

INDIREG

FINAL REPORT – ANNEX

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)

Annex II – Country Tables – Austria

Table of contents

I.	GENERAL INFORMATION	2
	Table 1 - Market data	2
	Table 2 - Audiovisual laws and regulatory bodies	2
	Table 3 - Regulatory bodies – general information	4
	Table 4 - Sectors covered	5
	Table 5 - Staff and overall budget	6
II.	INSTITUTIONAL FRAMEWORK	7
	Table 6 - Legislation establishing and governing the regulatory body	7
	Table 7 - Legal status	8
	Table 8 - Independence as a value	9
III.	POWERS OF THE REGULATORY BODIES	9
	Table 9 - Regulatory powers	9
	Table 10 - Supervision and monitoring power	10
	Table 11 - Powers of sanctions	13
	Table 12 - De facto use of formally granted competences and monitoring powers	14
	Table 13 - De facto use of formally granted sanction powers	15
	Table 14 - Complaints handling	15
IV.	INTERNAL ORGANISATION AND STAFFING	16
	Table 15 - Highest decision-making organ – composition	16
	Table 16 - Highest decision-making organ – competences and decision-making process and transparency	16
	Table 17 - Highest decision-making organ – appointment process	18
	Table 18 - Term of office and renewal	19
	Table 19 - Professional expertise/qualifications	19
	Table 20 - Rules to guard against conflicts of interest – Appointment process	20
	Table 21 - Rules to guard against conflicts of interest – during term of office	20
	Table 22 - Rules to guard against conflicts of interest – after term of office	21
	Table 23 - Rules to protect against dismissal	22
	Table 24 - Dismissal before term	23
V.	FINANCIAL RESOURCES	23
	Table 25 - Sources of income	23
	Table 26 - Annual budget	25
	Table 27 - Financial accountability – auditing	25
VI.	CHECKS AND BALANCES	26
	Table 28 - Formal accountability	26
	Table 29 - Reporting obligation	27
	Table 30 - Auditing of work undertaken	27
	Table 31 - Power to overturn/instruct	28
	Table 32 - Number of stages in appeal procedure	30
	Table 33 - Does the regulator’s decision stand pending appeal?	31
	Table 34 - Accepted grounds for appeal	31
	Table 35 - Does the appeal body have power to replace the original decision with its own?	31
VII.	PROCEDURAL LEGITIMACY	32
	Table 36 - External advice regarding regulatory matters	32
	Table 37 - Public consultations	33
	Table 38 - Public consultations – figures	33
	Table 39 - Publication of regulator’s decisions	34
VIII.	COOPERATION	34
	Table 40 - Cooperation with other regulatory authorities	34
	Table 41 - International cooperation	35

I. GENERAL INFORMATION

Table 1 - Market data

This table is aimed at gathering information on the number of audiovisual media services that are supervised in the country.

Country	Number of linear commercial services	Number of non-linear commercial services	Number of public service channels (PSBs)
Austria	<p>In total: 200 permissions or notifications according to PrTV-G (henceforth AMD-G) See: www.rtr.at/de/rf/Fernsehveranstalter Note, that multiple permissions or notifications are needed to distribute the same service via different platforms (cable, satellite, terrestrial) and in different regions. In sum, there are approximately 160 different services provided under an Austrian notification or permission, approximately 45 of them nation-wide.</p>	No information available	<p>3 (ORF 1, ORF 2, ORF Sport Plus) Note, that ORF 2 provides windows with regional programs in the 9 Austrian regions (Bundesländer).</p>

Table 2 - Audiovisual laws and regulatory bodies

This table lists the regulatory bodies in charge of overseeing the areas covered by the Audiovisual Media Services (AVMS) Directive, in relation to commercial linear television, non-linear audiovisual media services and public service broadcasters (PSBs). It also lists the relevant laws.

Country	Areas	Main laws	Regulatory body in charge of commercial television	Regulatory body in charge of non-linear commercial media services	Regulatory body in charge of PSB
Austria	Information requirements (art. 5 AVMS Directive)	<p>§ 29 (2) AMD-G § 18a ORF-G www.rtr.at/en/rf/RFGesetze</p>	KommAustria; BKS	KommAustria; BKS	KommAustria; BKS
	Audiovisual commercial communication, sponsorship, product placement (Art. 9 – 11 AVMS Directive)	<p>§ 37 AMD-G (sponsoring) § 38 AMD-G (prod. placement) § 16 ORF-G (prod. placement) § 17 ORF-G (sponsoring)</p>	As above	As above	As above

Country	Areas	Main laws	Regulatory body in charge of commercial television	Regulatory body in charge of non-linear commercial media services	Regulatory body in charge of PSB
	Accessibility to people with a disability (Art. 7 AVMS Directive)	§ 30 (3) AMD-G § 5 (2) ORF-G	As above	As above	As above
	Broadcasting of major events (Art. 14 AVMS Directive)	§ 3 FERG	As above	N/A (FERG covers audiovisual broadcasters only)	As above
	Access to short news reports (Article 15 AVMS Directive)	§ 5 FERG	As above	Not applicable (FERG covers audiovisual broadcasters only)	As above
	Promotion of European works (Art. 13, 16, 17 AVMS Directive)	§§ 11—12 ORF-G § 40 AMD-G § 50 AMD-G	As above	KommAustria; BKS	As above
	Hate speech (Art. 12 and 6 AVMS Directive)	§ 30 (2) AMD-G § 10 (2) ORF-G	As above	As above	As above
	Television advertising and teleshopping, (Art. 19 – 26 AVMS Directive)	§§ 13—15 ORF-G §§ 31—36 AMD-G §§ 42a—46 AMD-G	As above	As above	As above
	Protection of minors (Art. 27 AVMS Directive)	§ 39 AMD-G (watershed) § 42 AMD-G (labelling) § 36 AMD-G (advertising) §§ 10 (11)—10 (14) ORF-G (watershed, labelling) §§ 13 (5)—13 (6) ORF-G (advertising)	As above	As above	As above
	Right of reply (Art. 28 AVMS Directive)	§§ 9 – 20 Media Act	Ordinary jurisdiction	Ordinary jurisdiction	Ordinary jurisdiction

