

# 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 – United Kingdom

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## 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)
UK	905 (total) 835 cable/satellite; 70 DTT	OFCOM has estimated that there will be 150-200 VOD services in the UK at the point at which ATVOD takes up its formal duties. <a href="http://www.ofcom.org.uk/consult/condocs/vod/vod.pdf">www.ofcom.org.uk/consult/condocs/vod/vod.pdf</a>	12 BBC1, BBC2, BBC3, BBC4, BBC News 24, BBC Parliament, CBeebies, CBBC, ITV, Channel 4, Five, S4C

**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
UK	Information requirements (art. 5 AVMS Directive)	Communications Act 2003 <a href="http://www.opsi.gov.uk/ACTS/acts2003/ukpga_20030021_en_1">www.opsi.gov.uk/ACTS/acts2003/ukpga_20030021_en_1</a> The Audiovisual Media Services Regulations 2009 <a href="http://www.opsi.gov.uk/si/si2009/uksi_20092979_en_1">www.opsi.gov.uk/si/si2009/uksi_20092979_en_1</a> The Audiovisual Media Services Regulations 2010 <a href="http://www.opsi.gov.uk/si/si2010/uksi_20100419_en_1">www.opsi.gov.uk/si/si2010/uksi_20100419_en_1</a>	Office of Communications (OFCOM) The Advertising Standards Authority (ASA)	Office of Communications (OFCOM) The Advertising Standards Authority (ASA) The Association for Television on Demand (ATVOD)	Office of Communications (OFCOM) The Advertising Standards Authority (ASA) BBC Trust
	Audiovisual commercial communication, sponsorship, product placement (Art. 9 – 11 AVMS Directive)	Communications Act 2003 <a href="http://www.opsi.gov.uk/ACTS/acts2003/ukpga_20030021_en_1">www.opsi.gov.uk/ACTS/acts2003/ukpga_20030021_en_1</a> The Audiovisual Media Services Regulations 2009 <a href="http://www.opsi.gov.uk/si/si2009/uksi_20092979_en_1">www.opsi.gov.uk/si/si2009/uksi_20092979_en_1</a>	OFCOM ASA	OFCOM ASA ATVOD	OFCOM ASA

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
		The Audiovisual Media Services Regulations 2010 <a href="http://www.opsi.gov.uk/si/si2010/uksi_20100419_en_1">www.opsi.gov.uk/si/si2010/uksi_20100419_en_1</a>			
	Accessibility to people with a disability (Art. 7 AVMS Directive)	Communications Act 2003 <a href="http://www.opsi.gov.uk/ACTS/acts2003/ukpga_20030021_en_1">www.opsi.gov.uk/ACTS/acts2003/ukpga_20030021_en_1</a> The Audiovisual Media Services Regulations 2009 <a href="http://www.opsi.gov.uk/si/si2009/uksi_20092979_en_1">www.opsi.gov.uk/si/si2009/uksi_20092979_en_1</a>	OFCOM	OFCOM ATVOD	OFCOM
	Broadcasting of major events (Art. 14 AVMS Directive)	Communications Act 2003 <a href="http://www.opsi.gov.uk/ACTS/acts2003/ukpga_20030021_en_1">www.opsi.gov.uk/ACTS/acts2003/ukpga_20030021_en_1</a>	OFCOM	OFCOM	OFCOM
	Access to short news reports (Article 15 AVMS Directive)	Communications Act 2003 <a href="http://www.opsi.gov.uk/ACTS/acts2003/ukpga_20030021_en_1">www.opsi.gov.uk/ACTS/acts2003/ukpga_20030021_en_1</a>	OFCOM	OFCOM	OFCOM
	Promotion of European works (Art. 13, 16, 17 AVMS Directive)	Communications Act 2003 <a href="http://www.opsi.gov.uk/ACTS/acts2003/ukpga_20030021_en_1">www.opsi.gov.uk/ACTS/acts2003/ukpga_20030021_en_1</a> The Audiovisual Media Services Regulations 2009 <a href="http://www.opsi.gov.uk/si/si2009/uksi_20092979_en_1">www.opsi.gov.uk/si/si2009/uksi_20092979_en_1</a>	OFCOM	OFCOM ATVOD	OFCOM
	Hate speech (Art. 12 and 6 AVMS Directive)	The Audiovisual Media Services Regulations 2009 (modifying the Communications Act 2003 s368E) Public Order Act 1986, Part III, s18	OFCOM	OFCOM ATVOD	OFCOM
	Television advertising and teleshopping, (Art. 19 – 26 AVMS Directive)	Communications Act 2003 <a href="http://www.opsi.gov.uk/ACTS/acts2003/ukpga_20030021_en_1">www.opsi.gov.uk/ACTS/acts2003/ukpga_20030021_en_1</a>	OFCOM ASA	OFCOM ATVOD ASA	OFCOM ASA
	Protection of minors (Art. 27 AVMS Directive)	Communications Act 2003 <a href="http://www.opsi.gov.uk/ACTS/acts2003/ukpga_20030021_en_1">www.opsi.gov.uk/ACTS/acts2003/ukpga_20030021_en_1</a>	OFCOM	OFCOM	OFCOM
	Right of reply (Art. 28 AVMS Directive)	Communications Act 2003 <a href="http://www.opsi.gov.uk/ACTS/acts2003/ukpga_20030021_en_1">www.opsi.gov.uk/ACTS/acts2003/ukpga_20030021_en_1</a>	OFCOM	OFCOM	OFCOM
	Communication and cooperation with other European regulation bodies and the	Communications Act 2003 <a href="http://www.opsi.gov.uk/ACTS/acts2003/ukpga_20030021_en_1">www.opsi.gov.uk/ACTS/acts2003/ukpga_20030021_en_1</a>	OFCOM	OFCOM	OFCOM

