



ERGA Report on the independence of NRAs

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Introduction

The European Regulatory Group for the Audiovisual (ERGA) was established in March, 2014, through the Commission Decision C(2014) 462 of 3.2.2014 as advisory body to the Commission¹. Its task is to advise and assist the Commission in its work to ensure a consistent implementation of the AVMS directive in a converged media age.

One of the topics enlisted in ERGA's Work Programme for 2014/2015 is the independence of audiovisual regulators, on which a specific subgroup has been created.

The concept of independence of regulators, already well developed and implemented in other sectors of the European Acquis Communautaire (e.g., electronic communications and energy), is pursued in the audiovisual sector by article 30 of the 2010/13/EU Directive on Audiovisual Media Services (AVMSD), according to which *"Member States shall take appropriate measures to provide each other and the Commission with the information necessary for the application of this Directive, [...] in particular through their competent independent regulatory bodies"*.

Article 30 of the AVMSD neither defines who are the independent regulatory bodies nor enlists their competences and features. On the contrary, as it comes out from the contributions to the public consultation launched by the EU Commission in 2013, although independence is a key value, shared by the European regulators of audiovisual media services and enshrined in their missions, the notion of independence is understood very differently among the Member States.

The main task given to the subgroup on "Independence of NRAs" is therefore to collect and analyse the work already done on the issue of regulatory independence by relevant institutions, organisations and academics and to prepare a report that will address the ways to strengthen the independence of the European audiovisual media services regulatory bodies. With this report, the subgroup should carry out an analysis of the institutional remit of the National Regulatory Authorities (hereinafter referred to as "NRA") and their independence prerogative in the light of the relevant EU legislation, in order to identify possible common features of the concept of independence at EU level and assess them on the background of the specificities of the national approaches to the AVMS sector.

The work of the subgroup was anticipated by the High Level Statement on the independence of NRAs in the audiovisual sector, which was approved on October 21, 2014, by the ERGA Plenary. The High Level Statement, that the subgroup contributed to draft, set out the general principles and approaches shared by the regulators on this matter: *"The independence of regulatory bodies in the communications sectors is key to their effectiveness [...]and at the same time, to ensure a predictable and dynamic competitive environment in*

¹ <http://ec.europa.eu/digital-agenda/en/news/commission-decision-establishing-european-regulators-group-audiovisual-media-services>

their sectors. At a high level, regulators should be able to carry out their regulatory tasks without direction or interference from political or commercial interests". The statement recognizes "the differences in constitutional systems in the EU and the variety of institutional and organizational set-ups among the audiovisual regulators of the Member States" and it identifies "[...] common characteristics that any independent regulator in our sector should be equipped with. Based on regulatory best practice in related sectors, such characteristics could include: independence both from private parties (including regulated entities) and public authorities; transparent decision-making processes and accountability to relevant stakeholders; open and transparent procedures for the nomination, appointment and removal of Board Members; knowledge and expertise of human resources; financial, operational and decision making autonomy; effective enforcement powers; availability of dispute resolution mechanisms; the possibility only for judicial power to review the NRAs' decisions".

The last paragraph of the statement underlines the importance of the European Commission as the initiator of European legislation. In the light of this, ERGA is to discuss with the Commission the conclusions that will be elaborated by the subgroup in view of the ongoing REFIT exercise of the AVMS Directive.

In fulfilment of the Work Programme, at the end of 2014 the subgroup sent to all NRAs participating to ERGA a questionnaire aimed at collecting relevant information and data about the different national institutional set-ups regarding NRAs' independence.

The questionnaire was answered by 33NRAs, namely KommAustria (Austria), CSA (Belgium-Wallonia), VRM (Belgium-Flanders), MEDIENRAT (Belgium) CEM (Bulgaria), AEM (Croatia), CRTA (Cyprus), RRTV (Czech Republic), The RADIOAND TELEVISION BOARD (Denmark), TJA (Estonia), FICORA (Finland), CSA (France), German regulatory bodies/authorities (Germany), ESR (Greece), NMHH (Hungary), IMC (Iceland), BAI (Ireland), AGCOM (Italy), NEPLP (Latvia), LRTK (Lithuania), ALIA (Luxembourg), BA (Malta), AEM (Montenegro), CVDM (Netherlands), MEDIETILSYNET (Norway), KRRIT (Poland), ERC (Portugal), RVR (Slovakia), AKOS (Slovenia), CNMC (Spain), MRTV (Sweden), OFCOM (Switzerland), OFCOM (United Kingdom). The Belgian MEDIENRAT submitted answers in November 2015.

Not all the NRAs answered all the questions, of course, but in general terms each question has been answered by more than 90% of the NRAs consulted and therefore the data collected can be considered reliable and trustworthy.

Purpose of the Report

The questionnaire circulated by the ERGA subgroup on "Independence of regulators" was aimed at collecting relevant information about different national institutional set ups,

focusing on independence features as well as on other relevant aspects that may impact on such features.

The report summarizes the findings deriving from the analysis of the answers to the mentioned questionnaire and the position of the most relevant literature on the topic of “independence of regulators”, with the aim of providing the EU Commission with some ideas to foster the independence of regulators during the revision of the AVMS Directive.

Finally, beyond embracing all comments coming from ERGA members, the report also takes into the highest consideration those provided by EPRA.

Structure of the Report

The report is opened by a “Chapter 0”, dedicated to the provisions on the issue of the NRAs’ independence set in the European framework regulating the sectors of energy and electronic communications.

Chapter 0 is followed by 7 sections, each dedicated to a specific topic:

- Chapter 1: Institutional framework
- Chapter 2: Appointment procedures and governance
- Chapter 3: Human Resources
- Chapter 4: Financial autonomy
- Chapter 5: Accountability and transparency
- Chapter 6: Decision making
- Chapter 7: Enforcement

After a brief introduction focused on the reasons why the topic discussed in the chapter is important for the independence of the NRAs, each of the seven chapters describes the main findings stemming from the answers gathered. A more detailed presentation of the answers collected is then enclosed in the Annexes to the Report.

At the beginning of each chapter, a paragraph “Literature review” highlights the position of the most relevant institutions, organisations and academics on the topic of interest, while at the end of each chapter a “blue box” summarizes the analysis of the answers and makes recommendations.

The Conclusions of the Report, which are based on the findings of the questionnaire and on the evaluations of the blue boxes, provide the opinion of the ERGA subgroup on the statements that the review of the AVMS Directive should contain in order to foster the independence of the regulators. In any case, the Report reflects the general understanding that it is essential that each Member State is able to apply more detailed or stricter rules in the areas covered by the Directive, hereby taking into account the differences in organization of the public

sector and tradition for law regulation between Member States, but that it sets clear minimum standards at the same time.

Chapter 0: NRA independence in the electronic communications and energy sectors

The issue of the NRAs' independence has been tackled by the European institutions at various levels. In the sectors of energy and electronic communications, for example, there are specific provisions included in the EU Directives which are aimed at providing safeguards to the independence of the regulators. The following subchapters will summarize briefly the provisions of the aforementioned frameworks.

0.1 Electronic communications

The electronic communications Directive 2009/140/EC (amending Directives 2002/21/EC, *ed.*) provides for a wide range of powers, responsibilities and tasks to be vested in national regulatory authorities in order to ensure effective competition between market players. Under the existing electronic communications framework, NRAs are required to deal with important and complex issues such as determining relevant markets, conducting market analyses and imposing obligations on identified SMP-operators.

The safeguards ensuring the independence of the regulatory authorities are stated by Art. 3 of the Framework Directive². The reasons behind the quest for independent are indicated in

²DIRECTIVE 2002/21/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) as amended by Directive 2009/140/EC and Regulation 544/2009, https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/140framework_5.pdf.

Article 3, National regulatory authorities:

1. Member States shall ensure that each of the tasks assigned to national regulatory authorities in this Directive and the Specific Directives is undertaken by a competent body.
2. Member States shall guarantee the independence of national regulatory authorities by ensuring that they are legally distinct from and functionally independent of all organisations providing electronic communications networks, equipment or services. Member States that retain ownership or control of undertakings providing electronic communications networks and/or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.
3. Member States shall ensure that national regulatory authorities exercise their powers impartially, transparently and in a timely manner. Member States shall ensure that national regulatory authorities have adequate financial and human resources to carry out the task assigned to them.
- 3a. Without prejudice to the provisions of paragraphs 4 and 5, national regulatory authorities responsible for ex-ante market regulation or for the resolution of disputes between undertakings in accordance with Article 20 or 21 of this Directive shall act independently and shall not seek or take instructions from any other body in relation to the exercise of these tasks assigned to them under national law implementing Community law. This shall not prevent supervision in accordance with national constitutional law. Only appeal bodies set up in accordance with Article 4 shall have the power to suspend or overturn decisions by the national regulatory authorities. Member States shall ensure that the head of a national regulatory authority, or where applicable, members of the collegiate body fulfilling that function within a national regulatory authority referred to in the first subparagraph or their replacements may be dismissed only if they no longer fulfil the conditions required for the performance of their duties which are laid down in advance in national law. The decision to dismiss the head of the national regulatory authority concerned, or where applicable members of the collegiate body fulfilling that function shall be made public at the time of dismissal. The dismissed head of the national regulatory authority, or where applicable, members of the collegiate body fulfilling that function shall receive a statement of reasons and shall have the right to request its publication, where this would not otherwise take place, in which case it shall be published. Member States shall ensure that national regulatory authorities referred to in

the relevant recitals: avoiding the risk of conflicts of interests between the regulation of the sector and operational (or financial) interests and ensuring the impartiality and transparency of the decisions of the NRAs. These concepts are referred to in the recitals to the Directive as the “principle of separation of regulatory and operational functions”³.

The precise requirements are formulated by Art. 3 of the Framework Directive. The first sentence of this provision applies to all Member States, who must all ensure that their NRAs are legally distinct from, and functionally independent of, market players. To that end, Member States must ensure at least that:

- every NRA is a legal person separate from any organization providing electronic communications networks or services: assigning the least part of the regulatory tasks to an undertaking would constitute a breach of this requirement;
- NRAs have “functional independence” in their relationship with market players. This means that, if a Member State retains ownership or control of a market player, it is obliged to ensure an effective structural separation of the regulatory function from activities associated with ownership or control (market players should not be able to interfere with or to influence the decisions of the regulatory body). In practice, Member States are obliged to avoid as much as possible every conflict of interests between those different functions at every level of their administration⁴;

Member States must ensure that national regulatory authorities exercise their powers impartially, transparently and in a timely manner, and that they have adequate financial and human resources to carry out the task assigned to them. Specifically, NRAs should have separate annual budgets, which have to be made public.

the first subparagraph have separate annual budgets. The budgets shall be made public. Member States shall also ensure that national regulatory authorities have adequate financial and human resources to enable them to actively participate in and contribute to the Body of European Regulators for Electronic Communications (BEREC).

- 3b. Member States shall ensure that the goals of BEREC of promoting greater regulatory coordination and coherence are actively supported by the respective national regulatory authorities.
- 3c. Member States shall ensure that national regulatory authorities take utmost account of opinions and common positions adopted by BEREC when adopting their own decisions for their national markets.
4. Member States shall publish the tasks to be undertaken by national regulatory authorities in an easily accessible form, in particular where those tasks are assigned to more than one body. Member States shall ensure, where appropriate, consultation and cooperation between those authorities, and between those authorities and national authorities entrusted with the implementation of competition law and national authorities entrusted with the implementation of consumer law, on matters of common interest. Where more than one authority has competence to address such matters, Member States shall ensure that the respective tasks of each authority are published in an easily accessible form.
5. National regulatory authorities and national competition authorities shall provide each other with the information necessary for the application of the provisions of this Directive and the Specific Directives. In respect of the information exchanged, the receiving authority shall ensure the same level of confidentiality as the originating authority.
6. Member States shall notify to the Commission all national regulatory authorities assigned tasks under this Directive and the Specific Directives, and their respective responsibilities.

³ INDIREG Final Report, pag. 334, <http://www.indireg.eu/?p=360>

⁴ INDIREG Final Report, pag. 334, <http://www.indireg.eu/?p=360>

The newly added paragraph 3a of the Framework Directive obliges NRAs responsible for ex-ante market regulation or for the resolution of disputes between undertakings to act independently and prohibits them seeking or taking instructions from any other body in relation to the exercise of these tasks assigned to them under national law implementing Community law. The text, however, explicitly mentions that these obligations shall not prevent supervision in accordance with national constitutional law. This obligation introduces the principle of the NRA's accountability, highlighting that the NRAs must be accountable to the appeal bodies set up in accordance with the provisions of Art. 4 of the Framework Directive. These bodies are the only bodies who should have the power to suspend or overturn decisions by the national regulatory authorities.

Another new requirement relates to the dismissal of the head (or the Board) of the regulatory body. In this respect, Member States have to ensure that the head of a national regulatory authority or, where applicable, members of the collegiate body, may only be dismissed if they no longer fulfil the conditions required for the performance of their duties. The decision to dismiss the head/Board Member has to be made public at the time of dismissal. The dismissed head/Board Member has to receive a statement of reasons and shall have the right to require its publication, where this would not otherwise take place, in which case it shall be published. This specific requirement has also been analysed by an interpretative note of the European Commission⁵.

Summary of the principles stated in Art 3 of the Framework Directive:

- The NRA must be independent of all organizations providing electronic communications networks, equipment or services
- It shall exercise its powers impartially, transparently and in a timely manner
- The NRA should shall not seek or take instructions from any other body in relation to the exercise of these tasks assigned to it
- Only appeal bodies that are independent of the parties involved (they may be a Court) shall have the power to suspend or overturn NRA's decisions
- The Head and Board Members can be dismissed only if they no longer fulfil the conditions required for the performance of their duties (laid down in advance in national law). Dismissal decision shall be made public and a statement of reasons shall be made available
- NRAs should have adequate financial and human resources to enable them to carry out their tasks, also at EU level. This also means that NRAs must have a separate annual budget.

⁵ Commission Staff Working Paper, *Interpretative Note On Directive 2009/72/Ec Concerning Common Rules For The Internal Market In Electricity And Directive 2009/73/Ec Concerning Common Rules For The Internal Market In Natural Gas*, January 2010, pag. 9.

0.2 Energy (electricity and gas)

The European framework regulating the energy sector is even more advanced, in its provisions regarding the independence of the NRAs, than the framework regulating the electronic communications sector: already in 2003, paragraph 34 of the preamble to the Directive 2003/54/EC, stated that regulators must be able to take decisions in relation to all relevant regulatory issues if the internal market in electricity is to function properly, and that the national regulatory authorities should be fully independent from any other public or private interests of the electricity and gas industry (without prejudice to judicial review or parliamentary supervision in accordance with the constitutional laws of the Member States).

More recently, Directive 2009/72/EC⁶, repealing Directive 2003/54/EC, stated in article 35 that Member States must guarantee that there be only one single and independent NRA at

⁶ DIRECTIVE 2009/72/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC

Article 35, Designation and independence of regulatory authorities, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32009L0072&from=EN> :

1. Each Member State shall designate a single national regulatory authority at national level.
2. Paragraph 1 of this Article shall be without prejudice to the designation of other regulatory authorities at regional level within Member States, provided that there is one senior representative for representation and contact purposes at Community level within the Board of Regulators of the Agency in accordance with Article 14(1) of Regulation (EC) No 713/2009.
3. By way of derogation from paragraph 1 of this Article, a Member State may designate regulatory authorities for small systems on a geographically separate region whose consumption, in 2008, accounted for less than 3 % of the total consumption of the Member State of which it is part. This derogation shall be without prejudice to the appointment of one senior representative for representation and contact purposes at Community level within the Board of Regulators of the Agency in compliance with Article 14(1) of Regulation (EC) No 713/2009.
4. Member States shall guarantee the independence of the regulatory authority and shall ensure that it exercises its powers impartially and transparently. For this purpose, Member State shall ensure that, when carrying out the regulatory tasks conferred upon it by this Directive and related legislation, the regulatory authority:
 - (a) is legally distinct and functionally independent from any other public or private entity;
 - (b) ensures that its staff and the persons responsible for its management:
 - (i) act independently from any market interest; and
 - (ii) do not seek or take direct instructions from any government or other public or private entity when carrying out the regulatory tasks. This requirement is without prejudice to close cooperation, as appropriate, with other relevant national authorities or to general policy guidelines issued by the government not related to the regulatory powers and duties under Article 37.
5. In order to protect the independence of the regulatory authority, Member States shall in particular ensure that:
 - (a) the regulatory authority can take autonomous decisions, independently from any political body, and has separate annual budget allocations, with autonomy in the implementation of the allocated budget, and adequate human and financial resources to carry out its duties; and
 - (b) the members of the board of the regulatory authority or, in the absence of a board, the regulatory authority's top management are appointed for a fixed term of five up to seven years, renewable once.

In regard to point (b) of the first subparagraph, Member States shall ensure an appropriate rotation scheme for the board or the top management. The members of the board or, in the absence of a board, members of the top management may be relieved from office during their term only if they no longer fulfil the conditions set out in this Article or have been guilty of misconduct under national law.

national level, and ensure that it exercises its powers impartially and transparently. For this purpose, Member States must ensure that, when carrying out the regulatory tasks conferred upon it by this Directive and related legislation, the regulatory authority is legally distinct and functionally independent from any other public or private entity.

In addition, compared to electronic communications, the electricity directive applies stricter independence requirements for the position of the head and the members of the board of the regulatory authority or, in the absence of a board, the regulatory authority's top management:

- a) the head and the members of the board are appointed for a fixed term of five up to seven years, renewable once. Member States are obliged to ensure an appropriate rotation scheme for the board;
- b) the head and the members of the board or, in the absence of a board, the top management may be relieved of office during their term only if they no longer fulfil the conditions set out in the Directive or have been guilty of misconduct;
- c) the regulator can take autonomous decisions, independently from any political body, and has separate annual budget allocations, with autonomy in the use of the allocated budget, and adequate human and financial resources to carry out its duties
- d) Member States are obliged to ensure that its staff and its managers:
 - i. act independently from any market interest; and
 - ii. do not seek or take direct instructions from any government or other public or private entity when carrying out the regulatory tasks. This requirement is without prejudice to close co-operation, as appropriate, with other relevant national authorities or to general policy guidelines issued by the government not related to the regulatory powers and duties under the Directive⁷.

Summary of the principles stated in Art 35 of the Directive 2009/72/EC:

- One single NRA at national level
- It shall exercise its powers impartially and transparently
- Legally distinct and functionally independent from any other public or private entity
- Staff and managers:
 - i. act independently from any market interest;
 - ii. and do not seek or take direct instructions from any government or other public or private entity when carrying out the regulatory tasks.
- the NRA can take autonomous decisions, independently from any political body
- Separate annual budget allocations, with autonomy in the implementation of the allocated budget
- Adequate human and financial resources to carry out its duties
- Board appointed for a fixed term of 5 to 7 years, renewable once.
- Appropriate rotation scheme for the Board
- Members of the Board may be relieved from office during their term only if they no longer fulfil the conditions set out in this Article or have been guilty of misconduct under national law

⁷ INDIREG Final Report, pag. 351-353, <http://www.indireg.eu/?p=360>

Chapter 1: Institutional framework

1.1 Literature review

All the articles and studies related to the issue of independence of regulators agree that «the regulatory body can achieve the relevant degree of structural independence from the government only if established as a separate legal entity». This idea is also further supported by analysis of sector-specific requirements of independence and efficient functioning, since the issue was emphasized as one of the main conditions for achieving fair competition in gradually liberalized markets, is also of particular relevance in the media sector, because of the delicate and controversial relationship between politics and the media.»⁸

The INDIREG report, specifically focusing on the institutional setup of regulatory bodies, stresses that: «[...] a **functional separation** between the ministry and the regulatory body shelters the autonomy of the regulatory body from politics but also from industry, because industry capture can also be performed via political channels. Also, a functional separation prevents the regulatory body from taking up the government's mode of law making, which is mainly based on negotiating with all interested parties and which is not considered as very efficient when carrying out regulatory tasks»⁹

Similarly, CERRE remarks that «Independence implies that the regulatory authority does not receive any instruction, threat or inducement from the national executive or legislative powers, directly or indirectly, regarding the decisions it takes or envisages taking»¹⁰. Moreover, «regulatory decisions must (...) be made in an environment which is shielded from undue influence as much as possible»¹¹.

The regulator, according to the INDIREG report, should derive its own powers and responsibilities from a public law, be organisationally separate from ministries and be neither directly elected nor managed by elected officials¹². «[...]experts [...]pointed out that[...] in cases where legislative and regulatory powers are not functionally separated, conflicts of interest can arise».¹³

In the same vein, a report for the World bank adds that «The regulation of broadcasting should be the responsibility of an independent regulatory body established on a statutory basis with powers and duties set out explicitly in law. The independence and institutional autonomy of the regulatory body should be adequately and explicitly protected from interference, particularly interference of a political or economic nature. »¹⁴

⁸ INDIREG Final Report, pag. 358, <http://www.indireg.eu/?p=360>

⁹ INDIREG Final Report, pag. 359, <http://www.indireg.eu/?p=360>

¹⁰ CERRE (2014), Code of Conduct and Best practices for the setup, operations and procedure of regulatory authorities, p.7.

¹¹ L. Hancher, P.Larouche, *The coming of age of EU regulation of network industries and services of general economic interest*, in P.Craig and G.de Brúrca, eds., *The Evolution of EU Law*, 2nd ed (Oxford:OUP, 2011) 743-781,2011.

¹² INDIREG Final Report, pag. 20, <http://www.indireg.eu/?p=360>

¹³ INDIREG Final Report, pag. 280, <http://www.indireg.eu/?p=360>

¹⁴ Steve Buckley, *Broadcasting, Voice and Accountability. A public interest approach to policy, law, and regulation*, The World Bank Group, pag. 160

1.2 Results from the questionnaire

The NRAs institutional framework and their governance regimes set up the ground for the NRAs' future action, effectiveness and their capacity to adequately respond to the problems identified in the market.

The institutional framework of NRAs needs to guarantee the independence of NRAs by ensuring that they are legally distinct and functionally independent from both market players and from any national institution, thus to ensure the effective application of the regulatory framework. The institutional framework determines the place of NRAs within the State, their competences, powers and resources, and their relationship with other institutional bodies and their government. The way these elements are placed gives a first glance at the degree of independence of their institutions. Although the EU framework for audiovisual services does not define a specific way of guaranteeing autonomy, it underlines the concept. For instance, Article 30 of the AVMS Directive mentions the role of "independent regulatory bodies" in Member States.

The ERGA questionnaire transmitted to participating countries evaluates the clarity of the institutional structures of NRAs. The first section of the questionnaire looks at the manner in which autonomy is affirmed and guaranteed (whether prescribed in law or otherwise). It may differ considering the Member State. Nevertheless, an overview of the different conceptions of an independent institutional framework for NRAs helps to define orientations for future legislation that may follow.

The first section of the questionnaire gives an overview of how independence is institutionally established. There seems to be a large shared opinion within ERGA members that NRAs should be established as entirely independent entities, legally and/or functionally separated from other institutional bodies. Even in the 7 countries¹⁵ where it seems there are not totally independent authorities (legally because NRAs are under the trusteeship of a Ministry¹⁶ or part of a ministerial body¹⁷, or functionally because of budget control or issued guidance from the government), Cyprus, Finland, Latvia, Lithuania and Norway consider this legally established autonomy from other institutional bodies as "*relevant*" or "*very relevant*". The core issue is the way this autonomy is established and enshrined in the legal framework. The results show contradictory tendencies on two points.

First, in most countries (30), the independence of NRAs is set out within the country's legal framework. It is even sometimes explicitly constitutionalized¹⁸. A formal institutionalization of independence for NRAs seems to be widely accepted. On the contrary, in Denmark, Poland and Switzerland, neither a constitutional nor a legal framework asserts the independence of their NRAs. Moreover, OFCOM (Switzerland) and the RADIO AND TELEVISION BOARD (Denmark) do not see this legal guarantee as "*relevant*" or "*really relevant*". The Danish RADIO AND TELEVISION BOARD argues "*that the independence of institutions as the Radio- and Television Board is implicitly intended and respected*" even though there are no specific legal provisions.

¹⁵ Cyprus, Estonia, Finland, Latvia, Lithuania, Norway and Switzerland.

¹⁶ Finland and Norway.

¹⁷ Estonia and Switzerland.

¹⁸ Austria, Greece, Hungary, Malta, Portugal and Sweden.

Second, when evolutions have occurred within the institutional framework, opposite trends may also be observed. The question 1.6 asked if the act on the status of the regulatory bodies had been modified in a way that has reduced its tasks and powers. On the one hand, this was notably the case for Lithuania, Greece and Montenegro. In Greece, for instance, the power to impose penalties has been transferred to other regulatory bodies. On the other hand, it is relevant to highlight that some NRA have gained more powers as a result of modifications to their legal status:

- CSA (France) benefitted from a change in the status (“Autorité Publique indépendante”) which gave it more functional powers, for instance in terms of budget execution.
- AGCOM’s tasks (Italy) in the overall communication sector have been widened to include postal services, conflict of interests, sport rights and copyright.
- BAI’s powers (Ireland), functions and tasks were increased by the Broadcasting Act 2009.

The way independence is defined in the legal framework of the participating countries may vary. Nevertheless, the vast majority of ERGA members consider it a prerequisite.

Blue box: Chapter 1 conclusions

A satisfactory number of NRAs answered the questions in the section on institutional framework. The answers received bring us to the following conclusions:

1. A vast majority of NRAs consider that the establishment of an entirely independent Authority is relevant.
2. Not all NRAs are entirely independent in practice and there are various opinions on the extent to which independence should be guaranteed in the AVMS Directive, if any.

Recommendation of the ERGA working group deriving from the analysis of the questionnaires:

- a specific provision of a revised AVMS Directive should state that the institutional frameworks of Member States shall establish independent NRAs

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.

Chapter 2: Appointment procedures and governance

2.1 Literature review

Enshrining a regulator's independence in legislation does not guarantee that the regulator's behaviour and decisions will be independent. Indeed, «Organisations gain autonomy when they have maximum control of the input of resources on which they are dependent. In particular, a stable source of funding, e.g. by a fee levied on the regulated industries, and the authority to control appointment, allocation, promotion, dismissal and salary policies in relation to the regulatory authority's staff, are important attributes». Hence, «The most obvious safeguards to create an arm's length relation from elected politicians stem from a legal framework which prescribes how the members of the highest decision making organ of the independent regulatory body take office. Thus, the nomination, appointment, tenure and protection against dismissal are of utmost importance when looking at the formal independence of independent regulatory agencies»¹⁹.

