts have been determined by the Supreme Council as violating the international treaties to which Republic of Turkey is party and as contradicting with the related provisions of the general principles of the Law. The transmission authorization of infrastructure operators shall be annulled in case they do not suspend the transmission of such broadcast services despite the notification or in case they do not fulfill other obligations within the allowed period by the Supreme Council and this situation shall be notified by the Supreme Council to the Information Technologies and Communications Authority.

Broadcasting via Cable Networks[22] sets the sanctions during broadcasting via cable networks.[23]

As far as the sanctions regime under Law no. 6112 is concerned, Article 8 of the latter should also be emphasized. In Article 8, it contains a long list of media service principles, which mainly consist of prohibitions, which include human dignity, the principle of privacy and obscenity. With regard to the obligation not to act "contrary to the national and moral values of the society, general morality and the principle of family protection (Article 8f)", statistics were provided according to which in 2013, 18 warnings and 14 pecuniary fines were given by the competent board of the Supreme Council. Similarly, the Supreme Council was criticized for bringing an excessive number of cases based on obscenity, having an unduly restrictive view on what is obscene or otherwise unsuitable. However, this is most probably rather an expression of the polarisation of society also when it comes to values than a deficiency in the work of the agency or direct political pressure. There are large divisions in Turkish society on cultural and social values. The Supreme Council admitted that they try to act based on what are the real concerns of people but that this is difficult, not least because of the mentioned

[22] Published in the Official Gazette on 15 June 2011, no. 27965.

[23] **Article 10 [Revocation of satellite broadcasting license, administrative and juridical sanctions]**– (1) If one of the licensing requirements sought under the Law disappears; the related media service provider shall be allowed a period of thirty days to restore its conformity with that requirement. Broadcasts of an enterprise that does not meet the requirement despite the time allowed shall be suspended for a period of three months. If the requirement is not met within the course of that time, the broadcasting license of that organization shall be revoked and its broadcasts shall be suspended.

(2) If the conformity of a cable broadcasting license with the required provisions is proven to have been acquired by an enterprise through fraudulent means, the cable broadcasting license of that enterprise shall be revoked.

(4) The provision stated in Article 33 of the Law shall be implemented for the enterprises sustaining their services with their annulled broadcasting license or with no cable broadcasting licenses,

(5) If a media service provider, although it has owned a broadcasting license, provide broadcasts that fall outside of its license type or installs a terrestrial transmitter without any authorization, it shall be warned by the Supreme Council and for the anyone still sustaining such unauthorized broadcasts in spite of all the warnings, the provision of the Article 33 of the Law shall be implemented.

Article 12 [Obligations of cable platform operators and sanctions] – (3) Cable platform operators shall suspend, following the notification of the Supreme Council's resolution, the transmission of broadcast services of the media service providers who have not any broadcasting license or whose satellite broadcasting licenses have been revoked by the Supreme Council and the transmission of the broadcasters that are under the jurisdiction of an another country but whose broadcasts have been ascertained by the Supreme Council as violating the international treaties to which Republic of Turkey is party and as contradicting with the related provisions of the general principles of the Law. The transmission authorization of platform operators shall be annulled in case they do not suspend the transmission of such broadcast services despite the notification or in case they do not fulfill other obligations within the allowed period by the Supreme Council and this situation shall be notified by the Supreme Council to the Information Technologies and Communications Authority.

Article 13 [Liabilities of cable infrastructure operators and sanctions] – (2) Cable infrastructure operators shall suspend in seven days at the latest following the notification of the Supreme Council's resolution, the transmission of broadcast services of the media service providers who have not acquired a satellite broadcasting license or whose satellite broadcasting licenses have been revoked by the Supreme Council, and the transmission of the media service providers that are under the jurisdiction of another country but whose broadcasts have been determined by the Supreme Council as violating the international treaties to which Republic of Turkey is party and as contradicting with the related provisions of the general principles of the Law. The transmission authorization of infrastructure operators shall be annulled in case they do not suspend the transmission of such broadcast services despite the notification or in case they do not fulfil other obligations within the allowed period by the Supreme Council and this situation shall be notified by the Supreme Council to the Information Technologies and Communications Authority.

divisions. Moving from more ex officio cases to mainly reacting to complaints should better reflect real concerns, but in a polarised society the concerns of some will not be accepted by others. Decisions of the Supreme Council can be appealed to the Administrative Court. If some decision is overturned, this is used as an indicator to not make similar ones in the future and in the same way, the court´s approval of a decision helps to make it part of the benchmarks that the Supreme Council makes for broadcasters.[24]

Another important provision is Article 7 of the Law no. 6112, according to which the Prime Minister or respectively appointed Minister can impose a temporary ban if "evidently required by public security or in situations where it is highly likely that the public order will be seriously disrupted". Such sweeping powers, although they apparently have not been used so far and can be brought to the Council of State for review, raise issues of the freedom of expression as the existence of such provision may already have a self-censorship effect. For instance, it has been criticized that the mainstream media were slow in reporting about the Gezi Park Events, which resulted in a loss of confidence with the public.[25]

Administrative and judicial fines flow to the state budget pursuant to Article 17(3) of the Law no. 5326 on Misdemeanours as it requires that administrative fines shall flow into state budget unless regulated otherwise specifically. Lastly, there is no specific regulation of track record in Law no. 6112.

7. Transparency and Awareness

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

Law no. 6112 does not invoke an obligation on the publication of the decisions and annual reports of the Supreme Council. [26] In fact Article 40 (7)[27] of Law no. 6112 requires that decisions of 'classified nature' are not published. Likewise, this is further laid down in the By-law regarding Operating Rules and Procedures of the Radio and Television Supreme

[24] EU Commission, Report on the findings and recommendations of the Peer Review Mission on Freedom of Expression (Istanbul and Ankara, 12-16 May 2014), Chapter 23: Judiciary and Fundamental Rights, available at http://avrupa.info.tr/fileadmin/Content/Files/File/Docs/Turkey_report_rev_WB_KNM_final_Jan_2015.pdf

[25] ibid.

[26] **Article 36 [President of the Supreme Council and Deputy President]** (3) Duties and powers of the President are as follows: e) to prepare annual activity reports, to commission an evaluation of the activities according to the objectives and targets, performance criteria and to submit them to the Supreme Council.

