

INDIREG

Preliminary Final Report

Annex – Questionnaire



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*“Indicators for independence and efficient functioning of audiovisual media services
regulatory bodies for the purpose of enforcing the rules in the AVMS Directive”*

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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.

Provide a link to where these services are listed.

Country	Number of linear commercial services	Number of non-linear commercial services	Number of public service channels (PSBs)
Country name			

Table 2 - Audiovisual laws and regulatory bodies

Audiovisual laws

- List the main implementing acts of the provisions contained in the Audiovisual Media Services (AVMS) Directive
- If the country has not yet implemented the AVMS Directive, give the names of the implementing acts of the Television Without Frontiers Directive
- For countries outside the European Union, list the main broadcasting act
- Provide name, date of adoption and link to acts (in English, where available, if not provide link to laws in original language).

Regulatory bodies

- Name the regulatory bodies in charge of overseeing the application of the national rules implementing the AVMS Directive (or if not implemented, the TWF Directive) by commercial broadcasters, non-linear audiovisual services providers and public service broadcasters (PSB).

NB The study focuses on the regulatory bodies competent for regulating the areas addressed in the AVMS Directive. The study is not aimed at examining the bodies exclusively in charge of substantiating and/or supervising of the public service remit of PSBs.

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
Country name	Information requirements (art. 5 AVMS Directive)				
	Audiovisual commercial communication, sponsorship, product placement (Art. 9 – 11 AVMS Directive)				
	Accessibility to people with a disability (Art. 7 AVMS)				

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
	Directive)				
	Broadcasting of major events (Art. 14 AVMS Directive)				
	Access to short news reports (Article 15 AVMS Directive)				
	Promotion of European works (Art. 13, 16, 17 AVMS Directive)				
	Hate speech (Art. 12 and 6 AVMS Directive)				
	Television advertising and teleshopping, (Art. 19 – 26 AVMS Directive)				
	Protection of minors (Art. 27 AVMS Directive)				
	Right of reply (Art. 28 AVMS Directive)				
	Communication and cooperation with other European regulation bodies and the Commission (Art. 30 AVMS Directive)				

Table 3 - Regulatory bodies – general information

For the main regulatory body (i.e. the one in charge of supervising the application of the rules in relation to most of the areas listed above, for commercial audiovisual media service providers and public service broadcasters) please fill in the tables below. Use several rows if there are several main regulatory bodies.

Country	Name of regulatory body	Link to website	Date of establishment	Location
Country name				

Table 4 - Sectors covered

The aim of this table is to see if the regulatory body is a converged regulator.

For spectrum, please specify if it is spectrum used for broadcasting, or for all services, including for electronic communications services.

Tick boxes if the regulatory body has competence over the listed fields.

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)
Country name							

Table 5 - Staff and overall budget

If the regulatory body is a converged body or has many responsibilities not specifically linked to audiovisual matters, please indicate figures allocated for audiovisual matters. If a breakdown is not available, please state that the figures cover the overall situation.

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
Country name						

II. INSTITUTIONAL FRAMEWORK

Table 6 - Legislation establishing and governing the regulatory body

Provide name and date of adoption of, and link to:

- legislation establishing the regulatory body
- legislation governing the functioning of the regulatory body.

Country	Body	Legislation setting-up the regulatory body	Governing legislation
Country name			

Table 7 - Legal status

Please state the legal form of the regulatory body and explain what this means.

If the regulatory body is not a separate legal entity please specify to what entity it is part of (ministry, government, PSB, etc.). Also specify if there are organisational characteristics that lead to an exceptional position of the regulatory body compared to others divisions of that entity and if so, which ones.

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
Country name						

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. Tick boxes and if it is recognised as a value, briefly explain how.

In the source, please list the highest formal legal level where this value is recognised. If it is a guiding value, but with no formal origin, please tick no and explain.

Country	Body	Is independence implicitly or explicitly recognised as a value in the legal framework?		Source (highest formal legal level)
		No	Yes	
Country				

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

If the body has rule making and/or policy setting powers, indicate if this power derives from a general act (e.g. governing the powers of the body) or if this power comes from specific legislation in a particular area. Please also indicate the areas where the regulatory body can exercise these powers.

Tick boxes ✓

Country	Body		General policy setting	General policy implementing powers	Third party decision making powers
Country name		Tick boxes ✓			
		Areas			
		Source			

Table 10 - Supervision and monitoring power

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

We have taken quotas, advertising and the protection of minors as examples of the areas where these powers can be exercised.

Please also specify under 'others' if the regulatory body has other supervision powers in the areas covered by the AVMS Directive.

This table is not concerned with how these powers are used in practice.

Tick boxes ✓.

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

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. For each of them, specify if the sanctions are non-discretionary/automatic or if the regulatory body has some discretion in deciding on whether or not adopt a sanction and on the type and amount of the sanction.

This table is not concerned with how these powers are used in practice.