A similar concept is also expressed by an OECD report: «Terms of appointment that span over an electoral cycle is likely to promote independence from the political process. Procedures regarding re-appointment should be mindful of the need to guard against the perception of "capture" by the (re)appointing authority. Term limits can be useful to guard against perceived capture, but must avoid unnecessarily depriving the regulatory system of the useful expertise and experience built up by a regulator. Overlapping terms of board members can be a useful mechanism to both provide continuity of approach and protect independence»²⁰.

2.2. Results from the questionnaire

An independent structure has to be completed by autonomous governance (operational and organisational) and adequate resources to preserve NRA's ability to respond to the problems identified in the audiovisual market and to put in place adequate measures to regulate the market in accordance with the objectives enshrined in the EU framework.

The decision-making body of NRAs puts into practice the independence provided by the institutional framework. Consequently, appointment procedures and governance rules play a major role. The measuring of the level of independence following appointment procedures takes into account several indicators. It implies various issues such as the body in charge of appointing regulatory members, the potential degree of political involvement and eligibility requirements, grounds for dismissal, etc.

Not only does independence rest on open and transparent nomination of the decision-making body, but also board members need to preserve it when governing. Assessing the independence of NRAs implies looking at potential safeguards, which may exist in terms of the conditions of mandate of the governing members (for example condition of revocability), incompatibility rules or legal protection against conflicts of interests or both.

¹⁹ INDIREG *Final Report*, pag. 31, <http://www.indireg.eu/?p=360>

²⁰ OECD, *The Governance of Regulators, OECD Best Practice Principles for Regulatory Policy*, 2014, pag. 60

a) Appointment procedures (Questions 2.1 – 2.5 and 2.8-2.9)

The appointment procedures of the head and the decision-making body (“board”) differ between participating countries. There is no predominant figure when it comes to the appointment of the head of the NRAs as answers to question 2.1 reveal. The head is appointed by the government as a whole or by a specific Ministry (Estonia and Norway) in 13NRAs²¹ in; by the Parliament in Croatia, Greece, Lithuania, as well as for some regional regulators in Germany; by the Head of State in France, Luxembourg, as well as for some regional regulators in Germany; or among its members in 8 NRAs²² and some regional regulators in Germany. The board is appointed in most NRAs either by the Parliament, by the Government or, by the head of State. Sometimes²³, board members are appointed jointly by two institutional bodies.

A large majority of NRAs²⁴ considers the nomination process of their board members as “*open and transparent*” (question 2.3). In these cases, some common features may be observed: both the head and the board are appointed by the Government or by the Parliament²⁵, sometimes following public advertisement²⁶. The composition of the board may also be the result of a shared power of nomination between institutions as in France (Sénat and Assemblée Nationale), Lithuania (President of the Republic and Seimas/Parliament) and Poland (Sejm, Senate and President) and Spain (Parliament and Government).

In terms of competencies, eligibility criteria may be required (questions 2.8 and 2.9). The law prescribes such criteria for the head of the TJA (Estonia), the FICORA (Finland) the AKOS (Slovenia), as well as for some regional regulators in Germany, while board members only, are subject to these requirements for the VRM (Belgium-Flanders), the CEM (Bulgaria), the CSA (France), the BAI (Ireland), the ERC (Portugal) and the RVR (Slovakia), as well as, again, for some regional regulators in Germany. For the other NRAs, criteria apply to both the head and board members, as it is the case of the Spanish CNMC and for some regional regulators in Germany or the Belgian MEDIENRAT. These criteria often require specialist skills or experience, such as technical skills or professional experience in the field of communication, broadcasting and electronic communications.

Interestingly, political majorities or power structures may be reflected within the composition of NRAs (2.5)²⁷. This link lies mostly in the representation of the national parliament:

- In Cyprus, Czech Republic, Hungary and some German regional regulators, board members appointed by the Parliament shall reflect a global consensus of the parties.
- In Lithuania, Malta and some German regional regulators, nominations are shared with the opposition either by the guarantee of one member of the opposition to be appointed (Lithuania) or by an equal (Malta) or proportional (Germany) share of the seats.

²¹ Belgium-Flanders, Belgium-Wallonia, Belgium- MEDIENRAT, Cyprus, Finland, Ireland, Netherlands, Slovenia, Sweden, Iceland and Switzerland.

²² Bulgaria, Czech Republic, Latvia, Poland, Portugal, Slovakia, United Kingdom (with the approval of the government) and Montenegro.

²³ In Austria, Belgium-Wallonia, Bulgaria, Denmark, Germany, Lithuania, Malta, Poland, Portugal, Spain and Iceland.

²⁴ Austria, Bulgaria, Croatia, Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Lithuania, Latvia, Netherlands, Poland, Portugal, Slovenia, Slovakia, Spain Iceland and Montenegro.

²⁵ Austria, Croatia, Estonia, Ireland, Latvia, Netherlands, Slovenia, Spain and Iceland.

²⁶ Austria, Croatia, Estonia, Germany, Ireland, Slovenia, United Kingdom and Montenegro.

²⁷ Belgium-Wallonia, Cyprus, Czech Republic, Germany, Hungary, Italy, Latvia, Lithuania Malta and Portugal.

- AGCOM (Italy) points out that independence is not harmed by such system as it is supposed to ensure the “widest representation” of political forces, “including the minorities”. Besides, Member’s mandate not being tied to electoral cycles, political balance changes in the Parliament do not have an impact on the composition of the board.

b) Mandate (Questions 2.6 – 2.7 and 2.10 – 2.14)

The duration of mandates can be an indicator of the independence of NRAs. The legal mandate of the Head and/or Board Members can have direct influence on potential dependencies. Those holding fixed terms of office, particularly those that do not coincide with Parliamentary term, are likely to exhibit more independence and to behave independently from political influences and third parties than those whose term is not fixed or coincides with the mandate of the Parliament, especially if the Head and/or Board Members might be reappointed.

Common aspects can be observed among participating members. Except for Finland, Malta, United Kingdom, Switzerland, and some German regional regulators, mandates of both heads and board members are fixed for a defined period. In Ireland, the law provides that members of the BAI Authority and Statutory Committees shall be appointed for a period not exceeding 5 years and members cannot serve more than two terms of office. The latter is also true for some German regional regulators. The question 2.10 indicates that mandates can be renewed in most NRAs (23²⁸), while in 9 cases it cannot²⁹. Finally, the duration of mandates is never linked to electoral cycles, except for the RRTV (Czech Republic). The main divergence lies in the length of terms of office as it ranges from 1 (Bulgaria) to 9 (Hungary) years when fixed (it is not fixed in 7 NRAs).

Specific measures conditioning the term of head and board members are set out by some NRAs. In some cases, the procedure of appointment envisages a rotation between members of the board as question 2.7 reveals. For instance, boards of the CSA (France) and the RVR (Slovakia) are renewed by one third every two years. This implies a partial renewal on a regulatory basis, which helps to keep certain continuity in the policies led.

Finally, it is impossible in 10 participating countries³⁰ to dismiss NRA’s head and/or board members. Yet, in all other NRAs, the Head of the NRAs or their members may be dismissed either by the Government³¹, by the Parliament³² or by other institutional bodies.³³ In Ireland, the law also prescribes grounds for automatic disqualification.³⁴ Nevertheless, there was no dismissal, in the past five years, on non-objective grounds according to the answers submitted. Common reasons given for

²⁸ Austria, Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Iceland, Ireland, Latvia, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, Slovakia, Slovenia, Sweden and United Kingdom.

²⁹ Bulgaria, France, Greece, Hungary, Italy, Poland, Portugal, Spain and Switzerland.

³⁰ Belgium-Flanders, Denmark, France, Iceland, Italy, Luxembourg, Malta, Norway Spain and Sweden.

³¹ Belgium-MEDIENRAT, Cyprus, Finland, Greece, Ireland, Netherlands, Slovenia, United Kingdom and Switzerland.

³² Belgium-Wallonia, Croatia, Czech Republic, Latvia, Poland, Portugal, Slovakia, Montenegro and some German regional regulators.

NB: the Parliament of Latvia, the Saeima, in an extraordinary session held on July 8, 2015 voted to dismiss the Chairperson of the National Electronic Mass Media Council.

³³ Austria, Bulgaria, Estonia, Hungary, Lithuania, Montenegro and and some German regional regulators.

³⁴ Section 10(6) of the Broadcasting Act, 2009.

the dismissal of a member from his/her position included physical or mental incapacity to work, judicial penalties, non-compliance with incompatibility provisions, conflicts of interest, violation of duties and/or non-participation in the work of the NRA for a defined time.

c) Safeguards (Questions 2.15 – 2.19)

Several safeguards may exist to preserve the independence of NRA, for example their governance structures, through incompatibility rules and rules against conflicts of interests.

In most NRAs, Members' mandates are not compatible with holding an office in other public institutions, private companies, associations and/or unions but those are not explicitly forbidden in Denmark, Ireland, Iceland and Norway. In Cyprus, Czech Republic, France, Lithuania, Slovenia, Slovakia and Montenegro, NRAs have extended incompatibility rules to relatives of the chair or board members. Besides, in 14 NRAs³⁵, a cooling off period can be applied: after the end of their terms, members cannot occupy positions neither within public institutions nor within private companies operating in regulated sectors. The minimum period recorded in question 2.18 for this cooling off period is six months for the OFCOM (UK) while the longest goes up to three years for the ESR (Greece), BA (Malta) and CSA (France, but not in every case).

Finally, in all countries, the law provides safeguards against conflicts of interests, which include the obligation to disclose certain interests³⁶ and activities, incompatibility with other offices, the exclusion of discussion or decision-making processes in circumstances where a conflict of interest has been disclosed³⁷, dismissal³⁸ or penalties.³⁹

³⁵ Bulgaria, Croatia, Cyprus, Estonia, France, Greece, Hungary, Italy, Latvia, Malta, Montenegro, Portugal, Spain and United Kingdom.

³⁶ Ireland, Belgium-Wallonia, Bulgaria, Cyprus, Estonia, Germany, Spain and Switzerland.

³⁷ Ireland, Denmark, Latvia, Spain, Sweden.

³⁸ Ireland, France, Finland, Germany, Hungary, Slovakia and Spain.

³⁹ France.

Blue box : Chapter 2 conclusions

A satisfactory number of NRAs answered the questions in the sections on appointment procedures and governance. The answers received bring us to the following conclusions:

1. A large majority of NRAs agree that the appointment procedures should be open and transparent.
2. Eligibility criteria are often required for the head of the NRA and/or board members.
3. Political representation within the Board of NRAs may be a source of debate to some but it exists in some Member States.
4. In most cases, the term of office is fixed and renewable. The duration of mandates is never linked to electoral cycles, except in one Member State. Dismissals may happen in a majority of NRAs based on objective grounds as prescribed in the relevant law/regulation.
5. Incompatibility rules apply in almost all NRAs but vary from country to country. Rules against conflicts of interests are prescribed in law for almost all NRAs

Recommendations deriving from the analysis of the questionnaires:

- A revised AVMS Directive should clearly state that MS shall guarantee the independence of NRAs, notably with open and transparent nomination and appointment procedures.
- The dismissal of the NRA's Chair or Board Members should be based on transparent and objective grounds as prescribed in the relevant law/regulation
- A revised EU AVMS Directive should ensure that Member States adopt incompatibility and conflict of interest rules in their national laws.

Chapter 3: Human Resources

3.1 Literature review

Almost all studies on the independence of NRAs stress that «An essential characteristic of an independent regulatory body is for it to be equipped with sufficient human resources and adequate expertise, which comprise expertise of the members of the highest decision-making organ itself and/or expertise gained from external advice⁴⁰». «The autonomy of the regulatory organization strengthens the authority of the regulatory agency. An organization has more autonomy when it controls its resources. Thus, a stable source of resources, through a fee charged to the regulated industries, and the authority to control assignment, promotion and salary policies, are considered to be important resources»⁴¹.

Independence is positively linked to “the development and application of technical expertise, because expertise can be a source of resistance against improper influences»⁴², and many of the staff and members of regulators’ governing boards will have backgrounds in the industry they are regulating, and in many cases will return to roles in that industry. Anyhow, preventing post-employment staff movement to industry can limit regulators’ ability to attract the necessary talented staff, as employment by the regulator would narrow potential later career opportunities. However, mandatory time gaps or **cooling-off** periods between leaving a regulator and taking up a position in the regulated industry may be warranted as conditions of employment in some cases⁴³.

3.2 Results from the questionnaire

Operational autonomy, which includes autonomy over human resources, along with knowledge and expertise of human resources are considered essential to reinforce or safeguard independence for a number of reasons.

Autonomy over human resources means that the regulatory authority has the ability to determine the required number, roles, qualifications and expertise of its human resources, recruitment procedures, remuneration policies, its internal organisation and the policies and codes that govern staff behaviours and ethics. This autonomy allows a regulatory authority to have the necessary resources to carry out its regulatory functions and to adapt, when necessary, to changing demands at its own discretion to ensure it retains the ability to carry out its functions effectively and to a high standard. To ensure the regulatory authority’s operational structures remain free from interference or influence from political or commercial interests, best practice recommends open and transparent recruitment procedures. However, to ensure the regulatory authority can attract and retain an adequate number of suitably qualified staff, it should not be constrained in its recruitment procedures and it must be able to offer an attractive career path to staff in terms of remuneration and/or promotion. This generally requires the regulatory authority to have its own budget and autonomy over its budget allocation and remuneration policies. It has been argued that a regulatory

⁴⁰ INDIREG *Final Report*, pag. 363 – 364, <http://www.indireg.eu/?p=360>

⁴¹ INDIREG *Final Report*, pag.39, <http://www.indireg.eu/?p=360>

⁴² INDIREG *Final Report*, pag. 31-32, <http://www.indireg.eu/?p=360>

⁴³ OECD, *The Governance of Regulators*, OECD Best Practice Principles for Regulatory Policy, 2014, pag. 62-63

authority's staff should be exempt from civil service salary rules in order to attract highly qualified staff. Remuneration that is competitive with salaries paid in the private sector reinforces NRAs' ability to recruit and retain qualified staff to perform the complex, technical and sensitive tasks assigned to them, making the regulatory authority's employees less vulnerable to job offers from market players.

The regulatory authority's human resources should possess the requisite expertise over the sector it regulates, over regulation and related issues.⁴⁴ It is expected that a regulatory authority equipped with sufficient human resources with the requisite knowledge and expertise will carry out its duties effectively and to a high standard.

The decision-making procedure of the regulatory authority is governed by the principles of transparency, evidence-based decision-making, impartiality and stakeholder involvement/consultation. The need for knowledge and expertise of human resources is linked to both of these principles. Knowledge and expertise support informed and expert decision-making that, in turn, enhances stakeholder and public respect for, and trust in, the regulatory authority's decision-making and actions, its impartiality and independence. Expertise allows the regulatory authority to independently assess the information obtained from the industry, externally and not to become too dependent on outside competence (for example, information provided by political or commercial interests) thereby protecting it against regulatory capture.⁴⁵ In the absence of knowledge and expertise, a regulatory authority's decision-making may be reduced to choosing between rival submissions and must, often, balance conflicting and different stakeholder interests. However, a regulatory authority is pursuing different regulatory and public interest objectives and, accordingly, requires the knowledge and expertise to independently assess the information that is available and any submissions it receives in order to arrive at fair and reasoned conclusions as to which course of action should be taken in pursuit of such objectives.⁴⁶ Stakeholder engagement with the regulatory process will also be increased where the regulatory authority's decision-making and actions are perceived to be impartial, transparent, fair, expert, informed. The regulatory authority's decision-making will be, as a result, considered as authoritative by the relevant stakeholders.

As noted in the Literature Review, the application of mandatory cooling off periods after a period of employment in a regulatory authority is also linked to expertise and knowledge. Preventing staff from a post-employment return to the industry regulated would impact on a regulatory authority's ability to attract sufficiently qualified staff.

Autonomy over policies, codes of practice or rules which govern and set ethical standards for staff behaviour, for example, rules against conflicts of interests (with regard to political and industry/commercial interests) also protect the regulatory authority against external intervention and political pressure and, thus, act as safeguards against regulatory capture. Such codes, policies or rules are also means and practices of ensuring that the regulatory authority exercises its powers impartially and transparently at all levels of its operations contributing to overall transparency and accountability in accordance with best practice governance and the recognised principles of better

⁴⁴ CERRE Code of Conduct and Best Practices for the setup, operations and procedure of regulatory authorities (7 May 2014).

⁴⁵ INDIREG: Para. 4.3.4, p. 364.

⁴⁶ CERRE Code of Conduct and Best Practices for the setup, operations and procedure of regulatory authorities (7 May 2014).

regulation. Where such codes and rules are made publicly available, this also enhances public/stakeholder trust in the regulatory authority's decision-making, impartiality and independence.

To address these matters, the questionnaire sent to the ERGA members contained questions on:

- (i) The adequacy of the NRAs' human resources (Question 3.1)
- (ii) Autonomy in relation to the recruitment of human resources, recruitment procedures, internal organisation and functioning, legal and economic treatment of employees (Questions 3.2 to 3.5)
- (iii) Difficulties in attracting and retaining suitably qualified staff (Question 3.6)
- (iv) Rules on incompatibility (cooling off periods) and codes of conduct applicable to the NRAs' employees (Question 3.7 and 3.8).

a) Adequacy of human resources (question 3.1)

The majority of NRAs (22)⁴⁷ considered their human resources to be adequate to carry out their functions effectively.

Among the remaining 11 negative answers⁴⁸, NRAs highlighted reductions in numbers, the inadequacy of current staff numbers to carry out all of their statutory or particular duties and, also, complained of a lack of the requisite skills-base.

The CSA in Belgium-Wallonia advised that it was down 20% of its normal staff complement and the ESR in Greece was down by 50%. The NRAs in these countries cited budgetary constraints and financial difficulties as the reasons for the reductions/inability to hire additional staff under Question 3.6 of the Questionnaire. Under Question 3.4, the ESR (Greece) also advised that the Minister of Finance, on the opinion of the Minister of Public Administration, makes the final decision on the internal organisation of the NRA which includes staff numbers. In the Czech Republic, the RRTV cites budgetary constraints as a bar to recruitment. The NRAs in Iceland, Luxembourg and Latvia reported that they had insufficient numbers to carry out their statutory functions. This is also the case for the Belgian MEDIENRAT: The decree of the German-speaking Community of 27 June 2005 setting up the Media Council stipulates that the Media Council is assisted by an independent Bureau with 3 members of staff (art. 116.1 Decree). One person should assist the Regulatory chamber, one the Advisory chamber and the third person should be a legal adviser for both chambers. So far only one person has been designated (Government's Regulation of 11th June 2015, not yet published in the official gazette *Moniteur belge*) and only part-time for the purposes of the Media Council (at a rate of 75% i.e. 28 1/2 hours a week). This person is employed and paid by the Ministry of the German-speaking Community (and is as such submitted to instructions) and becomes no remuneration from the Media Council. The IMC (Iceland) also referred, under Question 3.6, to government cuts to its

⁴⁷ Austria, Belgium-Flanders, Cyprus, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Lithuania, Malta, Montenegro, Netherlands, Norway, Poland, Slovakia, Slovenia, Spain, Sweden, Switzerland and United Kingdom.

⁴⁸ Belgium, Belgium- MEDIENRAT, Bulgaria, Croatia, Czech Republic, Greece, Iceland, Ireland, Latvia, Luxembourg and Portugal.

budget as well as government proposals to either close the NRA or to merge it with another authority.

The NRAs in Bulgaria and Croatia highlighted particular skills and qualifications that were lacking and required, for example, legal, compliance and language skills. The ERC in Portugal considered its staffing resources inadequate having regard to the extent and complexity of its responsibilities particularly in the context of the digital environment.

In Ireland and Slovenia, where staff numbers are subject to the consent of the Government, the NRAs referred to a public service embargo/freeze on recruitment imposed in 2009 (even though in Slovenia this was a temporary embargo only during the crisis). The embargos were also highlighted as a difficulty under Question 3.6 of the Questionnaire as impacting negatively on the NRAs ability to attract suitably qualified staff. On a more positive note, these NRAs report that permission was granted in 2015 for additional staff and new positions. The BAI in Ireland was given permission to create 5 new positions and to fill existing positions which may become vacant in the future. The number of AKOS staff in Slovenia will be increased by 15 in the areas of telecommunications regulation and monitoring, radio spectrum monitoring, infrastructure investment monitoring and postal services regulation.

b) Autonomy in relation to the recruitment procedures, internal organisation and functioning, legal and economic treatment of employees (questions 3.2 - 3.5)

The large majority of NRAs (27)⁴⁹ stated in response to Question 3.2 that they can decide their own recruitment procedures although responses to the subsequent Question 3.3 indicated that 17 NRAs must recruit through public competition and follow civil service procedures prescribed in law. This is to be expected in circumstances where the NRAs' employees have public or civil servant status (Question 3.5). While the CNMC in Spain reported that it could decide its own recruitment procedures, it noted that the launch of a recruitment process must be approved by the Ministry of Finance and Public Administrations.

Four among the 6 NRAs that answered "no" to this initial question noted that the recruitment procedures were determined either by another public / government body or government. KommAustria (Austria) refers to another company RTR GmbH which is its operational support company. In Denmark, the Danish Agency for Culture is responsible for recruitment. In Greece, the ESR is an Independent Authority and recruitment for all Independent Authorities is organised by the High Counsel of selection of personnel (ASEP).⁵⁰ The CEM (Bulgaria) notes it has two types of employees: employees having an employment contract and employees of service who are civil servant and civil servants must be recruited in accordance with a specific procedure.

Positively, in almost all cases among the NRAs who chose "other selection procedures" in response to question 3.3, the recruitment procedures as described appear to be open and transparent (i.e.

⁴⁹ Belgium-Flanders, Belgium-Wallonia, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Malta, Montenegro, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland and United Kingdom.

⁵⁰ Article 4 of Law 3051/2002 as amended.

positions are first advertised publicly and candidates are short-listed according to qualifications, interview processes etc.). The exceptions to public competition were limited and specific. These pertained to the redeployment of public or civil servants (Ireland), temporary staff (Iceland and Switzerland), contractual agents and civil servants on secondment (France).

It is noteworthy that the requirement to follow public competition and civil service recruitment procedures were not cited as a difficulty in attracting or retaining suitably qualified staff under Question 3.6.

Positively, the large majority of NRAs (27)⁵¹ can decide their own internal organisation and functioning. Only 3 NRAs in Estonia, Denmark and Spain reported that they did not have this power and 2 NRAs (Greece and Switzerland) answered both in the affirmative and negative.

In Estonia, Denmark and Spain, the legislation contains provisions on the overall organisation and functioning but the NRAs can make certain decisions in relation to same. In Ireland and Portugal, the relevant legislation establishes the decision making body and other committees/councils which make up the organisation. OFCOM (Switzerland) refers to a split competency on organisational matters between the Minister and the General Director. Similarly, while the ESR in Greece answered 'yes' in respect of its internal functioning, it noted that the final decision regarding its internal organisation (including staff numbers) belongs to the Minister of Finance who relies upon the opinion of the Minister of Public Administration.

The NRAs that answered 'no' to this question on the internal organisation and functioning do not highlight any difficulties as a result.

The employees of the majority of 18 NRAs are civil or public servants and in such cases, the legal and economic treatment of their staff is defined in law. While the NRAs in Bulgaria, Estonia, Greece and Spain refer to two categories of employees: civil servants and employees with the status of private law, their legal and economic treatment is defined by law.

Interestingly, while FICORA (Finland) and MRTV (Sweden) state that most of its staff are civil servants whose legal treatment is defined by law, the NRA determines its remuneration policies and staff salaries.

The employees in the NRAs in Croatia and the United Kingdom do not have the status of civil or public servants. In Croatia, the AEM has private employment contracts with its employees and adopts its own regulations concerning their economic and legal treatment. OFCOM (United Kingdom) determines its own employment and remuneration policies through Executive and Remuneration Committees. OFCOM is also not bound by civil service pay scales.

In total, therefore only 4 NRAs (Croatia, Finland, Sweden and the United Kingdom) have autonomy over their remuneration policies and would appear not to be bound by civil service remuneration levels.

⁵¹ Austria, Belgium-Wallonia, Belgium-Flanders, Belgium- MEDIENRAT, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Malta, Montenegro, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Sweden and United Kingdom.

c) Difficulties in attracting and retaining suitably qualified staff (question 3.6)

Positively, the majority of NRAs (20) do not report any difficulties in attracting and recruiting suitably qualified staff.⁵²

For the 11 NRAs that reported difficulties, they cite budget shortfalls and cuts, wage competitiveness, centralisation of the public sector and funding arrangements as the reasons. For example, AGCOM (Italy) notes that recent legislation requires the NRA to share its recruitment procedures with other NRAs (in response to question 3.2). It notes that this requirement may reduce its autonomy in defining requisite technical skills. The inability to offer competitive remuneration has impacted negatively on the NRAs ability to recruit staff with specialist skills. Accountants, economists and engineers were examples provided. In Ireland and Slovenia, the recruitment embargos which existed between 2009 and 2015 were highlighted as the reasons for difficulties in attracting suitably qualified staff at that time.

The IMC (Iceland) highlighted government cuts to its budget as well as government proposals to either close the NRA or to merge it with another authority. The answers to Question 4.7 in Section 4 of this Report should also be noted. These provide further details of past or pending budget cuts for NRAs. For example, CvdM (Netherlands) notes that from 2018 it will lose more than 1/3 of its budget although it has been assigned with many new tasks and activities in the recent past.

Significant austerity measures were introduced also in the Spanish public administration in 2010, with a 5% cut in public sector salaries and a wage freeze in 2011. These decisions influence also the regulatory body (CNMC). Similarly, AGCOM remarks that spending review measures adopted for the general Italian public administration have been introduced on the NRA's use of its resources in several respects, including through cuts and caps to salaries (further reductions in the economic treatment were introduced in 2014) which may make AGCOM less attractive compared to the private sector.

The negative responses to this question highlight the importance of financial autonomy (including autonomy over budget allocation and remuneration policies) for regulatory authorities in ensuring they can be equipped with suitably qualified staff with the necessary specialist knowledge and expertise.

d) Rules on incompatibility (cooling off periods) and codes of conduct (questions 3.7 - 3.8)

A small number of NRAs advised that their Countries introduced rules on incompatibility applicable to their staff members. These measures aim at preserving the independence of NRAs at every level. In that vein, it might be worthwhile to assess that while there is a general agreement that adequate remuneration or economical compensation in these cases should be desirable in order to counterbalance the negative effects of such cooling-off periods for staff members, these compensations do not seem to be applied by many EU Countries.