[27] **Article 40 [The Supreme Council's working principles, quorum for meetings and resolutions]** (7) The unclassified regulatory and supervisory resolutions of the Supreme Council shall be published by appropriate means.

Council.[28] The decisions of unclassified and regulatory nature of the Supreme Council are posted on its website in Turkish under "Kurul Kararları" (Decisions of the Council) at http://www.rtuk.org.tr . Annual reports of years 2011, 2012 and 2013 are further available on the same website. Annual reports explains the functions and powers, state mission, vision and quality policy of the Supreme Council; present information regarding the administrative and organizational structure of the Supreme Council; summarize the strategic goals and fiscal budget of the Supreme Council; elucidates operations on licensing, supervision and monitoring of media service providers as well as results of public polls and web services; presents trainings of experts.

The activities of the Supreme Council are often covered by the printed press.

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

a. The President of the Supreme Council has the power to determine the agenda, time and date of the Supreme Council's meetings pursuant to Article 36 (3)(a) of Law no. 6112. The Supreme Council, on the other hand, is free to set its own agenda. Pursuant to Article 37 (1) (o), the Supreme Council is entitled to prepare the strategic plan, determine the performance criteria, purposes and aims, and service quality standards of the Supreme Council.

b. Not applicable

[28] Published in the Official Gazette: 16.12.2011, no.28144.
Article 12 [Disclosure and publication of the decisions of the Supreme Council] (1) Deliberations of the Supreme Council are confidential and unless a decision is taken the deliberations are not disclosed. However, if appropriate, the President or a member authorized by the President may disclose the subject matters and decisions taken to press and broadcasting media providers. (2) Resolutions of non-classified and regulatory nature are published by appropriate means.

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

Law no. 6112 does not invoke a general obligation on part of the Supreme Council to consult industry stakeholders and the general public. There are, however, some instances where the Supreme Council is required and/or can have consultation with the other stakeholders. For instance, pursuant to Article 17 of Law no. 6112, the Supreme Council prepares and announces a list of major events by obtaining the opinions of other institutions concerned with the matter in order enable the broadcasting countrywide as live or pre-recorded of national and international events that have substantial importance for the public on television channels that broadcast as unencrypted and free of charge. Furthermore, in the matters related to frequency planning and allocation, as it is regulated under Article 26 (8) of Law no. 6112, the procedures and principles for using the transmitter facilities and the annual rental fees are only put into effect subsequent to obtaining the transmitter building and operating company's opinion with the approval of the Supreme Council.

Pursuant to Article 37(1)(n) of Law no. 6112, the Supreme Council is further asked to obtain opinions of relevant ministries and institutions while duly signing documents of which do not constitute an international treaty for the purposes of representing Turkey in organizations that have legal personality under international law in relation to broadcasting services and fulfilling the duty of representation at international organizations that do not have a legal personality under international law wherein media service providers are not members.

Lastly, there is a possibility to have outsider people to be present at the Supreme Council deliberations. Pursuant to Article 40 (6) of Law no. 6112, relevant people may be invited to Supreme Council meetings for their opinions if needed. However, Supreme Council resolutions cannot be taken in the presence of those people who are invited.

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

The Law no. 6112 was prepared with the intention of solving current problems the Turkish media sector has been facing. It contains completely new provisions alongside articles that repeat related provisions of the repealed Law no. 3984. The most important changes may be summarized under the following four titles[29]:

1. The Turkish Media Sector has been regulated in accordance with EU standards. For example, the Audiovisual Media Services Directive 2010/13/ EU has been taken into

[29] See TV and on-demand audiovisual services in Turkey; available at http://mavise.obs.coe.int/country?id=32

consideration in terms of the responsibilities of crossborder media service providers. The scope of Article 3, titled "Definitions", is enlarged to include the new concepts mentioned in the Directive. Namely, new items such as European works, media service provider, editorial responsibility and commercial communication have been added.

2. The articles relating to advertising have been revised and broadened. The time allowed for commercial breaks is limited to 20% per hour while the media service provider decides on the frequency of the breaks. Product placement is permitted in cinema and TV films, TV series, sports and entertainment programmes, provided that it does not infringe the editorial independence and responsibilities of the respective media service providers.

3. The period and date of the transition to digital terrestrial broadcasting have been clarified. The procedures relating to the frequency planning are regulated in detail in Article 26. A provisional article declares that the transition to digital terrestrial broadcasting has to be completed in 2015. The term of the broadcasting license is extended from five years to ten.

4. The partnership structure of radio and television enterprises has been revised. One of the most important changes concerns the structure of media companies. However, with the new law, the ratio for the share of foreign capital has been raised to 50%.

Despite the progress achieved with the implementation of Law no. 6112 in view of harmonizing the domestic law with the AVMS Directive, there are some points of concern that may be summarized as follows:

1. There is an incompatibility with the AVMS Directive on the issues related to the independency and the scope of editorial responsibility of the media service producer. (Article 6 of Law no. 6112)

2. The powers given to the Prime Minister and relevant Minister to impose a temporary ban in times of emergency have the risk of arbitrary use of these executive powers. (Article 7 of Law no. 6112)

3. The principles on media services under Article 8 of Law no. 6112 are of nature which has a great potential to limit the freedom of expression. As it is often observed in the sanctions/fees imposed, the grounds defined under the article in question- e.g. obscenity, national security- used for sanctions are widely interpreted by the Supreme Council and this carries the risk of creating a high level of censorship and impedes with the principles of media freedom.

4. Administrative sanctions have a very wide scope of application and the fees imposed are not always proportional to the infringements. (Article 32 of Law no. 6112)

5. The Supreme Council's independence from the Government is controversial. The Supreme Board of RTÜK is appointed by Members of Parliament with a certain number of members that can be appointed by the majority and a (smaller) number by the parliamentary minority. Although the qualifications set out in law for the members are similar to those in many countries and the idea is that they should be professional and act independently, the perception is one of politicisation – with members having to please "their" Members of Parliament. With a more independent method of appointing the board it would be easier for them to explain their work and avoid the suspicion that they are acting on political orders from any one side. (Article 35 of Law no. 6112)

6. The fact that the Supreme Council's deliberations are confidential unless disclosure decision is taken increases the concerns as to the transparency and the accountability of the Supreme Council (Article 40 of Law no. 6112)

United Kingdom

Questionnaire (incl. review of INDIREG country table)

I. Comments on INDIREG country table of 2011

Please comment on the respective tables of the former INDIREG study where necessary.

