

INDIREG

FINAL REPORT – ANNEX

Indicators for independence and efficient functioning of audiovisual media services regulatory bodies for the purpose of enforcing the rules in the AVMS Directive” (SMART 2009/0001)

Annex II – Country Tables – Portugal

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I. GENERAL INFORMATION

Table 1 - Market data

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

Country	Number of linear commercial services	Number of non-linear commercial services	Number of public service channels (PSBs)
Portugal	42 linear commercial TV channels. <i>NOTE: Although the Television Law states (see Art. 19º) that ERC must organize and make publicly available a complete list of all TV operators, as well as of their programming services, this list is not available</i>	2 main operators for VOD services (Meo/Portugal Telecom and Zon /TV Cabo)	2 main national, general, open-access channels (RTP1 and RTP2) and 7 smaller channels (RTP Madeira, RTP Açores, RTP Internacional, RTP África, RTPN, RTP Memória and RTP Mobile) – www.rtp.pt/homepage/

Table 2 - Audiovisual laws and regulatory bodies

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

Country	Areas	Main laws	Regulatory body in charge of commercial television	Regulatory body in charge of non-linear commercial media services	Regulatory body in charge of PSB
Portugal	Information requirements (art. 5 AVMS Directive)	None (not implemented) Law 27/2007, of 30 of July (Television Law, implementing the TWF Directive).	ERC (Entidade Reguladora para a Comunicação Social) – Regulatory Entity for the Media	None There is no regulatory body in charge of non-linear commercial media services yet.	ERC (Entidade Reguladora para a Comunicação Social) – Regulatory Entity for the Media
	Audiovisual commercial communication, sponsorship, product placement (Art. 9 – 11 AVMS Directive)	Television Law (Decree-Law Nr. 27/2007), art. 40º (www.erc.pt/documentos/Lei_Televisao_2007.pdf) Code of Advertisement (Decree-Law nr. 330/90, amended by several other Decree-Laws and Laws, the latter of which date from 2008), art. 8º, 9º, 10º, 11º, 14º, 17º, 18º, 19º, 24º, 25º and 25º-A. (www.gmcs.pt/index.php?op=fs&cid=124&lang=pt) <i>NOTE: These laws implement the Television Without Frontiers Directive, not yet the AVMS Directive. There are no specific items concerning</i>	ERC Directorate-General of the Consumer (<i>Direcção-Geral do Consumidor</i>) / Commission for the Application of Financial Penalties in Economic and Advertising Matters (<i>Comissão de Aplicação das Coimas em Matéria Económica e de Publicidade</i>).	A new TV law (mostly concerned with the implementation of the AVMS Directive) has been publicly discussed and	ERC Directorate-General of the Consumer (<i>Direcção-Geral do Consumidor</i>) / Commission for the Application of Financial Penalties in Economic and Advertising Matters (<i>Comissão de Aplicação das Coimas em Matéria Económica e de Publicidade</i>)

Country	Areas	Main laws	Regulatory body in charge of commercial television	Regulatory body in charge of non-linear commercial media services	Regulatory body in charge of PSB
		<i>product placement.</i>		was presented to the Portuguese Parliament on July 7, 2010.	
	Accessibility to people with a disability (Art. 7 AVMS Directive)	Television Law (Decree-Law Nr. 27/2007), art. 34 ^o , for all the TV operators, and art. 51 ^o , specifically for the PSB. (www.erc.pt/documentos/Lei_Televisao_2007.pdf) Deliberation 5/OUT-TV/2009 from the Regulatory Council of ERC, defining a plan for the period 2009-2012, according to which all TV operators must guarantee some weekly time of programming for people with disability. (www.erc.pt/index.php?op=downloads&lang=pt&Cid=34&onde=34 0 0&disabled=disabled) <i>NOTE: This deliberation from ERC specifically refers to the AVMS Directive, although it is not yet formally implemented in the Portuguese laws.</i>	ERC	According to the bill, ERC would probably take charge of non-linear services	ERC
	Broadcasting of major events (Art. 14 AVMS Directive)	Television Law (Decree-Law Nr. 27/2007), art. 32 ^o . (www.erc.pt/documentos/Lei_Televisao_2007.pdf) Dispatch n ^o 23951-A/2009, listing the events regarded as being of major public interest for this year. (www.gmcs.pt/index.php?op=fs&cid=1397&lang=pt)			
	Access to short news reports (Article 15 AVMS Directive)	Television Law (Decree-Law Nr. 27/2007), art. 33 ^o . (www.erc.pt/documentos/Lei_Televisao_2007.pdf)			
	Promotion of European works (Art. 13, 16, 17 AVMS Directive)	Television Law (Decree-Law Nr. 27/2007), art. 45 ^o -49 ^o . (www.erc.pt/documentos/Lei_Televisao_2007.pdf) <i>NOTE: This law implements the Television Without Frontiers Directive, not yet the AVMS Directive.</i>			
	Hate speech (Art. 12 and 6 AVMS Directive)	Television Law (Decree-Law Nr. 27/2007), art. 27 ^o . (www.erc.pt/documentos/Lei_Televisao_2007.pdf)			