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
	Commission (Art. 30 AVMS Directive)				

**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
UK	Office of Communications (Ofcom)	<a href="http://www.ofcom.org.uk">www.ofcom.org.uk</a>	March 19, 2002 (empowered October 29, 2003)	Riverside House, 2a Southwark Bridge Road, London SE1 9HA, UK
	The Advertising Standards Authority (ASA)	<a href="http://www.asa.org.uk">www.asa.org.uk</a>	1962	71 High Holborn, London, WC1V 6QT, UK
	The Association for Television on Demand (ATVOD)	<a href="http://www.atvod.co.uk">www.atvod.co.uk</a>	March 18, 2010	PO Box 561, Walton on Thames, Surrey KT12 9DA, UK

**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)
UK	Office of Communications	Yes	Yes	Yes	Yes	Yes	Consumer Protection (electronic communications networks and services)

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)
	(OFCOM)						Promotion of Media Literacy Copyright Infringement under the Digital Economy Act 2010 <a href="http://www.opsi.gov.uk/acts/acts2010/ukpga_20100024_en_1">www.opsi.gov.uk/acts/acts2010/ukpga_20100024_en_1</a>
	The Advertising Standards Authority (ASA)	Yes	No	No	No	No	No
	The Association for Television on Demand (ATVOD)	Yes	No	Yes	No	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
UK	Office of Communications (OFCOM)	Not foreseen	853 (31/3/09)	Not foreseen	£142.5m (2010/11) €170.935m	OFCOM Annual Report, 2008-09 <a href="http://www.ofcom.org.uk/about/accoun/reports_plans/annrep0809/annrep0809full.pdf">www.ofcom.org.uk/about/accoun/reports_plans/annrep0809/annrep0809full.pdf</a> <a href="http://www.ofcom.org.uk/about/accoun/tariff/ble1011/">www.ofcom.org.uk/about/accoun/tariff/ble1011/</a>
	The Advertising Standards Authority (ASA)	Not foreseen	Not stated Staff cost: £4,665,693	Not foreseen	£7.9m €9.47m	ASA Annual Report 2008 <a href="http://www.asa.org.uk/About-ASA/Annual-Report.aspx">www.asa.org.uk/About-ASA/Annual-Report.aspx</a>
	The Association for Television on Demand	Not foreseen	Information not available	Not foreseen	£375,000 (estimate of full year 1 running cost)	

