



# AVMS-RADAR

## AudioVisual Media Services- Regulatory Authorities' InDpendence And Efficiency Rview

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)

### EXECUTIVE SUMMARY

A study prepared for the European Commission  
DG Communications Networks, Content & Technology  
by:



**This study was carried out for the European Commission by**



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## AVMS-RADAR

### AudioVisual Media Services- Regulatory Authorities' InDpendence And Efficiency Review

#### Executive Summary (en)

1. This 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) has been prepared jointly by the Institute of European Media Law (EMR) and the University of Luxembourg (hereinafter: the consortium) on behalf of the European Commission, following the consortium’s successful bid to the Commission’s invitation to negotiate of 28 July 2014. The acronym of the study is **AVMS-RADAR** (AudioVisual Media Services **R**egulatory-**A**uthorities’ **I**n**D**ependence **A**nd **E**fficiency **R**evue).
2. The main **objective** is to update the findings of a previous study, commissioned by the European Commission in 2009, entitled “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, hereinafter: INDIREG study). The study therefore aims to provide updates of the detailed description and analysis of the institutional, legal and regulatory framework governing the regulatory bodies competent for audiovisual media services in EU Member States and candidate countries to the EU (Objective 1) and the analysis of the implementation of said framework in practice and its effectiveness (Objective 2).
3. The consortium pursued an integrated **approach** to both objectives since the legal paradigms and their practical implementation are interlinked and both can have a significant impact on the real degree of independence of a regulatory body. In this vein, similar tasks foreseen under Objectives 1 and 2 have been linked, resulting in a single set of issues to be investigated, comprising both objectives. The analysis covers both the competent regulatory bodies overseeing the activities of public service audiovisual media services providers as well as those for commercial audiovisual media services providers. Regulatory bodies are included in the scope of the study regardless of their structure and actual legal status, for example whether it is an internal oversight Board within a public service broadcaster or a co-regulatory body.
4. The chosen **methodology** included an intensive desk research phase aimed at gathering information about the different legislative, regulatory and institutional frameworks present at the international, supranational and national

levels with regard to the scope and activities of the audiovisual media services regulatory bodies in the countries to be covered by the study. In parallel, the existing data on the specific national situations were extensively complemented and updated by country reports produced by correspondents of the EMR's Media Network in response to a questionnaire developed by the consortium. Appropriate consideration of both regulatory authorities' and stakeholders' viewpoints was secured by including in the overall analysis an evaluation of their feedback to another questionnaire and online survey which were designed specifically for these two groups by the consortium. Following the thorough evaluation of the country reports and with due consideration of the further material, a comprehensive comparative analysis was conducted with a view to identifying differences and common traces of the different national legal frameworks.

5. The **structure** of the final report is composed of two parts. The first part includes a description of the legal framework currently in force at EU level including an overview of relevant texts from the Council of Europe. In the second part, an updated description of the legal, institutional and regulatory framework in place in EU Member States and candidate countries and its efficient implementation in practice is given. A list of the experts that have contributed to the study with country reports is included in Annex 1 of this report. Annex 2 contains the questionnaire sent to these experts. Screenshots of the online-survey are included in Annex 3 of this report. In order to complement the issue-based description of the final report, Annex 4 contains the country overview tables from the former INDIREG study for each monitored country, but in the version as they have been updated by the national experts. In order to make the numerous changes visible, the track changes mode has been used. Finally, Annex 5 contains the answers of the national experts to the questionnaire drafted by the EMR.
6. It emerges from the comparative analysis that all regulatory authorities are separate legal entities whose **independence is explicitly or implicitly recognized** by the national legal framework with the exception of one authority that constitutes a governmental organisation. While the regulatory framework has remained stable in most countries investigated in the study, in a few countries new regulatory bodies have been established. Staffing and budget are heavily dependent on national conditions and thus show great variety across all countries. It seems as if problems concerning staffing and financial resources are more likely to occur or become evident in case of "small" regulatory authorities in countries which have limited resources to fund them.
7. Both the **financial and human resources** of the regulatory bodies responsible for audiovisual media services need to be acquired from external sources. With regard to the highest decision-making organ within the regulatory body (the Board), this situation requires careful selection of its members so as to ensure that all relevant views are represented in it in a balanced way. The size of regulatory bodies' Boards spans from three to 13, except for a few countries

where in certain cases an individual person acts as the highest decision-making body and a few other countries which have significantly higher numbers. While the sizes of Boards have remained unaltered in a majority of countries, when changes occurred they typically came about as a consequence of extensive reforms of the entire regulatory body.