Country	Areas	Main laws	Regulatory body in charge of commercial television	Regulatory body in charge of non-linear commercial media services	Regulatory body in charge of PSB
	Communication and cooperation with other European regulation bodies and the Commission (Art. 30b AVMS Directive)	No provision	N/A	N/A	N/A
<p>The Austrian Communications Authority (KommAustria) was set up under the KommAustria Act (KOG) for the purpose of handling the administration of regulatory activities in broadcasting. The Federal Communications Board (BKS) was set up as an appeals authority within the Austrian Federal Chancellery in order to review the decisions of KommAustria.</p> <p>Reform of the regulatory framework: For the implementation of the provisions contained in the Audiovisual Media Services Directive (AVMS) relevant acts have been amended in 2010 by the „Bundesgesetz, mit dem das Bundes-Verfassungsgesetz, das KommAustria-Gesetz, das Telekommunikationsgesetz 2003, das Verwertungsgesellschaftengesetz 2006, das ORF-Gesetz, das Privatfernsehgesetz, das Privatradiogesetz und das Fernseh-Exklusivrechtegesetz geändert werden“ (BGBl. I 2010/50 July 19, 2010). See: www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2010_I_50/BGBLA_2010_I_50.pdf</p> <p>Abbreviations: AMD-G: Audiovisuelle Mediendienste-Gesetz [Audiovisual Media Services Act]; KOG: KommAustria-Gesetz [KommAustria Act]; ORF-G: ORF-Gesetz [ORF Act], FERG: Fernseh-Exklusivrechtegesetz [Act on Exclusive Television Rights].</p> <p>Links: For an overview and details on all relevant laws for the Austrian broadcasting sector see: www.rtr.at/en/rf/RFGesetze</p>					

Table 3 - Regulatory bodies – general information

This table provides basic information on the regulatory authority (name, website address, date of establishment and location).

Country	Name of regulatory body	Link to website	Date of establishment	Location
Austria	Austrian Communications Authority (KommAustria). KommAustria was set up for the purpose of handling the administration of regulatory activities in broadcasting.	www.rtr.at/en/rf/InstitKommAustria	2001, established under the KommAustria Act (KOG)	Austrian Communications Authority (KommAustria) Mariahilfer Straße 77-79 A-1060 Wien
	Federal Communications Board (BKS). The Federal Communications Board acts as the appeals authority for decisions made by KommAustria.	www.bks.gv.at/	2001, established under the KommAustria Act (KOG)	Federal Communications Board Ballhausplatz 2 A-1014 Wien

Country	Name of regulatory body	Link to website	Date of establishment	Location
	Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR-GmbH). RTR acts as KommAustria's operational arm in the field of broadcasting regulation, especially for the purpose of providing administrative support.	www.rtr.at	2001, established under the KommAustria Act (KOG)	Austrian Regulatory Authority for Broadcasting and Telecommunications Mariahilfer Straße 77-79 A-1060 Wien
From 2001 until 2010 the Federal Communications Board (BKS) was the legal supervisory authority for the Austrian Broadcasting Corporation (ORF). These competences of the BKS shift from BKS to KommAustria with the introduction of the new regulatory framework (BGBl I 2010/50 of July 19, 2010 – see above).				

Table 4 - Sectors covered

This table provides an overview of the areas that are covered by the regulatory authority.

Country	Body	Audiovisual content (radio/TV, on demand media services)	Transmission aspects of audiovisual content (e.g. spectrum)	Distribution aspects of audiovisual content (e.g. must carry, EPG, API)	Spectrum	Electronic communications (networks and services in general)	Others (e.g. energy, post)
Austria	KommAustria	Yes (e.g., program, advertising, protection of minors, program quotas)	Yes (e.g., site sharing, authorization of technical equipment, administration of broadcasting frequencies)	Yes (e.g., access control, access to multiplex platforms, access to conditional access control systems, interoperability of digital television sets; regulation of EPG, API according to §§ 25—27 AMG-G)	Broadcasting frequencies only	No	Yes press and journalism subsidies (since 2004); supervisory authority for collecting societies (2006)

Country	Body	Audiovisual content (radio/TV, on demand media services)	Transmission aspects of audiovisual content (e.g. spectrum)	Distribution aspects of audiovisual content (e.g. must carry, EPG, API)	Spectrum	Electronic communications (networks and services in general)	Others (e.g. energy, post)
	Federal Communications Board (BKS)	Yes	Yes	Yes	Broadcasting frequency appeals only	No	No

Table 5 - Staff and overall budget

This table provides an overview of the staff and overall budget of the regulatory authority. The figures are given for the areas covered by the AVMS directive (where possible) for regulators with a broader area of responsibility.

Country	Body	Total number of staff foreseen in statutes/law	Current staff count	Annual budget (€m) foreseen in statutes/law	Current annual budget	Reference year +source
Austria	Federal Communications Board (BKS)	The law only specified 5 board members	5 board members (3 judges, 1 lawyer, 1 professor constitutional law) 3 lawyers in the administrative office	Not specified	Information not available	2009
	KommAustria + RTR-GmbH/ Broadcasting Division	KommAustria From October 1, 2010: 5 members (one head, one deputy head, three additional members) Source: § 3 (1) KOG Until September 30, 2010: one head, two deputy heads and the requisite number of staff	2010 [in FTEs] KommAustria From October 1, 2010 forward: *budgeted: 5 Until September 30, 2010: *budgeted: 3 RTR-GmbH * budgeted: 14.86 2009 [in FTEs] KommAustria *budgeted 3.00 *actual 3.00 RTR-GmbH	From October 1, 2010: Max €4.1m Valorisation from 2012 forward based on consumer price index (CPI) 2007 Source: § 35 (1) KOG Until September 30, 2010: Max €3m Valorisation from 2007 until 2010 based on consumer price index (CPI) 2000 Information to be confirmed.	2010 budgeted: €2.674m 2009 budgeted: €2.861m actual: €2.430m Notice: budgets for 2009 and 2010 based on the old legal situation with a statutory ceiling (Budgetobergrenze) of €3m Information to be confirmed.	Reference years: 2009, 2010 Sources: § 3 (1) and § 35 (1) KommAustria Act (KOG) RTR-GmbH (2010): Kommunikationsbericht 2009. Information to be confirmed.

Country	Body	Total number of staff foreseen in statutes/law	Current staff count	Annual budget (€m) foreseen in statutes/law	Current annual budget	Reference year +source
			*budgeted 15.45 *actual 12.95			
	RTR-GmbH staff counts for matters of 'Broadcasting Regulation'. There is additional RTR staff (approx. 7 FTE's/2009) for administration and allocation of funds (e.g., Digitalisierungsfonds; Fernsehfonds Austria) and other tasks in the RTR Broadcasting Division.					

II. INSTITUTIONAL FRAMEWORK

Table 6 - Legislation establishing and governing the regulatory body

This table shows the legislation setting up and governing the regulatory authority.

Country	Body	Legislation setting-up the regulatory body	Governing legislation
Austria	Austrian Communications Authority (KommAustria)	§ 1(1) KOG, Federal Act on the establishment of an Austrian Communications Authority ("KommAustria") and a Federal Communications Board (KommAustria Act - KOG), Federal Law Gazette I No. 32/2001. Art. 20 (2) 5a Federal Constitutional Law (B-VG)	§§ 1—15 KOG Art. 20 B-VG
	Federal Communications Board (BKS)	§ 1 (2) KOG, Federal Act on the establishment of an Austrian Communications Authority ("KommAustria") and a Federal Communications Board (KommAustria Act - KOG), Federal Law Gazette I No. 32/2001. Art. 20 (2) 3 Federal Constitutional Law (B-VG)	§§ 36—38 KOG Art. 20 B-VG
	Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR-GmbH)	§ 5 (1) KOG, Federal Act on the establishment of an Austrian Communications Authority ("KommAustria") and a Federal Communications Board (KommAustria Act - KOG), Federal Law Gazette I No. 32/2001.	§§ 16—20 KOG

Table 7 - Legal status

This table provides information on the legal status taken by the regulatory authority.