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
	(ATVOD)				€449,296	

## 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
UK	Office of Communications (Ofcom)	Ofcom Act 2002 Communications Act 2003	Ofcom Act 2002 Communications Act 2003
	The Advertising Standards Authority (ASA)	The British Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code)	Control of Misleading Advertisements Regulations 1988 Consumer Protection from Unfair Trading Regulations 2008 Business Protection from Misleading Marketing Regulations 2008
	The Association for Television on Demand (ATVOD)	Communications Act 2003 Audiovisual Media Services Regulations 2009 Audiovisual Media Services Regulations 2010	Communications Act 2003 Audiovisual Media Services Regulations 2009 Audiovisual Media Services Regulations 2010

**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
UK	Office of Communications (Ofcom)	Statutory corporation	Yes		Governed by a Board comprising a mix of non-executive and executive members (of which the non-executives must form a majority)	<a href="http://www.ofcom.org.uk/about/account/role/">www.ofcom.org.uk/about/account/role/</a>

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
					Independent of Government	
	The Advertising Standards Authority (ASA)	Non-statutory body	Yes		Independent of Government Formal relationships with OFCOM (co-regulatory partner for broadcast advertising) and the Office of Fair Trading (OFT) As a non-statutory body, ASA has no power to fine or take advertisers to court	<a href="http://www.asa.org.uk">www.asa.org.uk</a>
	The Association for Television on Demand (ATVOD)		Yes		Self-regulatory body, appointed by OFCOM under AVMS	<a href="http://www.atvod.co.uk">www.atvod.co.uk</a>
	BBC Trust		No	The Trust is a sovereign body within the BBC		BBC Royal Charter

**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	
UK	Office of Communications (OFCOM)		OFCOM is an independent statutory body. The Government is responsible for appointing Members to the OFCOM Board, and is answerable to Parliament for the performance of OFCOM. However, other than the specific cases set out in the Communications Act 2003 where the Secretary of State has power of direction to OFCOM, OFCOM is independent of government. <a href="http://www.ofcom.org.uk/about/csg/ocb/codeofconduct/">www.ofcom.org.uk/about/csg/ocb/codeofconduct/</a>	Office of Communications Act 2002
	The Advertising Standards Authority (ASA)		The Memorandum of Understanding between OFCOM and the co-regulatory parties in television advertising, including the ASA, OFCOM "OFCOM	Communications Act 2003



Country	Body	Is independence implicitly or explicitly recognised as a value in the legal framework?		Source (highest formal legal level)
		No	Yes	
			undertakes not to interfere in the functioning of the new system, except in exceptional circumstances". <a href="http://www.ofcom.org.uk/consult/condocs/reg_broad_ad/update/mou">www.ofcom.org.uk/consult/condocs/reg_broad_ad/update/mou</a>	
	The Association for Television on Demand (ATVOD)		The Audiovisual Media Services Regulations 2009 amend the Communications Act 2003, giving OFCOM the power to regulate VOD services and to delegate this to another body. <a href="http://www.ofcom.org.uk/tv/ifi/vod/designation180310.pdf">www.ofcom.org.uk/tv/ifi/vod/designation180310.pdf</a> <a href="http://www.ofcom.org.uk/consult/condocs/vod/statement/">www.ofcom.org.uk/consult/condocs/vod/statement/</a>	The Audiovisual Media Services Regulations (SI 2009/2979)
	BBC Trust	While the Trust is part of the BBC, the independence of the Trust from the BBC Executive and the governance relationship between them is set out in the BBC Charter		BBC Royal Charter

### 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
UK		Tick boxes	√	√	√
	OFCOM	Areas	Audiovisual content (radio/TV, on demand media services Transmission aspects of audiovisual	<ul style="list-style-type: none"> <li>• Television Broadcast licensing regime</li> <li>• Content standards – code setting powers</li> </ul>	<ul style="list-style-type: none"> <li>• Enforce the rules in relation to licensed broadcasters</li> <li>• Enforcement provisions – on-air</li> </ul>