⁵² Austria, Belgium-Flanders, Croatia, Cyprus, Denmark, Estonia, France, Germany, Hungary, Italy, Lithuania, Luxembourg, Malta, Montenegro, Norway, Poland, Slovenia, Spain, Sweden and Switzerland.

6 NRAs⁵³ stated they have rules on incompatibility after the end of employment refer to cooling off periods which range from 1 – 3 years. Estonia advised that civil servants in the TJA cannot, for a period of 12 months, become a connected person with a legal person in private law over which they have exercised direct or constant supervision in the previous year. In Montenegro, a 12-month cooling off period applies to the Deputy Directors and Heads of Departments of the AEM. In Spain, Directors are subject to a two-years cooling-off period. No other members of the staff are subject to incompatibility rules after the end of their employment. In France, the law prohibits employees of the CSA, for a period of three years after the end of their employment, from being involved in certain companies in circumstances where they carried out specified activities in relation to such companies during their employment with the NRA. However, the Ethics Commission can approve the compatibility of such involvement.

In the United Kingdom, OFCOM's employees are put on gardening leave for the duration of their notice period in circumstances where there is a potential conflict of interest.

19⁵⁴ NRAs referred to the existence of formal Codes of Conduct or equivalent staff policies. These codes and policies govern matters such as ethics, bribery and representation and, in the majority of cases, follow the rules applicable to civil servants in the country. In Ireland, the BAI has one Code of Conduct which applies to the members of its Authority, its two statutory committees as and its employees. A Code of Conduct in respect of controls on interests and ethical behaviour of such members and staff is required by the Irish broadcasting legislation and must be published on the BAI's website.⁵⁵ In the United Kingdom, OFCOM referred to a Code of Conduct for the Board members and Executive Board Members.

While the AKOS (Slovenia) advised that it does not have a Code of Conduct, it referred to internal regulations and codes on matters (not specified). Similarly, the RADIO AND TELEVISION BOARD (Denmark) does not have a Code of Conduct but refers to its Rules of Procedures for the Board and the legislative provisions applying to matters such as access to documents and rules against conflicts of interest in the Danish Administration Act.

It is also noted that in Section 2 of the Questionnaire ("Appointment Procedures and Governance"), the NRAs advised that the national legislation provides safeguards against conflicts of interests, including the obligation to disclose certain interests and activities, incompatibility with other offices, a prohibition in the decision-making processes in circumstances where a conflict of interest has been disclosed, terms of removal/dismissal and penalties.

⁵³ Estonia, France, Italy, Montenegro, United Kingdom and Spain.

⁵⁴ Belgium-Flanders, Belgium-Wallonia, Bulgaria, Croatia, Cyprus, Estonia, France, Germany, Ireland, Italy, Malta, Montenegro, Netherlands, Norway, Slovakia, Spain, Sweden, Switzerland and United Kingdom

⁵⁵ Section 23 of the Broadcasting Act, 2009

Blue box: Chapter 3 conclusions

Section 3 of the Questionnaire on Human Resources was answered by a satisfactory number of NRAs. The responses bring us to the following conclusions:

1. The large majority of NRAs do not have full operational autonomy. As a result, some NRAs are of the view that they do not have adequate resources and/or the necessary expertise and knowledge to carry out all of their regulatory functions effectively.
2. The reasons for such difficulties seem to be (in several cases) the lack of both operational autonomy and financial autonomy and the fact that the majority of NRA's staff are, as civil/public servants, subject to public sector pay levels. In a small number of cases, for example, staff numbers are subject to government approval.
3. In a small number of cases, the recruitment procedures of the NRA are decided by, or subject to the approval of, another public body or government.
4. In almost all cases, the recruitment procedures employed by the NRAs are open and transparent.
5. The requirement for NRAs to follow public/civil servant recruitment procedure was not cited as a difficulty in attracting and retaining suitably qualified staff, however the status of the NRAs staff as civil/public servants who are, accordingly, subject to civil/public service pay levels, was highlighted as a difficulty.
6. In some cases, the NRAs can employ staff not having public or civil servant status.
7. In most cases, the NRAs have autonomy over their internal organisation and functioning.
8. Most NRAs adopt codes of conduct in respect of controls on interests and ethical behavior to apply to their staff or, at a minimum, adopt rules against conflict of interests

Recommendations deriving from the analysis of the questionnaires:

- **All the NRAs believe that it is crucial to have adequate and appropriately qualified human resources to carry out their functions effectively. This principle should be clearly stated in a revised AVMS Directive.**

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.

Chapter 4: Financial autonomy

4.1 Literature review

Financial autonomy is «An important indicator for dependency potential of the regulatory body. Where external parties have legal influence on the level of the budget, they can both exert pressure to get politically motivated decisions from the body, as well as undermine its operational capacity through inadequate financing. This can occur intentionally or unintentionally, resulting from a lack of knowledge, e.g. due to missing market studies. The greater the influence of one single player regarding the budget allocation, the more likely it is to be used to punish or reward the body in order to generate politically motivated decisions»⁵⁶.

Regarding the financial autonomy of the regulatory authority, the INDIREG report has identified two different aspects as best practices: «the regulatory authority should be able to play a *significant role in the budget setting process*, e.g. being able to make a reasoned proposal which can only be denied for (limited) reasons. The importance of being involved (at least in an advisory role) in the process of determining the appropriate level of the overall budget follows immediately from the theoretical framework of independence»⁵⁷.

«To promote efficiency and equity, it should be made clear who pays for the regulator's operations, how much and why. A regulator should disclose in its annual report what proportion of its revenue comes from each of these sources»⁵⁸.

Different funding models may have different advantages, according to the context and the existence of external audits. With some respects, a funding model based only on the fees or contributions from operators may be preferable; with some others, a mixed model (partly public, partly coming from the fees or contributions from operators) could be a better choice to provide a higher degree of protection from industry influence. «Funding sources may include budget funding from consolidated revenue, cost-recovery fees from regulated entities, monies from penalties and fines and interest earned on investments and trust funds. This mix of funding sources should be appropriate for the particular circumstances of the regulator»⁵⁹.

Moreover, «The existence of an external audit mechanism of the regulator's financial situation is an important mechanism for making sure that it is functioning in an appropriate manner, i.e. to make sure that it is spending money correctly in light of the tasks that it needs to fulfil. Recommendation (2000) of the Council of Europe allows for the supervision of regulatory authorities with respect to the lawfulness of their activities and the correctness and transparency of their financial activities»⁶⁰.

⁵⁶ INDIREG *Final Report*, pag. 54, <http://www.indireg.eu/?p=360>

⁵⁷ INDIREG *Final Report*, pag. 360, <http://www.indireg.eu/?p=360>

⁵⁸ OECD, *The Governance of Regulators*, OECD Best Practice Principles for Regulatory Policy, 2014, pag. 99

⁵⁹ *A mixed funding*, comprising fees levied from industry and government funding, can reduce risk potentials for dependencies and can therefore be qualified as best practice. Source: OECD, *The Governance of Regulators*, OECD Best Practice Principles for Regulatory Policy, 2014, pag. 99

⁶⁰ INDIREG *Final Report*, pag. 394, <http://www.indireg.eu/?p=360>

The adequacy of economic means is key to preserve regulators' autonomy. As reported by the CERRE Code, «a regulatory authority should be endowed with sufficient resources to carry out their tasks adequately»⁶¹.

4.2 Results from the questionnaire

Financial autonomy has crucial importance for the proper independent functioning of NRAs.

The national legal framework should guarantee the NRA's financial autonomy, being a tool to ensure objective, impartial and comprehensively examined regulatory decisions for the benefit of the public interest and strengthening the market. This power, however, should be balanced by sufficient transparency and accountability measures to enable effective public control over , and public scrutiny of, regulators' activities.

The financial autonomy of NRAs can be measured by the fulfilment of the number of criteria, which include:

- autonomy in preparing the regulator's budget;
- diversification of the sources of regulators' budget as stipulated in the national legal framework;
- clearly defined, objective and transparent procedures on the approval of the regulator's budget;
- autonomy in allocating the budget; lack of any external involvement in, or influence over, budget allocation
- efficiency, fairness and transparency of budget allocation procedures;
- adequacy of financial resources; enabling the regulator to effectively implement the provisions of the EU legal framework and perform its regulatory functions and achieve its public interest objectives(use enforcement powers, making objective, well-reasoned, impartial decisions arrived at through transparent process, based on proper analysis and market examination conducted by the regulator's office composed of qualified experts);
- existence of the measures ensuring constant, adequate level of financing over the years (preventing sudden and/or unreasoned budgetary cuts);
- transparency of financial reporting, subject to external approval by the independent audit office, independent commission or other body.

As demonstrated, financial autonomy has many various aspects but it cannot be assessed by formal criteria only. It has been recognised that *de facto* criteria of regulators' financial independence have a great impact on the ability to perform its regulatory tasks effectively and adequately.

Different funding models may have different advantages, depending on the circumstances. For example, the diversification of the sources of regulators' budget could be one way of aiming at achieving at least partial independence from political influence.

⁶¹ CERRE (2014), Code of Conduct and Best practices for the setup, operations and procedure of regulatory authorities, p.6.

In order to examine the aforementioned problems, the questionnaire contained nine questions which may be divided into four categories:

- (i) Autonomy in preparing, approving and allocating the budget (questions 4.1, 4.2, 4.3 and 4.5);
- (ii) External approval of financial statements (question 4.4)
- (iii) Adequacy of financing (questions 4.6 and 4.7); and
- (iv) Sources of financing (questions 4.8 and 4.9).

a) Autonomy in preparing, approving and allocating the budget (questions 4.1 – 4.3 and 4.5)

Budget preparation varies between the NRAs. The proportion of regulatory authorities that prepare their budgets autonomously and those that do not have such autonomy equal (16:16)

In the prevailing number of cases, the NRA's budget constitutes a part of the State budget and, thus, has to be approved by the Parliament. However, in some countries, the NRAs have complete autonomy in both preparing and approving their budgets.

- In the case of VRM (Belgium-Flanders) and IMC (Iceland), the budget is allocated by the Parliament;
- In Austria, the NRA simply notifies the Government of its budget and expected expenses, allowing it full autonomy in both preparing and approving its budget.
- In Bulgaria and Portugal, the NRA's budget is prepared on the basis of the decision of the Government and approved by the Parliament;
- The Croatian AEM has autonomy in preparing and approving its budget. The financial planning is done on a multiannual basis;
- In Greece, the ESR proposes its budget, but advises that, on the instruction of the Ministry of Finance, it usually has to reduce it;
- In Luxembourg, Malta, Norway and Sweden, the budget has to be approved by the Government;
- In Ireland, the relevant Minister has to give his approval for the publication of the BAI's 3-year estimates but he does not have an approval function in relation to the budget figures themselves.

Only in 7 countries⁶² are the NRAs entitled to approve their own budgets (4.2), however, as it takes place for example in French CSA, the draft budget bill has to be approved finally by the Parliament.

At the same time, most of the NRAs(23)⁶³ have autonomy in the budget allocation (4.3). Some of the respondents indicate their obligation to follow specific regulations of the State's financial regulations dividing their budget into parts, like salaries, investments into technologies, operation etc. Such allocation is then checked by the Ministry of Finance. The RADIO AND TELEVISION BOARD (Denmark)

⁶² Austria, Belgium-Wallonia, Croatia, France, Italy, Lithuania and United Kingdom (subject to a spending cap set by the UK government, which is accountable for the spending of all bodies that manage public funds).

⁶³ Austria, Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Croatia, Cyprus, Estonia, France, Germany, Hungary, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, Portugal, Slovenia, Sweden, Switzerland, United Kingdom.

reports, that according to the Financial Act, part of its financial resources has to be dedicated to support non-commercial radio and TV stations.

When it comes to the separation of NRA budget from that of the State (question 4.5), again the proportion is almost equal. The budgets of 15⁶⁴ regulators are separate from the State budget and the other 18 are not⁶⁵. However, some of the NRAs that describe their budget as separate from the State, also advise that it is integrated within the State budget, but the NRA has its own patrimony to use it and that it cannot be changed without a Parliamentary decision (Spain, Sweden, United Kingdom).

b) External approval of financial statements (question 4.4)

The issue of NRAs' accountability is inherently linked with the notion of their independence. The legal framework ensuring the NRA's financial statement is subject to external approval by an objective, competent, and independent authority ensures a regulator's respect for the legal rules and procedures. It also contributes to enhancing public and industry trust in its decision-making.

In the majority of cases (26)⁶⁶, the NRAs' financial statements are subject to external approval (4.4) and in most of these countries (15) an independent audit office, commission or court is in charge of approving it. Other respondents of this group indicate a body connected with or being a part of the Government as the entity responsible for approving their financial statements. In five countries, the financial statements do not have to be approved by external body.

- In Belgium-Flanders, the financial statements are approved by the general board and reviewed by an external accountant and by the Belgian Court of Audit.
- In Denmark, the financial statements regarding the administration of financial support for non-commercial radio and TV stations has to be approved by Rigsrevisionen (The Danish Audit Department) but the budget connected with other activities of the Board, which is part of the budget for the Danish Agency for Culture. The Agency's budget is set out in the Finance Act which is audited by the Public Accounts Committee, based on reports and comments from The Danish Audit Department.
- The CvdM's (Netherlands) finances are audited twice a year by a private entity.
- In Sweden, the National Audit Office evaluates not only the financial statements, but also the authorities' efficiency.

c) Adequacy of financing (questions 4.6 – 4.7)

⁶⁴ Austria, Belgium-Wallonia, Belgium-Flanders, Croatia, Cyprus, Germany, Hungary, Ireland, Italy, Montenegro, Netherlands, Slovenia, Spain, Sweden, United Kingdom.

⁶⁵ Belgium-MEDIENRAT, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Greece, Iceland, Latvia, Lithuania, Luxembourg, Malta, Norway, Poland, Portugal, Slovakia, Switzerland.

⁶⁶ Austria, Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Bulgaria, Croatia, Cyprus, France, Germany, Greece, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, Norway, Poland, Slovakia, Spain, Sweden, Switzerland, United Kingdom

The majority of respondents (25)⁶⁷ consider their budgets adequate to fulfil their functions, although some of them highlight difficulties.

It has to be noted, that at the same time 17 NRAs⁶⁸ highlight recent legislative or governmental interventions with potential to impact on their budget's size or allocation. The respondents highlight budget cuts or threats of budget reductions in circumstances where the existing budget is not sufficient to carry out its regulatory functions. Some of NRAs are constrained by inadequate finances that do not allow them to carry out their duties properly/effectively or at all. In many cases, the NRAs specify particular activities that cannot be carried out due to the inadequacy of their budgets for example: the commissioning of research and studies, the purchasing of necessary equipment, recruiting suitably qualified staff members or covering expenses connected with attendance at international meetings.

- In Croatia and Iceland, the Governments are considering the merger of existing regulatory authorities, creating new convergent bodies with broader competencies which may negatively influence the continuance of NRAs' activities;
- In Belgium-Wallonia, the Government does not always respect its obligations under the financing contract signed with the NRA;
- In Belgium-MEDIENRAT, the allowed amounts are modest (on average 20.000 EUR/year) and do not enable the NRA to have its own staff, premises or equipment.
- 11 NRAs advise of recent budget cuts. In the case of CvdM (Netherlands) it lost one third of its budget despite an increase in its regulatory functions.

The importance of securing adequate financial means for NRA cannot be stressed enough. Insufficient funding causes difficulties in properly fulfilling all of a regulator's functions and generates the risk of conflict of interests or capture. This is an issue where a higher degree of harmonization would be advisable.

d) Sources of financing (questions 4.8 - 4.9)

The last two questions concern the sources of financing for regulatory authorities and possible constraints in the use of income coming from regulated entities.

According to the responses, for the majority of NRAs, the finances come solely from the direct public sources (12 NRAs). Financing the NRA activity solely from the fees paid by regulated entities (6 NRAs) or from mixed sources: direct public sources + fees, direct public sources + indirect public sources + fees and indirect public sources + fees is less common. Other solutions appear in single countries: indirect public sources only, indirect public sources + fees + other, direct public sources + fees + other, direct public sources + indirect public sources and direct public sources + indirect public sources + fees + other.

⁶⁷ Austria, Belgium-Flanders, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Lithuania, Luxembourg, Montenegro, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom.

⁶⁸ Belgium-Wallonia, Belgium-Flanders, Bulgaria, Croatia, Cyprus, Finland, Germany, Greece, Iceland, Ireland, Italy, Montenegro, Netherlands, Slovakia, Spain, Switzerland, United Kingdom.

Among the NRAs that are financed at least partly from the fees paid by the regulated entities (19)⁶⁹, in 11 of them, constraints are imposed on the use of income from this source. Eight of these NRAs indicate that the income from the regulated entities may be used only to cover the cost of the particular regulatory tasks in line with the provisions of the Authorisation Directive.⁷⁰ It can be observed, that:

- In Luxembourg, the legislation/regulation contains no provision as to the use and allocation of the collected fees;
- In Swiss Ofcom, the revenue from the licence fee is used primarily to promote research projects in the radio and television sector and to finance archiving as well as the promotion of new technologies;
- In the United Kingdom, staff costs are allocated to specific stakeholder tariffs depending on the sectors that a project/task covers.

⁶⁹ Austria, Belgium-Flanders, Croatia, Cyprus, Finland, Germany, Hungary, Ireland, Italy, Lithuania, Luxembourg, Montenegro, Netherlands, Portugal, Slovenia, Spain, Sweden, Switzerland, United Kingdom.

⁷⁰ Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive), preamble: “(30) *Administrative charges may be imposed on providers of electronic communications services in order to finance the activities of the national regulatory authority in managing the authorisation system and for the granting of rights of use. Such charges should be limited to cover the actual administrative costs for those activities.*”

Blue box: Chapter 4 conclusions

The section on the financial autonomy has been answered by a satisfactory number of NRAs. The answers received bring us to the following conclusions:

1. More than a half of responding NRAs have autonomy in preparing their budgets.
2. Only a small minority of responding NRAs have autonomy in approving their budget.
3. The prevailing majority, but not all NRAs, have autonomy in allocating their budgets.
4. In most cases the NRA's financial statements are subject to external approval.
5. While the majority of NRAs consider their budgets adequate to perform their tasks, some observe that significant financial cuts and austerity measures make it challenging to adequately fulfill all their functions.
6. There is no dominant model for a NRA's financing.

Recommendations deriving from the analysis of the questionnaires:

- A specific provision of a revised AVMS Directive should ensure that the NRAs have sufficient/adequate financial resources for the performance of their tasks and are autonomous in the implementation of the budget;
- In compliance to the principle of accountability, the NRA's financial statements should be subject to external examination by an independent and qualified institution.

Comments from the ERGA working group: a revised AVMS Directive could also state that NRAs should also be autonomous in the preparation of the budget and have separate budget allocations.

Chapter 5: Accountability and transparency

5.1 Literature review

Accountability and transparency are the other side of the coin of independence and a balance is required between the two. «Comprehensive accountability and transparency measures actively support good behaviour and performance by the regulator, as they allow the regulator's performance to be assessed by the legislature or another institution»⁷¹.

«A certain degree of transparency regarding decision making is essential for all regulatory bodies to act in an impartial manner. This essential characteristic can be met by regulatory bodies that provide their decisions publicly and give reasons for their decisions or by delivering a meaningful annual activity report, or equivalent mechanisms»⁷².

«The regulator exists to achieve objectives deemed by government and the legislator to be in the public interest and operates within the powers attributed by the legislature. A regulator is therefore accountable to the legislature, either directly or through its minister, and should report regularly and publicly to the legislature on its objectives and the discharge of its functions, and demonstrate that it is efficiently and effectively discharging its responsibilities with integrity, honesty and objectivity. A system of accountability that supports this ideal needs to clearly define what the regulator is to be held accountable for, how it is to conduct itself and how this will be assessed. The judiciary should help ensure that the regulator operates within the powers attributed to it»⁷³.

«Citizens and businesses that are subject to the decisions of public authorities should have ready access to systems for challenging the exercise of that authority. This should include internal review of delegated decisions, as well as more robust external review by a body such as a court. An important distinction can be made between the principle that specific decisions of a regulator should be subject to judicial review, and the regulator's ultimate accountability for its performance to the legislature. Delegated decisions (such as those of inspectors) can have a material effect on regulated entities and should be subject to a timely and transparent internal review process on request. The regulator should advise the regulated entity of any options for internal review when they are informed of the decision. The internal review process should be published and made accessible to regulated entities. There should also be timely, transparent and robust mechanisms for the external review of significant regulatory decisions. External reviews –such as the Court's decisions- can act as an accountability mechanism and can improve the quality of the regulator's decision-making and internal review processes»⁷⁴.

Finally, «in order to become a 'relevant actor', the regulatory body should have the capacity for networking with all relevant actors and for interacting with the public. This can foster public awareness of regulatory issues. If there is more than one regulatory body in place, it is

⁷¹ OECD, *The Governance of Regulators, OECD Best Practice Principles for Regulatory Policy*, 2014, pag. 81

⁷² INDIREG *Final Report*, pag. 364, <http://www.indireg.eu/?p=360>

⁷³ OECD, *The Governance of Regulators, OECD Best Practice Principles for Regulatory Policy*, 2014, pag. 81

⁷⁴ OECD, *Principles for the Governance of Regulators*, pag. 52. <http://www.oecd.org/gov/regulatory-policy/Governance%20of%20Regulators%20FN%202.docx>

especially important that the public is well informed about the body's responsibility for complaints, and complaint-handling procedures. As a best practice characteristic, the regulatory body should therefore have an obligation to organise open consultations in all cases having a direct or indirect impact on more than one market player.⁷⁵

5.2 Answers from the questionnaire

This section is intended to provide a framework for the discussion of NRAs framework, competences and procedures regarding decision-making, accountability and transparency.

Regulatory decisions must be made in an environment which is shielded from undue external influence as much as possible. This would imply independency, transparency, accountability and openness. Independence implies that the NRA does not receive any instruction from the national executive or legislative or from any private party, to ensure fair competition and to build confidence in the regulatory process.

Transparency and accountability underline the principle of independence, by to ensuring that NRAs do not stray from their mandate. In the EU, independence is usually coupled with accountability. Comprehensive accountability and transparency measures actively support good behaviour and performance by regulators.

Accountability is an important principle in order to ensure that NRAs are incentivized to perform to the best of their ability and serve the public interest. The concept of accountability involves two distinct stages: answerability and enforcement. Answerability refers to the obligation of NRAs to provide information about their decisions and actions and to justify them to the public and those institutions of accountability tasked with providing oversight. Enforcement means that the public or the institution responsible for accountability can sanction the offending party or remedy the contravening behaviour.

Regulators are generally accountable to three groups of stakeholders:

- (i) Legislative power: the legislature confers powers on the regulator and the regulator should report on its activities and outcomes to the legislature.
- (ii) Regulated entities and stakeholders: these are subject to the decisions of NRAs and should have the right to easily access information, the right to be heard and the right to appeal the decisions of the NRA which impact on them.
- (iii) The public: citizens have the right to monitor the NRAs' performance. Decisions of the NRA impact on the public.

Accountability can be achieved through different means, but usually includes the following procedural obligations: disseminating information, reporting obligations, appearing before the legislative powers, consultations with stakeholders and providing reasons for decisions and actions.

Transparency in the actions and decisions is crucial for ensuring the good governance of NRAs and directly increase their perceived level of independence and credibility. Transparency contributes to greater accountability and therefore reduces possibilities for abuse or the inappropriate exercise of discretion from NRAs.

The EC Treaty imposes a number of obligations on the institutions in relation to principles of sound administration. These include, for example, principles in respect of operators' right to be heard and to present counter-arguments prior to the adoption of any decisions detrimental to their interests, the obligation to give reasons for decisions, to provide access to documents and information, and rules on personal data protection and business confidentiality. The EC legal frameworks for electronic communications and energy also reflect this through provisions concerning transparency and best governance principles.

The core requirements for independence and the efficient functioning of NRAs in the audiovisual media sector are mainly to be found in Art. 30 of the AVMSD. Recital 94 refers to "the aim that independence of the Member State's regulatory body should enable it to carry out its work impartially and transparently and to contribute to pluralism". However, there is no any mention in the Directive as regards the obligations the Member States have to fulfil.

To address these issues, the questionnaire contained eight questions:-

- (i) whether there is a legal requirement to publish the NRAs decisions;
- (ii) whether the NRA is required to submit periodical reports to the Parliament or Government;
- (iii) whether the NRA is subject to external auditing;
- (iv) whether the NRA carries out public consultations;
- (v) whether consultations are open or closed;
- (vi) whether they take into account the responses to the open consultations
- (vii) whether they carry out hearings with interested parties; and
- (viii) whether the NRA has a publicly available long-term strategy.

a) Legal requirements for NRAs to publish decisions (question 5.1)

The majority of NRAs have procedures in place to ensure the full transparency of their decisions. 26⁷⁶ out of the 32 NRAs explicitly point out that there is a legal or other requirement in their countries for publishing NRAs decisions. Usually, this obligation is prescribed in law, most frequently the Media or Audiovisual Law. In order cases, for instance Sweden, this requirement states in the Administrative Procedure Act. For other countries, for instance, The Netherlands, publication of NRAs decisions is not imposed by law, however, it is included in the communications protocol adopted by the CvdM. Finally, for some other countries, for instance Luxembourg, the obligation only concerns some type of decisions (i.e. the decision to withdraw a license).

⁷⁶ Austria, Belgium-Wallonia, Belgium-Flanders, Bulgaria, Croatia, Denmark, Belgium-MEDIENRAT (partly), Estonia, Finland, France, Germany – but only for some broadcasting councils of the public service broadcasting -, Greece, Hungary, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Montenegro, Portugal, Slovakia, Spain, Sweden, Switzerland and United Kingdom

The decisions are usually published on the NRAs website and/or the Official Gazette. In the case of Greece, all decisions of NCRTV are published in a specific website “Diagvia”, which collects information regarding public sector.

Although 6⁷⁷ NRAs declared that there is not a requirement to publish decisions, the situation varies from country to country. In particular, the following issues should be highlighted:

- In Finland, there is no specific requirement to publish audiovisual decisions, however in accordance to Act on Openness of Government Activities, official documents shall be of public domain.
- In Poland and Slovenia, although there is not a public obligation to publish the decisions, this is a usual practice of the NRAs.
- In the case of Norway, the NMA publishes electronic records of all the decisions, however only the title is visible. The decision is available at request.
- In Germany, regulatory authorities for private broadcasting are not obliged to publish their decisions, whereas this is a binding obligation for some PBS-broadcasting councils.