Tick boxes

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
Country name		Quotas						
		Advertising						
		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. If it has not made use of them, explain why.

If there is any statistical data on these questions, please add.

Tick boxes .

Country	Body	Policy setting	General policy implementing powers	Specific rule making	Systematic monitoring	Ad-hoc monitoring	Information collection powers	Monitoring after complaints
Country name								

Table 13 - De facto use of formally granted sanction powers

This table shows whether the regulatory body has made use of its formally granted powers within the past 5 years. If it has not made use of them, explain why. If there is any statistical data on these questions, please add.

Tick boxes .

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)
Country name						

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
Country name			

IV. INTERNAL ORGANISATION AND STAFFING

Table 15 - Highest decision-making organ – composition

- Please state if the highest decision-making organ of the regulatory body/bodies is an individual or a board/commission and if it is a board/commission, tick the relevant representative components (specify the number of representatives per category and the proportion of that category in the whole composition).
- The highest decision-making organ is the organ responsible for regulatory tasks, namely supervision and enforcement. The highest decision-making organ can also be an internal body to the public service broadcaster if it has the power to issue binding decisions. 'Representation' does not necessarily mean formal representation (delegation) 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 (common practice).

If there is more than one organ responsible within a regulatory body (for instance one organ in charge of management questions, and one in charge of regulatory questions, or in particular areas such as quotas, advertising and the protection of minors) please fill out for each organ, by using different rows.

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)		
				Yes or no Number of representatives Proportion of this group in the board	Yes or no Number of representatives Proportion of this group in the board	Yes or no Number of representatives Proportion of this group in the board	Yes or no Number of representatives Proportion of this group in the board	Yes or no Number of representatives Proportion of this group in the board	Yes or no Number of representatives Proportion of this group in the board		
Country name											

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

This table is intended to show the main fields of responsibility of the highest decision-making organ of the regulatory body as well as its decision making process.

- For the competences, please list main competences and specify if the body is competent to determine its internal organisation and procedures and whether it has a decision making power on human resource.
- On the decision making process, please specify how decisions are taken: by majority vote, consensus, whether there a presence quorum. Please indicate source and/or link.
- Is the decision making process transparent and does the highest decision making body publish agendas and minutes of its meetings? If so, please provide link.

If there is more than one organ responsible within a regulatory body (for instance one organ in charge of management questions, and one in charge of regulatory questions) please fill out for each organ, by using different rows.

Country	Body	Competences	Decision making process	Is the decision making process transparent?	Minutes and agendas published?
Country name					

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.

If there is more than one organ responsible within a regulatory body (for instance one organ in charge of management questions, and one in charge of regulatory questions) please fill out for each organ, by using different rows to the extent that different rules apply.

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
Country name		Chairman				Yes - No	
		Board members					

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.

If there is more than one organ responsible within a regulatory body (for instance one organ in charge of management questions, and one in charge of regulatory questions) please fill out for each organ, by using different rows to the extent that different rules apply.

Country	Body		Term of office	Is the term staggered not to coincide with election cycle?	Renewal possible? If so, state how many times	Source
Country name		Chairman of the board				

Country	Body		Term of office	Is the term staggered not to coincide with election cycle?	Renewal possible? If so, state how many times	Source
		Board members				

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.

If there is more than one organ responsible within a regulatory body (for instance one organ in charge of management questions, and one in charge of regulatory questions) please fill out for each organ, by using different rows to the extent that different rules apply.

Country	Body		Qualifications	Professional expertise	Source
Country name		Chairman of the board			
		Board members			

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.

For the rules on incompatibilities, please also specify if civil servants/members of other public bodies can enter the regulatory body.

If there is more than one organ responsible within a regulatory body (for instance one organ in charge of management questions, and one in charge of regulatory questions) please fill out for each organ, by using different rows to the extent that different rules apply.

Country	Body		Do such rules exist?		Rules to ensure conflicts of interest with government	Rules to ensure conflicts of interest with political parties	Rules to ensure 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						
Country name		Chairman	+ link to rules							
		Board members								
		Senior staff								

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.

If there is more than one organ responsible within a regulatory body (for instance one organ in charge of management questions, and one in charge of regulatory questions) please fill out for each organ, by using different rows to the extent that different rules apply.

Country	Body		Do such rules exist?		Rules to ensure conflicts of interest with government	Rules to ensure conflicts of interest with political parties	Rules to ensure conflicts of interest with industry	Source
			Yes	No				
Country name		Chairman	+ link to rules					
		Board members						
		Senior staff						

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.

If there is more than one organ responsible within a regulatory body (for instance one organ in charge of management questions, and one in charge of regulatory questions) please fill out for each organ, by using different rows to the extent that different rules apply.

Country	Body		Do such rules exist?		Do rules exist to prevent chairman/board members/senior staff from being employed by former regulatees?	Is a cooling-off period foreseen?	Others	Source
			Yes	No				
Country name		Chairman	+ link to rules					
		Board members						
		Senior Staff						

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.