Country	Body	What form does it take?	It is a separate legal entity?	If it is not a separate legal entity, it is part of:	Specific organisational characteristics	Source
Austria	Federal Communications Board (BKS)	Independent Authority (Independent collegiate tribunal)	Yes (in terms of independent decision making since 2001; however, BKS is established at the Federal Chancellery and the administrative office of BKS is run by the Department V/4 of the Federal Chancellery)			Art. 20 (2) 3 B-VG Art. 133 (4) B-VG § 38 KOG
	KommAustria	Administrative authority	Yes (in terms of its external business practices since 2001; in terms of independent decision making from October 2010 forward)			Art. 20 (2) 5a B-VG § 6 (1) KOG
In 2001 KommAustria was established as an authority directly subordinate to the Federal Chancellor. As regards its external business practices, it was an independent authority from its beginning. With the introduction of the new regulatory framework in 2010 (BGBl. I 2010/50 of July 19, 2010) KommAustria is an independent regulatory authority and not bound to any instructions (§ 6 (1) – KOG)						

Table 8 - Independence as a value

This table is intended to capture whether independence of the regulatory body is explicitly or implicitly recognised as a value in the legal framework.

Country	Body	Is independence implicitly or explicitly recognised as a value in the legal framework?		Source (highest formal legal level)
		No	Yes	
Austria	Federal Communications Board (BKS)		<p>Yes (since 2001)</p> <p>In general, the Austrian Federal Constitutional Law (Bundes-Verfassungsgesetz, B-VG) allows independent regulatory bodies only under exceptional circumstances (see Art. 20 B-VG). By law, functionaries may be dispensed from being bound by instructions of their superior functionaries—for example— 'to decide in final instance, if they are being instituted as panel, of which at least one person is a judge and whose decisions are not subject to repeal or change by way of administrative ruling' (Art. 20 (2) 3 B-VG). BKS is set up as such an independent panel.</p>	<p>Art 20 B-VG</p> <p>Art 133 Z 4 B-VG</p>
	KommAustria		<p>Yes (since 2010)</p> <p>By law, functionaries may be dispensed from being bound by instructions of their superior functionaries 'for supervision and regulation of electronic media and the promotion of the media' (Art. 20 (2) 5a B-VG). KommAustria is in charge of these functions in the electronic media domain</p>	<p>Art 20 B-VG (as amended by BGBl. I 50/2010)</p>

III. POWERS OF THE REGULATORY BODIES

Table 9 - Regulatory powers

This table is aimed at understanding the types of decisions that can be taken by the regulatory body.

We have distinguished from a theoretical point of view, between:

- general policy setting powers, i.e. the power to decide on the general orientation of the rules to be followed (for instance the power to decide on the amount of quotas)
- general policy implementing powers, i.e. once the general policy has been adopted, to specify by means of general or abstract rules how this general policy will be implemented (for example to decide in general terms (not connected to a specific case) how the quotas should be applied and monitored)
- third party binding policy application powers, i.e. the power to take in a specific case a decision binding on specific operators

Country	Body		General policy setting	General policy implementing powers	Third party decision making powers	
Austria	Austrian Communications Authority (KommAustria)	Tick boxes	No	√ KommAustria regulates by means of “ordinances”	√ i.e., by means of individual/concrete ‘Decisions’ (Entscheidungen)	
		Areas		In a number of areas, including on frequency usage fees, broadcasting market definition; Broadcasting Threshold Value; Multiplex Operator Selection Principles	e.g., authorization of technical equipment; awarding of broadcasting licenses; allocation of frequencies; decisions regarding infringements of program regulations (advertising, protection of minors, etc.)	
		Source		www.rtr.at/en/rf/RFVerordnungen	See KommAustria ‘Decisions’ overview	
	Federal Communications Board (BKS)	Tick boxes	No	No	√ i.e. by means of individual/concrete ‘Decisions’ (Entscheidungen)	
		Areas			e.g., licenses, program standards, advertising, protection of minors, etc.	
		Source			See BKS ‘Decisions’ overview	
	Note: KommAustria inter alia regulates by means of general/abstract “Ordinances” (Verordnungen). E.g., by Ordinances on Frequency Usage Fees; Broadcasting Market Definition; Broadcasting Threshold Value; Multiplex Operator Selection Principles. This may be referred to as “General policy implementing” or “Specific rule making” (see also Table 11). Demarcation between both is not completely clear. For an overview on KommAustria ‘Ordinances’ see: http://www.rtr.at/en/rf/RFVerordnungen .					

Table 10 - Supervision and monitoring power

This table is aimed at understanding the supervision/monitoring/information gathering powers of the regulatory body.

Country	Body	Areas	Systematic monitoring	Ad-hoc monitoring	Information collection powers	Monitoring only after complaints	Others	Source (legislation, or practice)
Austria	BKS	Quotas			√	√		
		Advertising			√	√		
		Protection of minors			√	√		

Country	Body	Areas	Systematic monitoring	Ad-hoc monitoring	Information collection powers	Monitoring only after complaints	Others	Source (legislation, or practice)
	KommAustria	Quotas	√		√			<p><i>Systematic monitoring: Obligation to report</i> for broadcasters (Berichtspflicht) according to § 52 AMD-G (private/ commercial broadcasters); § 7 (1) ORF-G (public service broadcaster).</p> <p><i>Information collection powers</i> according to § 36 (4) ORF-G (public service broadcaster); § 47 (1) AMD-G (private/commercial broadcasters); § 29 (1) AMD-G (providers of audiovisual services).</p>
		Advertising	√	√ (powers with limited scope in the case of public service)	√	√ (in some aspects regarding public service, monitoring demands for a external complaint)		<p><i>Systematic/periodic monitoring of compliance</i> with advertising regulations by KommAustria according to § 2 (1) 7 KOG (public broadcasters and private/commercial broadcasters).</p> <p><i>Ad hoc monitoring</i> ('von Amts wegen') according to § 61 (1) AMD-G (private broadcasting) and § 36 (1) 3 ORF-G (public service broadcasting) with however limited scope regarding public service offers (limited to online offer; special interest programs for culture, information, sports).</p> <p><i>Information collection powers</i> according to § 36 (4) ORF-G (public service broadcaster); § 47 (1) AMD-G (private/commercial broadcasters); § 29 (1) AMD-G (providers of audiovisual services).</p> <p><i>Monitoring after complaints</i> according to § 61 (1) AMD-G (private broadcasting) and § 36 (1) 1 and § 36 (1) 2 ORF-G (public service)</p>