Country	Body		General policy setting	General policy implementing powers	Third party decision making powers
			content (e.g. spectrum) Distribution aspects of audiovisual content	<ul style="list-style-type: none"> <li>Fairness and Privacy – code setting powers</li> <li>Quotas for independent productions and European programming</li> <li>PSB quotas for original productions; regional production; news and current affairs</li> </ul>	announcements, financial penalties, licence revocation <ul style="list-style-type: none"> <li>Through broadcasting licences – fines through to revocation</li> </ul>
		Source	Communications Act 2003	Broadcasting Act 1990 and 1996; Communications Act 2003	Broadcasting Act 1990 and 1996; Communications Act 2003
	ASA	Tick boxes	No	√	√
		Areas		Content standards	Adjudications
		Source		Delegated from OFCOM	Delegated from OFCOM
	ATVOD	Tick boxes	No	√	√
		Areas		On demand services	Editorial and advertising issues
		Source		Delegated from OFCOM Audiovisual Media Services Regulations 2009 <a href="http://www.opsi.gov.uk/si/si2009/uksi_20092979_en_1">www.opsi.gov.uk/si/si2009/uksi_20092979_en_1</a> Audiovisual Media Services Regulations 2010 <a href="http://www.opsi.gov.uk/si/si2010/uksi_20100419_en_1">www.opsi.gov.uk/si/si2010/uksi_20100419_en_1</a> Ofcom formal designation <a href="http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/designation180310.pdf">http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/designation180310.pdf</a>	Delegated from OFCOM Audiovisual Media Services Regulations 2009 <a href="http://www.opsi.gov.uk/si/si2009/uksi_20092979_en_1">www.opsi.gov.uk/si/si2009/uksi_20092979_en_1</a> Audiovisual Media Services Regulations 2010 <a href="http://www.opsi.gov.uk/si/si2010/uksi_20100419_en_1">www.opsi.gov.uk/si/si2010/uksi_20100419_en_1</a> Ofcom formal designation <a href="http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/designation180310.pdf">http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/designation180310.pdf</a>

**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)
UK	OFCOM / ATVOD / ASA	Quotas	√	√	√			Communications Act 2003
		Advertising	√	√	√			Communications Act 2003
		Protection of minors	√	√	√			Communications Act 2003

**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
UK	OFCOM	Quotas	√ all sanctions are discretionary	√ Not exceeding 5% of the provider's applicable qualifying revenue or £250,000 (€305,000)	√	√	√	
		Advertising	√	same as above	√	√	√	
		Protection of minors	√	same as above	√	√	√	
		On-demand editorial	√	same as above	√	√		
	ASA	Advertising	√		√			
	ATVOD	On-demand editorial	√		√			
		Protection of minors	√		√			

**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
UK	OFCOM	√	√	OFCOM only implemented its proposals to enact the AVMS legislation in the UK at the beginning of 2010: nevertheless, in the areas covered by the Directive, Ofcom has set and implemented policies since its inception in 2003				

**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)
UK	OFCOM Listed in Ofcom annual reports	√	√	√	√	No cases
	ASA	√		√		
	ATVOD	N/A (body only just being set up)	As previous answer	As previous answer		

**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
UK	OFCOM	Yes All complaints considered: in serious cases, broadcasters invited to submit representations. Most serious cases will be referred to a Committee of the Board for sanction to be imposed, following an oral hearing.	<a href="http://www.ofcom.org.uk/">www.ofcom.org.uk/</a>

#### 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)		
UK	OFCOM	Board	9	No	No	No	No	No	No	Content Board (a committee of the Ofcom Board dealing with content issues) has statutory requirement for members representing the 4 nations of the UK	<a href="http://www.ofcom.org.uk/about/csg/ofcom_board/">www.ofcom.org.uk/about/csg/ofcom_board/</a>
	ASA	Board	16	No	No	No	No	No	No	No information available	<a href="http://www.asa.org.uk">www.asa.org.uk</a>
	ATVOD	Board	No information available	No	No	No	Yes	No	No	No information available	OFCOM: The regulation of video on demand services, December 2009