General Information

Table 1: Note that it is planned to stop broadcasting BBC3 but to transmit it on-line only. A consultation is currently underway. Ofcom is additionally licensing 25 local service providers (on DTT multiplexes). ATVOD lists notified service providers which fall within the regulatory schema here: http://www.atvod.co.uk/regulated-services/directory-of-notified-services; note changes in rules about classification may have resulted in in perceived number of providers (see ATVOD 2014 Report) (available here: www.atvod.co.uk/uploads/files/Annual_Report_2014.pdf).

Table 2: The implementation of rules relating to protection of minors as regards VOD have been changed. Section 368E(2) Communications Act provides that on-demand material that might seriously impair the physical, mental or moral development of persons under the age of eighteen must only be made available in a manner which secures that such persons will not normally see or hear it. Following concerns from the DCMS in 2010 about whether children were sufficiently protected from harm arising from sexually explicit material, Ofcom recommended in its 2011 Report than new provision be made to regulate material classified as R18. The result was The Audiovisual Media Services Regulations 2014 (SI/2014/2916 available: http://legislation.data.gov.uk/cy/uksi/2014/2916/made/data.htm?wrap=true).

Tables 3 and 4: The regulatory structure remains broadly the same (changes relate to ATVOD and the scope of its powers (see SI/2014/2916); Ofcom now has responsibility for postal services as regards the universal service obligation (Postal Services Act 2011)).

Table 5: According to Ofcom's annual report 2014 (available https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/328063/Ofcom_Annual_report_2013-14_ACC_Fin.pdf) Ofcom's budget for 2013/14 was £117m, but actual expenditure was audited at £111.6m; its estimated budget for 2014/15 is again £117m. Staff costs reduced from £61,634,000 in 2012/13 to £ 60,920,000 in 2013/14. As at 31 March 2014, Ofcom had 790 employees (2013: 778); Board members are excluded from this figure.

The ASA's 2013 Annual Report reported a proposed budget of £8,105,418 (with an overspend of £258,843). Staff costs increased to £5,515,948.

ATVOD's income was £513484 (higher than forecast), and staff costs (including pensions) were given as £330,246 (in increase on £313090 in 2013).

Institutional Framework

Ofcom's powers as regards postal services are found in the Postal Services Act 2011 (available: http://www.legislation.gov.uk/ukpga/2011/5/contents).

Note amending SI The Audiovisual Media Services Regulations 2014 (SI/2014/2916) (above) affecting ATVOD and Ofcom regarding protection of minors and 'R18' content. The powers of ATVOD and the ASA are delegated from Ofcom. ATVOD's designation has been amended: first in 2012 to allow more operational freedom; and second in 2014, to take into account the new statutory requirements in the Audiovisual Media Services Regulation 2014.

Table 6 specifies the CAP Code as the legislation setting up the body. The CAP Code is not legislative in nature, nor does it establish the ASA. It sets out the rules applicable to non-broadcast advertising (including on-line advertising). There is no legislation setting up ASA (indeed Table 7 recognises this as the ASA is a non-statutory body). Further, the governing legislation refers to the advertising framework – which is clearly relevant – but it does not mention the Communications Act , under which act Ofcom has power to regulate broadcast advertising, a power which it has delegate to the ASA. Note that following changes to the OFT, it is now Trading Standards which operates as backstop regulator to the ASA regarding non-broadcast ads (which can include VOD ads).

Table 8 refers to the BBC Trust; this body is not referred to elsewhere in the report. The Trust's powers and responsibilities are found in the Charter (Cm 6925, Oct 2006) and the Agreement (Cm6872, Oct 2006), as elaborated by a number of protocols to those documents. The Agreement was amended in March 2010 to reflect the changes made to UK law as a result of the implementation of the Audio Visual Media Services Directive. Subsequent amendments in 2011 related to the most recent licence fee settlement, which gave the BBC further responsibilities with regard to the World Service and the roll-out of next generation broadband. The text of the various documents can be found here: http://www.bbc.co.uk/bbctrust/governance/regulatory_framework/charter_agreement.html.

The BBC operates under the BBC Trust, which can arguably been seen as part of a self-regulatory system (albeit one set up under executive authority), although OFCOM also regulates the BBC in relation to some issues. The Trust oversees the development and implementation of the BBC's public purposes as set down in the BBC Agreement and Charter (BBC Charter Article 22(c)); it has a budgetary oversight role. It also acts as a complaints body. The BBC Trust is under an obligation to report (BBC Charter Article 45) as elaborated in the Protocol: http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2010/d2_annual_report.pdf. The BBC is required to consult on the public value test (BBC Agreement Clauses 20 and 26; BBC Agreement Clause 103); it may also consult on other matters, as set out in its policy of engagement (available: http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/d1_audience_engagement.pdf). Note also the role of Audience Councils representing each of

the home nations (BBC Charter Article 39). I am unclear whether the Trust should be included in this report as it has not been mentioned elsewhere.

Powers of the Regulatory Bodies

Table 12: ATVOD Rules and Guidance provides further information on the implementation of the AVMSD rules falling within ATVOD's remit. It has carried out investigations regarding scope and regarding protection of minors (see below). It responds both to complaints and 'pro-active enforcement'. Similarly, the ASA Code further implements AVMSD requirements with regard to advertising (but not product placement/sponsorship with fall within Ofcom's remit). The ASA monitors advertising itself as well as responding to complaints from viewers and other members of industry. Note amendments to BBC Agreement following implementation of AVMSD, extending obligations to on-demand services.

Table 13: Information is now available as to ATVOD's use of powers. Its 2014 Annual Report shows it taking action against un-notified services and services not complying with ATVOD Rules. Further details of ATVOD's activity are contained in Part 2.

Table 14: ATVOD also considers complains from viewers (though it notes most complains concern charges, which lie outside its remit). In the first instance the complaint is referred to the service provider for resolution and it is only if that is ineffective that ATVOD considers the matter. A form is available on ATVOD's webpage for the making of a complaint.