Country	Body	Areas	Systematic monitoring	Ad-hoc monitoring	Information collection powers	Monitoring only after complaints	Others	Source (legislation, or practice)
		Protection of minors		√ (powers with limited scope in the case public service)	√	√ in some aspects regarding public service, monitoring demands for a external complaint)		<i>Ad hoc monitoring</i> ("von Amts wegen") according to § 61 (1) AMD-G (private/commercial broadcasting) and § 36 (1) 3 ORF-G (public service broadcasting) with however limited scope regarding public service offers (limited to online offer; special interest programs for culture, information, sports). Monitoring after complaints according to § 61 (1) AMD-G (private broadcasting) and § 36 (1) 1 and § 36 (1) 2 ORF-G (public service).
	<p>Regulatory requirements for the promotion of European works (by means of "quotas") set out in §§ 11—12 ORF-G (public service broadcasting) and § 50 AMD-G (private/commercial broadcasting).</p> <p>Regulatory requirements for advertising set out in §§ 13—17, §§ 9—9b, and § 18 ORF-G (public service broadcaster); §§ 31—38, and 42a—45 AMD-G (private/commercial broadcasters).</p> <p>Regulatory requirements for the protection of minors set out in § 36, § 39, and § 42 AMD-G (private/commercial broadcasters); §§ 10 (11)—10 (14), and §§ 13 (5)—13 (6) ORF-G (public service broadcaster).</p> <p>*The Federal Communications Board (BKS) will only act as the appeals authority for decisions made by KommAustria. Hence, BKS only acts "in reaction" to appeals against decisions of KommAustria (that is, "only after complaints").</p>							

Table 11 - Powers of sanctions

This table provides an overview of the sanctions that can be adopted by the regulatory body in case of breach of the rules implementing the AVMS Directive on quotas, advertising and protection of minors.

Country	Body	Areas	Warnings/formal objections	Fine (lump sum) If so, list maximum and minimum amounts	Publication of decisions in the media	Suspension/Revocation of licence	Penalty payments (in case of non compliance with decision)	Others
Austria	KommAustria*	Quotas (For all sanctions, there is room for discretion as the law does not require the application of the sanctions)	√	No	√	No	No	-
		Advertising	√ For ORF: warnings according to § 37 (2) ORF-G	√ For ORF: fines up to €58,000 according to § 38 (1) 2 ORF-G	√ For ORF: publication requirements according to § 37 (4) ORF-G	No For ORF	No	Power to annul any decision of the institutions of the ORF in case of consequent violation of ORF-G; Power to dismiss the accountable ORF organs according to § 37 (2) ORF-G
			√ For commercial providers: warnings according to § 62 (1) AMD-G	√ For commercial providers: fines up to €8,000 according to § 64 (2) AMD-G	√ For commercial providers: publication requirements according to § 62 (3) AMD-G	√ For commercial providers: revocation of license in case of severe and repeated violations according to § 63 (4) 2 AMD-G (theoretically only, but never used in practice)	No	
		Protection of minors	√ For ORF: warnings according to § 37	√ For ORF: fines up to €58,000 according to § 38 (1) 1 ORF-G	√ For ORF: publication requirements	No For ORF	No	Power to annul any decision of the institutions of the ORF in case of consequent

Country	Body	Areas	Warnings/formal objections	Fine (lump sum) If so, list maximum and minimum amounts	Publication of decisions in the media	Suspension/Revocation of licence	Penalty payments (in case of non compliance with decision)	Others
			(2) ORF-G		according to § 37 (4) ORF-G			violation of ORF-G; Power to dismiss the accountable ORF organs according to § 37 (2) ORF-G
			√ For commercial providers: warnings according to § 62 (1) AMD-G	√ For commercial providers: fines up to €8,000 according to § 64 (2) AMD-G	√ For commercial providers: publication requirements according to § 62 (3) AMD-G	√ For commercial providers: revocation of license in case of severe and repeated violations according to § 63 (4) 2 AMD-G		
<p><u>Sanctions for public service broadcasting (room for discretion):</u> <i>Warnings/formal objections:</i> According to § 37 (2) ORF-G the regulatory authority <u>may object (annul)</u> a decision of an ORF body, if the decision violates the law. <i>Fines:</i> According to § 38 (1) 2 ORF-G, the regulatory authority <u>has to</u> impose a fine <u>up to</u> €58,000 if the ORF violates advertising regulations or regulations regarding the protections of minors. <i>Publication requirements:</i> According to § 37 (4) ORF-G the regulatory authority <u>may require publication</u> of their decisions.</p> <p><u>Sanctions for private broadcasting (room for discretion):</u> <i>Warnings/formal objections:</i> room for discretion not specified by § 62 (1) AMD-G. <i>Fines:</i> According to § 64 (2) AMD-G the regulatory authority <u>has to</u> impose a fine up to €8.000 if a private broadcaster violates advertising regulations or regulations regarding the protections of minors. <i>Publication requirements:</i> According to § 62 (3) AMD-G the regulatory authority <u>may require publication</u> of their decisions.</p>								

Table 12 - De facto use of formally granted competences and monitoring powers

This table shows whether the regulatory body has made use of its formally granted powers in the areas covered by the AVMS Directive within the past 5 years.

Country	Body	Policy setting	General policy implementing powers	Specific rule making	Systematic monitoring	Ad-hoc monitoring	Information collection powers	Monitoring after complaints
Austria	Federal Communications Board (BKS)	N/A (no policy setting powers)	N/A (no general policy implementing powers)	N/A (no specific rule making power)	N/A (no systematic monitoring power)	Yes (monitoring power only after complaints)	√	√

Country	Body	Policy setting	General policy implementing powers	Specific rule making	Systematic monitoring	Ad-hoc monitoring	Information collection powers	Monitoring after complaints
	KommAustria	N/A (no policy setting powers)	N/A (but see remark to table 9 “regulatory powers”)	√ Specific rule making powers available and in use by means of ‘Ordinances’, but in practice so far not used for areas covered by the AVMS Directive	√	√	√	√

Table 13 - De facto use of formally granted sanction powers

This table shows whether the regulatory body has made use of its formally granted sanction powers within the past 5 years.

Country	Body	Warnings	Fine (lump sum)	Publication of decisions in television programmes/on demand services	Suspension/Revocation of licence	Penalty payments (in case of non compliance with decision)
Austria	KommAustria	√	√	√	No cases	N/A

Table 14 - Complaints handling

This table shows whether there are procedures for dealing with complaints coming from viewers against conduct of audiovisual media service providers. Briefly explain them.