8. A **balanced representation of stakeholder views** within the Board is also dependent on the socio-economic backgrounds of its members. In most countries, Boards are legally required to be composed of members acting for diverse social, economic and political groups. In nearly two thirds of the countries experts in fields related to (audiovisual) media are represented in the Board. In a few others, members do not explicitly represent certain groups, but are actually nominated and/or appointed by these.
9. Of equal importance for the proper fulfilment of the Board's functions is the **professional qualification and expertise** of its members. However, while in most countries requirements in this regard exist, they are missing completely in a considerable number of countries. Where legal requirements are in place, they vary substantially. In some countries, only some education, but no work experience is required, whereas others only require a certain degree of professional experience.
10. Existing **rules to prevent conflicts of interest** at all stages of Board membership are a strong indicator for the independence of Board members, as they can ensure that undue influence on the decisions of the Board is reduced to a minimum. While specific conflict of interest rules preventing candidates from being appointed in case of existing incompatibilities are widespread, they are missing in seven countries. In the majority of countries, specific incompatibility rules also apply at senior staff level. As far as they exist, the rules mostly cover a wide range of potential conflicts of interest, from incompatibilities with Government, political parties and sometimes the legislature as well as the regulated branches. The laws of more than half of the countries prohibit Board members from holding any other position during their membership in the Board, and they also provide for a cooling-off period after the Board member's term of office in order to prevent members from abusing their position regarding decisions taken in favour of a potential future employer.
11. In procedural terms, the **rules governing the appointment and dismissal** of Board members (including the chairperson) and their practical implementation call for a closer look as they may have an impact on the independence with which a Board member conducts his or her functions. Candidates for the Board are, in most countries, selected through a two-stage procedure, featuring separate nomination and (subsequent) appointment stages. Often, however, this procedure does not apply to the chairperson. On the other hand, in some countries, the chairperson is elected directly from among the Board members. As far as a two-stage model is applied, it is mostly a legislative or executive

organ of the State (Parliament, Head of State or (a part of) the Government) that is responsible for the actual appointment. State bodies or individual Members of Parliament are also usually in charge of the nominations. In the majority of countries, the Government is involved either at the nomination or at the appointment stage of the procedure.

12. Board members are, in most countries, appointed for a **term** of between four and six years. Shorter terms of one or two years are foreseen in very few cases for chairpersons. Noteworthy are long terms of seven and nine years in a few countries. Particularly where these terms have only been extended in the past years, this might point to a potential democratic deficit. In the overwhelming majority of countries, laws to protect Board members against arbitrary dismissal are effective. In these countries, a Board member can only be dismissed for one of the reasons specified in law, which mostly include health conditions, cases of serious misconduct, violations of conflict of interest rules, a request by the Court of Auditors or by the Board member him or herself. Changes in this area have remained minimal in the past years and mostly did not touch upon substantial issues. In practice, dismissals ahead of schedule have been limited to a handful of cases in the past five years.
13. Since the regulatory body cannot produce its own resources, its **financial independence** is determined by the way in which the regulatory body can enforce the funding entity's financing obligation. Generally spoken, in all countries, the regulatory body is involved, at some stage, in the decision-making process about the financial needs. In the great majority of countries, regulatory bodies are to a large part or exclusively financed by the State. In some countries, a mainly fee-based funding model applies, whereby fees are collected either from the broadcaster (licence and authorisation fees) or from the end-user (broadcasting fee) or from both. In more than two thirds of the countries, the final decision concerning the regulatory body's annual budget lies with the Parliament. In seven countries, the regulatory body itself decides on its budget. In three countries, the Government or the competent Ministry takes the ultimate decision over the regulatory body's budget. In the years after the INDIREG study, there have only been very few changes in this regard, most of which brought about a more prominent role of the Parliament in the decision-making process.
14. The **range of powers** granted to regulatory authorities is indicative of their independence. The more comprehensive their powers are, the more they can assert themselves within the national context (e.g. vis-à-vis the Government or the industry). While less than half of the regulatory authorities examined in this study have been given policy *setting* powers, all bodies are entrusted with policy *implementing* powers. The power to take decisions, which are binding on third parties, is attributed to all regulatory authorities and pertains to the core of their powers. Changes with regards to the existence of regulatory powers have occurred in a handful of countries where regulatory bodies have gained such powers. To this end, their independence was strengthened.