It can be concluded that transparency of the decisions is a principle enshrined in the legal framework of most of the NRAs, however some concerns remain as in a few cases, where no legal requirement to publish the NRA’s decisions is in place, fully relying on the criteria of the NRA’s Head or Board. This may raise doubts about fairness of the procedures and may raise concerns about the exercise of discretion by public officials. It should, therefore, be considered important to take into account the introduction of this legal requirement in the forthcoming revision of the AVMSD.

The kind of information published and the quantity of the documents publicly available vary significantly from country to country. As a result, it might be concluded that there is not a common understanding of what information should be made public.

On a general basis, the documents published by the NRAs falls into the following categories:

- Decisions taken in connection with the implementation of their powers: Bulgaria, Croatia, France, Ireland, Montenegro, Portugal, Spain and United Kingdom.
- Meetings minutes: Bulgaria, Germany, Ireland, Spain and United Kingdom.
- Procedures for granting or withdrawing authorizations: Belgian MEDIENRAT, France, Ireland, Luxembourg and United Kingdom.
- Opening of closing sanctioning proceedings: France, Spain and United Kingdom.

b) Accountability before the Parliament and/or the Government (reporting obligations), (question 5.2)

In terms of reporting obligations, NRAs are accountable either to the government or the parliament, or both. The large majority of the respondents (30 out of 32) report to the Parliament and/or to the Government, generally on a yearly basis (26⁷⁸). However, Bulgaria, Finland and Portugal are the only

⁷⁷ Cyprus, Czech Republic, Latvia, Netherlands, Norway and Poland.

⁷⁸ Austria, Belgium-Wallonia, Belgium-Flanders, Belgium–MEDIENRAT, Croatia, Czech Republic, Denmark, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, Norway, Poland, Slovakia, Slovenia, Spain, Sweden, Switzerland and United Kingdom.

authorities which have to report more than one time per year, specifically ERC, the Portuguese authority, must inform the Parliament on a monthly basis about its decisions and activities.

Only Cyprus, Estonia and Iceland do not have this requirement. Accountability mechanisms are considered as safeguards for both the democratic legitimacy and the efficient functioning of the regulator. This pre-requisite should therefore be in place to demonstrate that the NRA is efficiently and effectively discharging its responsibilities with integrity, honesty, objectivity and efficiency.

When asked about the type of documents reported to the Parliament and/or Government, the most frequently mentioned is the annual report (France, Germany, Greece, Ireland, Latvia, The Netherlands, Spain and Sweden). In a few cases, for instance, Ireland and Spain, they have also to submit the Annual Work/Action Plan, Strategy, etc. Finally, as for the Netherlands, they also submit the annual report on the media landscape to the Government.

c) External auditing of NRAs' activities (question 5.3)

Concerning the financial auditing, it can be concluded that the vast majority of NRAs (24⁷⁹ out of 32) are audited by a specialized authority. In most of the cases, they are subject to the corresponding National Audit Office, which normally has the role of scrutinizing public spending and to approve the NRA's accounts. Annual evaluations from an external body is not standard practice.

As for Austria, Belgium-Flanders, Denmark, Greece, Iceland, Italy, Slovakia, Slovenia and Switzerland, no auditing procedure is in place. External auditing procedures should be advisable to ensure transparency concerning the financial activity of NRAs. The existence of an external audit mechanism of the regulators' financial situation is crucial to ensure the NRA's efficient use of resources.

The activities of the NRA are also subject to auditing in some countries, this scrutiny is aiming at checking the efficiency and effectiveness of the procedures and the compliance with the work plan. This is the case of Estonia, the Netherlands, Poland and Spain. The BAI in Ireland conducts internal audits on its activities annually and external auditors are engaged for this purpose.

d) Consultation with the market/stakeholders (questions 5.4 – 5.7)

There are differences in the extent to which the regulators are subject to statutory consultation processes but the vast majority of respondents conduct public consultations as a matter of regulatory practice. It is mandatory for only 8⁸⁰ NRAs. In most cases (22 out of 32⁸¹), public consultations are not always obligatory for the NRA, or may be for only particular cases, for example,

⁷⁹ Belgium-Wallonia, Belgium- MEDIENRAT, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, Norway, Poland, Portugal, Spain, Sweden and United Kingdom.

⁸⁰ Belgium-Wallonia, Croatia, Cyprus, Italy, Latvia, Lithuania, Montenegro and Switzerland.

⁸¹ Austria, Belgium-Flanders, Belgium- MEDIENRAT, Bulgaria, Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Iceland, Ireland, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and United Kingdom.

Germany as part of the procedure relating to the so called “Public-Value-Test” or France with respect to the right to use radio electric resources.

- **Open/closed consultations.**

There is no consensus on the categorisation of these consultations as open or closed (i.e. if all the stakeholders are invited to comment on the public consultation if it is just restricted to the interested parties).

14⁸² NRAs carry out public consultations which are described as both open and closed, according to the topic of debate and depending on who will be impacted by the decision in question. In contrast, 17⁸³ NRAs advised that their consultations are always an issue of public debate and people are invited to express their opinion in according with the topic of discussion. In Iceland, however, consultations are always targeted to specific stakeholders.

Consulting stakeholders is an important way to enhance the transparency of the NRA’s decision-making and build trust in the NRA’s decision making procedures. It is a vital issue as the regulated entities and citizens are subject to the NRAs’ decisions. The NRA should ensure the best possible quality and legitimacy for its decisions in order to ensure the best possible quality and the greater legitimacy for its decisions in order to prevent complaints to its decisions.

Procedural rules for ensuring the involvement of the regulators’ stakeholders would be advisable, such as consultations and hearings with stakeholders. Transparent processes (such as clear guidance and published criteria) in relation to consultations and hearings would be advisable to increase legal certainty. Consistency in procedures such as the design of the consultation document, clear criteria and timeframes to provide responses, clearly targeted etc., could be considered as good practice for NRAs.

- **Hearings with regulated entities**

Another very common practice for regulators is the regular organization of hearings with stakeholders (25⁸⁴ out of 32 respondents) during the decision making process. For some NRAs, hearings are prescribed by law under specific circumstances (e.g. France, Germany, Ireland, Malta and Portugal).

For others, as Austria, Croatia and Spain, this is a general requirement for any administrative procedure.

Very broadly, hearings are organized to deal with the following subjects:

- To introduce/resolve issues of greater importance: Bulgaria, Hungary, Netherlands, Norway, Sweden and Switzerland.
- Right of reply: Bulgaria, France, Germany, Luxembourg, Netherlands, Portugal and Switzerland.

⁸² Austria, Belgium-Wallonia, Bulgaria, Cyprus, Estonia, Greece, Hungary, Ireland, Italy, Latvia, Malta, Netherlands, Poland and Slovakia.

⁸³ Belgium-Flanders, Belgium- MEDIENRAT, Croatia, Czech Republic, Denmark, Finland, France, Germany, Lithuania, Montenegro, Norway, Portugal, Slovenia, Spain, Sweden, Switzerland and United Kingdom.

⁸⁴ Austria, Belgium-Wallonia, Belgium-Flanders, Belgium- MEDIENRAT, Bulgaria, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and Switzerland.

- Licensing: France, Germany, Ireland⁸⁵, Lithuania and Switzerland.

In France, the law prescribes circumstances under which hearings should be carried out, in particular, when delivering authorizations to use frequencies, before agreeing modalities of audiovisual services, before imposing sanctions, etc.

Good administration requires sound mechanisms to ensure that affected parties can be heard before any measure or decision that can affect them is taken. A right of reply should therefore be guaranteed.

- **Use of the responses for adopting decisions**

As for the regulatory use of stakeholders' contributions, a significant number of NRAs (25⁸⁶ out of 32) confirmed they take the responses into account for their regulatory decisions. However, this does not necessarily mean that the NRAs' decisions are necessarily bound by the responses, as France points out. As a good practice, NRAs should provide reasons and explanations for their decisions. Preferably this would also include the obligation for the NRA to publish a document after the public consultation giving an overview of the comments received, of those that were taken into account and the reasons why other comments were not taken into account.

e) Publicly available long-term operating strategy (question 5.8)

The publication of a long-term operating strategy is not a widely-spread regulatory practice for NRAs. Only 19⁸⁷ NRAs confirmed that this is a usual procedure, whereas 14⁸⁸ expressed they have not implemented this practice and/or that their strategies are not made publicly available. The expectations for each regulator should be clearly outlined by means of publishing a publicly available long-term operating strategy. Through this process, it becomes clear to all stakeholders what the regulator is there to achieve and what it is accountable for. Involving stakeholders in defining the strategy will improve the regulators' legitimacy of their actions and the quality of the outcomes.

⁸⁵ In Ireland, oral hearings are not mandatory in the licensing process.

⁸⁶ Austria, Belgium-Flanders, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, Greece, Iceland, Ireland, Italy, Latvia, Lithuania, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland and United Kingdom.

⁸⁷ Austria, Belgium-Flanders, Croatia, Czech Republic, Estonia, Finland, Greece, Iceland, Ireland, Italy, Latvia, Lithuania, Netherlands, Norway, Poland, Spain, Sweden, Switzerland and United Kingdom.

⁸⁸ Belgium-Wallonia, Belgium- MEDIENRAT, Bulgaria, Cyprus, Denmark, France, Germany, Hungary, Luxembourg, Malta, Montenegro, Portugal, Slovakia and Slovenia.

Blue box: Chapter 5 conclusions

The section on accountability and transparency has been answered by a satisfactory number of respondents. The answers received bring us to the following conclusions:

1. Not all NRAs have provisions on transparency embedded in law. Nevertheless, all NRAs usually publish their decisions as a matter of regulatory practice.
2. Not all NRAs have accounting mechanisms in place.
3. Financial auditing of NRAs' activities is a common practice for EU NRAs, however in some cases no auditing procedure is in place.
4. Only few NRAs audit their activity and regulatory decisions.
5. Public consultations and hearings with stakeholders are widely spread regulatory practices for NRAs. However, these requirements are not mandatory for all NRAs or are required only in certain cases.
6. In some countries, the right to be heard of the affected parties is not clearly stated in the law. This may put at risk the protection of third parties affected by the NRAs' actions.
7. The publication of a long-term strategy is not a usual practice for NRAs. It would be advisable for NRAs to adopt this governance practice and to involve stakeholders in defining the NRAs' strategy. It enables stakeholders to be aware of forthcoming initiatives and to provide their input so that the body can define its strategy by taking into account all interests at stake. However, at least at the moment this recommendation could be postponed.

Recommendations deriving from the analysis of the questionnaires:

- **A specific provision of a revised AVMS Directive should be introduced prescribing transparency as a main aspect of good governance that directly influences regulators' independence**
- **A specific provision of a revised AVMS Directive should prescribe the introduction of mechanisms to safeguard NRAs' as democratic legitimacy and efficient functioning (i.e. external auditing procedures).**
- **A specific provision of a revised AVMS Directive should clearly state that the functioning of the NRAs should be regulated by transparent procedures and that NRAs ensure, where appropriate, consultation with the affected parties, especially before taking decisions with relevant impact in the market. Clear procedural rules to the consultation process would be advisable**

Chapter 6: Decision making

6.1 Literature review

A report from the OECD on the independence of regulators explains that «The regulator should disclose what rules, data and informational inputs will be used to make decisions. However, where such disclosure would likely lead to gaming of the regulatory system by regulated entities, it would be appropriate for the regulator to be permitted to limit such transparency. Transparency in the actions and decisions of regulators is beneficial for preventing reviews of decisions. By being open and providing explanations of decisions regulators can avoid the risk of a large number of appeals to those processes provided the decisions are perceived to be fair and evidence based. Enforcement actions should also be disclosed in a timely and readily accessible manner. However, limiting transparency may be appropriate where confidentiality is required, for example, in relation to enforcement actions that have not yet been resolved (and where disclosure may prematurely affect the reputation of a regulated entity)»⁸⁹.

On the same line, the INDIREG report highlights that establishing a set of transparency rules regarding decision making and accountability measures is essential for all regulatory bodies to act in an impartial manner. «This essential characteristic can be met by regulatory bodies that provide their decisions publicly and give reasons for their decisions or by delivering a meaningful annual activity report, or equivalent mechanisms»⁹⁰.

6.2 Answers from the questionnaire

NRAs' decision-making processes well defined by legislation coupled with transparency are two elemental parameters in securing the NRAs' independence. In effect, the decision-making process employed by an NRA must not only be thorough in its reasoning, stemming from a high level of critical thinking analysis (in any event, all the NRAs' legislation is in essence rooted in the European AVMS Directives), yet it must also be transparent. This is a matter that is generally left at the discretion of the NRAs themselves. Nevertheless, these factors are two vital pillars supporting the independence of NRAs. For they have the capacity to provide such conditions that will serve as the basis for the NRAs' neutrality, impartiality and equality towards all AVMS providers that fall under their jurisdiction. This, in turn, will safeguard their credibility and reliability as an independent authority as well as increase their potential to enhance the status and span of their independence both at national and at the EU level through the prospective AVMS Directives.

In this chapter of the questionnaire, entitled "Decision-making", three fundamental questions were posed. These questions markedly encapsulate the significance of a clear and comprehensive decision-making procedure applied by the NRAs and, no less, the availability of the decisions made to the public and the transparency of the process to all affected stakeholders.

It would not be an exaggeration to say that the required scope of the independence of NRAs could not be achieved if their decision-making procedures were weak, flawed or lacking transparency, the

⁸⁹ OECD, *The Governance of Regulators, OECD Best Practice Principles for Regulatory Policy*, 2014, pag. 83- 84

⁹⁰ INDIREG *Final Report*, Pag. 364, <http://www.indireg.eu/?p=360>

latter of which, as a term, engenders fairness and intrinsically precludes corruption and discrimination/partiality.

Clearly, the NRAs have an important role to play in the development of policy and policy enforcement, in the AVMS field. Indeed the implementation of their decisions ensures effective regulation across the internal market through their robust procedures, therefore constituting the leading edge of policy-making in the AVMS field.

a) Decision making power (question 6.1)

The initial question of this chapter concerned the NRAs' decision making power and whether this was defined in the relevant national legislation. The answers from all participating 33⁹¹ NRAs were affirmative and straightforward without any comments, pointing out that their decision-making power is clearly defined by law.

b) Publicity of decisions (question 6.2)

The second question posed in this chapter asked whether the NRAs' decisions were published or were, by some means, made publically available. All participating NRAs stated that they publish or make them publicly available.

For most NRAs, this was done through their websites only or as one of various ways. As a matter of fact, 19⁹² NRAs referred to their websites only as a means of communication of their decisions to the public.

However:

- NEPLP (Latvia) stated that this is the case only for binding or informative decisions.
- German regulatory bodies/authorities stated that some regional regulatory bodies do not publish their decisions or major results on their website.
- MRTV (Sweden) stated that, pursuant to their legislation, decisions by an authority shall be available to the public. The authority also makes its decision available through its website unless there are special reasons not to publish (such as privacy rules).

14⁹³ NRAs answered that they also use other means to communicate their decisions to the public.

In 6 of these cases⁹⁴ the NRAs answered that they also publish their decisions in the Official Gazette or Official Journal of their country. CNMC (Spain) answered that, in accordance with the legislation,

⁹¹ Austria, Belgium-Wallonia, Belgium-Flanders, Belgium- MEDIENRAT, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, Montenegro, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland and United Kingdom.

⁹² Austria, Belgium-Wallonia, Belgium- MEDIENRAT , Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Iceland, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, Sweden, Switzerland.

⁹³ Belgium-Flanders, Bulgaria, Croatia, France, Greece, Ireland, Italy, Luxemburg, Montenegro, Netherlands, Norway, Portugal, Spain, United Kingdom

⁹⁴ Croatia, France, Greece, Luxembourg, Montenegro, Spain

some of the CNMC's decisions need to be also announced on the Official Gazette. CNMC (Spain) has a blog on its website to explain the CNMC's decisions in a language more accessible to citizens.

⁶⁹⁵ NRAs stated that their decisions are also published in Newsletters and/or print publications and/or bulletins and/or press releases. In the case of ¹⁹⁶ NRA, their decisions are also made public on other websites apart from their own official website. ²⁹⁷ NRAs stated that they also inform the impacted parties and stakeholders. However: MRTV (Sweden) advised that a decision is always given to a person *if requested*.

In addition to the above means of publication:

- At MEDIETILSYNET (Norway), all the decisions are available through the NRA's electronic public records as well as on its website.
- ERC (Portugal) stated that all regulations, directives, recommendations and decisions issued by ERC must be disclosed on its website, yet in addition to that, a summary of the Regulatory Board's decisions that affect interested parties are made public immediately after the end of the meeting where they were adopted, without prejudice to the need for its publication and notification, where legally required.

c) Transparency (question 6.3)

The third and final question contained in this chapter concerned transparency. The NRAs were asked if they considered their decision-making process to be transparent to their stakeholders. The answers here were affirmative and straightforward. The only NRA that provided any comments whatsoever besides a clear-cut affirmation was OFCOM (United Kingdom). Namely, OFCOM referred to transparency as one of its founding principles. For this reason, it publishes all of its decisions along with the evidence that was considered (with the exception of data that is commercially sensitive or sensitive personal data), consults widely and engages in regular dialogue with stakeholders as part of its regulatory work. OFCOM's regulatory principles are in fact published on its website.

None of the 3 afore described questions enclosed in chapter 6 seems to raise any problem with reference to the NRAs' decision-making powers or the decision-making processes which they employ and certainly not as regards their compliance with transparency vis-à-vis the independence of regulators.

⁹⁵ Belgium-Flanders, Bulgaria, France, Ireland, Netherlands, United Kingdom

⁹⁶ Greece

⁹⁷ Ireland, Sweden

Blue box: Chapter 6 conclusions

The chapter on the NRAs' decision-making power and its transparency was answered by a satisfactory number of NRAs. The answers received lead us to the following conclusions:

1. All participating NRAs' decision-making power is defined by law. Therefore, there is absolute harmonization on this, demonstrating that the most desirable outcome was achieved. Consequently, no measure seems to need to be taken on this matter
2. With the exception of *some* regional regulatory bodies in Germany, all NRAs appear to publish their decisions on their websites. Around 44% of NRAs additionally use other means of publishing their decisions, such as the Official Gazette or Official Journal, Newsletters, blogs, bulletins, press releases, press publications, other websites, communication of decisions to the impacted parties and stakeholders themselves and in one case this is done in person, if requested. Therefore, except for some Broadcasting Councils' in Germany, all NRAs' means of publishing their decisions include their official website. Differences with regard to the other methods employed by NRAs in making their decisions publicly available were observed. As a result, since in all countries (except for some Broadcasting Councils in Germany) there is one common denominator when it comes to publishing the NRAs' decisions, namely, the NRAs' website, this matter seems to be fairly harmonized.
3. All NRAs believe that their decision-making process is transparent to its stakeholders. This denotes that there is broad satisfaction vis-à-vis the transparency of the NRAs' decision-making system, thereby not necessitating the adoption of any stricter provisions/requirements than a basic reflection of the need for NRAs to make autonomous decisions in a transparent manner.

Recommendations deriving from the analysis of the questionnaires:

- **A specific provision of a revised AVMS Directive should ensure that the NRAs have the power to take autonomous decisions, independent from all bodies and organizations related to the provision and distribution of audio-visual media services**

The new Directive should impose the “transparency principle” into the Directive, making clear that NRAs must make their decisions publicly available in appropriate form, providing reasoning for them and respecting principles of confidentiality as well as legitimate interests of concerned parties (e.g. trade secrets).

Chapter 7: Enforcement

7.1 Literature review

The enforcement power of a NRA is a very important criterion to measure its independence, as it is clearly stated by all reports discussing this topic: “The imposition of regulatory obligations on businesses is commonly implemented through [...] inspections or investigations, warnings, directions or penalties [...]»⁹⁸.

Recommendation (2000) 23 of the Council of Europe states that if a broadcaster fails to respect the law or the conditions specified in its licence, the regulatory authorities should have the power to impose sanctions, in accordance with the law (point 22). It also says that a range of sanctions (which must be prescribed by law) should be available, starting with a warning. It is also explained that monitoring can never be effective without the power to impose sanctions, and that the regulatory authorities should have the power to impose sanctions (graded in severity to reflect the seriousness of the failure to comply), in accordance with the law. Given the gravity of licence revocation, the recommendation emphasises that it should be applied only in extreme cases, where broadcasters are guilty of very serious compliance failures.

«The range of enforcement powers given to a regulator dictates whether it can act independently or whether it needs to go to courts or another entity to enforce compliance with the rules. [...] Regulators need to be able to impose a wide range of enforcement powers, with deterrent sanctions as an ultimate recourse, to ensure that its regulations are respected and its decisions are enforced. [...] Regulator has a range of proportional enforcement powers, ranging from warnings, through the ability to impose deterrent fines, to the suspension and revocation of licences, bearing in mind that this is an extreme sanction, to be used sparingly. Regulatory theory indicates that only a range of sanctions provides for a strong position in the interaction between regulators and regulatees. A less optimal solution is where the regulator only has the power to impose deterrent fines, with no possibility to suspend or revoke a licence»⁹⁹.

7.2 Answers from the questionnaire

The issue of legitimacy and acceptance of the authority of the regulator is crucial for the effectiveness of an NRA. The regulator must have sufficient credibility and clout in the eyes of the industry, consumers and other government institutions. If it lacks legitimacy then there is potential for constant appeals, lack of support from government, and ultimately an ineffective sector. Often, the credibility of a regulator is connected to its power to enforce its decisions: the regulator should be provided with adequate power to impose sanctions and financial penalties directly and quickly against those who fail to comply with, or act in breach of, the regulator’s decisions and policies.

⁹⁸ OECD, *The Governance of Regulators, OECD Best Practice Principles for Regulatory Policy*, 2014, pag. 27

⁹⁹ INDIREG *Final Report*, Pag. 376, <http://www.indireg.eu/?p=360>

Although the EU regulatory framework does not describe in detail how the enforcement powers of NRAs should be designed, it does require that Member States have effective enforcement systems in place to ensure compliance with the regulatory obligations resulting from the legal and regulatory framework. Several studies on the independence of regulators, both at EU and national level, show that, in order to ensure transparency and predictability of the legal framework (crucial for the development of a level playing field and investment opportunities), the basic elements relating to the enforcement powers of an NRA should be laid out in a Law, a legislative instrument not susceptible to easy revocation by a government authority and thus able to ensure stability and predictability in the market. The secondary legislation would then have the role to address fundamental regulatory issues such as the sanctioning procedure, the practical steps taken to grant transparency and participation to the proceeding to the operators and the citizen, the possibility to access documents and information and so on.

Moving to the requirement for external or Judiciary review of NRAs decisions, it is clear that NRAs do not and cannot exist in a vacuum. They must fit within the existing order, which implies for instance that they are accountable for their actions both politically – through mechanisms such as reporting to the Parliament which respect their independence – and legally – through appeals and other avenues of judicial review. The latter mechanisms are intended to submit the actions of the NRAs to the supervision of courts, as is the case with the actions of the rest of the Member States' public administration.

By and large, this is a matter left to the discretion of the Member States: even the most advanced among the legal frameworks that the European Union has dedicated to the communications sector, the Electronic communications Framework, provides little guidance on the procedure to be used in case an NRA's decision is challenged before a review Court; on the other hand it clearly states that EU Member States are required to ensure the effectiveness of the appeal mechanism, including the possibility to review the merits of a case. In order to allow this, the Directive specifies that the appeal body must have appropriate expertise and that, pending the outcome of an appeal, the NRA's decision should stand unless the appeal body decides otherwise. Judicial review is a complex matter, where a number of policy objectives collide:

- (i) The adequate protection of the rights of market players and other interested parties. This is required not just ex post (NRA decisions have been taken with due respect for the rights of those involved to participate and present evidence and submissions, so that we can be confident that the outcome/result is adequate, proportionate and fair) but also ex ante (to ensure trust in and support for the regulatory process);
- (ii) The effectiveness of the regulatory regime. Regulation must operate effectively, i.e. the intended policy, regulatory and public interest objectives must be achieved without delay and without distortion, and parties must know what their position is. Review proceedings may lead to judgments that influence the regulation of the market. Systematic appeals and lengthy procedures may create legal uncertainty for the economic agents and potential market entrants. Decisions may be annulled retroactively by the courts, while the regulators may not adopt retrospective decisions. Courts may issue decisions that are not in line with the guidelines and practices that are set up within networks of authorities to which courts do not belong. These situations may lead to some distortions within the regulatory control of the market

- (i) The efficiency of the review process. This may be a subsidiary objective, but the review process as such should operate efficiently, i.e. it should not impose undue costs because of length, complexity, amount of effort required to gather evidence and make submissions etc.

In order to strike a balance between the aforementioned policy objectives, NRAs are required to use appropriate tools to ensure the enforcement of their decisions, including adequate participation mechanisms (consultation procedures; right to access), remedies (sanctioning procedures and fines) and judiciary review measures, based on the general principles of transparency, fairness and equity¹⁰⁰. To address the aforementioned issues, the questionnaire sent to the ERGA Members contained 3 groups of questions, addressing specifically the issues of “enforcement power” (questions 7.1 to 7.4), “enforcement measures” (questions 7.5 to 7.8) and “judicial review” (questions 7-9 to 7.15).

a) Enforcement power (questions 7.1 – 7.4):

The initial question concerned the power/s assigned to each NRA to enforce its decisions autonomously. Interestingly enough, 5 NRAs¹⁰¹ point out that they do not have such power/s. In response to question 7.2, these NRAs explain their positions as follows:

- ALIA (Luxembourg) explained that fines are collected by another public administration called “Administration de l’enregistrement et des domaines”.
- In Slovakia, financial sanctions can be, according to the Slovak legal system, enforced only through an “executing person”, who is a legal, state approved enforcing body.
- Bulgaria did not answer question 7.2, although it had responded negatively to question 7.1

KRRIT (Poland) seems to have reasonable enforcement powers: according to Polish law (Act on administrative enforcement proceedings of 17.06.1966 and the Code of Administrative Proceedings of 14.06.1960) the KRRIT’s Chairman is entitled to issue an executive order, in case a fined entity does not proceed by paying the fine.