The ASA considers complaints made about advertising, not programmes.

Note the BBC Trust also considers complaints from viewers. It is effectively the final stage of the BBC complaints process, via two Committees; the Editorial Standards Committee (ESC) and the Complaints and Appeals Board (CAB), should complainants not be satisfied with the responses they have received from the BBC's Management. It is the ESC which deals with programme content, whereas the CAB deals with other issues, such as fair trading. Ofcom may also been involved in BBC programmes standards, e.g. regarding impartiality or programme quotas (see s. 198 Communications Act regarding Ofcom's functions vis a vis the BBC). In some instances both the Trust and Ofcom will investigate a matter – e.g. the complaints of anti-Semitism in the reporting of the attacks on Charlie Hebdo.

Internal Organisation and Staffing

Table 15: ATVOD is led by a Board, which has an independent chair. The Board has five independent members and four others, representing industry. The independent members are non-industry but do not need to represent any particular segment of society. There is no provision for representatives of government or parliament. In addition, ATVOD has a chief executive, but the chief executive is not a Board member. ATVOD has also set up an

industry forum, which according to the forum's terms of reference, is to 'facilitate a two-way communication between the industry and ATVOD'. The ATVOD board meets regularly and minutes are published on the ATVOD website. There is a code of conduct and a register of interests. Purdah provisions apply for independent members. This information is now on the ATVOD site.

The BBC Trust comprises 12 members, led by a Chairman. There are four National Trustees who represent England, Scotland, Wales and Northern Ireland, and there is also an International Trustee who has specific oversight of the BBC's international public services, including the World Service. The Trust is advised by 4 audience councils, representing the home nations. It is supported by the Trust unit which provides administrative support: the Trust Unit currently employs approximately 70 people. The Trust is separate from the executive body of the BBC. The Trust operates under a code of practice (most recent version April 2014) covering issues such as hospitality, political activities etc. It is available here: http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_operate/2014/code_of_practice.pdf

Table 16: Decisions on compliance with ATVOD rules are made by the Board (see guidance on procedure after an initial investigation by the executive: http://www.atvod.co.uk/uploads/files/ATVOD_Breach_Determination_Process_Jan_2014.pdf); there is a special subcommittee to hear 'determinations' for breach of rules. Decisions are reported to the main board. Minutes of that Board are published.

Table 17 et seq: the recruitment process for board members is available on the ATVOD web site:
http://www.atvod.co.uk/uploads/files/Board_Member_Recruitment_Policy_March_2014.pdf

The policy is based on the Code of Practice (2012) established by the Commissioner for Public Appointments. Vacancies are filled through a competitive process following advertising of the role. There is no fixed term of office; this will be specified in the appointments information. There are no general provisions regarding early termination and no information on whether there have been any early departures. Details of Board Members standing down are recorded in the minutes.

All BBC Trustees are appointed by the Queen on advice from Ministers after an open selection process – effectively the trustees are government appointments. Note that there is guidance to ministerial departments on such appointments: http://publicappointmentscommissioner.independent.gov.uk/; and https://www.gov.uk/government/publications/code-of-practice-for-ministerial-appointments-to-public-bodies.

Decisions on compliance with the BCAP or CAP code is made by the ASA Council (which also operates as the ASA Board). It comprises 13 members, two-thirds of which are independent of industry; the remaining members have a recent or current knowledge of the advertising or media sectors.

Table 20: the ATVOD board structure distinguishes between industry members and independent members. Once appointed Board members must comply with the code on conflicts. This applies during the term but does not seem to have specific post office application. General statutory rules (Communications Act s 393 (disclosure of confidential information – noted as part of ATVOD's designation notice)) and the Bribery Act 2010) apply to all. Within the rules on determination of breaches, there are provisions to avoid conflict in individual cases.

Financial Resources

See above regarding budget and income. Nature of sources of income remain the same, though ATVOD has introduced a banded fee structure, resulting in a reduction of income.

Financial auditing for Ofcom and ASA remains the same. ATVOD also publishes an annual report including the financial reporting required by companies legislation (available here: http://www.atvod.co.uk/uploads/files/Annual_Report_2014.pdf).

The terms of ATVOD's designation require it to submit a report to Ofcom on the exercise of the delegated functions (see schedule to Designation Order: http://www.atvod.co.uk/uploads/files/amended-designation011214.pdf).

The BBC is funded by a licence fee payable by each household with a television set. It additionally has commercial income. Licence fees for 2014 were stated as £3,726m, with other income totalling £1,340m. The BBC is required by the Charter to produce accounts which are externally audited. The most recent financial statements can be found here: http://downloads.bbc.co.uk/annualreport/pdf/2013-14/BBC_Financial_statements_201314.pdf

Of this, some monies go to funding the BBC Trust. The Trust has stated that its direct costs will be less than 0.31% of licence fee income and that for the most recent period, its direct costs were 0.25% (and increase on 2012/13: 0.24%).

Checks and Balances

Tables 28 et seq refer to regulatory bodies and the information refers only to Ofcom as a result. Note that the Designation Orders with regard to both the ASA and ATVOD include reporting obligations concerning the carrying out of their respective designated functions. Both bodies have been set KPIs with regard to the carrying out of their functions. The Designation Orders envisage the possibility of appeal to Ofcom, or the referring of cases to Ofcom, in which Ofcom may overturn or substitute its decision for that of ASA/ATVOD. The designation requires them to have a complaints handling procedure.

Procedural Legitimacy

Tables 36 and 37: Under its designation, ATVOD is obliged to consult and carry out impact assessments in relation to the carrying out of the Designated Functions in circumstances where Ofcom would be required to do so to comply with section 7 Communications Act. The ASA Designation likewise empowers the ASA to commission research (s.368(B)(11) Communications Act), and is likewise required to carry out impact assessments where Ofcom would be required so to do under s7 Communications Act.