Country	Body	Do complaints handling procedures exist?	Link to website
Austria	KommAustria	Yes Specific regulations for complaints handling procedures according to §§ 61—62 AMD-G (private broadcasting) and according to §§ 36—37 ORF-G (public service broadcasting). Moreover, general regulation for complaints handling procedures according to AVG (Allgemeines Verwaltungsverfahrensgesetz) apply (see § 39 (1) KOG).	www.rtr.at/de/rf/InfoKonsumenten
	Federal Communications Board (BKS)	Yes The Federal Communications Board acts as the appeals authority for decisions made by KommAustria. General regulation for appeals handling procedures according to AVG (Allgemeines Verwaltungsverfahrensgesetz) apply (see § 39 (1) KOG).	No specific website available

IV. INTERNAL ORGANISATION AND STAFFING

Table 15 - Highest decision-making organ – composition

This table shows whether the highest decision-making organ of the regulatory body/bodies (i.e. the organ responsible for regulatory tasks, namely supervision and enforcement) is an individual or a board/commission and if it is a board/commission, who are its relevant representative components

Representation does not necessarily mean formal representation of that group. It can mean that the board member is expected to emanate from that group, but does not have to formally represent it during the mandate.

Country	Body	Individual or Board	Legal requirements regarding composition of highest decision-making organ							Implicit representation structures?	Source
			Number of Board members	Representatives of civil society	Representatives of government	Representatives of parliament	Representatives of industry	Experts	Others (e.g. regions)		
Austria	KommAustria	Individual and board*	5	No	No	No	No	Yes 5 (100%)	No	No	§ 3 (1) KOG
	Federal Communications Board (BKS)	Board	5	No	No	No	No	Yes 5 (100%)	No	No	§ 37 (1) and § 37 (4) KOG
*Identification of one/"the" highest decision making organ is not possible. KommAustria is composed of 5 members. According to § 8 KOG the KommAustria acts by its General Assembly (5 members), by its Senates (3 members) or by individual/single members. Senates and individual members hold responsibilities for regulatory tasks, namely supervision and enforcement. For details regarding the composition of organs and the distribution of competences between the General Assembly, Senates and individual/single members see §§ 3—13 KOG, in particular §§ 9—13 KOG.											

Table 16 - Highest decision-making organ – competences and decision-making process and transparency

This table shows the main fields of responsibility of the highest decision-making organ of the regulatory body as well as its decision-making process (in particular its transparency and whether minutes and agendas are published).

Country	Body	Competences	Decision-making process	Is the decision making process transparent?	Minutes and agendas published?
Austria	KommAustria	Regulation of broadcasting	<p>KommAustria acts by its General Assembly (5 members), by senates (3 members) and by individual/single members.</p> <ul style="list-style-type: none"> The General Assembly has the quorum, if the majority of its member attends (that is 3 members). The general Assembly takes decisions by simple majority vote. Abstention from voting is not allowed. See § 9 (1) KOG. Senates (3 members) take decisions by simple 	Yes (e.g. publication of decisions, conduction of public oral hearings)	No information available

Country	Body	Competences	Decision-making process	Is the decision making process transparent?	Minutes and agendas published?
			majority vote. See § 10 (5) KOG. <ul style="list-style-type: none"> A 'senate decision' is taken by such a senate consisting of 3 members. 		
		Competence to determine its internal organisation and procedures	General Assembly (5 members; presence quorum/3; board decisions; majority vote; abstention from voting is not allowed) See § 9 (1), § 9 (3) 1 and § 12 KOG	No information available	No information available
		No decision making power on human resources	n/a	n/a	n/a
	Federal Communications Board (BKS)	Regulation of broadcasting in second instance	Board decisions (5 members, qualified majority vote (2/3); abstention from voting is not allowed) See § 38 KOG	Yes (e.g. publication of decisions, conduction of public oral hearings within the administrative proceeding)	No information available
		Competence to determine its internal organisation and procedures	No information available	No information available	No information available
		No decision making power on human resources	n/a	n/a	n/a

Table 17 - Highest decision-making organ – appointment process

This table shows whether there are several stages in the appointment process of the chairman and members of the highest decision-making organ of the regulatory body, for the nomination and appointment phases respectively. It also shows who is involved in each of these two stages (government, minister, parliament, civil society, religious groups, political parties, board members, board chairman, others) and whether the appointer(s) can override the proposals made at the nomination stage.

Country	Body		Nomination stage Yes – No	Nomination stage Specify who is involved in that stage and who has the decisive say	Appointment stage Specify who is involved in that stage and who has the decisive say	If there are two stages, can the appointer ignore the nominations?	Source
Austria	Federal Communications Board (BKS)	Chairman and board members	Yes	President of the Supreme Court President of the Higher regional Court Vienna Federal Government	Federal President	No	§ 37 KOG
	KommAustria	Chairman and board members	Yes	Federal Government (proposal) National Assembly (Government proposal to be accepted by the National Assembly)	Federal President	No	§ 3 KOG

Table 18 - Term of office and renewal

This table shows the term of office of the chairman and members of the highest decision-making organ of the regulatory body and whether the term is staggered not to coincide with election cycles. It also indicates if appointment is renewable and for how many times.

Country	Body		Term of office	Is the term staggered not to coincide with election cycle?	Renewal possible? If so, state how many times	Source
Austria	Federal Communications Board (BKS)	All members	6	No	Not specified by KOG	§ 37 (2) KOG
	KommAustria	Chairman of the board	6	No	Yes (how many times is not specified)	§ 3 (2) KOG
		Board members	6	No	Yes (how many times is not specified)	§ 3 (2) KOG

Table 19 - Professional expertise/qualifications

This table illustrates the qualifications and professional expertise required to become a chairman or member of the highest decision making organ of the regulatory body.

Country	Body		Qualifications	Professional expertise	Source
Austria	KommAustria	Chairman of the board	Degree in law or in law & government studies	5 years of professional practice in legal affairs	§ 3 (1) KOG
		Board members			§ 3 (1) KOG
	Federal Communications Board (BKS)	Chairman of the board	Judge (degree in law)	Professional experience in administrative matters, jurisprudence, science or in matters related to the competences of BKS	§ 37 (1) KOG; § 37 (4) KOG
		Board members	2 more judges and 2 more persons with degree in law.		§ 37 (4) KOG

Table 20 - Rules to guard against conflicts of interest – Appointment process

This table shows whether there are clear rules, in the appointment process of the chairman and members of the highest decision-making organ of the regulatory body, to avoid possible conflicts of interest.

Country	Body		Do such rules exist?		Rules to prevent conflicts of interest with government	Rules to prevent conflicts of interest with political parties	Rules to prevent conflicts of interest with industry	Can other offices be held at the same time?	Others (e.g. obligation to disclose participations in companies)	Source
			Yes	No						
Austria	KommAustria	All members		√				yes, if there is no doubt about incompatibility	yes, if there is no doubt about incompatibility	Incompatibility rules for BKS (§ 37 (5) KOG) apply to the term of office, but not to the appointment process.
	Federal Communications Board (BKS)	Chairman	√		√	√	√	yes, if there is no doubt about incompatibility	yes, if there is no doubt about incompatibility	§ 4 (7) KOG (referring to incompatibility with professional practices exerted during the last year before term of office starts -'cool off phase')
		Board members	√		√	√	√	yes, if there is no doubt about incompatibility	yes, if there is no doubt about incompatibility	§ 4 (7) KOG (referring to incompatibility with professional practices exerted during the last year before term of office starts -'cool off phase')

Table 21 - Rules to guard against conflicts of interest – during term of office

This table shows whether there are rules to avoid conflicts of interest during the term of office.