Country	Areas	Main laws	Regulatory body in charge of commercial television	Regulatory body in charge of non-linear commercial media services	Regulatory body in charge of PSB
		<p><i>NOTE: This law implements the Television Without Frontiers Directive, not yet the AVMS Directive. It has, therefore, no specific items regarding on-demand audiovisual media services (Art. 12 AVMS Directive)</i></p>			
	Television advertising and teleshopping, (Art. 19 – 26 AVMS Directive)	<p>Television Law (Decree-Law Nr. 27/2007), art. 40^o - 41^o www.erc.pt/documentos/Lei_Televisao_2007.pdf Code of Advertisement (Decree-Law nr. 330/90, amended by several other Decree-Laws and Laws, the latter of which date from 2008), art. 8^o, 9^o, 10^o, 11^o, 14^o, 17^o, 18^o, 19^o, 25^o and 25^o-A. www.gmcs.pt/index.php?op=fs&cid=124&lang=pt</p> <p><i>NOTE: These laws implement the Television Without Frontiers Directive, not yet the AVMS Directive.</i></p>			
	Protection of minors (Art. 27 AVMS Directive)	<p>Television Law (Decree-Law Nr. 27/2007), art. 27^o. www.erc.pt/documentos/Lei_Televisao_2007.pdf</p>			
	Right of reply (Art. 28 AVMS Directive)	<p>Television Law (Decree-Law Nr. 27/2007), art. 65^o - 69^o. www.erc.pt/documentos/Lei_Televisao_2007.pdf Law Nr. 53/2005 (Creation and Statutes of the Regulatory Entity for the Media – ERC), art. 8^o www.gmcs.pt/index.php?op=fs&cid=837&lang=pt</p>			
	Communication and cooperation with other European regulation bodies and the Commission (Art. 30 AVMS Directive)	<p>Law Nr. 53/2005 (Creation and Statutes of the Regulatory Entity for the Media – ERC), art. 11^o. www.gmcs.pt/index.php?op=fs&cid=837&lang=pt</p>			

Table 3 - Regulatory bodies – general information

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

Country	Name of regulatory body	Link to website	Date of establishment	Location
Portugal	ERC (Entidade Reguladora para a Comunicação Social) – Regulatory Entity for the Media	http://www.erc.pt	Legal establishment – November 2005 Beginning of activity – February 2006	Avenida 24 de Julho, nº 58 1200-869 LISBOA Tel: +351 210 107 00 Fax: +351 210 107 019 E-mail: info@erc.pt

Table 4 - Sectors covered

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

Country	Body	Audiovisual content (radio/TV, on demand media services)	Transmission aspects of audiovisual content (e.g. spectrum)	Distribution aspects of audiovisual content (e.g. must carry, EPG, API)	Spectrum	Electronic communications (networks and services in general)	Others (e.g. energy, post)
Portugal	ERC NOTE: Besides the audiovisual sector, ERC also has responsibilities on general media content, including all the printed press and news agencies.	Yes (only for audiovisual content in radio and TV, not for on demand media services)	No	Yes	No	No	NOTE: Besides the audiovisual sector, ERC also has responsibilities on general media content, including all the printed press and news agencies.