Public consultations

Ofcom 2014: 10 (7 of these related to sports broadcasting and listed events). An additional consultation was carried out on the renewal of Channel 4 licence, which was presumably affected in a general way by AVMS provision (likewise renewal of Chanel 3 and5 licences consultation in 2013); it also consulted on the renewal of the co-regulatory system of regulation for broadcast advertising. There was one listed events consultation in 2013. 2012 saw two sports consultations, as did 2011. Additionally Ofcom consulted on ATVOD's fee levels. 2010 saw 4 listed events, a consultation on ATVOD appeals procedures and its fees. There was also a consultation on commercial references in television programming. In addition, OFCOM publishes its annual work plan each year for consultation; this is likely to have elements of AVMSD policy area within it each year. Details of all OFCOM consultations for 2013/14 can be found at pp. 40-43 of its annual report (available here: http://www.ofcom.org.uk/files/2014/07/annrep1314.pdf).

While the ASA carries out research and surveys it seems much less frequently to carry out formal consultations. See here for list: http://www.asa.org.uk/News-resources/Reports-and-research.aspx. It takes advice from consumer and industry panels, however.

ATVOD has consulted on its fee structure each year since 2010. It also consulted on notification Requirements (2012); scope of ODPS (2013) and access service (2011).

Cooperation.

Following the changes to the regulation of VOD concerning R18 content, there has been a MoU between ATVOD and the BBFC, which runs the video classification system on with R18 is based.

According to Cl. 91 of the BBC Agreement, the BBC must co-operate with Ofcom in connection with any function of Ofcom's under section 198 of the Communications Act 2003. There is additionally a MoU between Ofcom and the BBC Trust, available: http://www.ofcom.org.uk/files/2010/06/Memorandum-of-Understanding-between-The-Office-of-Communications-Ofcom-and-the-BBC-Trust.pdf.

II. Additional Questions

1. Type of Regulation

What type of regulatory model has been adopted in your country (state regulation, co- or self-regulation)? What is the scope of competence of the individual regulator(s), i.e. is there one converged regulatory body competent for all (audiovisual) media (and possibly even for the underlying infrastructure) or is competence split between separate entities, depending on whether a public service broadcaster or a private broadcaster, a television broadcaster or a provider of another audiovisual media service is concerned?

What is the hierarchical structure internal to the regulator? If applicable: can you give reasons or refer to public debates why a co- or self-regulatory model has been established in your country?

The UK has adopted a mix of regulatory structures: regulatory, co-regulatory and self-regulatory. The backbone is OFCOM, the UK's converged communications regulator.

Ofcom has regulatory competence for all broadcasting whether commercial or public service (though note role also of BBC Trust); the key factor is the nature of the service provided. So 'Television Licensable Content Service (TLCS) licences are required for services providing television programmes or electronic programme guides or both, irrespective of the delivery methods: satellite, cable, radio multiplex, or delivery over IP and mobile. The content of the service does not affect the type of licence either – the same licence is required whether or not the content comprises editorial/programme based content, self-promotional or teleshopping and commercial communications. The definition of Definition of TLCS is found at s. 232 Communications Act 2003. The exception to this principle is Digital Terrestrial Television, which requires a different type of licence, but is still regulated by Ofcom. Services made available on a television multiplex (digital terrestrial television) are licensed as Digital Television Programme Services (DTPS) or Digital Television Additional Services (DTAS). Again the content of the service and the institutional structure of the provider do not affect the assessment of what sort of licence is required. Ofcom also has responsibility for the granting of the DTT multiplex licences (Broadcasting Act 1996), with the exception of 'Multiplex 1', which is granted by the government to the BBC.

Ofcom has certain regulatory responsibilities to regulate broadcast content, in part implementing the AVMSD. Originally, on-demand programmes were excluded from Ofcom's remit, until the changes introduced by AVMSD. Then the Communications Act was amended to include general duties on Ofcom in relation to the regulation of those who provide on demand programmes via the internet, known as On Demand Programme Service (ODPS) providers. (Note parallel changes to BBC Agreement, discussed above.)

Ofcom is a traditional top down regulatory body, but OFCOM operates under a statutory self-denying ordnance, seeking the lightest touch regulation and with a preference for de-

regulation. The exception is perhaps the broadcasting sector where it still operates – as far as the DTT licensees are concerned – quite a detailed regime, albeit one that relies on a certain degree of self-reporting (in terms of meeting programming obligations). More in line with the deregulatory approach, it has devolved some of its regulatory powers top 'bottom –up' bodies (though note ATVOD had to undergo some reformation to be considered acceptable in terms of transparency and independence requirements as a designated body) in relation to the ODPS. There was discussion at the time of the changes, but it was thought that a pure self-regulatory model would be insufficient in terms of compliance with EU law, or given the interests at stake. The ASA claims to be a self-regulatory body, but as regards its powers over broadcast advertising operates under (delegated) statutory authority; as regards non-broadcast advertising (which includes on-line and VOD) it has statutory backstops as regards misleading and illegal advertising.

The BBC's position is anomalous. In some regards it is subject to self-regulation via the Trust. The entire system is set up under executive powers, however, although any changes are subject to much public debate. Further, the BBC is subject to OFCOM's jurisdiction in some respects. The BBC Charter is due for renewal soon, and the question of the appropriate form for BBC governance has returned to the agenda as a result.

2. Financing

How is the regulator financed? Does the state contribute (partly or exclusively) to its funding? If yes, are there conditions to receive state funding? Have there been any cut-backs in view of the economic crisis? If so, please specify. Who manages the funds available to the regulator? Is the funding scheme regulated by legislation? Please specify the legal basis.

The various models are set out in the tables from the original report. Note in addition the BBC, which is funded from the licence fee. Here is a link to the letter setting out the most recent licence settlement: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/77800/Lyons_BBC.pdf.

Ofcom is funded by a mixture of government grants for specific activities and fees from the stakeholders that it regulates. Funding has been reduced, inspired by the Government's spending review. In 2011, Ofcom announced that it would reduce its total budget by 28.2 per cent in real terms over four years to 2014/15. In terms of assessing this reduction, note also that Ofcom became responsible for postal regulation during this period and that figures given in annual reports relate to all Ofcom's regulatory functions, not just the audiovisual sector. In evidence given to the Leveson inquiry, Ofcom estimate the cost of content regulation to be approximately £3m (http://media.ofcom.org.uk/files/2012/02/Second-Witness-Statement-of-Ed-Richards1.pdf) and which identifies in more detail which income streams relate to which

of Ofcom's regulatory functions. The evidence refers to s. 347 Communications Act to make the point that:

> Our administrative costs for carrying out our functions in relation to broadcasting are funded by broadcast licensees and not grant-in-aid.