Country	Body		Do such rules exist?		Rules to prevent conflicts of interest with government	Rules to prevent conflicts of interest with political parties	Rules to prevent conflicts of interest with industry	Source
			Yes	No				
Austria	Federal Communications Board (BKS)	All members	Yes		Yes	Yes	Yes	§ 37 (5) KOG

Country	Body		Do such rules exist?		Rules to prevent conflicts of interest with government	Rules to prevent conflicts of interest with political parties	Rules to prevent conflicts of interest with industry	Source
			Yes	No				
	KommAustria	Chairman	Yes		Yes Members of KommAustria must not be at the same time members of the federal government, secretary of state, members of the Parliament, or the European Parliament; they must not be members of minister cabinets;.	Yes Members of KommAustria must not be at the same time working for political parties or hold an employment status in a political party	Yes Members of KommAustria must not be at the same time members of an organ of the ORF and they must not hold any other service-, employment- assignment- in relation with ORF, ORF's subsidiary companies, any other media company and relevant interest groups in the media sector.	§ 4 KOG
		Board members	Yes		Yes Same as above	Yes Same as above	Yes Same as above	§ 4 KOG

Table 22 - Rules to guard against conflicts of interest – after term of office

This table shows whether there are clear rules to avoid conflicts of interest after the term of office.

Country	Body		Do such rules exist?		Is a cooling-off period foreseen?	Source
			Yes	No		
Austria	Federal Communications Board (BKS)	Chairman		No		
		Board members		No		

Country	Body		Do such rules exist?		Is a cooling-off period foreseen?	Source
			Yes	No		
	KommAustria	Chairman & Board members		No		

Table 23 - Rules to protect against dismissal

This table shows the rules to protect against dismissal of the whole decision making organ, the chairman and individual members of the highest decision-making organ of the regulatory body. Please add any other comments in the row below.

Country	Body		Do such rules exist?		Who can dismiss? Specify who is involved in that stage and who has the decisive say	Grounds for dismissal listed in legal instrument?	Can the whole body be dismissed or only individual members?	Source
			Yes	No				
Austria	KommAustria	Chairman	Yes		Whole board	Incompatibility Serious breach of duty Serious physical/psychic infirmity Loss of eligibility to the parliament	Only individual members	§ 5 KOG; § 9 (5) KOG
		Individual board members	Yes		Whole board	Incompatibility, Serious breach of duty, Serious physical/psychic infirmity, Loss of eligibility to the parliament		§ 5 KOG; § 9 (5) KOG
	Federal Communications Board (BKS)	Chairman	Yes		Whole board	Incompatibility, Repeated absence	Only individual members	§ 37 (6) KOG
		Individual board members	Yes		Whole board	Incompatibility, Repeated absence		§ 37 (6) KOG

Table 24 - Dismissal before term

This table shows available statistics on dismissal before term in the last 5 years as well as the reasons for this dismissal.

Country	Body	Year		Dismissal before term		Reasons	Comment
				Yes	No		
Austria	Federal Communications Board (BKS)	2001-2010	Chairman		No		
			Individual board members		No		
	KommAustria	2005-2009	Chairman		No		
			Individual board members		No		

V. FINANCIAL RESOURCES

Table 25 - Sources of income

This table shows the sources of income of the regulatory authority.

Country	Body	End-user broadcasting licence fees (max level)	State budget	Spectrum fees	Authorisation/licence fees paid by broadcasters	Fines	Other fees, e.g., 'market surveillance fee' based on % of revenues of broadcasters (or other operators – e.g. in case of converged regulators)	Source
Austria	Federal Communications Board (BKS)	No	State funding 100%	No	No	No	No	cf. Latzer, Just, Saurwein & Slominski (2002, p. 166) and notice below table 25.
	KommAustria and RTR-GmbH/broadcasting Division*	Funding contribution of end-user licence fees: €1.21m per year; valorisation from 2010	No	No	No	No	Funding contributions from market players based on percentage of revenues. Max. €2.89m per year, valorisation from 2010 forward based on consumer price index (CPI) 2007	Funding of KommAustria and RTR-GmbH is determined by § 35 KOG.

Country	Body	End-user broadcasting licence fees (max level)	State budget	Spectrum fees	Authorisation/licence fees paid by broadcasters	Fines	Other fees, e.g., 'market surveillance fee' based on % of revenues of broadcasters (or other operators – e.g. in case of converged regulators)	Source
		forward based on consumer price index (CPI) 2007						
<p>* The budget for KommAustria and RTR-GmbH/Broadcasting Division are composed of (1) funding contributions of end-user licenses fees and (2) funding contributions of market players (see § 35 KOG). While the contribution from licence fees is fixed (€1.21m), the funding contributions of market players are determined and annually adjusted by RTR-GmbH, but limited to a maximum total of €2.89m. The actual annual contribution of the market players may be lower, depending on the RTR-GmbH's funding decision. The relation (percentages) between license fee funding and funding by market players may vary accordingly. The law foresees a maximum distribution of 30% (end-user license fees) to 70% (market players), but the share of market player contribution may decrease at the expense of the share of contributions of end-user license fees. In 2009 market player contributed with 0.4% of their annual revenues in the average.</p>								

Table 26 - Annual budget

This table shows who decides on the annual budget of the regulatory body and decides on adjustments to it as well as the extent to which the regulatory body is involved in these processes.

Country	Body	Who decides the annual budget?	Is the regulator involved in the process?	Rules on budget adjustment – who is involved in the process (e.g. parliament, government and/or industry) ?	De facto influence of third parties on budget amounts	Source
Austria	Federal Communications Board (BKS)	State funding	Yes	Federal Chancellery; Government; Parliament	(impossible to measure)	.§§ 36 (1) and 37 (8) KOG
	KommAustria + RTR-GmbH (broadcasting)	RTR-Board of management decides on funding contribution of market players (max €2.88m per year) Funding contribution from licence fees is fixed (€1.21m per year).	Yes	<ul style="list-style-type: none"> regulator prepares the budget consultation process with the market (industry) the board of management decides to take up the budget 	(impossible to measure)	§§ 35 (4)—35 (7) KOG
The Federal Communications Board (BKS) can not resort to a budget in the narrow sense. The BKS is established at the Federal Chancellery (see § 36 (1) KOG), the administrative office of BKS is run by the Department V/4 of the Federal Chancellery and funded by the chancellery /state budget which is adjusted according to procedures of the Bundeshaushaltsgesetz (BHG). Under the terms of § 37 (8) KOG, members of the BKS have the right to receive attendance fees and reimbursement of reasonable travel and cash expenditures. The height/rate of the attendance fee is fixed by the government by means of an ordinance.						