15. In order to effectively enforce the law, regulatory authorities are equipped with different **monitoring powers**. With the exception of two regulatory authorities, all other regulators have been empowered to conduct systematic monitoring. Similarly, all regulatory authorities but one have been granted ad-hoc monitoring powers, and all regulatory authorities are authorized to collect information from third parties. Complaints may be initiated by the general public in many countries.
16. Apart from monitoring powers by which regulatory authorities oversee compliance with national media laws, the **power to impose sanctions** constitutes another indicator of the independence of regulators. Typically, national laws prescribe a graduated sanctioning scheme comprising a number of sanctions of different intensity. While almost all regulatory authorities may impose warnings and fines, considerably less regulatory authorities are endowed with the power to order publication of their decisions in media outlets of the concerned providers. Furthermore, the power to suspend a service or revoke a license has been attributed to all but a few regulators and is mostly regarded as a sanction of last resort, but not all regulatory authorities have the power to impose penalty payments in case of non-compliance with their decisions. It follows from the analysis that all regulatory authorities seem to have adequate sanctioning powers to be able to enforce the law.
17. The position of a regulator within the national regulatory arena may also be indicative of its independence. At national level, **collaboration with other regulators** operating in different fields is indispensable in implementing the Government's policies consistently. Thus, all regulatory bodies cooperate with other bodies regulating the media or different aspects of the market for audiovisual media services. Cross-sector cooperation (with consumer or competition agencies) is equally common. In most countries, such collaboration is voluntary and designed in rather loose fashion. Cooperation between regulators at European or international level has increased in the last years. Bilateral or multi-lateral cooperation exists between neighbouring countries or countries sharing the same language, history or culture. More institutionalized forms of cooperation such as EPRA and ERGA have been established at European level and are actively supported by the regulatory authorities.
18. There have been very few changes regarding the **bodies to which regulatory authorities are formally accountable**. Overall, there has been a small increase in the amount of regulators that are accountable towards the Parliament, a specific ministry, the Government or the Head of Government. Whereas there has been a small increase in the amount of regulators being obliged to undergo an audit by a public audit office, there has been no change regarding the periodicity of such an obligation. In the same vein, there has almost been no change in the reporting obligations of the regulatory authorities towards statutory organs (e.g. Parliament or Government). While a few more obligations have been introduced for regulatory authorities to conduct public

consultations, there have been almost no changes in the question of who needs to be consulted and the period of consultation. Further, no changes could be detected regarding the publication obligations of regulatory authorities.

19. Concerning **judicial review** of the decisions of regulatory authorities that might have an impact on regulators' independence, it can be noted that little has changed. Similarly, there have been no changes at all regarding the appeal bodies and the status of complaining persons or companies. While the possibility of the appeal body to suspend the regulator's decision has been newly introduced in two countries, it has been abolished in one country, and limited in another. In two countries, appeal bodies are newly empowered to replace the regulator's decision with their own, whereas in one country the appeal bodies of the second and third stage of the appeal procedure have lost this power.
20. As an **overall observation**, it is noteworthy that there have been only a few major changes in the national landscapes governing regulatory authorities. Where these occurred they were indeed significant such as for example the establishment of new bodies in some of the monitored countries. In many cases there have been a series of smaller amendments, for example the extension of regulatory powers, prolongation of terms of office for chairpersons and Board members, increase of consultation obligations, or changes in judicial review procedures. However, the study supports the conclusion that in general regulatory authorities in the audiovisual sector are both independent to a sufficient degree and function efficiently.



European Commission

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