In almost all cases (29 NRAs¹⁰²) the enforcement procedure is set out in the relevant national Law (question 7.3). The 4 NRAs which did not answer this question are Bulgaria, Luxembourg,

¹⁰⁰ Generally speaking, commonly accepted indicators for a fair, transparent and equitable sanctioning procedure are the following:

- the operator can have access to the documents;
- the operator is immediately informed of the start of the sanctioning procedure;
- the operator can present briefs and defensive documents and can ask to be heard;
- NRA shall take into utmost account the opinions, comments and suggestions of operators received at the public hearing; if the NRA’s opinion differs from the operators view, the reason must be duly motivated;
- the final decisions are public.

¹⁰¹ Bulgaria, Luxembourg, Poland, Slovakia, Sweden,

¹⁰² Austria, Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Malta, Montenegro, Netherlands, Norway, Poland, Portugal, Slovenia, Spain, Switzerland, United Kingdom.

Slovakia, Sweden, which answered “no” to question 7.1 and do not seem to have direct enforcement powers.

Almost all NRAs¹⁰³ consider their enforcement powers adequate to carry out their functions effectively (question 7.4). However, 2 of them¹⁰⁴ did not provide an answer to this question, while 6 NRAs¹⁰⁵ answered “no”:

- ALIA (Luxembourg), and AEM (Montenegro) explain that they lack effective power in the enforcement of sanctioning decisions, like a warning to the media service provider in question, or the (temporary) discontinuation of a program or daily fines (Luxembourg).
- IMC (Iceland) notes that although its enforcement powers are adequate in general terms, it lacks enforcement powers with particular respect to enforcing of the Act on the Monitoring of Children’s access to Films and Computer Games.
- NEPLP (Latvia) remarks that in cases when additional funding is needed, the Council is dependent on Government decisions.
- ERC (Portugal) maintains that its decisions can be appealed and a court’s decision may take some time.

Among the affirmative answers, CvdM (Netherlands) positively underlines an improvement of its enforcement instruments which became more effective after the expansion of the legal possibilities to impose an order subject to a penalty.

b) Enforcement measures (questions 7.5 – 7.8)

All participating NRAs considered adequate the measures taken in cases of breach by an AVMS provider (question 7.5). Recurring matters for which AVMS providers are fined include advertising (breach of advertising airtime thresholds, sponsorship and product placement) and protection of minors.

Similarly, almost all NRAs¹⁰⁶ stated that no approval or intervention from the Ministry/Government is ever needed for their decisions to take effect (question 7.6). Only 4 NRAs¹⁰⁷ answered that in some cases the intervention of the Ministry/government is needed, especially when broadcasting licenses are concerned. Three of them provide some reasons:

1. [TJA](#) (Estonia) remarks that the Ministry of Culture has shared competences with the Minister of Culture, who can state secondary conditions/requirements for licensing tenders.

¹⁰³ Austria, Belgium-Wallonia, Belgium-Flanders, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Malta, Netherlands, Norway, Poland, Slovenia, Spain, Sweden, Switzerland, United Kingdom.

¹⁰⁴ Bulgaria, Slovakia.

¹⁰⁵ Czech Republic, Iceland, Latvia, Luxembourg, Montenegro, Portugal.

¹⁰⁶ Austria, Belgium-Wallonia, Belgium-Flanders, Belgium- MEDIENRAT, Bulgaria, Cyprus, Czech Republic, Denmark, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Switzerland, United Kingdom.

¹⁰⁷ Croatia, Estonia, Latvia, Sweden.

2. In Sweden, MRTV may not revoke a licence issued by the government (which is public service licenses) unless the Government has notified the issue to the regulator.
3. In Croatia AEM highlights that when the regulator levies a fine pursuant to the violation of provisions, the fine cannot take effect before the courts' decision.

On the other hand, ALIA (Luxembourg), while answering negatively to this question, points out that it is not in full charge of all AVMS, and that some competences remain with the Government.

Almost all NRAs have the power impose administrative fines (question 7.7), the only exception being Montenegro.

The Danish RADIO AND TELEVISION BOARD, despite answering positively to this question, specifies that fines are imposed by the Police and the court, as "the Board cannot impose fines, but other kinds of sanctions, such as to withdraw a services broadcast license for a period or permanently".

28 NRAs¹⁰⁸ out of 32 respondents stated that they are required to adopt a formal procedures to impose fines (question 7.8). Requirements are usually enshrined either in the administrative law/act/code, or in the broadcasting or radio and television law/act. In only 4 cases¹⁰⁹ is there no legal provision to adopt formal procedures. This may raise doubts about the fairness and non-discriminatory features of the sanctioning procedures, which, instead, should be clearly affirmed in the provisions of a regulation detailing the practical steps taken to grant transparency and participation to the proceeding to the operators and the citizen, the possibility to access the documents and so on.

c) Judicial review (7.9 – 7.15)

All participating NRAs affirm that their decisions may be appealed (question 7.9). Despite answering "no", the Danish regulator (RADIO AND TELEVISION BOARD) points out that the validity of a decision made by the Danish Radio- and Television Board can be decided by a state court in a civil litigation raised by any affected party and by the Danish Ombudsman.

As to the subjects which may appeal the decisions of the NRAs (question 7.10), 12 NRAs answered "Persons who are the subject of the decision", 5 NRAs answered "All persons affected by the decision", 11 NRAs answered both "Persons who are the subject of the decision" and "All persons affected by the decision", 2 NRAs answered both "Persons who are the subject of the decision" and "Other", 1 NRA answered both "All persons affected by the decision" and "Third parties" and 1 NRA answered "Persons who are the subject of the decision", "All persons affected by the decision" and "Third parties". The answers show that there is a certain fragmentation as to the right to appeal the NRAs' decisions; in particular, some countries affirm that third parties may file the appeal while this is not possible in other countries.

¹⁰⁸ Austria, Belgium-Flanders, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom.

¹⁰⁹ Belgium-Wallonia, Belgium –MEDIENRAT, Bulgaria and Denmark.

Moving to the institution/body to which the NRA's decision may be appealed (Question 7.11), 3 NRAs answered "National civil Court", 18 NRAs answered "National administrative Court", 3 NRAs answered "Other", 2 NRAs answered both "National civil Court" and "National administrative Court", 2 NRAs answered both "National civil Court" and "Other", 5 NRAs answered both "National administrative Court" and "Other". It is worthwhile highlighting that in most cases the jurisdiction regarding the appeals against the NRAs decisions is given to the administrative Courts or to the Civil Courts but that in 2 cases (Cyprus, Slovakia) the competent Court is the Supreme Court, while for MEDIETILSYNET (Norway) it is the Media Appeals Board, and for some decisions to the Ministry of Culture, which is not a jurisdictional body. Also in this case, therefore, a higher degree of harmonization would be advisable. However, this subject is often regulated by Constitutional Laws, which cannot be modified easily. The ERGA subgroup therefore recommends not to include provisions in a revised AVMS Directive with regard to the appeal procedures.

All NRAs stated that the appeal body can annul their decisions (question 7.12), the only exceptions being Bulgaria and Denmark.

The powers of the appeal body (question 7.13) vary: 21 NRAs answered both "It can review the merits of the decision" and "It can review the lawfulness of the decision-making process"; 6 NRAs answered both "It cannot review the merits of the decision" but "It can review the lawfulness of the decision-making process"; 4 NRAs answered that it can only "review the lawfulness of the decision-making process". These statements should be combined with the answers regarding the extent to which the appeal body may replace the NRA's decisions with its own decision (question 7.14): 15 NRAs answered "When rejecting the NRA's decision, the appeal body can only remit the case back to the NRA for a new decision", while 10 NRAs answered "When rejecting the NRA's decision, the appeal body can overrule the NRA's decision and replace it with its own decision, even if it goes into technical details".

An important issue regards the possibility that the appeal suspends the effect of the NRA's decision (question 7.15): 5 NRAs answered "yes, automatically"; 15 NRAs answered "yes, upon decision of the Court"; 1 NRA answered "yes" without specifying whether the suspension would take place automatically or upon decision of the Court; 8 NRAs answered "no". Other NRAs (4 in total) did not answer or answered inconsistently. This is a very important issue: the possibility that the appeal can automatically suspend the decision of an NRA (as it happens in 6 Countries) means that the operators have the possibility to delay the effects of the decision of a NRA until the Court has ruled on the case, and they can also "game" the system by deliberately launching appeals each time they are the subject of a decision. All of this can weaken the effectiveness of the sanctioning power of the NRA itself and confidence in the wider system. It would be more logical, on the contrary, if the decision upon the suspension was taken by the Court (as it happens in 13 Countries).

This is for sure an issue on which a higher degree of harmonization would be desirable.

d) Legislative/governmental intervention (7.16)

The last question asked was whether there have been recent legislative or governmental interventions with potential impact over the decisions: 29 NRAs answered “no”¹¹⁰, 2 NRAs did not answer the question¹¹¹ and 2 NRAs answered “yes”:

1. CSA (Belgium-Wallonia) notes that in some cases, decisions over a breach of the Public Service Broadcaster management contract have led to the renegotiation of this management contract
2. MEDIETILSYNET (Norway) observes that appeals regarding film classification will be transferred to the Media Appeals Board when the new act on protection of minors enter into force. A public report with suggestions on appeals board has recently been published. It suggests that there should be one big centralized board handling administrative decisions rather than multiple small specialized boards

None of the answers to this question seems to raise any immediate problem for the independence of the regulators.

¹¹⁰ Austria, Belgium-Flanders, Belgium- MEDIENRAT, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, Poland, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom.

¹¹¹ Latvia, Portugal.

Chapter 7: conclusions (Blue box)

The section on the enforcement powers of the NRAs and the judicial review of the NRAs' decision has been answered by a satisfactory number of NRAs. The answers received bring us to the following conclusions:

1. Not all the NRAs in the EU have enforcement powers.
2. Several NRAs affirm that their enforcement powers are not adequate to carry out their functions effectively.
3. In some cases the intervention of the Ministry is needed for the NRAs' decisions to take effect, especially when broadcasting licenses are concerned.
4. Not all NRAs have adopted a formal procedure to impose sanctions.
5. All participating NRAs affirm that their decisions may be appealed. The appeal can be filed by various subjects: in particular, some Countries affirm that third parties may file the appeal while this is not possible in other Countries.
6. In most cases the jurisdiction regarding appeals against the NRAs decisions is given to the administrative Courts or to the Civil Courts but that in some cases the competent Court is the Supreme Court, while in Norway it is the Media Appeals Board, and for some decisions to the Ministry of Culture, which is not a judicial body. There is a potential for a higher degree of harmonization in the appeal procedure, but subject is often regulated by Constitutional Laws, which cannot be modified easily, and therefore no modification of the Directive is advisable.
7. The powers of the appeal body vary considerably. All NRAs stated that the appeal body can annul their decisions but in some Countries the judge will limit itself to annulling the decisions and sending it back to the regulator, whereas in other Countries it can actually replace the NRA's decisions with its own decision.
8. In some Countries the appeal has the effect to automatically suspend the effect of the NRA's decision. This weakens the effectiveness of the sanctioning power of the NRA itself.

Recommendations deriving from the analysis of the questionnaires:

- **A specific provision of a revised AVMS Directive should clearly state that all NRAs should be provided with adequate enforcement powers and that these powers should be handled autonomously**
- **A specific provision of a revised AVMS Directive should clearly state that the procedure to impose sanctions should be fair, transparent and non-discriminatory, and it should be published;**
- **The right to be heard of directly affected parties should be ensured by a specific provision;**
- **The appeal bodies should be judicial bodies.**

Conclusions

Institutional framework

There seems to be a large shared opinion among ERGA members that NRAs should be established as entirely independent entities, legally and functionally autonomous from other institutional bodies and from all organisations related to the provision and distribution of audiovisual media services, to ensure that NRAs act impartially from any political, national body or any market player. The new EU Directive should include a specific provision highlighting this.

Appointment procedures and governance

All NRAs agree that the appointment procedures should be open and transparent, and this statement should be included in the new EU Directive. However, this is the highest level of harmonization that can be achieved (at least at the moment). As regards the appointment system: the answers to the questionnaire highlight that the appointment procedures of the head and/or the decision-making body ("board") of the NRAs differ greatly from Country to Country, and that a large majority of NRAs considers their procedures as "*open and transparent*", even though in some cases political parties are clearly represented within the Board. Some NRAs argue that [the revised directive should ensure that member states shall guarantee that the head and board members of NRAs have the necessary skills and experience to exercise their duty.](#)

There is no harmonization among the Member States with regard to the mandate of the Head or the Board, which may or may not be fixed and renewable. Almost all NRAs, on the contrary, agree that the mandate of the Board should never be linked to electoral cycles, that the terms of renewal should be known in advance and that the dismissal of the NRA's Chair or Board Member should be based on transparent and objective reasons, clearly stated in the law. This latter principle should be included in a revised AVMS Directive.

Incompatibility rules apply in almost all NRAs but they differ from Country to Country. A revised AVMS Directive could therefore include (maybe in the preambles) a generic reference to the principle that the mandate in a NRA is not compatible with holding an office in other public institutions, private companies, associations and/or unions and that conflict of interest should be countered.

Human Resources

All the NRAs believe that it is crucial to have adequate and appropriately qualified human resources to carry out their functions effectively. This principle should be clearly stated in a revised AVMS Directive, which might also highlight that the NRA should have autonomy with regard to recruitment procedures, the management of its financial and human resources, which include the internal organization of the NRA.

There is no harmonization among the Member States with regard to status of the NRAs staff (civil servant or not). Although a higher degree of harmonization on this matter would be desirable, a provision of this type in a revised AVMS Directive may open unneeded contrasts due to the different internal rules related to the Public Administration. What should be made clear, in the view of the ERGA working group, is that NRAs staff should be offered an adequate salary, comparable to the level of the employees of the private sector, in order to make it less vulnerable to job offers from market players.

Financial autonomy

In the prevailing number of cases, the NRA's budget constitutes a part of the State budget and, thus, has to be approved by the Parliament. However, in some Countries, the NRAs have complete autonomy in both preparing and approving their budgets.

In spite of this lack of harmonization, all NRAs believe that a specific provision of a revised AVMS Directive should guarantee that:

- the NRAs have sufficient/adequate financial resources for the performance of their tasks;
- are autonomous in the managing of the budget (in addition, it is opinion of the ERGA subgroup that the Directive could also guarantee the NRAs' autonomy in preparing and allocating the budget and resources).
- the procedures leading to the budget's approval should be objective and transparent.
- in compliance to the principle of accountability, the NRA's financial statements should be subject to external examination by an independent and qualified authority.

Although most respondents consider their budgets adequate to fulfil their functions, some of them highlight difficulties due to the recent financial crisis. All the NRAs believe that a revised AVMS Directive should include a provision mandating the Member States to ensure adequate funding for their NRAs. Different funding models may have different advantages, according to the context and the existence of external audits. With some respects, a funding model based only on the fees or contributions from operators may be preferable; with some others, a mixed model (partly public, partly coming from the fees or contributions from operators) could be a better choice to provide a higher degree of protection from industry influence. A public model could also be considered as relevant if NRAs have sufficient/adequate financial resources for the performance of their tasks and are autonomous in the managing of the budget.

Accountability and transparency

Although not all NRAs have provisions on transparency enshrined in their law, all NRAs believe that a specific provision of a revised AVMS Directive should be introduced prescribing transparency and accountability (to the Parliament and the Judicial Courts, not the Government) as a main aspect of good governance that directly influences regulators' independence and as safeguard both for the democratic legitimacy and the efficient functioning of regulators.

For the same reasons, most NRAs agree that external auditing procedures as well as procedures for ex-post evaluations should be advisable to ensure transparency concerning the financial activity of regulators and to assess whether the objectives pursued by the NRAs' actions have been attained. Since there is no harmonization with regard to the ex-post evaluation procedure, a revised AVMS Directive should at least include a provision of the external audit procedures towards the financial activity of the NRAs.

Although there is no harmonization with regard to the provisions on public consultation, all NRAs agree that public consultations and hearings with stakeholders (or cooperation between authorities and affected parties) should be mandatory for the NRAs, especially before taking decisions with relevant impact in the market. A revised AVMS Directive should include a provision on this.

It would be advisable as a good governance practice to involve stakeholders in defining the NRAs' strategy. It would enable market players to be aware of the forthcoming NRAs' initiatives and to provide their input so that the NRA can define its strategy by taking into account all interests at stake.

Decision making

The decision making is the part of the analysis on which the answers show the highest degree of harmonization: all participating NRAs report that their decision-making power is based on the law. Similarly, all NRAs state that their decision-making process is transparent to its stakeholders and that their decisions are published directly on their website or are made publicly available (through the Official Gazette or other means).

Such a high degree of harmonization brings all NRAs to agree on the importance that a revised EU Directive includes a provision on the need that the decision making power is assigned to the NRA by the Law, that they have the powers to take autonomous decisions (independently from all bodies and organizations related to the provision and distribution of audio-visual media services) and to achieve their objectives efficiently (e.g. powers to request for information, investigative powers, etc.). The Directive should also state that the decision-making process be transparent to the stakeholders and that the NRAs' decisions must be made publicly available, along with their reasoning, respecting principles of confidentiality as well as legitimate interests of concerned parties (e.g. trade secrets).

Enforcement

Not all the NRAs in the EU have enforcement powers, and several NRAs affirm that their enforcement powers are not adequate to carry out their functions effectively: in some cases the intervention of the Ministry is needed for the NRAs' decisions to take effect, especially when broadcasting licenses are concerned.

The inability to enforce autonomously its decisions jeopardizes/undermines the effectiveness of an NRA's action and its authoritativeness. This is recognized by all studies conducted on the independence of regulators. Therefore, based on the results of the questionnaire, the ERGA

subgroup believes that a revised AVMS Directive should clearly state that all NRAs should be provided with adequate enforcement powers and that these powers should be handled autonomously.

Of course, such an enforcement power should be counterbalanced by rigid transparency mechanisms; to that end, the provision in a revised AVMS Directive should also state that the procedure to impose sanctions should be fair, transparent and non-discriminatory, and it should be published if not prescribed in the national law.

While all participating NRAs affirm that their decisions may be appealed, the right to be heard by the affected parties is not clearly stated in the law in all the Countries. This may put at risk the protection of third parties affected by the NRAs' actions. It would be advisable that the new Directive clearly enshrined the right to be heard by law.

As to the possibility to appeal a regulator's decisions, all NRAs agree that the appeal bodies should be judicial bodies and that this should be stated in the new Directive, as it happens in other frameworks (i.e. the electronic communications framework). There is no harmonization on the appeal procedure: some Countries affirm that third parties may file the appeal while this is not possible in other Countries, and the appeal Body differs among the Countries. However, this subject is often regulated by Constitutional Laws, which cannot be modified easily. The ERGA subgroup therefore recommends not to include provisions in a revised AVMS Directive with regard to the appeal procedures.

In some Countries the appeal has the effect to automatically suspend the effect of the NRA's decision. This weakens the effectiveness of the sanctioning power of the NRA and encourages any operator to appeal the NRA's decision, just to gain more time. This issue is particularly difficult to handle, because the rules on the effects of the appeals are often inserted in a Country's Administrative Codes, nevertheless the ERGA subgroup believes that, if possible, it would be important that a provision of a revised requiring NRA independence also stated (maybe in the preamble) that the suspension may not come as a simple consequence of the appeal but it should be ordered by a decision of the Court.

Summary of the recommendations

A specific provision of a revised AVMS Directive should state that:

1. The institutional frameworks of Member States shall establish independent NRAs¹¹², 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 effectively¹¹³,
3. NRAs shall have sufficient/adequate financial resources for the performance of their tasks, and be autonomous in the allocation of the budget¹¹⁴, 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 audio-visual 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.

¹¹² 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

¹¹³ 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

¹¹⁴ Comments from the ERGA working group: the NRAs should also be autonomous in the preparation of the budget and have separate budget allocations.

7. **The right to be heard should be ensured by a specific provision and the appeal bodies should be judicial bodies.**

ANNEX 1

1.1 Is your NRA established as an entirely autonomous entity, i.e. legally and/or functionally separated from other institutional bodies (e.g. Ministry, Government, PSB)?

26 NRAs answered “yes” (Austria, Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Bulgaria, Croatia, Czech Republic, Denmark, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Luxembourg, Malta, Montenegro, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and United Kingdom)

7 NRAs answered “no” (Cyprus, Estonia, Finland, Latvia, Lithuania, Norway and Switzerland)

Among the NRA which answered “No”, reasons for incomplete autonomy are twofold.

The FICORA (Finland) and the MEDIETILSYNET (Norway) are legally under the trusteeship of a specific Ministry and functionally not autonomous as this Ministry can issue them guidance and performance targets.

The TJA (Estonia) and the OFCOM (Switzerland) are part of a ministerial body.

In the CRTA (Cyprus) and the NEPLP (Latvia) budget are controlled and amendments to its legislation from the Government are.

1.2 If you answered “no” to the previous question, please answer the following question: how relevant is, in your view, a legally established autonomy from other institutional bodies?

7 NRAs provided answers to this question, having answered “no” to the previous one (Cyprus, Estonia, Finland, Latvia, Lithuania, Norway, and Switzerland)

5 NRAs answered “*relevant*” or “*very relevant*” (Cyprus, Finland, Latvia, Lithuania, and Norway)

2 NRAs answered “*not relevant*” or “*not very relevant*” (Estonia and Switzerland)

1.3 Does the Constitution of your country explicitly provide for the independence of your NRA?

6 NRAs answered “yes” (Austria, Greece, Hungary, Malta, Portugal, and Sweden)

27 NRAs answered “no” (Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Montenegro Netherlands, Norway Poland, Slovakia, Slovenia, Spain, Switzerland and United Kingdom)

Although the KRRIT (Poland) is part of the NRAs that answered “No”, it specifies that the Council is placed among the supreme organs of state control and for defence of rights.

1.4 Does the legal framework of your country explicitly provide for the independence of your NRA?

30 NRAs answered “yes” (Austria, Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Montenegro Netherlands, Norway, Portugal, Slovakia, Slovenia, Spain, Sweden and United Kingdom)

3 NRAs answered “no” (Denmark, Poland and Switzerland)

1.5 If you answered “no” to the previous question, please answer the following question: how relevant do you consider an explicit legal provision of independence of the NRA?

4 NRAs provided answers to this question, having answered “no” to the previous one (Denmark, Latvia Poland and Switzerland)

2 NRAs answered “*relevant*” or “*very relevant*” (Latvia and Poland)

2 NRAs answered “*not relevant*” or “*not very relevant*” (Denmark and Switzerland)

The Danish RADIO AND TELEVISION BOARD argues that the independence of institutions as the Radio- and Television Board is implicitly intended and respected even though there are no specific legal provisions.

1.6 Has the law on the status of the regulatory body been modified in a way that has reduced its tasks and powers?

4 NRAs answered “yes” (Bulgaria, Greece, Lithuania and Montenegro)

29 NRAs answered “no” (Austria, Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Latvia, Luxembourg, Malta, Netherlands, Norway Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland and United Kingdom)

Among the 4 NRAs that answered “Yes”, reasons given are different. In Greece, two laws have transferred the powers/functions ? of the ESR to other institutional bodies: the exclusive power to impose penalties for all offenses related to the use of radio spectrum and the authorizations to perform gambling on TV were transferred to a relevant Commission.

The CEM (Bulgaria) indicated that although tasks and powers had not been reduced by a legislative amendment, board members were affected by a legislative amendment as it reduced their number from 9 to 5.

It has to be noted that, instead of decreasing, the powers of some NRAs were increased (for the CSA (France), the AGCOM (Italy) and the BAI (Ireland)).

ANNEX 2

2.1 According to your national law, who is in charge of appointing the Head of your NRA?

3 NRAs (Croatia, Greece and Lithuania) and some German regional regulators answered “Parliament”

13NRAs answered “Government” (Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Cyprus, Estonia, Finland, Iceland, Ireland, Netherlands, Norway, Slovenia, Sweden and Switzerland)

2 NRAs (France, Luxembourg) and some German regional regulators answered “Head of State”

6 NRAs answered “Two of the above mentioned institutional bodies jointly” (Austria, Hungary, Italy, Malta, Spain and United Kingdom (Chair))

8 NRAs (Bulgaria, Czech Republic, Latvia, Montenegro, Poland, Portugal, Slovakia, United Kingdom (Chief Executive)) and some German regional regulators answered “NRA from amongst its members”

1 NRA sends back to previous answers (Denmark)

Among NRAs that answered “Two of the above mentioned institutional bodies jointly”, the CNMC (Spain) specifies that it is actually the Government which nominates but the Parliament has a veto power.

The OFCOM (United Kingdom) is actually composed of two heads. Its board is composed of executive and non-executive members. The Department for Culture, Media and Sport (DCMS) appoints these non-executive members. The Chief executive of OFCOM is an executive member of the Board and is appointed by the Chairman and the other non-executive members, with the approval of the Secretary of State (DCMS). In Ireland, the Chairperson of the decision making authority (the Authority) and the Chief Executive of the NRA are appointed by the Government.

2.2 According to your national law, who is in charge of appointing the Board (decision-making body) of your NRA?

11 NRAs answered “Parliament” (Croatia, France, Hungary, Italy, Latvia, Lithuania, Montenegro, Poland, Portugal, Slovakia and some German regional regulators)

7NRAs answered “Government” (Belgium-Flanders, Belgium-MEDIENRAT, Cyprus, Denmark, Iceland, Ireland and Netherlands)

3 NRAs answered “Head of State” (Lithuania, Luxembourg, and Poland)

6 NRAs answered “Two of the above mentioned institutional bodies jointly” (Austria, Belgium-Wallonia, Bulgaria, Malta, Spain and United Kingdom)

5 NRAs answered “Other institutional bodies” (Czech Republic, Denmark, Iceland, Lithuania and some German regional regulators)

6 NRAs answered “Our NRA has no board” (Estonia, Finland, Norway, Slovenia, Sweden and Switzerland)

The FICORA (Finland) specified that it only has an advisory board nominated by the Director-General.

In Germany, members of boards are representative from socially relevant groups (e.g. churches, federations of trade unions etc.). They have an impact on the composition of the boards, which vary from one *Land* to another.

2.3 Is the appoint procedure for the members of the Board based on an open and transparent nomination process?

17 NRAs answered “Yes, prescribed by the law” (Austria, Croatia, Denmark, France, Germany, Hungary, Iceland, Ireland, Italy, Lithuania, Montenegro, Poland, Portugal, Slovakia, Slovenia, Spain and United Kingdom)

4 NRAs answered “Yes but not prescribed by the law” (Bulgaria, Czech Republic, Latvia and Netherlands)

8 NRAs answered “No” (Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Cyprus, Greece, Luxembourg, Malta and Sweden)

Among the NRA answering “Yes but not prescribed by the law”, the CVDN (Netherlands) specifies that vacancies are published in national newspaper and pre-selection is made by an external “head hunter”. The Minister decides the appointment but board members are actively involved in the process.