Table 27 - Financial accountability – auditing

This table shows if the regulatory authority is subject to periodic financial auditing.

Country	Body	Is the regulatory body subject to periodic external auditing?					
		Yes/no	Periodicity	By national (state) audit office, etc.	Private audit firm	Other	Legal basis
Austria	KommAustria + RTR-GmbH (broadcasting)	yes	Annual	--	private audit firm appointed by the general assembly	--	Limited liability company law (GmbH-Gesetz)
	KommAustria	Yes	Not specified	Public Audit Office (Rechnungshof)			§ 15 (2) KOG

VI. CHECKS AND BALANCES

Table 28 - Formal accountability

This table shows to whom the regulatory body is accountable to and through which means (e.g. reports, parliamentary questions).

Country	Body	Body accountable to		Accountability means	Legal basis
Austria	Federal Communications Board (BKS)	Parliament	Yes	Information right of Parliament restricted to questions of management	Art. 52 B-VG
		Government as a whole	No	N/A	N/A
		Specific ministers (e.g. Media, finance, etc.)	Yes, Federal Chancellor	Information right of Chancellor restricted to questions of management	Art 20 B-VG, § 36 (6) KOG
	KommAustria	Parliament	Yes	Information right of Parliament restricted to questions of management Reporting obligation: Duty to deliver an annual report to the Federal Chancellor who presents the report to the National Assembly. Subsequently the report has to be published.	Art. 52 B-VG (information right); § 19 KOG (reporting obligation)
		Government as a whole	No	N/A	N/A
		Specific ministers (e.g. Media, finance, etc.)	yes, Federal Chancellor	Reporting obligation/Annual report (see above). Federal Chancellor can request information of all matters pertaining to the competence of KommAustria.	§ 19 KOG (reporting obligation); Art. 20 BV-G; § 15 (1) KOG (information right for the Federal Chancellor)
		Public at large	Yes	Reporting obligation/Annual report (see above).	§ 19 KOG
Other	Yes, Public Audit Office	KommAustria is subject to audit of the Public Audit Office.	§ 15 (2) KOG		

Table 29 - Reporting obligation

This table is aimed at understanding the scope of the reporting obligation.

Country	Body	Report submitted to	Periodicity	Scope	Does statistical data need to be provided about own performance? Explain	Approval necessary?	Has a report been disapproved?	Link
Austria	KommAustria	Federal Chancellor and Minister for Transport, Innovation and Technology. The Federal Chancellor shall submit the report to the Parliament and, in addition, shall publish the report in an appropriate manner.	Annual	Regulatory environment; decisions taken; information on a multitude of particular regulatory activities (e.g., digital broadcasting, mobile TV, frequency spectrum, licenses, monitoring of advertising, dispute resolution, etc.); market development (data; statistics), staff and budget.	No	No	No	§ 19 KOG For the latest report see: www.rtr.at/de/komp/KBericht2009/K-Bericht_2009.pdf

Table 30 - Auditing of work undertaken

This table shows if the regulatory body is subject to periodic external auditing, either by a private or a national audit office.

Country	Body	Is body subject to periodic external auditing					
		Yes/no	Periodicity	By public authority	By private authority	Other	Legal basis
Austria	KommAustria + RTR-GmbH (broadcasting)	Yes (cf. Table 27)	Annual	No	Yes Private audit firm appointed by the general assembly	No	Limited liability company law (GmbH-Gesetz)

Table 31 - Power to overturn/instruct

This table shows if (regardless of an appeal lodged against a decision) any other body can overturn the decisions of the regulator or give it instructions.

Country	Body			Ministry/Minister	Government	Parliament	Other	Source	
Austria	KommAustria	Does anybody have the power to overturn decisions of the regulator?	No	No	No	No	No	§ 36 KOG	
		Does anybody have the power to give instructions to the regulatory body?	No	No	No	No	No	§ 6 (1) KOG. Members of KommAustria are independent in their official activities and not bound to instructions. Formal independence of KommAustria was introduced in 2010 with amendments to the KommAustria Act (BGBl. I 2010/50 of July 19, 2010; in particular: § 6 (1) KOG) which enters into force by October 1, 2010. Hitherto, KommAustria was bound to instructions of the Federal Chancellor.	
		Are there limitations in the power to overturn (e.g. limited to legal supervision, which would exclude political supervision)?	N/A	N/A	N/A	N/A	N/A	N/A	N/A
		Are there limitations in the power to give instructions (e.g. limited to legal instructions)	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Country	Body			Ministry/Minister	Government	Parliament	Other	Source
		which exclude instructions on political grounds)?						
	Federal Communications Board (BKS)	Does anybody have the power to overturn decisions of the regulator?	No	No	No	No	No	§ 36 (3) KOG
		Does anybody have the power to give instructions to the regulatory body?	No	No	No	No	No	§ 37 (1) KOG Members of BKS are independent in their official activities and not bound to instructions.
		Are there limitations in the power to overturn (e.g. limited to legal supervision, which would exclude political supervision) ?	N/A	N/A	N/A	N/A	N/A	N/A
		Are there limitations in the power to give instructions (e.g. limited to legal instructions which	N/A	N/A	N/A	N/A	N/A	N/A

Country	Body			Ministry/Minister	Government	Parliament	Other	Source
		exclude instructions on political grounds)?						

Table 32 - Number of stages in appeal procedure

The following tables are concerned with the appeal procedure relating to decisions taken in relation to the enforcement of the rules listed in the AVMS directive (eg. non-compliance with quota requirements if binding, advertising, protection of minors, etc.). The stages include the internal stages.

Country	Body	Stage	Number of stages in appeal procedure and appeal body at each stage		Do internal procedures need to be followed before external recourse?	Who has the right to lodge an appeal?	Legal basis
Austria	Federal Communications Board (BKS)	External	1	Supreme Administrative Court	No	Party	Art. 130, 144 B-VG (Federal Constitutional Law)
			2	Constitutional Court			
	KommAustria	External	1	Federal Communications Board	No	Party	§ 36 KOG Art. 130, 144 B-VG (Federal Constitutional Law) The Federal Communications Board is set up at the Federal Chancellery to control the decisions of the KommAustria. It decides as the highest appellate authority on appeals against decisions of KommAustria, with the exception of appeals in administrative penal cases. The decisions of the Federal Communications Board are not subject to revocation or amendment by administrative action. Appeals against decisions of the Federal Communications Board may be filed with the Administrative Court. In matters concerning KommAustria, the Federal Communications Board is the superior authority within the meaning of the regulations governing the proceedings.
			2	Supreme Administrative Court			
			3	Constitutional Court			

Table 33 - Does the regulator's decision stand pending appeal?