If there is more than one organ responsible within a regulatory body (for instance one organ in charge of management questions, and one in charge of regulatory questions) please fill out for each organ, by using different rows to the extent that different rules apply.

Tick boxes .

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				
Country		Chairman						
		Individual board members						

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		
Country		2009	Chairman				
			Individual board members				
		2008	Chairman				
			Individual board members				
		2007	Chairman				
			Individual board members				
		2006	Chairman				
			Individual board members				
		2005	Chairman				
			Individual board members				

V. FINANCIAL RESOURCES

Table 25 - Sources of income

Provide percentages of total budget, reference year (unless 2009) + link to source where information is published.

For other fees, please also add who can decide on the amount of these fees and if there is a requirement that they should be cost-oriented.

Country	Body	State funding/broadcasting fees (max level)	Spectrum fees	Authorisation/licence fees paid by operators	Fines	Other fees, e.g., 'market surveillance fee' based on % of market players' revenues	Source
Country name							

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
Country name		Describe the role of the parliament/government in the process				

Table 27 - Financial accountability – 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
Country name							

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
Country name		Parliament	Yes/no		
		Government as a whole	Yes/no		
		Specific ministers (e.g. Media, finance, etc.)	Yes/no		
		Public at large	Yes/no		
		Other	Yes/no If yes, specify		

Table 29 - Reporting obligation

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

Please indicate the areas (scope) covered by the reporting obligation (financial auditing, performance linked to objectives/clearly defined indicators, etc.).

Please also state if a report has been disapproved in the past 10 years.

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
Country name		Parliament/ministry/body/sector/public (if more than one, cover in separate rows)						

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
Country name							

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 If you answer yes (✓) state who can overturn and give short explanation (areas, conditions if any, examples).

Country	Body	Does anybody have the power to overturn decisions of the regulator?	Ministry/Minister	Government	Parliament	Other	Source
Country name		Yes	No				
		Explanation					
		Does anybody have the power to give instructions to the regulatory body?					
		Yes	No				
		Are there limitations in the power to overturn (e.g. limited to legal supervision, which would exclude political supervision)?					
		Are there limitations in the power to give instructions (e.g. limited to legal instructions which 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 includes the internal stages.

Please specify clearly who will decide the appeal in case of internal appeal. We also want to know whether there is any requirement to exhaust internal appeal before turning to a court.

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
Country name		Internal	1				
			2				
			3				
		External	1				
			2				
			3				

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

Please indicate if the situation varies according to the appeal stages.

Country	Body	Does regulator decision stand pending appeal body decision?			
		Yes	No	Yes, unless appeal body suspends it	Other
Country name					

Table 34 - Accepted grounds for appeal

Please indicate if the situation varies according to the appeal stages.

Country	Body	Errors of fact	Errors of law (including failure to follow the due process)	Full re-examination	Other
Country name					

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

Please indicate if the situation varies according to the appeal stages.

Country	Body	Appeal stage	Yes	No	Comments
Country name		1			[e.g. No. The appeal body has the power to cancel the decision and remit it back to regulator for new decision.]
		2			
		3			

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?
Country name		Yes/no				

Table 37 - 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	
Country name							

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
Country name		2009	
		2008	
		2007	
		2006	
		2005	

Table 39 - Publication of regulator's decisions

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
Country name					

VIII.COOPERATION

Table 40 - Cooperation with other regulatory authorities

Where in a country, there are more than one regulatory body, describe the mechanisms of cooperation between the bodies, including self and co-regulation bodies. State if the process is formalised in a cooperation agreement, or if the cooperation takes place in an ad-hoc manner (source of cooperation). Please also indicate if the regulatory body can receive any instructions from another regulatory body.

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
Country name					

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
Country name				

IX. ASSESSMENT OF INDEPENDENCE

These tables will not be published. They are intended to be used for our own internal purposes. Please also state if you do not want this information to be shared with the European Commission.

Table 42 - Adequacy of staffing – Confidential

Country	Body	Adequate	Not adequate	If not adequate, state reasons
Country name				

Table 43 - Adequacy of funding – Confidential

Please indicate if the funding is adequate in view of the tasks to be carried out.

Country	Body	Adequate	Not adequate	If not adequate, state reasons
Country name				

Table 44 - Adequacy of formal powers – Confidential

Please indicate if the formal powers are adequate in view of the tasks to be carried out.

Country	Body	Adequate	Not adequate	If not adequate, state reasons
Country name				

Table 45 - Overall evaluation of level of independence – Confidential

Please indicate if you consider that the regulatory body is independent.

Country	Body	Yes (completely)	If no, is lack of independence due to influence from :				
			Ministry/ Government	Parliament	Public service broadcaster	Other broadcasters	Others
Country name			Give examples	Give examples	Give examples	Give examples	Give examples e.g. insufficient resources