

ERGA Report on the independence of NRAs

15 DECEMBER 2015

Summary of the recommendations

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The AVMS Directive should be strengthened so as to ensure the following:

1. The institutional frameworks of Member States shall establish independent National Regulatory Authorities (NRAs¹), in particular by:
 - guaranteeing the independence of these NRAs, notably with open and transparent nomination and appointment procedures;
 - ensuring that the dismissal of the NRA's Chair or Board Members is based on transparent and objective grounds as prescribed in the relevant law/regulation;
 - introducing incompatibility and conflict of interest rules in their national laws.
2. NRAs shall have adequate and appropriately qualified human resources to carry out their functions effectively².
3. NRAs shall have sufficient/adequate financial resources for the performance of their tasks, and be autonomous in the allocation of the budget³, and their financial statements should be subject to external examination by an independent and qualified institution in compliance with the principle of accountability. Accounting mechanisms for NRAs should be introduced as safeguard for democratic legitimacy and efficient functioning (i.e. external auditing procedures).
4. NRAs shall carry out their work in line with the principle of transparency:
 - the functioning of the NRAs should be regulated by transparent procedures, including for the process of consultation;
 - NRAs should ensure where appropriate, consultation and cooperation with the affected parties, especially before taking decisions with relevant impact in the market;
 - NRAs must make their decisions publicly available (while taking into account the privacy requirements of the interested parties) and provide reasoning for them.
5. NRAs shall have the power to take autonomous decisions, independent from all bodies and organizations related to the provision and distribution of audiovisual media services.
6. NRAs should be provided with adequate enforcement powers and these powers should be handled autonomously, but also in line with fair, transparent and non-discriminatory published procedures for imposing sanctions.
7. The right to be heard should be ensured by a specific provision and the appeal bodies should be judicial bodies.

¹ Comments from the ERGA working group: the provision of a revised AVMS Directive might specify that the NRAs should be legally distinct from and functionally independent from Government, market players and any other institution.

² Comments from the ERGA working group: The remuneration of the NRAs' employees should be adequate and sufficient to allow the NRA to attract and retain qualified staff.

³ Comments from the ERGA working group: the NRAs should also be autonomous in the preparation of the budget and have separate budget allocations.