**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?
UK	OFCOM	<ul style="list-style-type: none"> <li>Ensuring the optimal use of spectrum</li> <li>Ensuring a wide range of electronic communications services</li> <li>Ensuring a wide range of TV and radio services</li> <li>Maintaining plurality in broadcasting</li> <li>Adequate protection for</li> </ul>	<p>Consensus, with the option of voting: minority views not expressed either internally or externally</p> <p>Ofcom board resolutions must be passed by a majority of non-executive members (Office of Communications Act 2002)</p>	Yes – meeting notes, declarations of members' interests, "purdah" periods	Yes <a href="http://www.ofcom.org.uk/about/csg/ofcom_board/">www.ofcom.org.uk/about/csg/ofcom_board/</a>

Country	Body	Competences	Decision-making process	Is the decision making process transparent?	Minutes and agendas published?
		audiences against offence, harm, unfairness or infringement of privacy			
	ASA	<ul style="list-style-type: none"> <li>Investigating complaints, monitoring and taking action against misleading, harmful or offensive advertising</li> </ul>	Initial investigation at staff level. If staff believe there is a case to answer, case is referred to ASA Council for adjudication	Yes	Yes
	ATVOD	<ul style="list-style-type: none"> <li>Receiving notifications from VoD services</li> <li>Enforcing relevant standards in relation to editorial, protection of minors, advertising; sponsorship and product placement, accessibility; European works</li> </ul>	To be determined: organisation still being set up	To be determined: organisation still being set up	To be determined: organisation still being set up

**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
UK	OFCOM	Chairman Board members	Yes	Public advertisement of posts	Chairman and Non-Executive Directors of the OFCOM Board are appointed jointly by the Secretary of	No	Office of Communications Act 2002

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
					State for Business, Enterprise and Regulatory Reform and the Secretary of State for Culture, Media and Sport. The Chief Executive is appointed by the Nominations Committee of the Board. Executive Directors appointed on the recommendation of the Chief Executive and approved by the Non-Executive Directors.		
	ASA	Chairman	Yes	Nominations Committee of the ASA Council	ASA Council	No information available	No information available
		Board members	No	ASA Council members are appointed following public advertisement	ASA Council is made up of 15 people, appointed by the ASA Chairman	n/a	No information available

**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
UK	OFCOM	Chairman of the board	Not stated in Act, but in practice usually initially five years, renewable for a further period.	No	Yes, not limited by Act but OCPA Code recommends a maximum of two terms	OFCOM Act 2002
		Non-executive Board members	Not stated in Act, but usually initially three/four years, renewed for a further three years	No	Yes, not limited by Act but OCPA Code recommends a maximum of two terms	OFCOM Act 2002
		Executive Board members	Terms of appointment coterminous with their employment with OFCOM.	No	n/a	OFCOM Act 2002
	ASA	Council members	ASA Council members serve three-year terms for a maximum of six years.		Yes, once	



**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
UK	OFCOM	Chairman of the board	None required	None specified	n/a
		Board members	None required	None required. Board may include up to 4 executive members	n/a
	OFCOM Content Board	Chairman of the board	None required	None specified	n/a
		Board members	None required	None required. Board may include up to 2 executive members	n/a
	ASA	Council Members	No information available	Two-thirds of the members independent of the advertising industry.	n/a

**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						
UK	Ofcom	Chairman	Yes		No	Yes Members of the lower house of parliament are	Yes No interest permitted in any entity whose core business	Yes but not in central or local government	Obligation to disclose	OFCOM Act 2002

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						
						debarred from membership of Ofcom Board	activities could be affected by Ofcom's decisions			
		Board members	Yes		No	Same as above	Same as above	Yes but not in central or local government	Obligation to disclose	OFCOM Act 2002
		Senior staff	Yes		No	Same as above	Same as above	Yes but not in central or local government	Obligation to disclose	OFCOM Act 2002
		ASA		No (Council is drawn in part from industry as a self regulatory body)						
		ATVOD		No (Council is drawn in part from industry as a self regulatory body)						