It continues:

> The basis on which we collect our administrative costs for these functions is set out in our Statement of Charging Principles [available at: http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charqinqprinciples.pdf]. Our functions in relation to the BBC and S4C (the Welsh fourth channel) are determined separately and recovered from them'. [para 4.3]

ATVOD is funded by fees (though it was originally transferred to designated status with the aid of a loan from DCMS). The Communications Act and the Designation Order give ATVOD the power to levy fees from ODPS. Under section 368NA of the Act, the aggregate amount of such fees must be sufficient to enable ATVOD and Ofcom to meet, but not exceed, the likely costs of carrying out the relevant functions during that year. Any fee must also represent the appropriate contribution of the provider towards meeting those likely costs and must be justifiable and proportionate having regard to the provider who will be required to pay it and the functions in respect of which it is imposed. ATVOD consults on the level of the fees annually but the final responsibility for the approval of fee levels lies with OFCOM. For recent years, ATVOD has proposed frozen fee levels, meaning a cut in real terms. ATVOD has however been affected by market consolidation meaning reduced fee levels. It noted in its most recent fees consultation (av ailable: http://www.atvod.co.uk/uploads/files/Consultation_on_ATVOD_Fees_for_2015-16.pdf) that this consolidation had come about 'with some providers ceasing to provide an ODPS and others disappearing through mergers and acquisitions' (para 1.10).

The ASA receives no state funding; it is funded by a 0.1% levy on the cost of buying advertising space and the 0.2% levy on some direct mail. The payment of the levy is voluntary. There are two arm's-length bodies tasked with collecting and distributing the funds: Asbof (non-broadcast advertising) and Basbof (broadcast advertising).For Basbof, advertisers pay a levy of £1 per £1,000 on relevant advertising (ie the same 0.1% rate as for non-broadcast advertising), in this case radio and television advertising by Ofcom licensed broadcasters. Basbof board also reviews and approves the budgets of the ASA(B) each year, and based on these, makes funding payments. It also funds the Independent Reviewer, who considers appeals against ASA(B) decisions.

3. Incompatibility Rules

Do conflict of interest rules exist either in the legislation, in executive measures (e.g. guidelines) or in any other documents (e.g. codes of ethics)? If so, do they include the prohibition to be remunerated by a service provider or the prohibition to hold a public/political office? Please also indicate and, where possible, explain where information is unavailable.

See tables 201-22 and comments on them above. Note that there is a general framework for those in public office, called the Nolan Principles, which apply to anyone who works as a public office-holder. They are available here:

https://www.gov.uk/government/publications/the-7-principles-of-public-life.

There are no specific prohibitions on the holding of public office, or specifically payments from service providers though there would be questions under the general codes of ATVOD and the ASA and certainly a person would be excluded from decision-making in relation to that provider.

ATVOD rules require members to disclose details of any public and charitable appointments, directorships, related employments, and relevant financial interests. All shareholdings of a material size in any regulated company (including those of partners and dependent children) are disclosed.

Note also impact of the Bribery Act.

4. Staffing and Resources

How is the regulator equipped in terms of staff, technical and financial resources? In your opinion, is the level of personnel appropriate to the complexity of tasks and to the number of services regulated? If not, please explain. What kinds of technical facilities exist?

Ofcom is a large organisation, albeit one with a wide range of tasks. While it has been under budgetary pressure, it still has a substantial budget and retains a wide range of expertise in house.

The ASA is reporting an increased workload, partly due to expansion in (or clarification of) remit (e.g non-paid for on-line space; on-line behavioural advertising), but also due to an increased number of cases requiring investigation (particularly in the on-line environment). Nonetheless, the ASA income seems secure – increasing slightly and there is no indication that it is struggling. There is however little detail as to employee types or numbers. When renewing the contract with the ASA in autumn 2014, Ofcom made the following assessment of the ASA's performance as regards broadcast advertising:

We note that the advertising industry has, throughout the past decade, made a significant commitment to the co-regulatory system, funding it by means of a levy and participating in both the setting and enforcement of advertising rules to maintain a scheme that fulfils statutory obligations, while minimising costs and administrative burdens. (para 2.12 Ofcom Statement, available:

http://stakeholders.ofcom.org.uk/binaries/consultations/asa-re-authorisation/statement/Statement.pdf)

ATVOD has typically been the poor relation, although the statutory basis for its fees must have helped stabilise it financially, though it seems that the matter remains sensitive for the industry. It is hard to judge the adequacy of the support, although recent accounts show a slight deficit. There are no details as to nature and types of staff, although ATVOD notes it will employ an extra case officer to deal with increasing workload. Complaints seem to be being dealt with broadly within the parameters set as KPIs, and ATVOD report an improvement on previous years' performance.

Note comments on licence fee and on Trust Unit in Part 1. The BBC has additional commercial income. The licence fee was agreed in 2007 for a six year period. Thereafter, the Government decided to freeze the licence fee (£145.50 pa for colour; £49 pa for black and white), but also to require the BBC to do more with the income. The BBC assessed the costs of funding the World Service to be £245million with additional costs for extra responsibilities taken on for S4C, BBC Monitoring, broadband rollout, and Local TV (amounting to £250million). The cumulative effect is that the BBC has been engaged in a money saving exercise, known as 'Delivering Quality First' (DQF). One issue that has dogged the BBC is the pay levels of senior executives, as well as the pay differentials within the organisation. Note the BBC Trust produces a report on executive remuneration as part of its overall obligation to ensure that the BBC produces value for money. The current savings regime has led to questions about the continued existence of BBC3, at least as a DTT channel.

5. Monitoring

Does the regulator conduct monitoring of the services itself or does it entirely rely on complaints by the public? How does the regulator conduct its monitoring (by spot checks or more indiscriminate monitoring techniques)?

See Table 10. ATVOD responds to complaints but also monitors matters itself. Its rules on breach determination identify that it may take such action but do not set out particular circumstances in which it will take action: http://www.atvod.co.uk/uploads/files/ATVOD_Breach_Determination_Process_Jan_2014.pdf, paras16 and 25.