2.4 If you answered yes to the previous question, please describe briefly the procedure/s for the selection and appointment of the Head and of the Board Members of your NRA?

All NRAs have their own procedures but it is possible to observe common features among some NRAs which answered “yes” to the question 2.3:

- Public call for applications (Austria, Estonia, United Kingdom and some regional regulators in Germany);
- Internal rules of procedure for the bodies in charge of the appointment (Bulgaria, Czech Republic, Latvia, Poland);
- Approval/veto from the Parliament or a relevant parliamentary committee (France, Hungary, Ireland, Italy, Lithuania, Portugal, Spain)

2.5 Are political majorities or political power structures reflected in the composition of the NRA’s Board?

10 NRAs answered “Yes” (Belgium-Wallonia, Cyprus, Czech Republic, Germany, Hungary, Italy, Latvia, Lithuania, Malta and Portugal)

22NRAs answered “No” (Austria, Belgium-Flanders, Belgium-MEDIENRAT, Bulgaria, Croatia, Denmark, Finland, France, Greece, Iceland, Ireland, Luxembourg, Montenegro Netherlands, Norway, Poland, Slovakia, Slovenia, Spain, Sweden, Switzerland and United Kingdom)

In Bulgaria, there is a Constitutional Court decision declaring that such conditions such as the requirement for a proportional representation of the parties in the Parliament is unconstitutional.

2.6 How long is the term of office of the Head and the Board of your NRA? Please indicate if the term of office is a fixed term.

The term of office is one year for the chairperson in 1 NRA (Bulgaria)

The term of office is two years in 1 NRA (Czech Republic)

The term of office is four years in 5 NRAs (Belgium-Wallonia’s Board, Belgium-MEDIENRAT, Denmark, Iceland, Lithuania and Montenegro’s head)

The term of office is five years in 10 NRAs (Belgium-Wallonia’s Head, Croatia, Estonia, Ireland, Latvia, Luxembourg, Netherlands, Portugal, Slovenia and Montenegro’s Board)

The term of office is six years in 10 NRAs (Austria, Belgium-Flanders, Bulgaria’s Board, Cyprus, France, Greece, Poland, Slovakia, Spain and Sweden’s head)

The term of office is seven years in 1 NRA (Italy)

The term of office is nine years in 1 NRA (Hungary)

This term is fixed in 23 NRAs (Austria, Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, France, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovakia, Slovenia, Spain and Montenegro)

The term is not fixed in 5 NRAs (Finland, Ireland, Malta, Switzerland and United Kingdom), while it varies in Germany in different regional regulators (usually between four and seven years, sometimes unlimited)

The BA (Malta) explains that the law provides a five year mandate but they appear to last between 2 and 3 years.

In Sweden, members of the commission of the MRTV are appointed for a period decided by the Government. Thus it varies.

As the Ofcom (United Kingdom) has two senior appointees (a chairperson and a chief executive), it depends on who is concerned. The chairperson is appointed for three to five years while the chief executive does not have a fixed term of office.

2.7 Are all members of the Board appointed at the same time or does the procedure envisage a rotation?

20 NRAs indicated that all members of the Board are appointed at the same time (Austria, Belgium-Flanders, Belgium-MEDIENRAT, Bulgaria, Cyprus, Czech Republic, Denmark, Germany, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, Poland, Portugal and Sweden)

8 NRAs indicated that not all members of the Board are appointed at the same time (Belgium-Wallonia, Croatia, France, Greece, Ireland, Slovakia, Spain, United Kingdom)

Initially, the Broadcasting Act of 1992 in Poland envisaged the exchange of a third of the KRRIT's Council members every two years

2.8 Does the law prescribe specific eligibility requirements for the Head of the NRA?

17 NRAs answered "Yes" (Austria, Belgium-Wallonia, Croatia, Cyprus, Denmark, Estonia, Finland, Germany, Greece, Hungary, Iceland, , Italy, Lithuania, Montenegro, Slovenia and Spain)

16 NRAs answered "No" (Belgium-Flanders, Belgium-MEDIENRAT, Bulgaria, Czech Republic, France, Ireland, Latvia, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Sweden, Switzerland and United Kingdom)

Requirements commonly mentioned are technical skills or professional experience in the field of communication, broadcasting and electronic communication.

2.9 Does the law prescribe specific eligibility requirements or specific competence for the members of the Board?

21NRAs answered "Yes" (Austria, Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Bulgaria, Croatia, Cyprus, Denmark, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Montenegro, Portugal, Slovakia and Spain)

6 NRAs answered "No" (Czech Republic, Luxembourg, Netherlands, Poland, Sweden, Switzerland))

2 NRAs did not answer the question (Malta and Norway)

1 NRA sends back to question 2.8 (United Kingdom)

Requirements commonly mentioned are technical skills or professional experience in the field of communication, broadcasting and electronic communication.

2.10 Is the mandate renewable?

23NRAs answered “Yes” (Austria, Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Iceland, Ireland, Latvia, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, Slovakia, Slovenia, Sweden and United Kingdom).

9 NRAs answered “No” (Bulgaria, France, Greece, Hungary, Italy, Poland, Portugal, Spain and Switzerland)

1 NRA did not answer the question (Norway)

Cyprus specified that the renewal of board members’ mandate depends on a decision from the government.

In Ireland, a member cannot serve more than two terms.

2.11 Is the duration of mandate tied to electoral cycles?

1 NRA answered “Yes” (Czech Republic)

All the other NRAs answered “No”

2.12 Can the Head or the members of the Board be dismissed from their positions prior to the end of the term of the office?

9 NRAs answered “Yes, by the Government” (Belgium-MEDIENRAT , Cyprus, Finland, Greece, Ireland, Netherlands, Slovenia, Switzerland and United Kingdom)

8 NRAs (Belgium-Wallonia, Croatia, Czech Republic, Latvia, Montenegro, Poland, Portugal, Slovakia) and some German regional regulators answered “Yes, by the Parliament”)

7 NRAs (Austria, Bulgaria, Estonia, Hungary, Lithuania, Poland, Montenegro) and some German regional regulators)answered “Yes, by another institutional body”

10 NRAs answered “No” (Belgium-Flanders, Denmark, France, Iceland, Italy, Luxembourg, Malta, Norway, Spain and Sweden)

However, the CSA (France), which has answered no to the question, specifies that according to the French law a member who carries on a professional activity, a job, a mandate incompatible with his member quality, who receives fees or have interests in an audiovisual company, or who take a position on issues currently under discussion is dismissed by the Board acting by a majority of its members.

2.13 If you answered “yes” to the previous question, please briefly specify the reasons for the dismissal of a Board member or the Head from his/her position?

Reasons given for the dismissal of a member from his/her position mostly consist of:

- A physical or mental incapacity to work (Austria, Bulgaria, Cyprus, Estonia, Ireland, Lithuania, Netherlands Poland, Slovenia and Montenegro);
- Judicial penalties (Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Ireland, Lithuania, Poland and Slovakia);
- Non-compliance with incompatibility provisions (Bulgaria, Germany, Latvia, Montenegro, Netherlands, Slovakia and Slovenia);
- Conflict of interests (Belgium-MEDIENRAT , Bulgaria, Czech Republic, Hungary, Ireland);
- Violation of duties and/or deontological rules (Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Croatia, Cyprus, Czech Republic, Germany, Portugal);
- Non-participation in the work of the NRA for a defined time (Croatia, Hungary, Latvia, Lithuania, Montenegro and Slovakia)

2.14 If you answered “yes” to question 2.12, please state whether one or more Board members have been dismissed on non-objective grounds in the past five years?

Among the 26 NRAs which answered “Yes” to the question 2.12, 23 answered “No” to question 2.14

3 NRAs did not answer the question (Austria, Estonia, Switzerland, the latter pointing out that that they have no board, despite the question was referred also to the Head)

2.15 Is the mandate in your NRA incompatible with any other office in different public institutions (Member of Parliament/Government/courts) or private companies/associations/unions?

5 NRAs answered “No” (Denmark, Iceland, Ireland and Norway)

All other NRAs answered “Yes” (except part- time teaching duties in higher education in Portugal)

1 NRA did not answer the question (Finland)

1 NRA sends back to question 2.8 (United Kingdom)

Although the Danish RADIO AND TELEVISION BOARD answered “No”, in practice, such incompatibility has never happened.

2.16 If you answered “yes” to the previous question, please state if the incompatibility extends also to relatives of the Head/chair/board members?

7 NRAs answered “Yes” (Cyprus, Czech Republic, France, Lithuania, Montenegro, Slovakia and Slovenia)

All the other NRAs concerned by the question answered “No”

2.17 Are the Head/Board members of your NRA subject to any incompatibility rule after the end of their mandate (cooling off period)?

14 NRAs answered “Yes” (Bulgaria, Croatia, Cyprus, Estonia, France, Greece, Hungary, Italy, Latvia, Malta, Montenegro, Portugal, Spain and United Kingdom)

All the other NRAs answered “No”

2.18 If you answered “yes” to the previous question, please specify the length of the cooling off period.

The cooling off period is 6 months in 1 NRA (United Kingdom)

The cooling off period is 1 year in 4 NRAs (Croatia, Estonia, Hungary and Montenegro)

The cooling off period is 2 years in 6 NRAs (Bulgaria, Cyprus, Italy, Latvia, Portugal and Spain)

The cooling off period is 3 years in 3 NRAs (France, Greece and Malta)

2.19 Does the law provide safeguards against conflicts of interests or regulatory capture for the Head/Board members?

All the other NRAs answered “Yes” (except Austria, which did not provide any answer).

ANNEX 3

3.1 Are human resources in your NRA adequate to carry out its functions?

22 NRAs answered “yes” (Austria, Belgium-Flanders, Cyprus, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Lithuania, Malta, Montenegro, Netherlands, Norway, Poland, Slovakia, Slovenia, Spain, Sweden, Switzerland and United Kingdom).

11 NRAs answered “no” (Belgium-Wallonia, Belgium-MEDIENRAT, Bulgaria, Croatia, Czech Republic, Greece, Iceland, Ireland, Latvia, Luxembourg and Portugal).

The NRAs that answered “no” provided details of staff reductions and skills shortages or referred to specific statutory functions that could not be carried out.

CSA (Belgium-Wallonia) stated that it is down 5 staff members which equates to 20% of the NRA’s normal staff complement. ESR (Greece) noted that it has only 41 of 81 permitted employees. The reasons for these reductions were financial difficulties and budget issues.¹¹⁵

The CEM (Bulgaria) noted it requires employees with a good knowledge of the three main EU working languages as well as employees with higher professional qualification. The AEM (Croatia) cited a shortage of legal and monitoring skills.

The IMC (Iceland) noted that only two employees are not sufficient to carry out supervisory activities as required by specified legislation.¹¹⁶ This NRA also highlighted government cuts to its budget as well as government proposals to either close the NRA or to merge it with another authority.¹¹⁷

The NEPLP (Latvia) stated that its resources were not sufficient to ensure adequate monitoring and assessment of violations of third country TV services. The ERC in Portugal linked inadequacy of its staffing resources to the complexity of responsibilities of the NRA particularly in the context of the digital environment.

The BAI (Ireland) referred to a public service embargo on recruitment which was put in place in 2009. In 2015, the BAI was granted permission to increase its staff number by 5 permanent full-time employees and permission to fill additional arising vacancies.

The RRTV (Czech Republic) stated that its budget prohibits further recruitment at this time.

3.2 Can your NRA decide its recruitment procedures? If “no”, please specify who can decide them.

¹¹⁵ See responses to Question 3.6.

¹¹⁶ Media Act No. 38/2011, Act on the Icelandic National Broadcasting Service No. 23/2013 and Act on the Monitoring of Children’s Access to Films and Computer Games No.62/2006.

¹¹⁷ See response to Question 3.6.

27 NRAs answered “yes” (Belgium-Flanders, Belgium-Wallonia, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Malta, Montenegro, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland and United Kingdom).

6 NRAs answered “no” (Austria, Belgium-MEDIENRAT, Bulgaria, Denmark, Greece and Luxembourg).

The NRAs that answered “no” named the authority or entity responsible for deciding on its recruitment procedures. KommAustria refers to another company RTR GmbH which is its operational support company. In Denmark, the Danish Agency for Culture is responsible for recruitment. In Greece, the ESR is an Independent Authority and recruitment for all Independent Authorities is organised by the High Counsel of selection of personnel (ASEP).¹¹⁸ The CEM (Bulgaria) notes it has two types of employees: employees having an employment contract and employees of service who are civil servant and civil servants must be recruited in accordance with a specific procedure.

Among the NRAs that answered “yes”, the CSA (France) referred to applicable legislation¹¹⁹ which provides that the CSA, for its administration, deliberates on general conditions of the recruitment procedures and on conditions of staff management rules after advices/opinion from the personnel representatives. However, the President sets the management rules of CSA’s contractual agents. AGCOM (Italy) notes that recent legislation requires the NRA to share its recruitment procedures with other NRAs. It notes that this requirement may reduce its autonomy in defining requisite technical skills.

The CNMC (Spain) organises its recruitment process, however, the decision to launch the process falls within the remit of the Ministry of Finance and Public Administration.

In Ireland, BAI staff must be recruited through public competition and the overall staff numbers are subject to the consent of the relevant Government Minister.

3.3 If you answered “Yes” to Question 3.2, under what rules are any staff selection procedures managed by the NRA? Are these procedures public and transparent?

(a) Open public competition (i.e. a procedure regulated by law, aimed at recruiting civil servants and applying public exams for all candidates with a view to objectively identifying the most suitable ones

(b) Other selection procedures (please specify whether these procedures are public and transparent)

17 NRAs selected (a) “open public competition” (Belgium-Flanders, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, Germany, Hungary, Italy, Montenegro, Norway, Poland, Portugal, Slovenia, Spain, and Sweden).

¹¹⁸ Article 4 of Law 3051/2002 as amended.

¹¹⁹ Articles 3 and 4 of Decree No. 2014-382.

10 NRAs selected (b) “other selection procedures” (Belgium-Wallonia, France, Ireland, Latvia, Malta, Netherlands, Slovakia, Switzerland and United Kingdom).

2 NRAs (Iceland and Lithuania) selected (a) and (b).

3 NRAs did not answer this question (Austria, Denmark and Greece).

Among the NRAs that selected (a) Open Public Competition, the CEM (Bulgaria) explained that the public competition consists of a written exam and, subject to the achievement of a qualifying score, an interview. In Slovenia, it was noted that there are no public written exams; rather, the procedure consists of interviews and psychological assessment. In Portugal, the open public competition is preceded by a public announcement published in the national newspapers. Objective selection criteria are set out in a regulation approved by the ERC’s Regulatory Board.

Where NRAs selected (b) Other Selection Procedures, the CSA (France) notes the general civil recruitment procedure allows for the internal and external publication of vacancies specifying the required skills and the selection of candidates based on skills and experience. IMC (Iceland) notes that it can recruit staff on a temporary basis without publicly advertising the position.

In Ireland, an exception to an open public competition is permissible through the use of the Redeployment Panel which is managed by the Public Appointment Service. In Malta, following an open call, candidates are short-listed according to qualifications and other criteria and will be selected following an interview process. The CvDM (Netherlands) advertises job vacancies publicly in the newspapers and on its website.

The Federal Office of Communications in Switzerland is, subject to some exceptions, legally required to publish all job vacancies.¹²⁰ The selection procedure is decided by the NRA.

OFCOM (United Kingdom) has its own recruitment policy, which is agreed through its internal governance processes.

3.4 Can the NRA adopt its own regulations regarding its internal organisation and functioning?

27 NRAs answered “yes” (Austria, Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Malta, Montenegro, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Sweden and United Kingdom).

3 NRAs answered “no” (Denmark, Estonia and Spain).

2 NRAs answered “yes/no” (Greece and Switzerland).

Among the NRAs that answered “no”, the TJA in Estonia noted that its internal organisation and functioning is defined by law. In Denmark, there is an Executive Order with Rules of Procedure for the NRA. The NRA can be heard in a public hearing in connection with changes to the Executive Order

¹²⁰ Vacancies limited to 12 months or subject to job rotation or to the reintegration of disabled or convalescent employees.

and within the framework of the Rules of Procedure, the NRA can make certain decisions on its organisation and functioning. In Spain, the CNMC's functions and internal structure are determined by law while the CNMC's internal operating rules are decided by its Board. OFCOM (Switzerland) refers to a split competency on organisational matters between the Minister and the General Director. In accordance with the law, the broad organisational structure is decided by the Minister and the detailed organisation of the office is determined by the office directors.¹²¹

While the ESR in Greece answered 'yes' in respect of its internal functioning, it noted that the final decision regarding its internal organisation (including staff numbers) belongs to the Minister of Finance who relies upon the opinion of the Minister of Public Administration. The ERC in Portugal also answered 'yes' but noted that it is statutorily obliged to maintain its organisational structure consisting of a Regulatory Board, Executive Directorate, Advisory Council and an Auditor. In Ireland, the Broadcasting Act 2009 provides for an Authority and two committees of the Authority (Contract Awards and Compliance Committees).

3.5 What is the NRA's employees' legal status? Can the NRA adopt its own regulations concerning the legal and economic treatment of its staff? Is such treatment defined by law?

29 NRAs provided answers to this question.

4 NRAs did not answer this question (France, Latvia, Lithuania and Portugal).

The employees of 18 NRAs are deemed to be civil and/or public servants and in such cases, the legal and economic treatment of the staff is defined in law (Austria, Belgium-Flanders, Bulgaria, Cyprus, Czech Republic¹²², Denmark, Estonia, Hungary, Ireland, Italy, Luxembourg, Netherlands, Norway, Poland, Slovakia, Slovenia and Sweden).

In Switzerland, OFCOM's employees are subject to public employment contracts as 'civil servant' status does not exist.

The CSA (Belgium-Wallonia) states that its employees have a private contract but have civil servant status. It can adopt its own regulations concerning the treatment of its staff.

FICORA (Finland) states that most of its staff are civil servants whose legal treatment is defined by law. It decides its remuneration policies and staff salaries.

Germany notes that while some employees are public employees/ employees in the public sector, others are (temporary) civil servants, as media authorities are independent institutions under public law.

The employees of the NRAs in Croatia and in the United Kingdom do not have the status of civil or public servants. In Croatia, the AEM has private employment contracts with its employees and adopts its own regulations concerning their economic and legal treatment. OFCOM (United Kingdom)

¹²¹ The Swiss Government and Administration Act.

¹²² From 1st September 2015 in accordance with a new Civil Code.

determines its own employment and remuneration policies through Executive and Remuneration Committees. OFCOM is not bound by civil service pay scales.

The NRAs in Bulgaria, Estonia, Greece and Spain have two categories of employees: civil servants and employees with the status of private law. Under question 3.3 above, the CSA (France) stated that it can employ both contractual agents and civil servants.

The Belgian MEDIENRAT's staff is actually employed and paid by the Ministry of the German-speaking Community (and is as such submitted to instructions) and becomes no remuneration from the Media Council. They work in the premises of the Ministry of the German-speaking Community for both Ministry and Media Council.

3.6 What difficulties, if any, has your NRA encountered in attracting and retaining suitably qualified staff? If, yes, please explain what type of problems.

11 NRAs answered "yes" (Belgium-Wallonia, Bulgaria, Czech Republic, Greece, Iceland, Ireland, Latvia, Netherlands, Portugal, Slovakia and United Kingdom).

20 NRAs answered "no" (Austria, Belgium-Flanders, Croatia, Cyprus, Denmark, Estonia, France, Germany, Hungary, Italy, Lithuania, Luxembourg, Malta, Montenegro, Norway, Poland, Slovenia, Spain, Sweden and Switzerland).

2 NRA did not answer (Belgium-MEDIENRAT, Finland).

Of the NRAs that answered "yes", 5 NRAs (Belgium-Wallonia, Bulgaria, Greece and Portugal) cited budgetary constraints or financial difficulties as a reason for the difficulties in attracting, recruiting and retaining suitably qualified staff. The IMC (Iceland) highlighted government cuts to its budget as well as government proposals to either close the NRA or to merge it with another authority. The ERC in Portugal noted that qualified staff prefer to work in the private sector.

A further 4 NRAs cited the problem of low salaries and wage competitiveness (Czech Republic, Latvia, Netherlands and Slovakia). The CvdM (the Netherlands) maintains that although the salaries cannot be considered to be low, for some high qualified functions it can be hard to compete with the wages common in the private sector. While AGCOM (Italy) answered "no", highlighted the introduction of public administration spending review measures as well as cuts and caps to the NRA's salaries may impact on its future capacity to attract and retain suitably qualified staff in the future.

2 NRAs (Ireland and Slovenia) referred to the recruitment embargo imposed in 2009. The embargos were lifted in 2015. The BAI in Ireland was given permission to create 5 new positions and to fill existing positions which may become vacant in the future. The number of AKOS staff in Slovenia will be increased by 15 in the areas of telecommunications regulation and monitoring, radio spectrum monitoring, infrastructure investment monitoring and postal services regulation.

Among the NRAs that answered "no", some noted difficulties when seeking staff with specialist skills or qualifications such as accountants, economists and engineers. The CEM in Bulgaria noted under

Question 3.1 that it lacked staff with knowledge of the main three EU working languages and higher professional qualifications.

3.7 Are any staff in the NRA subject to an incompatibility rule after the end of their employment?

6 NRAs answered “yes” (Estonia, France, Italy, Montenegro, Spain and United Kingdom).

27 NRAs answered “no” (Austria, Belgium-Flanders, Belgium-Wallonia, Belgium-MEDIENRAT, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Finland, Germany, Greece, Hungary, Iceland, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Sweden and Switzerland).

Among the NRAs that answered “yes”, they referred to cooling off period ranging from 1 – 3 years. The TJA (Estonia) explained that civil servants cannot, for a period of 12 months, become a connected person with a legal person in private law over which they have exercised direct or constant supervision in the previous year. The MNR (Montenegro) noted that a 12-month cooling off period applies to the Deputy Directors and Heads of Departments. As for CNMC (Spain), the cooling-off period only applies for Directors. No other members of the staff are subject to incompatibility rules after the end of their employment.

In France, the law prohibits employees of the CSA, for a period of three years after the end of their employment, from being involved in certain companies in circumstances where they carried out specified activities in relation to such companies during their employment with the CSA. However, the Ethics Commission can approve the compatibility of their involvement.

In Italy, AGCOM’s managers are subject to a cooling off period, however the length of this period was not specified.

In the United Kingdom, OFCOM’s employees are put on gardening leave for the duration of their notice period in circumstances where there is a potential conflict of interest. The AKOS in Slovenia also notes that cooling periods may be provided for in the employee’s contract but not, by law.

3.8 Does the NRA have a Code of Conduct?

19 NRAs answered “yes” (Belgium-Flanders, Belgium-Wallonia, Bulgaria, Croatia, Cyprus, Estonia, France, Germany, Ireland, Italy, Malta, Montenegro, Netherlands, Norway, Slovakia, Spain, Sweden, Switzerland and United Kingdom).

11 NRAs answered “no” (Austria, Belgium-MEDIENRAT, Czech Republic, Denmark, Greece, Hungary, Iceland, Lithuania, Luxembourg, Poland and Slovenia).

3 NRAs did not answer this question (Finland, Latvia and Portugal).

Among the NRAs that answered “yes”, Norway referred to Ethical Guidelines which are based on guidelines for all civil servants. The MRTV (Sweden) referred to internal policies on bribery and representation as well as general principles and regulations applicable to all civil servants. The BAI

(Ireland) has one Code of Conduct which applies the members of its Authority and statutory committees and to all of its employees. OFCOM in the United Kingdom refers to a Code of Conduct for its Board members.

Among the NRAs that answered “no”, Denmark refers to its Rules of Procedures and general rules applying to matters such as conflicts of interest in the Danish Administration Act. Slovenia referred to internal regulations and codes.

ANNEX 4

4.1 Does your NRA have autonomy in preparing its own budget?

17 NRAs answered “yes” (Belgium-Wallonia, Croatia, Cyprus, Estonia, Finland, France, Greece, Hungary, Italy, Lithuania, Montenegro, Netherlands, Poland, Slovakia, Slovenia, Spain, United Kingdom);

1 NRA answered “no” (Latvia,);

15 NRAs answered “no/not entirely” (Austria, Belgium-Flanders, Belgium-MEDIENRAT, Bulgaria, Czech Republic, Denmark, Germany, Iceland, Ireland, Luxembourg, Malta, Norway, Portugal, Sweden, Switzerland).

Among the affirmative answers, the ESR (Greece) notes, that it has to take into account the instructions of the Ministry of Finance, concerning expenses reduction, while the British OFCOM reports that it sets its own budget within the spending caps set by HM Treasury.

The budget of the majority of NRAs (18) is connected with the State budget.

Among 14 NRAs that answered “no/not entirely”, German regulatory bodies/authorities explain, that there are two kinds of procedures as far as the budget preparation is concerned. In the case of Regulatory Authorities for Private Broadcasting, the annual budget is prepared by the director and approved by the decision-making body of the respective media authority. These authorities are mainly financed by a small percentage of the broadcasting fee, the licence fees and fines. In the case of Broadcasting and Administrative Councils (PSB), the annual budget is a part of the annual budget of the broadcasters they are supervising. These councils are involved in the financial planning and preparing the financial statements. PSB are financed from the broadcasting fee.

The RADIO AND TELEVISION BOARD (Denmark) remarks, that its budget is partly regulated by the annual Finance Act in regard to specific purposes within the Board’s mandate. This applies e.g. for the financial resources for support of non-commercial radio- and TV-stations and connected with it administration costs. Another part of the budget belongs to the budget of the Danish Agency for Culture which is also regulated by the Finance Act. It embraces e.g. other staff costs and the remuneration of Boards members.

In Croatia the AEM is autonomous in preparing its own budget. Following the Strategic Action Plan for 2014-2017, the financial planning is based on multiannual basis.

4.2 Does your NRA have autonomy in approving its own budget?

7 NRAs answered “yes” (Austria, Belgium-Wallonia, Croatia, France, Italy, Lithuania, United Kingdom¹²³);

3 NRAs answered “no” (Cyprus, Latvia, Netherlands);

23 NRAs answered “no/not entirely” (Belgium-Flanders, Belgium-MEDIENRAT, Bulgaria, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Iceland, Ireland, Luxembourg, Malta, Montenegro, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland).