**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				
UK	Ofcom	Chairman	Yes		Yes	Yes	Yes	Non Executive Conflict of Interest Policy and Members Code of Conduct Office of Communications Act 2002 Schedule, sections 1 and 17
		Non-executive Board members	Yes		Yes	Yes	Yes	Non Executive Conflict of Interest Policy and Members Code of Conduct Office of Communications Act 2002 Schedule, sections 1 and 17
		Executive Board members	Yes		Yes	Yes	Yes	Employment contract Members Code of Conduct

**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		
UK	Ofcom	Chairman	Yes		Under the terms of appointment a restriction is applied for the first 6 months following termination/expiry of appointment requiring Board consent.	Letter of appointment
		Board members	Yes		Under the terms of appointment a restriction is applied for the first 6 months following termination/expiry of appointment requiring Board consent	Letter of appointment
		Senior Staff	Yes		Yes, a notice period and the employment contract makes clear that employees have an ongoing duty around confidentiality	Employment contract
	ASA			No		
	ATVOD		No information available			

**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				
UK	Ofcom	Chairman	Yes		Secretary of State for Business, Innovation & Skills and Secretary of State for Culture, Media and Sport	<ul style="list-style-type: none"> <li>Is an undischarged bankrupt or has had his estate sequestrated without being discharged</li> <li>Has made an arrangement with his creditors, or has entered into a trust deed for creditors, or has made a composition contract with his creditors</li> <li>Has such a financial or other interest as is likely to affect prejudicially the carrying out by him of his functions as a member of OFCOM</li> <li>Has been guilty of misbehaviour or</li> <li>Is otherwise incapable of carrying out, or unfit to carry out, the functions of his office</li> </ul>	Only individual members	Office of Communications Act 2002

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				
		Individual board members	Yes		Secretary of State for Business, Innovation & Skills and Secretary of State for Culture, Media and Sport	Same as above		Office of Communications Act 2002

**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		
UK	OFCOM	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
UK	OFCOM	No	State funding £2,768k (€3,253k): 2%	£75,192k (€91,987): 57% (Grant-in-Aid from Central Government)	£50,938k (€62,302k): 39% (of which £25,355 (€31,033k) – 19% - collected from broadcasting licensees: the rest base on administrative charges for electronic networks and services)	All fines are paid into the Consolidated Account – none are retained by OFCOM	Grant-in-aid from Central Government also covers areas such as public interest test for media mergers, media literacy and ex-post Competition Act investigations (2009: £2,004k, €2,355)) Set at cost recovery and agreed on case by case basis as required with Ministers	State funding, licence fees & other – Tariff Tables 2010/11  Spectrum fees & fines – section 400 accounts 2008/09
	ASA	No	No	£7,846k (€9,600k) Funding generated by levy based on advertising spend	No	No	<a href="http://www.asa.org.uk">www.asa.org.uk</a>	No

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
	ATVOD	No	No	To be set: estimated £375,000 (€458,673) Levy raised from services judged to be within AVMS scope	No	No	<a href="http://www.atvod.co.uk">www.atvod.co.uk</a>	No

**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
UK	OFCOM	HM Treasury sets overall spending caps which limit overall budget level: current 3 year cap level set in 2007	Yes OFCOM sets its budget within these spending caps each year.	Approval required from the Treasury	No	

**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?					Legal basis
		Yes/no	Periodicity	By national (state) audit office, etc.	Private audit firm	Other	
UK	OFCOM	Yes	Biannual	Yes UK National Audit Office			Office of Communications Act 2002
	ASA	Yes	Annual		Yes		
	ATVOD		Not yet stated				