Likewise the ASA will take own-initiative action, but there are no principles available as to how cases are identified. Sometimes, particular themes are identified as being problematic, and the ASA will focus on these aspects and seek to bring the relevant rules and good practice to the sector's attention (see e.g. alcohol adverts; rules for 'VLoggers' –for a list of surveys, see http://www.asa.org.uk/News-resources/Reports-and-research.aspx).

Ofcom responds to complaints, but may also initiate its own investigation, including in relation to fairness and privacy (see e.g. Broadcast Bulletin 233).

The Trust acts as an appeal committee in response to viewer complaints, though it does not accept all complaints. It also carries out reviews every five years to ensure that the BBC is meeting audience expectations and also commission research on particular topics, such as taste and impartiality standards. These reports are made generally available on the Trust website. There is also a website dealing specifically with complaints to the BBC, here: http://www.bbc.co.uk/complaints, which gives details on how to complain and on the outcome of complaints.

6. Sanctions

What kinds of sanctions have been imposed in practice for which infringements? Which rules of the AVMS Directive have been violated most frequently? What is the "track record"? Do fines flow, directly or indirectly, to the state budget? Please give references (to the extent to which information is available). Please indicate explicitly and, where possible, explain when information is lacking or not accessible.

The ASA can issue rulings but in case of a failure to change it can refer advertisers to trading standards under the misleading advertising rules noted in the study for non=broadcast claims (such as those on a website). Here is a link to the press release concerning the first use of the new trading standards regime: http://www.asa.org.uk/News-resources/Media-Centre/2014/ASA-steps-up-action-on-misleading-claims-by-referring-first-two-advertisers-to-Trading-Standards.aspx. The ASA maintains a list of traders who continue to make claims in the face of ASA determinations against them, available on its website. The ASA(B) may refer non-complaint broadcaster advertisers to Ofcom.

Note that some of the broadcasting sanctions cases are in fact cases referred by ATVOD for non-compliance – they often concern hard core pornography. ATVOD details its activity in compliance matters in its 2013/14 Annual Report and a large proportion of the cases (outside those relating to scope) relate to pornography (and these were often linked to failure to notify and failure to pay a fee violations). While many cases settled during the investigation process, in a number of cases further action was required. Such actions result in ATVOD issuing a 'determination'. If a service provider does not take action – or does not take action sufficiently swiftly – ATVOD may issue an enforcement notification under s. 368I Communications Act. An enforcement notice may require a service provider to:

- cease providing a certain programme;
- provide additional information to viewers prior to selection of programme;
- publish a correction; or
- publish a statement as to ATVOD's findings.

Failure to comply with an enforcement notification can lead to ATVOD instigating civil proceedings to enforcement the service's provider's duty to comply with the notice or referring the case to Ofcom. Ofcom may impose financial penalties, as for broadcasters (see below). In 2013-14, ATVOD instigated civil proceedings on one occasion in relation to five cases involving a single service provider and four service providers were referred to Ofcom. Two complied, one went into liquidation and one –concerning hard-core pornography -was made subject to an order by Ofcom under s. 368K(3)(a) Communications Act, the first time this power had been used. It concerned a VOD service which provided R18 material without appropriate protections being in place. Ofcom suspended the provider's right to provide the offending service, or any other service. In its plan for 2015-16, ATVOD notes that in the first 9 months of 'regulatory year' 2014-15 it had taken 120 actions in respect of the protection of minors

While decisions as to whether the broadcasting code has been violated are made by the content committee (and decisions are reported in the Broadcast Bulletins, here: http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/), a separate committee deals with sanctions (the Sanctions Committee). The range of sanctions available to Ofcom includes a decision to:

- issue a direction not to repeat a programme or advertisement;
- issue a direction to broadcast a correction or a statement of Ofcom's findings;
- impose a financial penalty;
- shorten or suspend a licence; and
- revoke a licence (not applicable to the BBC, S4C or Channel 4).

Section 198(5) Communications Act specifies that the maximum penalty that may be imposed on the BBC on any occasion by OFCOM in exercise of a power conferred by virtue of the BBC Charter and Agreement is £250,000. Similar limitations on the size of financial penalties apply in relation to licence holders (s. 237(3) Communications Act).

New procedures were introduced in December 2013 to improve transparency. In its 2013/14 Annual Report, Ofcom noted that it assessed 12,774 complaints about broadcasting standards or licence conditions (down from 16,151 in the previous year), and 241 complaints about unfairness and/or unwarranted infringements of privacy (compared to 183 in the previous year). It also noted that it had needed to take action against broadcasters not respecting the watershed with regard to protection of minors and against those transmitting extremist views, imposing fines in both situations. As regards extremist views see e.g decisions relating to DM Digital (£85,000), Noor TV (£85,000), Sangat TV (£30,000), and Takbeer TV (£25,000).

Penalties levied by Ofcom are passed to HM Treasury (see s. 400 Communications Act 2003). Separate statements of these accounts are prepared: the most recent accounts can be found here, although penalties under broadcasting rules are not distinguished here from those with regard to communications: http://www.ofcom.org.uk/files/2014/07/S400_2013-14.pdf. A breakdown is available on Ofcom's web pages: http://www.ofcom.org.uk/about/annual-reports-and-plans/financial-penalties/financial-penalties-imposed-for-the-period-2013-14/ together with a separate list of broadcasting related cases: http://stakeholders.ofcom.org.uk/enforcement/content-sanctions-adjudications/

In some instances, Ofcom will revoke broadcasting licences (see e.g. Bang TV, Notice of Revocation, 25 November 2010). The framework for licence revocation is found in s. 238 Communications Act. In addition to the provisions specifying these generally applicable sanctions, a specific provision deals with revocation of a licence following incitement to crime (s. 239). From this example notice, it can be seen that the revocation of a licence is not a decision that is made lightly. In this case, Ofcom found a series of serious and repeated breaches of the Broadcasting Code in relation to pornography and the protection of minors from harm by Bang TV the preceding 19 months. Ofcom had found Bang TV to have committed 48 separate breaches of the Broadcasting Code in respect of material contained in 45 programmes. Ofcom provided significant guidance to the broadcaster – either general guidance to the sector and specifically to Bang TV. The broadcasters failed to cooperate with Ofcom's investigation (breaching another condition of the licence) and failed to pay the financial penalty imposed upon them. Ofcom published a proposed notice of revocation subsequent to which Bang TV broadcast more material which breached the relevant code and underlying statutory provisions. It is an offence to broadcast without a licence: s. 13(1) Broadcasting Act 1990.