Among the NRAs that answered “no/not entirely” 11 regulators (Belgium-Flanders, Belgium-MEDIENRAT, Bulgaria, Hungary, Luxembourg, Montenegro, Poland, Slovakia, Spain, Sweden, Switzerland) indicate the Parliament as the body responsible for approving the budget. Three NRAs point out that their budget is approved both by the Government and Parliament (Cyprus, Denmark¹²⁴, Latvia). Despite answering “no/not entirely”, 2 NRAs did not identify the body responsible for approving their budgets (Finland and Greece).

Despite an affirmative answer to this question, the French CSA also advises that its final budget bill is approved by the Parliament.

Among the NRAs that answered “no/not entirely” FICORA (Finland) and ESR (Greece) did not explain their answers further.

4.3 Does your NRA have autonomy in allocating its own budget?

23 NRAs answered “yes” (Austria, Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Croatia, Cyprus, Estonia, France, Germany, Hungary, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, Portugal, Slovenia, Sweden, Switzerland, United Kingdom);

1 NRA answered “no” (Latvia);

8 NRAs answered “no/not entirely” (Bulgaria, Czech Republic, Denmark, Greece, Norway, Poland, Slovakia and Spain);

1 NRA (Finland) did not answer the question.

Answering “no/not entirely”, the ESR (Greece) did not explain the answer further. Other regulators who have marked this answer usually indicate that their budget has to be divided into specific groups of expenses (Bulgaria, Czech Republic, Denmark, Norway, Poland). Similar restrictions occur in the case of MRTV (Sweden), although it has marked the “yes” answer.

As for CNMC (Spain), the Act of Creation of CNMC establishes a budgetary system of “limitative” nature, that means that the amount set for every budget line represent an upper cap. Transfers between lines are applicable and the procedure is set out in the CNMC Statute.

¹²³ Subject to a spending cap set by the UK government, which is accountable for the spending of all bodies that manage public funds.

¹²⁴ See the answer to the previous question.

4.4 Are the NRA's financial statements subject to external approval?

26 NRAs answered "yes" (Austria, Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Bulgaria, Croatia, Cyprus, France, Germany, Greece, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, Norway, Poland, Slovakia, Spain, Sweden, Switzerland, United Kingdom);

5 NRAs answered "no" (Czech Republic, Estonia, Hungary, Portugal, Slovenia);

1 NRA answered "yes/no" (Denmark);

1 NRA did not answer this question (Finland).

The Finnish regulator did not answer this question and Malta, answering 'yes', did not identify the body in charge of approving the financial report.

15 NRAs identify the independent audit courts or offices as being responsible for approving their financial statements (Austria, Belgium-Flanders, Bulgaria, Croatia, Cyprus, France, Italy, Latvia, Lithuania, Netherlands, Norway, Spain, Sweden, Switzerland, United Kingdom).

4.5 Is the budget of the NRA separate from the State budget?

15 NRAs answered "yes" (Austria, Belgium-Wallonia, Belgium-Flanders, Croatia, Cyprus, Germany, Hungary, Ireland, Italy, Montenegro, Netherlands, Slovenia, Spain, Sweden, United Kingdom);

18 NRAs answered "no" (Belgium-MEDIENRAT, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Greece, Iceland, Latvia, Lithuania, Luxembourg, Malta, Norway, Poland, Portugal, Slovakia, Switzerland).

Among the NRAs who answered "yes", three NRAs, CNMC (Spain), MRTV (Sweden) and OFCOM (United Kingdom), remark, that although their budget is integrated within the State budget, it is governed exclusively by the NRA.

4.6 In your view, is the NRA's budget adequate to fulfil its functions?

25 NRAs answered "yes" (Austria, Belgium-Flanders, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Lithuania, Luxembourg, Montenegro, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom);

8 NRAs answered "no" (Belgium-MEDIENRAT, Belgium-Wallonia, Bulgaria, Czech Republic, Greece, Iceland, Latvia and Malta)

Among the NRAs that gave the negative answer the CSA (Belgium-Wallonia) attributes the difficulties in carrying out its mission to an insufficient number of staff members and lack of resources for research and studies necessary to support its policy and ground its decisions.

Similarly the RRTV (Czech Republic) points out that its budget does not allow it to hire enough employees nor buy new equipment.

The ESR (Greece) notes, that because of necessity of significantly reducing its expenses, it had to change its office infrastructure and cannot afford participating in international fora.

The IMC (Iceland) identifies problems with hiring more employees in order to be able to carry out its legal obligations to supervise the monitoring of children's access to audiovisual content as well as assessing the fulfilment of public broadcaster its public service remit. Furthermore the IMC budget is not adequate to allow this NRA attending the meetings with other media authorities.

The Maltese BAI mentions that the subvention it receives from the Consolidated Fund has remained the same for the last 25 years.

4.7 Are there recent legislative or governmental interventions with potential impact over the NRA's budget' size or destination?

17 NRAs answered "yes" (Belgium-Wallonia, Belgium-Flanders, Bulgaria, Croatia, Cyprus, Finland, Germany, Greece, Iceland, Ireland, Italy, Montenegro, Netherlands, Slovakia, Spain, Switzerland, United Kingdom);

14 NRAs answered "no" (Austria, Belgium-MEDIENRAT, Czech Republic, Denmark, Estonia, France, Hungary, Lithuania, Luxembourg, Malta, Norway, Poland, Slovenia, Sweden);

2 NRA did not answer this question (Latvia and Portugal).

Among the NRAs that gave the affirmative answer, 10 have incurred or are awaiting budget cuts, in some cases these cuts are substantial. For example, CvdM (Netherlands) notes that from 2018 it will lose more than 1/3 of its budget although it has been assigned with many new tasks and activities in the recent past.

Significant austerity measures were introduced also in Spanish public administration in 2010, with a 5% cut in public sector salaries and a wage freeze in 2011. These decisions influence also the budget of regulatory body (CNMC).

The Swiss OFCOM informs, that it has not spent all available financial resources of the global budget and due to the Swiss Confederations austerity policy is therefore expecting some budget cuts.

4.8 What are your sources of financing (multiple answers are possible; where possible, please provide percentages for each source)?

12NRAs answered “direct public sources” (Belgium-MEDIENRAT , Belgium-Wallonia, Bulgaria, Czech Republic, Denmark, Estonia, France, Greece, Iceland, Norway, Poland, Slovakia);

1 NRA answered “indirect public sources” (Malta);

6 NRAs answered “fees paid by regulated entities” (Croatia, Ireland, Italy, Lithuania, Montenegro, Slovenia);

4 NRAs answered both “direct public sources” and “fees paid by regulated entities” (Austria, Belgium-Flanders, Luxembourg and Spain);

3 NRAs answered “direct public sources”, “indirect public sources” and “fees paid by regulated entities” (Netherlands, Sweden, Switzerland);

2 NRAs answered both “indirect public sources” and “fees paid by regulated entities” (Cyprus, Hungary);

1 NRA answered “direct public sources”, “fees paid by regulated entities” and “other” (Finland);

1 NRA answered “indirect public sources”, “fees paid by regulated entities” and “other” (Germany);

1 NRA answered both “direct public sources” and “indirect public sources” (Denmark);

2 NRA answered “direct public sources”, “indirect public sources”, “fees paid by regulated entities” and “other” (Portugal and United Kingdom).

When it comes to percentages of each source of financing, it was FICORA (Finland) and OFCOM (United Kingdom), among the NRAs financed from multiple sources, that gave the precise data in this matter. FICORA acquires 10% of its incomes from direct public sources, 80% from the fees paid by regulated entities and 10% from other sources. In the case of British OFCOM the proportion is different. It obtains 56% of its incomes from public sources, 43% from regulated undertakings and 1% from other sources.

Germany notes that only in some of German federal states the media laws specify the annual levy paid by broadcasters as a source of NRA’s financing.

The Belgian MEDIENRAT is, in practice, exclusively financed by the German-speaking Community, which is a state entity. Each year, the Government of the German-speaking Community proposes a global budget for the Community’s public services including funding for the Media Council to the Parliament. While most public services within the German-speaking Community have to negotiate a 5-year-long-term management contract with the Government, which ensures financial funds for this period of time and a better definition of the missions), this is not the case for the Media Council. There has not been any cut-backs as such but as the following chart shows, the allowed amounts are modest (on average 20.000 EUR/year) and do not enable the Council to have its own staff, premises or equipment.

4.9 If among your answers to the previous question there is also “fees paid by private regulated entities”, please, answer the following question: are there constraints in the use of the financial income from such regulated subjects (I.e. in Italy the income from the regulated entities may be used by the NRA only to cover the cost of its regulatory activities)?

21 NRAs answered this question although only 19 marked “fees paid by regulated entities” in response to the previous one (Austria, Belgium-Flanders, Bulgaria, Croatia, Cyprus, Finland, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg Montenegro, Netherlands, Portugal, Slovenia, Spain, Sweden, Switzerland, United Kingdom).

10 NRAs answered “yes” (Bulgaria, Finland, Ireland, Italy, Lithuania, Slovenia, Spain, Sweden, Switzerland, United Kingdom).

11 NRAs answered “no” (Austria, Belgium-Flanders, Croatia, Cyprus, Germany, Hungary, Latvia, Luxemburg, Montenegro, Netherlands, Portugal).

The CEM (Bulgaria) and the NEPLP (Latvia) answered this question although they are financed solely from the state budget.

Despite answering “yes” to this question, the ALIA (Luxembourg) mentions that the regulation contains no provision as to the use of the collected fees.

Despite answering “no” to this question, the CEM (Bulgaria) indicates, that this source of funding is used to cover all the regulator’s expenses.

Among the 10 affirmative answers in 7 cases this source of funding may be used only to cover the cost of regulatory activities.

In Switzerland, the revenue from the licence fee is used to promote research projects in the radio and television sector, to finance archiving and to promote new technologies.

ANNEX 5

5.1 Is there a legal or other requirement for your NRA to publish its decisions and the reasons for such decisions?

26 NRAs answered “yes” (Austria, Belgium-Wallonia, Belgium-Flanders, Bulgaria, Croatia, Denmark, Belgium-MEDIENRAT (partly), Estonia, Finland, France, Germany – but only for some broadcasting councils of the public service broadcasting -, Greece, Hungary, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Montenegro, Portugal, Slovakia, Spain, Sweden, Switzerland and United Kingdom)

7 NRAs answered “no” (Cyprus, Czech Republic, Latvia, Netherlands, Norway, Slovenia and Poland)

For some NRAs, the legal requirement for publishing its decisions is enshrined in their sectorial Act (Radio and Television Act, Audiovisual Act, Freedom of Information Act, etc.). This is the case of CEM (Bulgaria), AEM (Croatia), RADIO AND TELEVISION BOARD (Denmark), CSA (France), NMHH (Hungary), IMC (Iceland), AGCOM (Italy) and OFCOM (Switzerland).

In other cases, the provisions can be found in a general law, e.g. administrative, public information or public sector law/act/code. These include TJA (Estonia), FICORA (Finland), ESR (Greece), LRTK (Lithuania) and MRTV (Sweden).

Concerning the Spanish CNMC, this obligation lays down in the Act of Creation of CNMC, 7th October 2013. The Act also clearly details the list of provisions, resolutions, agreements and reports that should be necessarily disseminate and publish. In addition, under the Act of Transparency, Access to Information and Good Governance, there is an obligation of “active publication” of any relevant activity carried out by any public administration.

ALIA (Luxemburg) observed that the publication of a decision [in the Mémorial \(Official Gazette\)](#) is [mandatory](#) exclusively when [the withdrawing of a license is concerned](#). However, on a general basis, [decisions are published on the web site for reasons of transparency, even though, except for the above mentioned cases, there is no legal obligation to do so.](#)

Among the 7 negative answers, CvdM remarks that despite publication is not imposed by law, but it is underpinned by a protocol on communication policies adopted by the CdvM. KRRIT (Poland) and AKOS (Slovenia) point out that although there is no such legal obligation, they usually publish such this information on their websites.

It is worth mentioning the German case, where the situation varies depending on the broadcasting council. Some of the PSB-broadcasting councils have the obligation to publish their decisions, whereas in other the publication is voluntary or anchored in the rules of procedure.

As part of the ongoing transparency process further rules dealing with publication of act and decisions are expected in the near future.

German regulatory authorities for private broadcasting are not obliged to publish their decisions.

Ofcom (UK) provides detailed information about their publication policy. The British regulator publishes all its decisions and evidence used. For decisions taken as a result of investigations into potential breaches of standards codes or other licence conditions, Ofcom publishes a fortnightly Broadcast Bulletin

Ofcom publishes documents outlining its procedures for investigating breaches of content standards for TV and radio, for investigating breaches of broadcast licenses, for considering and adjudicating on Fairness and Privacy complaints and for considering statutory sanctions.

Ofcom also publishes detailed guidance notes to accompany each section of the Broadcasting Code, in order to provide broadcasters with further detail about the factors that it takes into consideration when assessing potential breaches of its rules; and information related to the Ofcom Content Board, e.g., decisions, meetings, etc.

The Belgian MEDIENRAT is obliged to publish all relevant information on rights, conditions, procedures, charges, fees and decisions concerning general authorisations, rights of use and rights to install facilities and market regulation. Annual reports are to be published as well. There is no obligation to publish other decisions and documents, but some are (in principle all licencing decisions). Publication is made on the website of the Media Council (www.medienrat.be). In case of free frequencies, invitations to bid are published in the *Moniteur belge*, the official journal (art. 51 Decree).

5.2 Is your NRA required to submit periodical reports to the Parliament/Government or other institutions?

3 NRAs answered “yes, more than one per year” (Bulgaria, Finland and Portugal)

26 NRAs answered “yes, one per year” (Austria, Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Croatia, Czech Republic, Denmark, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, Norway, Poland, Slovakia, Slovenia, Spain, Sweden, Switzerland and United Kingdom)

1 NRA answered “Other” Latvia,

3 NRAs answered “no” (Cyprus, Estonia and Iceland)

Among the NRAs which answered positively, the NRAs Annual Report is the most recurrent document submitted to the Parliament and/or Government, which usually also includes the financial statement of the authority. This is the case in the vast majority of the respondents.

It is worth mentioning that some NRAs, e.g. CSA (France), and NEPLP (Latvia), they have to report on the implementation of the public service remit of the public mass media and their financial activities.

It should be also underlined the case of ERC (Portugal) that must inform the Parliament on a monthly basis of its decisions and activities.

The Dutch CvdM and the French CSA highlight that they also have the obligation to present a report on the ongoing trends of the media landscape and in the French case, legal and regulatory

suggestions to address the technological, economic, social and cultural evolution of the broadcasting sector.

In the Netherlands this report is carried out under the Mediamonitor, which reports at least once a year to the government on the main trends in ownership and market shares in the various media sectors including printed press, radio and TV (see <http://www.mediamonitor.nl/english/>)

Ireland states that once a year it must submit its annual work plan, strategy, budgets, end of year annual report and accounts to the Minister/Government for approval

None of the NRAs which have answered negatively (CRTA (Cyprus), TJA (Estonia) and IMC (Iceland)) have provided explanation about the absence of reporting obligations in their legal frameworks.

Apart of their regular appearance to present the annual report, BAI (Ireland), ERC (Portugal), CNMC (Spain) and Ofcom (United Kingdom) point out that they could be asked to appear before the Parliament on an ad-hoc basis to attend specific enquiries into specific subjects.

In this line, Ofcom also underlines that they could respond to questions received directly from the members of the Parliament. Any evidence and recommendations provided by Ofcom to Parliament of Ministers are made public on Ofcom's website.

5.3. Is your NRA's activity subject to regular review by external auditors or independent specialized public institution/bodies?

24 NRAs answered "yes" (Belgium-MEDIENRAT, Belgium-Wallonia, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, Norway, Poland, Portugal, Spain, Sweden and United Kingdom)

9 NRAs answered "no" (Austria, Belgium-Flanders, Denmark, Greece, Iceland, Italy, Slovakia, Slovenia and Switzerland)

CSA (Belgium-Wallonia) points out that the Authority is supervised by a Government commissioner, appointed to look at the good administrative and financial management of the NRA. The commissioner can even attend the meetings of the heads. German regulatory bodies/authorities also report limited legal supervision to the NRAs by the by federal state chancellery or a ministry or government.

As mentioned in the previous section, in some cases, e.g. Estonia, Ireland, The Netherlands, Poland and Spain, the activities and functioning of the NRA is also subject to auditing. As for the Spanish CNMC, an internal control body was put in place to guarantee the appropriateness and effectiveness of the decisions taken by the Authority in terms of procedural rules.

5.4. Does your NRA carry out public consultations?

8 NRAs answered "yes, running public consultations is mandatory" (Belgium-Wallonia, Croatia, Cyprus, Italy, Latvia, Lithuania, Montenegro and Switzerland)

22 NRAs answered “yes, running public consultations is not (or not always) mandatory” (Austria, Belgium-Flanders, Belgium-MEDIENRAT, Bulgaria, Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Iceland, Ireland, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and United Kingdom)

2 NRAs answered “no” (Denmark and Luxembourg)

1 NRA answered both “yes, running public consultations is mandatory” and “yes, running public consultations is not (or not always) mandatory” (France)

Some NRA provided some cases where is mandatory for the regulator to run public consultations. The French CSA notes that according to Law n°86-1067, 30 September 1986, CSA must proceed to run a public consultation on the usage of spectrum before any attribution of the right to use radio electric resources.

As for ALM (Germany), public consultations are mandatory of amendments/by-laws and as part of the procedure relating to the so-called “Drei-Stufen-Test” (Public-Value-Test or “Amsterdam Test”). AEM (Montenegro) also refers to the need of running public consultations for commenting the draft general acts prepared by the Authority.

In the case of Portugal, public consultation is only mandatory when involved regulations issued by ERC. However, running public consultations related with ERC’ scope of activity in not mandatory, although they underline this is a desirable procedure in many cases.

The Danish RADIO AND TELEVISION BOARD, despite answering negatively to this question, specifies that the Board soon will be imposed to invite the public to comment on the Public Service - broadcasters annual Public Service-reports in connection with the Board’s review of those reports.

The BAI in Ireland advises that although public consultations are not mandatory, it carries them out as a matter of practice.

5.5. Does the regulatory body categorize these consultations as open (anyone can respond) or closed consultations?

14 NRAs answered “both open and closed” (Austria, Belgium-Wallonia, Bulgaria, Cyprus, Estonia, Greece, Hungary, Ireland, Italy, Latvia, Malta, Netherlands, Poland and Slovakia)

17 NRAs answered “open” (Belgium-Flanders, Belgium-MEDIENRAT , Croatia, Czech Republic, Denmark, Finland, France, Germany, Lithuania, Montenegro, Norway, Portugal, Slovenia, Spain, Sweden, Switzerland and United Kingdom)

1 NRA answered “closed” (Iceland)

1 NRA did not answer the question (Luxembourg)

Few NRAs, BAI (Ireland) and AGCOM (Italy) clarify that it depends on the aim of the consultation and on who will be impacted by the decision in question. AGCOM (Italy) points out that regulatory decision usually imply open consultations.

The Danish RADIO AND TELEVISION BOARD remarks that the possibility of running open consultation is not yet in force by the time they replied to the questionnaire. However, it is expected that it will enter into place soon.

5.6. Does the regulatory body explain the extent to which responses are taken into account in final decisions or regulations adopted?

25 NRAs answered “yes” (Austria, Belgium-Flanders, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, Greece, Iceland, Ireland, Italy, Latvia, Lithuania, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland and United Kingdom)

7NRAs answered “no” (Belgium-MEDIENRAT, Belgium-Wallonia, Czech Republic, France, Germany, Hungary and Montenegro)

1 NRA did not answer the question (Luxembourg)

Among the 24 NRA that answered “yes”, AEM (Croatia) and BAI (Ireland) highlight that they publish a report explaining the rationale for the decisions taken and how the responses formed part of these decisions.

The Danish RADIO AND TELEVISION BOARD while answering negatively, points out that however, the Board does take responses into account in final decisions

5.7. Does your NRA facilitate hearings for regulated entities or other persons in connection with its decisions or functions?

25NRAs answered “yes” (Austria, Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Bulgaria, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and Switzerland)

8 NRAs answered “no” (Croatia, Cyprus, Czech Republic, Denmark, Iceland, Latvia, Montenegro and United Kingdom)

Several NRAs point out that hearing with operators is a usual regulatory practice for their authorities, especially before taking relevant decisions which may have a significant impact to the regulated entities.

Some of them underline that this is a usual procedure during the instruction of a sanctioning procedure to give parties the right to reply. This is the case, for instance, of CSA (Belgium-Wallonia), AEM (Croatia), TJA (Estonia), CSA (France) ESR (Greece), ALIA (Luxembourg), ERC (Portugal) CvdM (Netherlands), AKOS (Slovenia) and CNMC (Spain).

Other recurrent topics on which NRAs facilitate hearings for regulated include the preparation of legislative proposals (KRRIT (Poland) and OFCOM, Switzerland), licensing application processes (BAI (Ireland), CSA (France), broadcasting transmission German regulatory bodies/authorities and funding audiovisual services (CSA (France)).

5.8. Does your NRA publish/make publicly available its long-term operating strategy?

19 NRAs answered “yes” (Austria, Belgium-Flanders, Croatia, Czech Republic, Estonia, Finland, Greece, Iceland, Ireland, Italy, Latvia, Lithuania, Netherlands, Norway, Poland, Spain, Sweden, Switzerland and United Kingdom)

14 NRAs answered “no” (Belgium-MEDIENRAT , Belgium-Wallonia, Bulgaria, Cyprus, Denmark, France, Germany, Hungary, Luxembourg, Malta, Montenegro, Portugal, Slovakia and Slovenia)

CEM (Bulgaria), despite mentioning that the regulator does not adopt a long-term strategy, highlights that they publish every year an Action Plan publicly available on the website. In the same line, CSA (France) points out that although does not make public its long term strategy, they use the website to communicate the priority actions taken by CSA.

AGCOM (Italy) remarks that its strategic objectives for the subsequent years are identified in the Annual Report that is due to submit to the Parliament. In addition, since 2014, a specific section of such report is devoted to the NRA’s medium-term regulatory priorities and strategic goals.

CvdM (Netherlands) highlights that every year the CvdM informs the minister about their intended policy in the so-called “letter of enforcement” for the upcoming year. CvdM also publishes the letter on its website.

ANNEX 6

6.1 Is the NRA's decision making power defined in law?

33 NRAs unanimously answered in one word “yes” with no further comments (Austria, Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, Montenegro, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom)

6.2 Are the decisions of your NRA published/made publicly available?

33 NRAs answered affirmatively (Austria, Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, Montenegro, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom).

Among the 33 NRAs that answered “yes”, 19NRAs, namely, KommAustria (Austria), CSA (Belgium-Wallonia), MEDIENRAT (Belgium), CRTA (Cyprus), RRTV (Czech Republic), The RADIO AND TELEVISION BOARD (Denmark), TJA (Estonia), FICORA (Finland), German regulatory bodies/authorities, NMHH (Hungary), IMC (Iceland), NEPLP (Latvia), LRTK (Lithuania), BA (Malta), KRRIT (Poland), RVR (Slovakia), AKOS (Slovenia), MRTV (Sweden) and OFCOM (Switzerland) stated that their decisions are made publicly available through their website.

VRM (Belgium-Flanders) stated that, apart from their website, they also publish their decisions in newsletters and press releases. CEM (Bulgaria) answered that all decisions are published on the website of CEM and in a monthly newsletter - Article 35, Paragraph 3 and Article 39, Paragraph 2 of the Radio and Television Act.

AEM (Croatia) answered that the decisions are publicly available at the Agency's website and published in the Official Gazette (when requested by the Law).

CSA (France) stated that, according to the law no.86-1067, from the 30th of September, publication in the Official Journal of the French Republic is mandatory for all deliberations (from any sorts) and reports (art. 6), which include more specifically recommendations (art. 3.1), authorising decisions (art. 32) and sanction decisions (art. 42-7). Some other acts also have to be published in the Official Journal such as advisory opinions the CSA has to deliver in specific situations (art. 21, 27 and 48 of the law no.86-1067 from the 30th of September). More generally, the CSA is used to publishing some press releases in its website.

Germany stated that some regional regulators do not publish the decisions or major results on their website.

ESR (Greece) answered that, according to a law concerning public sector (law 3861/2010), all decisions of NCRTV are published in a website called “Diavgia”. Special dispositions provide for the

publication in the Official Journal of all decisions concerning licensing of radio or television stations or other audiovisual services. NCRTV's decisions (esp. sanctions and penalties) contain also a detailed reasoning and are published in their website.

BAI (Ireland) stated that decisions and any submission made in a public consultation are published on their website, in print publications, press releases and in individual reports to the impacted parties (feedback reports etc.). It also publishes on its website all of its codes, guidance notes, and policies setting out the relevant criteria and decision making procedures.

AGCOM (Italy) answered that, according to Law 14 March 2012, n.33, art 34, "unless the publication on the Official Gazette is required, the general decisions adopted by the Public administration must be published on the institutional websites of the concerned institution". According to Art.11 of AGCOM's internal regulation, decisions are published on its website. This applies also to decisions concerning sanctions.

NEPLP (Latvia) answered that only binding or informative decisions are published on their website.

ALIA (Luxembourg) stated that the decision to withdraw a licence has to be published in the Mémorial (art. 35sexies (6)). Other decisions are published on their website.

AEM (Montenegro) stated that, additionally to their website, some of their decisions are also published in the Official Gazette of Montenegro.

CVDM (Netherlands) answered that decisions are not only made publicly available on the website of the CVDM, the CVDM also reports on its decisions in its yearly report and in its newsletters.

ERC (Portugal) answered that all regulations, directives, recommendations and decisions issued by ERC must be disclosed on its website (Article 65, paragraph 6), yet in addition to that, a summary of the Regulatory Board's decisions that affect interested parties are made public immediately after the end of the meeting where they were adopted, without prejudice to the need for its publication and notification, where legally required (ERC Statutes, Article 28, paragraph 4).

MEDIETILSYNET (Norway) stated that, besides their website, all the decisions are available through the NMA's electronic public records.

CNMC (Spain) answered that the CNMC is obliged to publish all provisions, decisions, agreements and reports issued pursuant to the laws that regulate them (Article 37 of the Administrative Act) , once the interested party has been notified and after resolving, if applicable, confidentiality concerns. As general rule, all the decisions and reports issued by CNMC are published on their website.

In the application of the Administrative Act (Act 30/1992), some of the CNMC's decisions need to be also announced on the Official Gazette.