## 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
UK	Ofcom	Parliament	Yes	<p>Annual Financial Report (statement of accounts) to be sent to Secretary of State and Comptroller and Auditor General to be placed before Parliament as soon as possible after end of financial year.</p> <p>Annual Report to be send to Secretary of State and placed in Parliament as soon as possible after end of financial year.</p> <p>Annual oral evidence session with Chair and CEO to House of Commons Culture and Business Select Committees</p> <p>Written and oral evidence to House of Commons Select Committees as part of various inquiries</p>	<p>Clause 11 Office of Communications Act 2002</p> <p>Clause 12 Office of Communications Act 2002</p> <p>No legal basis – informal requirement of both committees, though instigated by OFCOM</p> <p>Committees can request a witness attends committee to give oral evidence – standing Order 152</p>
		Government as a whole	No	<p>While there is no formal overall legal accountability, OFCOM takes its public accountability and transparency seriously, and reflects in its day-to-day practices a number of best practice approaches identified by Government.</p> <p>HM Treasury sets a cap for OFCOM's budget.</p>	N/A
		Specific ministers (e.g. Media, finance, etc.)	Yes	<p>A number of reporting requirements to Secretary of State – e.g. on illegal file sharing and infrastructure (DEA 2010) and Annual and Financial Reports (as above)</p> <p>Ofcom also obliged to take direction from Ministers in some specific cases (as above)</p>	<p>Communications Act 2003</p> <p>Digital Economy Act 2010</p>
		Public at large	Yes	<p>Wide range of public consultation requirements</p> <p>Opportunity for Legal Review of OFCOM decisions</p>	Communications Act 2003

**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
UK	OFCOM	Parliament	Annual	All activity	Yes: KPI's in relation to performance: statistical record of all activity	No	No	Obligations are set out in a number of governing Acts of Parliament including: <ul style="list-style-type: none"> <li>• Office of Communications Act 2002</li> <li>• Communications Act 2003</li> <li>• Wireless Telegraphy Act 2006</li> <li>• Broadcasting Act 1996</li> <li>• Enterprise Act 2002</li> <li>• Digital Economy Act 2010</li> </ul>

**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
UK	OFCOM	Yes	Every 2 years	Yes National Audit Office	No	No	Office of Communications Act 2002

**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
UK		Does anybody have the power to overturn decisions of the regulator?	No	No	No	No	No	<i>No information available</i>
		Does anybody have the power to give instructions to the regulatory body?	Yes	Yes Ministers can direct Ofcom in relation to what can and cannot be advertised	Yes (as for minister – no constitutional difference)	No	No	Communications Act 2003 s 321
		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 exclude	Yes See above	Yes See above	N/A	N/A	N/A	N/A

Country	Body			Ministry/Minister	Government	Parliament	Other	Source
		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
UK	OFCOM	Internal	1 Any review granted will be undertaken by the Broadcasting Review Committee, a sub-committee of the OFCOM Board, consisting of members drawn from the OFCOM Content Board.	No	Either party (complainant or Broadcaster)	No legal requirement to allow internal review but Communications Act 2003 (325 (2)) provides that it shall be the duty of OFCOM to establish procedures for the handling and resolution of complaints about the observance of standards. Civil Procedure Rules 1998

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
		External	1 Judicial Review in the High Court (unappealable) for procedural matters. (Decisions can be reviewed by the Competitions Appeal Tribunal for competition matters and decisions relating to the provision of electronic communications services and networks)			

**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
UK	OFCOM (Broadcasting Review Committee)	√			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
UK	OFCOM	√	√		Decisions that relate to the areas covered by AVMS are typically not appealable to the Competition Appeals Tribunal, only to Judicial Review – which is an appeal on process not merits.

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

Country	Body	Appeal stage	Yes	No	Comments
UK	Internal: OFCOM (Broadcasting Review Committee)	1	√		The Broadcasting Review Committee may uphold the decision of the OFCOM Executive; or quash the earlier decision in whole or in part and remit the decision back to the OFCOM Executive with reasons for the OFCOM Executive to reconsider in light of those reasons; or substitute its own decision for the Decision of the OFCOM Executive.
	External: the High Court (Judicial review)	1		√	Court may refer a decision back to Ofcom for reconsideration on the grounds of faulty process or insufficient consideration of matters of fact – but it cannot replace the original 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?
UK	OFCOM	Not specified – but Ofcom has the ability to commission external advice	Not specified	Yes	Statutory obligations to conduct and publish research and reports	Yes
	ASA	Yes but not specified	Not specified	Yes	none	Yes
	ATVOD	Yes	Not specified	Yes	None	ATVOD is required to carry out research – this will inevitably be done in the form of outside advice