Country	Body	Does regulator decision stand pending appeal body decision?			
		Yes	No	Yes, unless appeal body suspends it	Other
Austria	Federal Communications Board (BKS)			√	N/A
	KommAustria	√			N/A

Table 34 - Accepted grounds for appeal

Country	Body	Errors of fact	Errors of law (including failure to follow the due process)	Full re-examination	Other
Austria	Federal Communications Board (BKS)	√	√		N/A
	KommAustria	√	√	√	

Table 35 - Does the appeal body have power to replace the original decision with its own?

Country	Body	Appeal stage	Yes	No	Comments
Austria	Federal Communications Board (BKS)	1 Supreme Administrative Court		√	The Supreme Administrative Court has the power to cancel the decision and remit it back to the Federal Communications Board for new decision.
		2 Constitutional Court		√	The Constitutional Court has the power to cancel the decision and remit it back to the Federal Communications Board for new decision.
	KommAustria	1 Federal Communications Board	√		The Federal Communications Board has the power to replace the original decision with its own.
		2 Supreme Administrative Court		√	The Supreme Administrative Court has the power to cancel the decision and remit it back to the Federal Communications Board for new decision.
		3 Constitutional Court		√	The Constitutional Court has the power to cancel the decision and remit it back to the Federal Communications Board for new decision.

VII. PROCEDURAL LEGITIMACY

Table 36 - External advice regarding regulatory matters

This table shows if the regulatory body is able to take outside advice regarding regulatory questions.

Country	Body	Is a budget foreseen for outside advice?	If so, what is the budget/year?	Must the body respect public tender procedures?	Other requirements	Does the regulatory body de facto take external advice on a regular basis?
Austria	KommAustria/RTR-GmbH	Yes	As regards activities related to the <u>competence centre</u> : Maximum: 10% of the sectoral expenditure of RTR-GmbH's broadcasting division (see Table 5)	Yes Requirements according to Public Procurement Law (Bundesvergabegesetz BVerG 2006, BGBl. I 2006/17)	As regards funds from the "Digitalisierungsfonds": Requirements according to §§ 23—25 KOG.	Yes e.g., Working Group Digital Platform Austria e.g., expert studies (see: www.rtr.at/en/komp/Studien)
	<p>RTR-GmbH and KommAustria are able to take outside advice regarding regulatory questions:</p> <p>According to § 20 (2) KOG the RTR-GmbH fulfils the function of a competence centre for matters pertaining to the sectors of audio-visual media and telecommunication. In this context, RTR-GmbH shall commission scientific analyses to be conducted in respect of matters connected with the tasks of the regulatory authorities assisted by it, in particular with regard to issues of frequency planning and frequency optimization, the introduction of digital broadcasting in Austria, national and European advertising regulation, protection of minors, access to services, the employment of new technologies and services as well as market conditions.</p> <p>According to § 20 (1) KOG the expenses for the competence center as regards broadcasting issues are limited with a maximum of 10% of the sectoral expenditure of RTR-GmbH's broadcasting division.</p> <p>According to § 21 AMD-G KommAustria is to compile a Digitization Concept for the introduction and the development of digital broadcasting. Based on § 21 (1) AMD-G the Working Group Digital Platform Austria (Arbeitsgemeinschaft Digitale Plattform Austria) was set up by the Austrian Federal Chancellery in 2001. The Working Group supports the regulatory authority.</p> <p>Activities of the Working Group Digital Platform Austria are funded by the "Digitalisierungsfonds" (§ 21 KOG). The Digitalisierungsfonds may also be used to commission scientific analyses on technical, economic, program-related and consumer-oriented questions regarding the introduction of digital broadcasting (see § 22 KOG).</p>					

Table 37 - Public consultations

This table shows if the regulatory authority is required to publish public consultations.

Country	Body	Which decisions require prior public consultation?	Requirements on who must be consulted? (e.g. broadcasters, consumer organisations, academics etc.)	Consultation period	Consultation responses published		Legal basis
					Full responses (if authorised by contributor)	Summaries prepared by regulator	
Austria	KommAustria	market definition ordinance (identification of the relevant national markets)	interested persons	within a reasonable period (4 weeks)	Yes		§ 128 TKG (Telecommunications Act 2003)
	KommAustria	public value test	Federal Competition Authority, advisory board concerning questions of journalism	6 weeks	-	-	§ 6a ORF-G

Table 38 - Public consultations – figures

This table shows the number of public consultations that were organised by the regulatory body in the past five years, in the areas covered by the AVMS Directive.

Country	Body	Year	Number of public consultations
Austria	KommAustria	2009	1

Table 39 - Publication of regulator’s decisions

This table shows if the regulatory authority is required to publish its decisions, if its decisions need to be motivated and if impact assessments are required.

Country	Body	Which decisions required by law to be published?	Obligation to motivate decisions? Legal basis?	Obligation to include/publish impact assessment? Legal basis?	
				Ex ante	Ex post
Austria	KommAustria	Decisions of KommAustria have to published in an appropriate way in due consideration of data protection regulations (§ 19 (1) KOG).	Yes: Obligations according to § 58 (2) and § 60 AVG		
	Federal Communications Board (BKS)	Decisions of BKS have to published in an appropriate way in due consideration of data protection regulations (§ 19 (1) KOG).	Yes: Obligations according to § 58 (2) and § 60 AVG		

VIII. COOPERATION

Table 40 - Cooperation with other regulatory authorities

Country	Body	Describe the mechanism of cooperation with other bodies	Source and form of cooperation	Can body receive instructions from other bodies? If so, state which and explain	Comments
Austria	KommAustria	RTR Operative arm of KommAustria; Administration of selected funds for promotion of the media	See § 16—18 KOG	Yes, instructions from KommAustria according to § 18 (3) 1 KOG	
		Advertising Council Self-regulation for the advertising sector	Optional: Financial subsidies from KommAustria according to § 33 KOG	No	

Country	Body	Describe the mechanism of cooperation with other bodies	Source and form of cooperation	Can body receive instructions from other bodies? If so, state which and explain	Comments
		Journalism Council - since 2002 not active, re-activation is planned. Self-regulation for print journalism (not broadcasting journalism)	Optional: Financial subsidies from KommAustria according to § 12a Act for the promotion of the press (Presseförderungsgesetz 2004)	No	The Austrian Journalism Council quote to exist in 2002. The introduction of the option for financial subsidies from KommAustria may be referred to as an attempt to stimulate the re-activation process—with however limited success so far (Sept. 2010).
		ORF-Foundation Council Regulatory body of ORF	Power for KommAustria to annul any decision of the institutions of the ORF in case of consequent violation of ORF-G; Power to dismiss the accountable ORF organs according to § 37 (2) ORF-G	No	

Table 41 - International cooperation

Country	Body	Does it cooperate with other national regulatory bodies in EU and international fora?	Source and form of cooperation (legal basis)	Comments
Austria	KommAustria	yes, e.g. EPRA, CEPT, and other institutions of international cooperation		