Table 5 - Staff and overall budget

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

Country	Body	Total number of staff foreseen in statutes/law	Current staff count	Annual budget (€m) foreseen in statutes/law	Current annual budget	Reference year +source
Portugal	ERC	Not defined. (In the terms of Art. 42º of its Statute, ERC shall “dispose of services of administrative and technical support, created by the Regulatory Council, according to its plan of activities and to its budget”).	72 (2009)	Not defined in specific terms (it is foreseen in the state budget)	€5.067m (2008) €5.408m (2009)	Source: ERC annual reports / 2008 www.erc.pt/documentos/Relatorios/2008ERCRelatorioActividadesContasVolume4final.pdf www.erc.pt/documentos/Relatorios/RelatorioRegulacao2008ERCfinalpdf.pdf 2010 Budget Law – Law 3B/2010, of 28 of April ERC

II. INSTITUTIONAL FRAMEWORK

Table 6 - Legislation establishing and governing the regulatory body

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

Country	Body	Legislation setting-up the regulatory body	Governing legislation
Portugal	ERC	<ul style="list-style-type: none"> - Constitution of the Portuguese Republic, Art. 39º (Media Regulation) http://www.gmcs.pt/index.php?op=fs&cid=126&lang=pt - Law Nr. 53/2005 (8 November), which creates ERC (Regulatory Entity for the Media) and extinguishes AACS (High Authority for the Media). http://apollo.atomicdns.com/~ercfront/documentos/lei53.pdf 	<ul style="list-style-type: none"> - Statute of ERC (Annex to Law Nr. 53/2005) http://apollo.atomicdns.com/~ercfront/documentos/lei53.pdf - Decree-Law Nr. 103/2006 (7 June) as amended by the Decree-Law Nr. 70/2009 (31 March) – Regime of Taxes to ERC. http://www.erc.pt/documentos/legislacaosite/DecretoLei702009.pdf

Table 7 - Legal status

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

Country	Body	What form does it take?	It is a separate legal entity?	If it is not a separate legal entity, it is part of:	Specific organisational characteristics	Source
Portugal	ERC	ERC is a legal person and an independent administrative body under public law, which means that it has administrative and financial autonomy.	Yes		Although an independent administrative entity, ERC is somehow accountable to the Parliament, by whom its members are elected, from whom it receives most of its budget and to whom it must submit an annual report.	Art. 1 ERC Statute

Table 8 - Independence as a value

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

Country	Body	Is independence implicitly or explicitly recognised as a value in the legal framework?		Source (highest formal legal level)
		No	Yes	
Portugal	ERC		<p>√ ERC is a legal person under public law, with administrative and budgetary autonomy and has its own assets. ERC is an independent administrative body who enjoys the necessary regulatory and surveillance powers.</p> <p>ERC is independent in the performance of its duties, defining freely the scope of its work, without being subject to any lines of action from political authorities, and acts in strict compliance with the Constitution and the law.</p> <p>The decision to put ERC under the dependence of</p>	<p>Constitution of the Portuguese Republic, Art. 39^o (Media Regulation) www.gmcs.pt/index.php?op=fs&cid=126&lang=pt</p> <p>Law Nr. 53/2005 (8 November), which creates ERC (Regulatory Entity for the Media). http://apollo.atomicdns.com/~ercfront/documentos/lei53.pdf</p>

Country	Body	Is independence implicitly or explicitly recognised as a value in the legal framework?		Source (highest formal legal level)
		No	Yes	
			the Parliament (instead of the Government) and the need of a majority of two thirds of votes to elect four of its five members (the fifth being co-opted by the four elected members) are regarded as requirements to ensure and enhance the independence of the regulatory body – either from the Government or from one single political party.	