**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	
UK	OFCOM	Legally, Ofcom is required to publish Impact Assessments in relation to any proposals which would have a significant effect, and to consult on these assessments. Ofcom's own internal rules set rigorous requirements for consultation in relation to regulatory decisions	Any persons affected. In relation to some issues, there are obligations to consult specified parties	Typically 12 weeks (minimum 4 weeks)	Yes	Yes	Communications Act 2003

**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
UK	OFCOM	2009 (2009/10)	12 (15)
		2008 (2008/09)	11 (10)
		2007 (2007/08)	12 (12)
		2006 (2006/07)	12 (10)
		2005 (2005/06)	12 (13)

**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
UK	OFCOM	All important decisions, defined by law as well as any that meet one of three criteria: (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 (c) to have a significant impact on the general public in the United Kingdom or in a part of the United Kingdom.	Yes Ofcom has an obligation under the Communications Act subsection 3(3) to have regard to principles representing best regulatory practice, including transparency – this affects both the decisions Ofcom takes and allowing stakeholders to understand the context within which Ofcom has reached its decisions e.g. by taking account of the precedent set by previous decisions. Ofcom also has specific requirements. For example, in relation to standards – Ofcom must publish in s.324. It includes a requirement to publish, by way of consultation, a proposed code and any proposed revisions to the code as well as the final code and revisions following consultation. Under section 328 Ofcom has a duty to publicise its functions in relation to complaints. In relation to Fairness and Privacy	Yes	N/A



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
			decisions, section 119 of the Broadcasting Act 1996 requires Ofcom to publish a summary of fairness and privacy complaints after it has reached its decision, together with a summary of its findings and any other action it has taken. Finally, there are duties for Ofcom as a public authority under the Freedom of Information Act, which include making information readily available through a publication scheme. <a href="http://www.ofcom.org.uk/about/cad/foimain/foi_pubscheme/">www.ofcom.org.uk/about/cad/foimain/foi_pubscheme/</a>		
	ASA	No legal obligation to publish but all decisions are published weekly	All Council decisions are published and full reasoning given for the decision	No	
	ATVOD	All determinations and enforcement orders	Ofcom's designation of ATVOD as the self-regulatory body for on-demand services contains requirements on ATVOD to carry out its duties openly and transparently and to publish decisions	yes	

## 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
UK	OFCOM / ASA	Memorandum of Understanding / Legal designation under AVMS	Co-regulatory arrangement under the terms of the Communications Act 2003 and the De-regulation and Contracting Out Act 1994	OFCOM retains backstop enforcement powers The ASA can also receive instruction from the Office of Fair Trading which retains backstop powers in relation to non-broadcast advertising	
	OFCOM / BBC	Memorandum of Understanding	Communications Act 2003: BBC Charter and	OFCOM has responsibility to set	

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
	Trust		Agreement	some quotas / requirements in agreement with the Trust	
	OFCOM / ATVOD	Legal designation	The Audiovisual Media Services Regulations 2009	OFCOM retains backstop enforcement powers	

**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
UK	Ofcom	Yes, Ofcom is a member of EPRA (European Platform of Regulatory Authorities) that deals with issues of content regulation and regularly cooperates with regulators from around the world on bilateral and multilateral basis.	Soft instruments (guidelines, MoUs, etc)	
		<p>On the telecoms sector, Ofcom is a member of the Body of European Regulators for Electronic Communications (BEREC)</p> <p>In addition, under powers conferred in the Communications Act, Ofcom represents the UK in the European spectrum committees (Radio Spectrum Policy Group (RSPG) and the Radio Spectrum Committee (RSC)) and is the designation UK Administration for ITU matters.</p> <p>We also support the work of the UK Government in other relevant EU Committees (Contact Committee and Cocom) and contribute to the work of the OECD on matters related to communications regulation</p>	<p>Regulation (EC) 1211/2009 establishing BEREC and the office</p> <p>Commission Decision 2002/622/EC establishing the RSPG</p>	