7. Transparency

a. Is the regulator obliged to make its decisions, recommendations, annual reports or similar documents summarizing its activities available to the public? If not, does the regulator publish such documents on its own initiative? Which form does publication take (e.g. publication in the official journal, on the website of the regulator etc.)? What information is included in the annual report?

b. Is the public aware of the activities of the regulator? Are the activities of the regulator commonly covered by the media (e.g. television, radio, the printed press)?

As at Table 29, specifically regarding statutory underpinning for obligations for Ofcom. All the regulators (including the BBC Trust) publish their decisions, recommendations and annual reports. The designations of both ATVOD and the ASA refer to the need to be transparent and accountable. They are also required to prepare and to publish guidance as to the scope and exercise of their powers. They are also under reporting obligations to Ofcom as noted above. The National Audit Office scrutinises the BBC's performance.

8. Agenda Setting and Enforcement

a. Can the regulator set its own agenda? Can it determine long-term objectives? If not, who determines the policies and goals of the regulator? What issues of the regulation of audiovisual media services have been prioritized by the regulator since the transposition of the AVMS Directive (e.g. interpretation of terms, protection of minors, promotion of European works)?

b. Can the regulator issue interpretative guidance on the application of rules contained in the AVMS Directive? Is this guidance binding on service providers? What guidance has been provided for which aspect of the regulation of audiovisual media services (please include the reference)?

Within remit, all bodies have some freedom to set their respective work plans; the ASA is currently consulting on its future priorities. Ofcom's work plan is set annually and subject to a consultation. The main issue arising for the editorial content regulators has been the protection of minors with regard to pornographic content. ATVOD has also identified promotion of European Works. The ASA has also been concerned with the protection of minors with respect to alcoholic drinks. When AVMSD was introduced it also carried out work on HFSS foods. This is an ongoing issue. Regulators may also respond to policy suggestions from government, or develop a conversation with the relevant department, as in the case of the R18 material. The BBC Trust publishes its annual work plan. The current plan is aimed at the implementation of the BBC governance review, aimed at ensuring the BBC focussed on its core functions. The Trust is currently planning to review BBC commissioning decisions to support the independent sector (in the UK).

The various bodies are obliged to develop codes (with which the service providers must comply) and also to issue guidance. The guidance is just that – guidance. In itself it is not binding.

9. Consultations

Is the regulator obliged to consult industry stakeholders and the general public? Are these consultations institutionalized (e.g. Industry Forum)? If not, does the regulator nonetheless regularly seek the views of the industry and the public? Please give examples of previous consultations. Are the responses by stakeholders made public (e.g. on the website of the regulator)?

All the regulators carry out consultations to a greater or lesser degree. According the BBC Trust Protocol D1, the Trust puts audience engagement at the heart of its role. Consultation forms one part of this process of engagement (see protocol cl. 3.1 and 4.1). While the Trust may consult more widely, BBC Agreement Clauses 20 and 26 require consultation as part of a PVT exercise. BBC Agreement Clause 103 specifies the factors the Trust must take into account when carrying out a consultation – specifically, it must 'do so in ways which are

appropriate to the subject matter of the consultation and to the issues which the Trust considers to be raised by its proposals' and consider whether any groups are likely to be particularly affected by the proposals. Inter alia, the Trust is obliged to produce documents in plain English (and Welsh), and ensure adequate time is provided for responses. The results will be published. The Trust has an obligation to consult Ofcom in certain instances set out in the MoU.

Ofcom has a general duty to carry out an impact assessment exercise under s. 7 Communications Act where the implementation of a proposal would be likely (per s.7(2)):

> "(a) to involve a major change in the activities carried on by OFCOM;
>
> (b) to have a significant impact on persons carrying on businesses in the markets for any of the services, facilities, apparatus or directories in relation to which OFCOM have functions; or
>
> (c) to have a significant impact on the general public in the United Kingdom or in a part of the United Kingdom."

This responsibility is delegated to the relevant co-regulators as specified above. In some instances the Secretary of State is under an obligation to consult – for example in the case of listing of events (s. 299 Communications Act).

10. General Remarks

Are there any other aspects or particularities which you consider significant in the context of the analysis of the regulator's independence and its enforcement of the AVMS Directive in your country?

The implementation of AVMSD in the UK is incorporated into an existing framework generally, so AVMSD implementation is not part of a separate regime. At the time of implementation of AVMSD, however, it was thought that the duties under Union law precluded pure self-regulation (even the BBC's AVMSD derived obligations are set down from outside the organisation, under the terms of the Agreement). This led to the development of certain co-regulatory systems (ASA and ATVOD).

One of the key concerns, particularly with ATVOD, was the need to ensure adequate independence both in terms of composition and in terms of finance. This latter point seems to be an on-going question as (part of) industry seems not to have been greatly accepting of the applicability of regulation still less the need to pay for it. In this context there are then two aspects: one resources; and 2. The impact of internet businesses.

As regards the first, across the public sector there has been a general tightening of financial resources given the current economic climate. It is an open question as to the point at which limitations from finance start to have an effect on independence or effectiveness. Currently,

OFCOM seems still to be well-financed, although it should not be forgotten that its remit is broad.

As regards the second, there is a lurking question about the ability of regulators to make regulation bite on some operators. ATVOD notes the relocation of some porn sites to the Netherlands to avoid UK regulation (with regard to the view of harm to minors arising from pornography). Even the ASA, which has typically been regarded as a well-functioning and effective regulator, has faced some rebellion with regards to online advertising. It states its research shows that non-compliance by internet operators is not a particular problem, yet it has resorted to listing non-compliant web-sites on its own site, indicating the existence of operators which disregard the system implementing advertising regulation in general and which could implicate elements of AVMSD depending of course on the nature of the service (specifically VOD, the boundaries of which are much disputed) provided by the non-compliant provider.

ATALOGUE NUMBER