III. POWERS OF THE REGULATORY BODIES

Table 9 - Regulatory powers

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

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

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

Country	Body		General policy setting	General policy implementing powers	Third party decision making powers
Portugal	ERC	Tick boxes	No	√	√
		Areas	Although without any power to set general policies, ERC must be formally consulted before any measures concerning media activity are decided.	Television	Television
		Source	ERC Statute (Art. 24) www.erc.pt/index.php?op=conteudo&lang=pt&id=68&mainLevel=folhaSolta Law 27/2007, of 30 of July (Television Law)	ERC Statute (Art. 24) www.erc.pt/index.php?op=conteudo&lang=pt&id=68&mainLevel=folhaSolta Law 27/2007, of 30 of July (Television Law)	ERC Statute (Art. 24, in particular 24, number 3, paragraph i). www.erc.pt/index.php?op=conteudo&lang=pt&id=68&mainLevel=folhaSolta Article 93 of Law 27/2007, of 30 of July (Television Law)

Table 10 - Supervision and monitoring power

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

Country	Body	Areas	Systematic monitoring	Ad-hoc monitoring	Information collection powers	Monitoring only after complaints	Others	Source (legislation, or practice)
Portugal		Quotas	√	√	√			ERC Statute Articles 44 and following, and article 93 of Law 27/2007, of 30 of July (Television Law).
		Advertising	√	√	√			ERC Statute Decree-law 330/90, of 23 October (Advertising Law), Law 27/2007, of 30 of July (Television Law) and ERC's Statutes.
		Protection of minors	√	√	√			ERC Statute Article 27 of Law 27/2007, of 30 of July (Television Law) and article 7, paragraph c) of ERC's Statutes.
		Audiovisual commercial communication, sponsorship, product placement	√	√	√			Decree-Law 330/90, of 23 of October (Advertising Law) and Law 27/2007, of 30 of July (Television Law).
		Accessibility to people with a disability	√	√	√			Law 27/2007, of 30 of July (Television Law).
		Broadcasting of major events	√	√	√			Law 27/2007, of 30 of July (Television Law).
		Television advertising and teleshopping	√	√	√			Decree-Law 330/90, of 23 of October (Advertising Law) and Law 27/2007, of 30 of July (Television Law).
		Right of Reply			√	√		Law 27/2007, of 30 of July (Television Law) and ERC's Statutes.

Table 11 - Powers of sanctions

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

Country	Body	Areas	Warnings/formal objections	Fine (lump sum) If so, list maximum and minimum amounts	Publication of decisions in the media	Suspension/Revocation of licence	Penalty payments (in case of non compliance with decision)	Others
Portugal	ERC	Quotas	√	√ Min € 20,000 Max € 150,000	√	√	√	
		Advertising	√	√ Min € 20,000 Max € 150,000	√	√	√	
		Protection of minors	√	√ Min €7,500 Max €37,500	√	√	√	

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

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

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

Table 13 - De facto use of formally granted sanction powers

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

Country	Body	Warnings	Fine (lump sum)	Publication of decisions in television programmes/on demand services	Suspension/Revocation of licence	Penalty payments (in case of non compliance with decision)
Portugal	ERC	√	√	√ (except in on-demand services, which don't fall under ERC competences)	√ (only in cases of radio operators) This sanction has not been applied because ERC has not acknowledged any	√

Country	Body	Warnings	Fine (lump sum)	Publication of decisions in television programmes/on demand services	Suspension/Revocation of licence	Penalty payments (in case of non compliance with decision)
					breaches that could justify its application.	

Table 14 - Complaints handling

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

Country	Body	Do complaints handling procedures exist?	Link to website
Portugal	ERC	<p>Yes</p> <p><u>General procedure</u></p> <p>Anyone can make a complaint regarding “behaviour that might violate rights, freedoms or guarantees, or violate any legal norms applicable to media activities”. These complaints / participations must be sent to ERC (by post, by fax or through on-line formulary) within 30 days after the knowledge of the facts.</p> <p>The person or company object of the complaint is allowed to respond within 10 days after notification. If he/she does so, ERC must engage both parts in a ‘conciliation audience’, in order to achieve a voluntary agreement. Otherwise, ERC proceeds according to the sanction powers granted to it by law.</p> <p><u>Specific Procedures</u></p> <p>Right of reply and rectification: when an entity that pursues media activities denies or complies poorly with the right of reply or rectification, the interested party may apply to the Regulatory Board.</p> <p>Arbitration, especially as regards disputes arising from restriction of access to information sources.</p>	<p>www.erc.pt/index.php?op=conteudo&id=79&mainLevel=folhaSolta&lang=pt#</p> <p>and</p> <p>www.erc.pt/formularios/recl2.html</p>