MRTV (Sweden) stated that, in addition to their website, a decision is always given to a person if requested. According to the 1986 Administrative Procedure Act a decision whereby a matter is determined by an authority shall contain the reasons that settled the outcome when the matter concerns the exercise of public power in relation to someone, unless certain specified cases are at

hand (section 20). Decisions by an authority shall be available to the public. The authority makes its decision available through MRTV's website unless there are special reasons not to publish (such as privacy rules).

OFCOM (United Kingdom) answered that all its decisions are published on its website along with all the evidence used (minus any company data that is commercially sensitive) to reach those decisions. For decisions taken as a result of investigations into potential breaches of standards codes or other licence conditions, OFCOM publishes a fortnightly Broadcast Bulletin. The Bulletin is published on OFCOM's website and consists of all of the decisions in relation to broadcasting complaints that OFCOM has made in the previous fortnights. The outcome of every formal investigation into a potential breach of our rules is published along with detailed reasons for OFCOM's decision. OFCOM will also list complaints that are not taken forward for formal investigation.

OFCOM provides links to its website to illustrate the range of decisions and other documentation (informing decision making etc.) for example, documents outlining its procedures for investigating breaches of content standards for TV and radio, for investigating breaches of broadcast licenses, for considering and adjudicating on Fairness and Privacy complaints and for considering statutory sanctions.

Detailed guidance notes are published by OFCOM to accompany each section of the Broadcasting in order to provide broadcasters with further detail about the factors that they take into consideration when assessing potential breaches of their rules.

The OFCOM Content Board, a committee of the main Board, is established by statute and tasked with enforcing quality and standards for TV and radio. Among its tasks is to sign off preliminary decisions made by the executive in relation to investigations into possible breaches of content standards. OFCOM publishes on its website information about Members of the Content Board, its terms of reference, the dates on which it meets, agendas and the minutes of all Content Board Meetings.

6.3 In your view is the decision-making process of your NRA transparent to its stakeholders?

32 NRAs answered affirmatively (Austria, Belgium-Wallonia, Belgium-Flanders, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, Montenegro, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom)

Among the 32 NRA's that answered "yes", only 1 NRA, namely, OFCOM (United Kingdom) made any relevant comments, explaining that transparency is one of the founding principles of OFCOM since it publishes all of its decisions along with the evidence that was considered (with the exception of data that is commercially sensitive or sensitive personal data), consults widely and engages in regular dialogue with stakeholders as part of its regulatory work. OFCOM's regulatory principles are published on its website.

ANNEX 7

7.1 Does your NRA have the power to enforce its decisions autonomously (e.g. a decision of its Head or Board)?

28 NRAs answered “yes” (Austria, Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Malta, Montenegro, Netherlands, Norway, Portugal, Slovenia, Spain, Switzerland, United Kingdom)

5 NRAs answered “no” (Bulgaria, Luxembourg, Poland, Slovakia, Sweden)

Among the 28 NRAs that answered yes, the CSA (France) provided some examples: CSA can issue a “formal notice” to make entities aware that they are acting in breach of regulation/the law. ESR (Greece) mentions special cases where other authorities may provide their support to enforce NRA’s decisions.

7.2 If you answered “no” to the previous question, please explain what additional measures are required for the enforcement of the NRA’s decisions as provided for by your legal system (e.g. referral to a Court)?

4 NRAs provided answers to this question, having answered “no” to the previous one. (Luxembourg, Poland, Slovakia, Sweden).

1 NRA did not answer the question, despite responding negatively to question 7.1 (Bulgaria)

In some countries, NRAs point out that they may need the support of other bodies (courts) in the enforcement of financial sanctions. For example, ALIA (Luxembourg) maintain that fines are collected by another public administration called Administration de l’enregistrement et des domaines. In Slovakia, financial sanctions can be, according to Slovak legal system, enforced only through an “executing person”, who is a legal, state approved enforcing body.

According to Polish law (Act on administrative enforcement proceedings of 17.06.1966 and the Code of Administrative Proceedings of 14.06.1960) the KRRIT’s Chairman is entitled to issue an executive order, in case a fined entity does not proceed by paying the fine.

In Sweden, a referral to court is required.

7.3 If you answered "yes" to the first question, please, answer the following question: Is the procedure adopted to enforce your NRA’s decisions set out in law or in any regulation/set of instructions?

28 NRAs provided answers to this question having answered "yes" to question 7.1 (this includes the UK). Moreover, 1 NRA (KRRIT, Poland) answered this question despite having answered "no" to question 7.1 (this is why countries providing answer to this question are 29 and not 28).

All 29 NRAs answered that the procedure to enforce an NRA's decision is set out in law (Austria, Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Malta, Montenegro, Netherlands, Norway, Poland, Portugal, Slovenia, Spain, Switzerland, United Kingdom)

AEM (Croatia) points out that, whereas its decisions are generally not appealable, an administrative procedure may be initiated by filling a complaint before the competent Administrative Court. This procedure however cannot suspend the enforcement of the Agency's decision.

AEM (Montenegro) highlights that the procedure is set out either by the Law or in the Statute of the Agency.

Further 4 NRAs (France, Greece, Ireland, Netherlands) identifies the legal provision where the procedure is set out.

7.4 In your view, are the enforcement powers of your NRA adequate to carry out its functions effectively?

24 NRAs answered "yes". (Austria, Belgium-Wallonia, Belgium-Flanders, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Malta, Netherlands, Norway, Poland, Slovenia, Spain, Sweden, Switzerland, United Kingdom).

6 NRAs answered "no" (Czech Republic, Iceland, Latvia, Luxembourg, Montenegro, Portugal)

2 NRAs did not answer this question (Bulgaria, Slovakia)

Among the 5 NRA that answered "no", the absence of specific powers are referred to for the enforcement of sanctioning decisions. This is the case for ALIA (Luxembourg), and for the AEM (Montenegro).

IMC (Iceland) notes that although its enforcement powers are adequate in general terms, there is a lack of enforcement powers with particular respect to enforcing of the Act on the Monitoring of Children's access to Films and Computer Games

Among the affirmative answers, CvdM (Netherlands) positively notes an increase of its enforcement instruments which became more comprehensive by the expansion of the legal possibilities to impose an order subject to a penalty. CvdM also notes that other sanctions can be imposed such as a cease and desist order.

7.5 Has the regulatory body taken adequate measures (sanctions) in cases of breach by an AVMS provider?

32 NRAs answered “yes”

Several examples of sanctions are provided. Recurring matters for which AVMS providers are fined include advertising (breach of advertising airtime thresholds, sponsorship and product placement) and the protection of minors.

Eleven NRAs explicitly mention sanctions related to advertising issues. VRM (Belgium-Flanders), The RADIO AND TELEVISION BOARD (Denmark), TJA (Estonia), German regulatory bodies/authorities, ESR (Greece), NMHH (Hungary), AGCOM (Italy), BA (Malta), CVDM (Netherlands), AKOS (Slovenia), CNMC (Spain). In particular, Spanish, Italian, Maltese, Dutch and Greek regulators refer to breaches of advertising airtime limitations. Flemish and Maltese NRAs cited violation of product placements rules, while Danish and Spanish regulators mention cases related to the content of the advertising (the latter explicitly referring to cases related to children’s programming).

Among other matters highlighted by the NRAs, it is worth noting that 2 NRAs mentioned fines imposed for the violation of political advertising or equal time rules. This was the case of Italian AGCOM and Hungarian NMHH. AKOS (Slovenia) referred to the breach of European audiovisual works quotas, while RVR (Slovakia) cited fines imposed to broadcasters for violations related to human rights principles.

In some cases, NRAs mention general violations of the broadcasting licences (it should be noted that this may also include the above mentioned topics of advertising and minors, in cases this are regulated in the licences). These include CEM (Bulgaria), AEM (Croatia), FICORA (Finland).

CSA (France) did not explicitly mention specific topics of violations and sanctioning, though they provided some links in order to find the information on their websites.

The BAI (Ireland) highlighted its investigative and enforcement powers under section 53 of the Broadcasting Act, 2009 by providing a link to a report published following an investigation of a broadcaster on its website for further information. It also provided a website link to decisions and actions of the BAI taken on complaints submitted by members of the public in relation to broadcast content.

7.6 Are there any decisions of your NRA which cannot take effect without the approval or other intervention of the Ministry/Government?

4 NRAs answered “yes” (Croatia, Estonia, Latvia, Sweden)
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28NRAs answered “no” (Austria, Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Bulgaria, Cyprus, Czech Republic, Denmark, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Switzerland, United Kingdom)
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1 NRA did not answer (Finland)

Some reasons provided to the affirmative answer to this question deal with the licensing regulation. TJA (Estonia) remarks that it has shared powers with the Ministry of Culture, who can state

secondary conditions/requirements for licensing tenders. In Sweden, the authority may not revoke a licence issued by the government (which is public service licenses) unless the Government has notified the issue at the authority, unless the licence holder itself wishes that a licence shall be revoked.

In Croatia, the AEM highlights that when the regulator levies a fine pursuant to the violation of provisions, the fine cannot take effect before the court's` decision.

On the other hand, ALIA (Luxembourg), while answering negatively to this question points out that it is not in full charge of all AVMS, some powers / functions remain with the Government (*while ALIA is in charge of allocating local and regional radio licences, the Government remains competent for national radio and television licences*).

7.7 Can your NRA impose administrative fines or other sanctions/ penalties?

32 NRAs answered "yes" (Austria, Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom).

1 NRA answered "no" (Montenegro)

Danish RADIO AND TELEVISION BOARD, despite answering in the affirmative to this question, specifies that The Board cannot impose fines, but the kinds of sanctions, such as to withdraw a service's broadcast licence for a period or permanently.

7.8 If you answered "yes" to the previous question, please, answer the following question: Is your NRA required to adopt formal procedures in order to impose the fine or other sanctions/penalties?

32 NRAs provided answers to this question, having answered "no" to the previous one:

28 NRAs answered "yes" (Austria, Belgium-Flanders, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom)

4 NRAs answered "no" (Belgium-Wallonia, Belgium-MEDIENRAT , Bulgaria, Denmark)

1 NRA did not answer the question (Montenegro)

According to 6 NRAs, the provisions of the adoption of formal procedures to impose fines, sanctions or penalties are enshrined in the administrative law/act/code. These include AEM (Croatia), German regulatory bodies/authorities, LRTK (Lithuania), CvdM (Netherlands), MEDIETILSYNET (Norway), KRRIT (Poland) and BAI (Ireland).

In other 8 cases, the provisions can be found in the broadcasting or radio and television law/act. These include CRTA (Cyprus), CSA (France), BAI (Ireland), BA (Malta), RVR (Slovakia), AKOS (Slovenia), CNMC (Spain), MRTV (Sweden), OFCOM (Switzerland).

Few NRAs reported in the answers also some features of the procedures. It is the case of Greek ESR where it is specified that the procedure should include a complete and specific reasoning, and a hearing of the implicated parties during at least one meeting of the plenary of the institution is to be held.

7.9 Can your NRA's decisions be appealed?

32 NRAs answered "yes" (Austria, Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom)

1 NRA answered "no" (Denmark)

The only negative answer was provided by RADIO AND TELEVISION BOARD (Denmark). However, the Danish regulator points out that while a decision by the Board cannot be appealed as such the validity of a decision made by the Danish Radio- and Television Board can be decided by a state court in a civil litigation raised by any affected party and by the Danish Ombudsman.

MRTV (Sweden) observes that not every decision taken by the Authority can be appealed according to the Swedish legislation. Cases when decisions may be appealed are set in the Radio and Television Act.

NMHH (Hungary) remarks that the client shall have the right to appeal at the Media Council against the official decision of the Office. The resolution of the Media Council adopted in the second instance may be challenged in court. (Act CLXXXV of 2010 - on Media Services and on the Mass Media Section 165). The resolutions adopted by the Media Council in its regulatory capacity in the first instance may not be appealed. The resolution of the Media Council may be challenged in court. (Act CLXXXV of 2010 - on Media Services and on the Mass Media Section 163).

7.10 If you answered "yes" to the previous question, please answer the following question: who can appeal your NRA's decisions? Multiple answers are possible.

32 NRAs provided answers to this question. In fact, even RADIO AND TELEVISION BOARD (Denmark), answered this question, despite having answered "no" to the previous one.

12 NRAs answered "Persons who are the subject of the decision" (Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Cyprus, Finland, Greece, Iceland, Ireland, Luxembourg, Malta, Poland, Slovakia)

5 NRAs answered “All persons affected by the decision” (Croatia, Latvia, Montenegro, Spain, United Kingdom).

11 NRAs answered both “Persons who are the subject of the decision” and “All persons affected by the decision” (Bulgaria, Czech Republic, Denmark, Estonia, France, Germany, Italy, Portugal, Slovenia, Sweden, Switzerland)

2 NRAs answered both “Persons who are the subject of the decision” and “Other” (Netherlands, Norway)

1 NRA answered both “All persons affected by the decision” and “Third parties” (Hungary)

1 NRA answered “Persons who are the subject of the decision”, “All persons affected by the decision” and “Third parties” (Lithuania)

1 NRA did not answer the question (Austria)

The RADIO AND TELEVISION BOARD (Denmark), despite mentioning that all persons affected by the decision can appeal, highlights that this never happened in practical terms. CSA (France) notes that according to Art. 42-8 – Law 30th of September 1986, complainants must have “an interest” (as defined by jurisprudence) in taking legal actions in order to appeal its decisions.

MRTV (Sweden) observes that it is the court (and not the authority) to decide whether a person may or may not appeal a decision of the NRA.

7.11 If you answered “yes” to question 7.9, please answer the following question: to whom can a NRA’s decision be appealed? Multiple answers are possible.

32 NRAs provided answers to this question. In fact, even the RADIO AND TELEVISION BOARD (Denmark), provided an answer to this question, despite having answered “no” to the previous one.

3 NRAs answered “National civil Court” (Iceland, Ireland, Malta)

18 NRAs answered “National administrative Court” ” (Austria, Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Croatia, Czech Republic, France, Greece, Italy, Latvia, Lithuania, Luxembourg, Montenegro, Netherlands, Slovenia, Spain, Sweden, Switzerland)

3 NRAs answered “Other” (Cyprus, Norway, Slovakia)

2 NRAs answered both “National civil Court” and “National administrative Court” (Poland, Portugal)

2 NRAs answered both “National civil Court” and “Other” (Denmark, Germany)

5 NRAs answered both “National administrative Court” and “Other” (Bulgaria, Estonia, Finland, Hungary, United Kingdom)

1 NRA did not answer the question (Bulgaria)

Several NRAs point out that beyond National civil or administrative Courts, decisions can be appealed also to other National or Regional Courts. For instance, CEM (Bulgaria) argues that in Bulgaria the decisions of CEM imposing sanctions are appealed, in the first instance, before the Regional Court and, in the second instance, before the Administrative Court. Regarding the licensing and registration activities, the election of directors of the Bulgarian National Television and the Bulgarian National Radio, the decisions may be appealed before the Supreme Administrative Court. Similarly, FICORA (Finland) notes that some cases can be appealed to the Supreme Administrative Court, while others can be appealed to the Market Court. In cases of a rectification request, it can be submitted directly to the NRA. Also CRTA (Cyprus) and RVR (Slovakia) mention the Supreme Court as the only Court where decision can be appealed.

NMHH (Hungary) reports that, whereas the Budapest Court of Public Administration and Labour (Fővárosi Közigazgatási és Munkaügyi Bíróság) has exclusive competence, according to Act CLXXXV of 2010 - on Media Services and on the Mass Media Section 164 the client shall have the right to appeal at the Media Council against the official decision of the Office (Act CLXXXV of 2010 - on Media Services and on the Mass Media Section 165)..

Ofcom (UK) explains that Decisions that fall under legislation defined in Section 192 are subject to a right of full merits appeal to the Competition Appeal Tribunal ("CAT") in the first instance. The CAT is a specialist judicial body with cross-disciplinary expertise in law, economics, business and accountancy. Decisions that are not subject to Section 192 are therefore appealable on judicial review by the Administrative Court. German regulatory bodies/authorities report that decisions can be appealed to the Court for proceedings of administrative fines, while MEDIETILSYNET (Norway) refers to the Media Appeals Board, and for some decisions to the Ministry of Culture. The RADIO AND TELEVISION BOARD (Denmark) to the Parliamentary Commissioner for Civil and Military Administration. TJA (Estonia) remarks that its decisions can be appealed to the Head.

Among those who affirmed that their decisions can be appealed to a National administrative Court, it should be noted that CSA (France) observes that it happens before the State Council at both first and last instance for most of the decisions, while NEPLP (Latvia) underlines that this happens only in cases concerning broadcasting licences and completions. Otherwise, the court of general jurisdiction is appealed in cases of administrative fines. However, when these cases are appealed to the District Court – they are reviewed in Department of Criminal Cases. Moreover, MRTV (Sweden) details that a decision by Stockholm County Administrative Court may be appealed to the Administrative Court of Appeal followed by the Supreme Administrative court.

7.12 Can an appeal body annul any of your NRA's decisions?

31 NRAs answered "yes" (Austria, Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania Luxembourg, Malta, Montenegro, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom)

2 NRAs answered "no" (Bulgaria, Denmark)

Among those who answered affirmatively, MEDIETILSYNET (Norway) points out that an annulment may occur only if the NRA's decision has been appealed.

Among the two negative answers, CEM (Bulgaria) remarks that it is an independent body without vertical dependence on other (appeal) body, and its decisions are subject to appeal only before the court – the Supreme Administrative Court, the Regional Court, the Administrative court.

7.13 What powers does the appeal body have in the review of the decisions of the NRA? Multiple answers are possible.

4 NRAs answered "It can review the lawfulness of the decision-making process" (Cyprus, Ireland, Malta, Montenegro)

21 NRAs answered both "It can review the merits of the decision" and "It can review the lawfulness of the decision-making process" (Austria, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Luxembourg, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom)

6 NRAs answered both "It cannot review the merits of the decision" and "It can review the lawfulness of the decision-making process" (Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Croatia, Estonia and Netherlands)

1 NRA answered "It can review the merits of the decision", "It can review the lawfulness of the decision-making process", "It cannot review the lawfulness of the decision-making process" (Lithuania)

1 NRA did not answer the question (Bulgaria)

Among those regulators who answered both "It can review the merits of the decision" and "It can review the lawfulness of the decision-making process", some NRAs made some remarks. In particular, RADIO AND TELEVISION BOARD (Denmark) argues that as the merits of the decision are concerned, the Civil Court can review the legal basis for the decision, though, as a main rule, there is no review of discretionary aspects of decisions. AGCOM (Italy) remarks that, thanks to the introduction of a "technical advice" tool within administrative trials, the administrative judge looks into the merits of AGCOM's decisions (as it assesses their legitimacy using the same technical tools as AGCOM's) and the scrutiny is hence ran not only on purely formal grounds.

BAI (Ireland), stated that the appeal body can review the lawfulness of the decision-making process, i.e. it will review the legality of the decision and determine whether or not the BAI exceed its lawful authority or made a decision that it had no power to make. It also highlighted that, in exceptional cases, the Court can review the substantive merits of a decision in circumstances only where the decision is shown to be unreasonable or irrational. The courts also apply the principle of proportionality (this requires that the effects on or prejudice to an individual's rights by an administrative decision be proportional to the legitimate objective or purpose of that decision) in examining whether the decision meets the test of reasonableness.

LRTK (Lithuania) indicated that the appeal body can review the merits of the decision, can review the lawfulness of the decision-making process, but it also cannot review the lawfulness of the decision-making process, although cases where this occur are not mentioned.

7.14 To what extent can the appeal body replace the NRA's decisions with its own decision?

15 NRAs answered "When rejecting the NRA's decision, the appeal body can only remit the case back to the NRA for a new decision" (Belgium-Wallonia, Belgium-Flanders, Belgium-MEDIENRAT, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Germany, Greece, Ireland, Montenegro, Poland, Portugal, United Kingdom)

10 NRAs answered "When rejecting the NRA's decision, the appeal body can overrule the NRA's decision and replace it with its own decision, even if it goes into technical details" (Finland, Italy, Latvia, Luxembourg, Malta, Netherlands, Norway, Slovenia, Spain, Sweden)

5 NRAs answered "Other" (France, Hungary, Iceland, Slovakia, Switzerland)

2 NRAs answered both "When rejecting the NRA's decision, the appeal body can only remit the case back to the NRA for a new decision" and "When rejecting the NRA's decision, the appeal body can overrule the NRA's decision and replace it with its own decision, even if it goes into technical details" (Austria, Lithuania)

1 NRA did not answer the question (Bulgaria)

AGCOM (Italy) provided some details in the previous question on the cases of overruling an NRA's decision by an appeal body, even when the decision goes into technical details. In fact, the judge cannot replace AGCOM in adopting a newer revised decision, given the principle of separation between administrative and judicial powers; the administrative judge can only modify AGCOM's decisions in matters in which the Administrative Trial Code envisages such a power, for instance as regards the amount of sanctions defined by AGCOM.

In the same manner, AKOS (Slovenia) had already noted in the answer to question 7.12 that beyond the power to cancel a regulator's decision and remit it back to regulator for a new decision, the Administrative Court can also replace it, if the conditions provided for in Administrative Dispute Act are met (rarely).

Five NRAs indicated "other" mainly referring to the possibility that the appeal body may annul the regulator's decision. CSA (France) for instance, observes that while in the context of full remedy actions, the administrative judge has the power to reform and substitute (article 42-8 law 1986), in the context of an appeal for abuse of power, the administrative judge has the only power to annul the decision of the CSA. Similarly IMC (Iceland) points out that the National civil Court can only annul the decision: the legal situation thus remains the same as before the decision was taken.

RVR (Slovakia) reports that the appeal body, beyond remitting the case back to the NRA for a new decision, it can also lower the financial sanction if it considers it unreasonably high.

OFCOM (Switzerland) remarks that, despite, as a general principle, the Federal administrative court can overrule OFCOM's decision and replace it with its own decision, it has also the possibility to remit the case back to OFCOM for a new decision if technical issues are concerned, where OFCOM's expertise is better suited to newly decide on the case.

NMHH (Hungary) distinguishes two cases. In case of appealing the decision of the Office, the authority of the second instance shall either sustain, reverse, or annul the decision. (Act CXL of 2004 - on the General Rules of Administrative Proceedings and Services Section 105). Otherwise, in case of challenging the Media Council's decision in court, unless otherwise provided for by the relevant legislation, the court shall abolish any administrative decision it finds unlawful - with the exception of any violation of a procedural rule that does not affect the merits of the case - and, if necessary, shall order the body having adopted the administrative decision in question to reopen the case. (Act III of 1952 - on the Code of Civil Procedure Section 339)

7.15 Does the filing of an appeal suspend the effects of any of your NRA's decisions?

5 NRAs answered "yes, automatically" (Bulgaria, Czech Republic, Latvia, Slovakia, Switzerland)

15 NRAs answered "yes, upon decision of the Court" (Belgium-Wallonia, Cyprus, Estonia, Greece, Hungary, Italy, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, Poland, Slovenia, Spain, Sweden)

1 NRA answered "yes" (Ireland)

1 NRA answered both "yes, automatically" and "yes, upon decision of the Court" (Finland)

8 NRAs answered "no" (Belgium-Flanders, Croatia, Denmark, France, Iceland, Norway, Portugal, United Kingdom)

3 NRAs did not answer the question (Austria, Germany, Belgium-MEDIENRAT)

BAI (Ireland) remarks that, despite the filing of an appeal suspends automatically the effects of its decisions, the Radio and Television Act allows exceptions when the decision concerns the selection and the dismissal of one of its members, or the protection of minors.

Among those who answered that the filing of an appeal suspends the effects of a NRA's decisions upon decision of the Court, NMHH (Hungary) notes that the submission of the claim shall not have suspensory effect on the execution of the resolution; the court may be requested to suspend the execution of the challenged decision (Act CLXXXV of 2010 - on Media Services and on the Mass Media Section 163). AGCOM (Italy) argues that the appeal does not trigger any suspension, unless the appealing party requests such suspension of the decision and the judge detects some specific elements; the criteria to be applied by the Courts to issue interim decisions are 2: *fumus boni iuris* and *periculum in mora*. CvdM (Netherlands) indicates that the suspension occurs following a preliminary injunction. CSA (Belgium) remarks that in case of an appeal, decisions are only suspended if the appellant asks for it and the Court grants it.

BAI (Ireland) answered "yes", pointing out that, however, this does not happen automatically but as a matter of policy applied by the BAI.

TJA (Estonia), while answering both "yes, upon decision of the Court" and "no", notes that in general the filing does not suspend the effects of a NRA's decision.

Among those who answered "no", IMC (Iceland) observes that an exception is done for per diem fines: if proceedings are instituted to have a decision on per diem fines invalidated within 14 days of the date on which the media service provider concerned was informed of the decision, and if it also desires that the matter receive priority treatment, then per diem fines may not be collected until judgment has passed. Notwithstanding the institution of proceeding for the invalidation of such a decision, per diem fines shall continue to be imposed on the media service provider in question.).

CSA (France) points out that according to Article L4 of the Code of Administrative Justice, except special legal provisions, judicial requests do not have any suspensory effect unless the jurisdiction demands it. As an exception to this general principle, if an appeal is made against withdrawal decisions pronounced without formal notice, it suspends CSA's decisions unless they are justified by public order, security or public health. (Art 42-9 – Law n°86-1067 from the 30th of September 1986).

Also MEDIETILSYNET (Norway) answered "no", but it remarks that the NMA or the Media Appeals Board may decide to suspend the effects.

7.16 Are there recent legislative or governmental interventions with potential impact over the decisions?

2 NRAs answered "yes" (Belgium-Wallonia, Norway)

29NRAs answered "no" (Austria, Belgium-Flanders, Belgium-MEDIENRAT, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, Poland, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom)

2 NRAs did not answer the question (Latvia, Portugal)

Among the two affirmative answers it must be highlighted that CSA (Belgium-Wallonia) notes that in some cases, decisions over a breach of the Public Service Broadcaster management contract have led to the renegotiation of this management contract. MEDIETILSYNET (Norway) observes that appeals regarding film classification will be transferred to the Media Appeals Board when the new act on protection of minors enter into force. A public report with suggestions on appeals boards has recently been published. It suggests that there should be one big centralized board handling administrative decisions rather than multiple small specialized boards.

Among the negative answers, IMC (Iceland) does not note direct interventions but both the Government and the Parliament have asked the Media Commission about specific cases and also specific types of cases. Instead BA (Malta) remarks that the Authority is awaiting judgement from the Court of Appeal following a judgement delivered from the first Hall Civil Court on the role of the Chief Executive as prosecutor during charges brought against stations.