IV. INTERNAL ORGANISATION AND STAFFING

Table 15 - Highest decision-making organ – composition

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

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

Country	Body	Individual or Board	Legal requirements regarding composition of highest decision-making organ							Implicit representation structures?	Source
			Number of Board members	Representatives of civil society	Representatives of government	Representatives of parliament	Representatives of industry	Experts	Others (e.g. regions)		
Portugal	ERC	Board	5	No	No	Yes. 4 members elected by Parliament. Those members then freely co-opt a fifth member.	No	Yes The law requires that board members should be persons of "recognized reliability, independence and professional and technical competence".	No	No	ERC Statute

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

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

Country	Body	Competences	Decision-making process	Is the decision making process transparent?	Minutes and agendas published?
Portugal	ERC	<p>The main competences of the Regulatory Council are to:</p> <ul style="list-style-type: none"> define the general orientation of ERC approve annual plans of activities, reports and budget approve regulations, deliberations and decisions concerning its activity approve internal regulations, as well as 	<p>By majority vote, but in any case with at least three votes in favour.</p> <p>Some major decisions require all the five members of the Regulatory Council to be present.</p>	<p>Yes</p> <p>http://www.erc.pt/index.php?op=noticias&lang=pt&mainLevel=8</p>	<p>Minutes and agenda not published, only decisions and rules of procedure</p>

Country	Body	Competences	Decision-making process	Is the decision making process transparent?	Minutes and agendas published?
		<p>the organization of human resources.</p> <p>Specifically, its competences are, among many others, to:</p> <ul style="list-style-type: none"> • ensure that the content of media operators (press, radio, tv), respects the principles and requirements legally prescribed • grant licences to radio and television operators • monitor the way they use those licences • rule on any complaints by the public regarding media misbehaviour • make a binding statement for the appointment of editors-in-chief for the Public Broadcasting Service; • give opinion on transactions concerning media ownership and media concentration 			

Table 17 - Highest decision-making organ – appointment process

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

Country	Body		Nomination stage Yes – No	Nomination stage Specify who is involved in that stage and who has the decisive say	Appointment stage Specify who is involved in that stage and who has the decisive say	If there are two stages, can the appointer ignore the nominations?	Source
Portugal	ERC	Chairman	No				ERC Statute
		Board members	Yes	Candidates to the Regulatory Board are presented in lists of 4 members by a minimum of 10 and a maximum of 40 Parliament deputies.	The lists are submitted to an election in the Parliament. The elected list must have two thirds of the votes, this number being necessarily superior to the absolute majority of deputies in functions.	No	ERC Statute

Table 18 - Term of office and renewal

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

Country	Body		Term of office	Is the term staggered not to coincide with election cycle?	Renewal possible? If so, state how many times	Source
Portugal	ERC	Chairman of the board	5 years	Yes (the elections for the Parliament have a cycle	No	ERC Statute (Articles 19 and 20) f Article 13 of Law 71/2007, of 27 March

Country	Body		Term of office	Is the term staggered not to coincide with election cycle?	Renewal possible? If so, state how many times	Source
				of 4 years)		
		Board members	5 years	Yes (the elections for the Parliament have a cycle of 4 years)	No	ERC Statute (Articles 19 and 20) Article 13 of Law 71/2007, of 27 March

Table 19 - Professional expertise/qualifications

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

Country	Body		Qualifications	Professional expertise	Source
Portugal	ERC	Chairman of the board	No (except for the general requirement that they must be chosen among persons of “recognized reliability, independence and professional and technical competence”).		ERC Statute
		Board members	No (except for the general requirement that they must be chosen among persons of “recognized reliability, independence and professional and technical competence”).		ERC Statute

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

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

Country	Body		Do such rules exist?		Rules to prevent conflicts of interest with government	Rules to prevent conflicts of interest with political parties	Rules to prevent conflicts of interest with industry	Can other offices be held at the same time?	Others (e.g. obligation to disclose participations in companies)	Source
			Yes	No						
Portugal	ERC	Chairman	Yes		Yes	No	Yes	No	Yes	ERC Statute (art. 18) Law 64/93, of 26 of August as amended.
		Board members	Yes		Yes	No	Yes	No	Yes	ERC Statute (art. 18) Law 64/93, of 26 of August, as amended.
		Senior staff	Yes		No	No	Yes ERC staff cannot work or provide services under remuneration to undertakings which hat are subject to its supervision or whose activities collide with the ERC competences.	No	No	ERC Statute art 44

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

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

Country	Body		Do such rules exist?		Rules to prevent conflicts of interest with government	Rules to prevent conflicts of interest with political parties	Rules to prevent conflicts of interest with industry	Source
			Yes	No				
Portugal		Chairman	Yes		Yes Board members must be functionally independent and cannot be subject to any specific instructions or guidelines.	No However, board members must be functionally independent and cannot be subject to any specific instructions or guidelines. Nothing is said on political affiliations.	Yes Board members must be functionally independent and cannot be subject to any specific instructions or guidelines. During the term of office, they cannot hold interests of a financial nature or shares in media companies.	ERC Statute Art. 18
		Board members	Yes		Yes (same as above)	No	Yes (same as above)	ERC Statute ; Art. 18
		Senior staff	Yes		No	No	Yes ERC staff cannot work for companies subject to its supervision or whose activities collide with the ERC competences..	ERC Statute Art. 44

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

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

Country	Body		Do such rules exist?		Is a cooling-off period foreseen?	Source
			Yes	No		
Portugal	ERC	Chairman	Yes		Yes, for 2 years The members of the Regulatory Board shall not carry out any executive functions in companies, unions, confederations or business associations in the media sector for a period of two years following the term of office.	ERC Statute ; Art. 18
		Board members	Yes		Yes, for 2 years	ERC Statute ; Art. 18
		Senior Staff		No		ERC Statute

Table 23 - Rules to protect against dismissal

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

Country	Body		Do such rules exist?		Who can dismiss? Specify who is involved in that stage and who has the decisive say	Grounds for dismissal listed in legal instrument?	Can the whole body be dismissed or only individual members?	Source
			Yes	No				
Portugal	ERC	Chairman	Yes		Only the Parliament can dismiss him/her (upon approval by two-thirds of the present deputies, provided it is superior	He/she can be dismissed on the grounds of a serious breach of statutory duties in the course of the performance of functions defined as: a) unjustified absence to board meetings (3 successively or 9) b) serious violation of his/her legal and statutory duties, confirmed by the Parliament through the vote of two thirds of the deputies c) dismissal of the whole regulatory board, decided by the	Both	ERC Statute (see Articles 22 ^o and 23 ^o)

Country	Body		Do such rules exist?		Who can dismiss? Specify who is involved in that stage and who has the decisive say	Grounds for dismissal listed in legal instrument?	Can the whole body be dismissed or only individual members?	Source
			Yes	No				
					to the absolute majority of the deputies in office)	Parliament (in case of serious irregularities on the functioning of the board)		
		Individual board members	Yes		Only the Parliament can dismiss them (upon approval by two-thirds of the present deputies, provided it is superior to the absolute majority of the deputies in office).	They can be dismissed on the grounds of a serious breach of statutory duties in the course of the performance of functions defined as: a) unjustified absence to board meetings (3 successively or 9); b) serious violation of his/her legal and statutory duties, confirmed by the Parliament through the vote of two thirds of the deputies c) dismissal of the whole regulatory board, decided by the Parliament.	Both	ERC Statute (see Articles 22 ^o and 23 ^o)

Table 24 - Dismissal before term

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

Country	Body	Year		Dismissal before term		Reasons	Comment
				Yes	No		
Portugal	ERC	2009	Chairman		No		
			Individual board members		No		
		2008	Chairman		No		
			Individual board members		No		
		2007	Chairman		No		
			Individual board members		No		
		2006	Chairman		No		
			Individual board members		No		
		2005	Chairman		N/A (ERC only exists since February 2006)		
			Individual board members		N/A (ERC only exists since February 2006)		

V. FINANCIAL RESOURCES

Table 25 - Sources of income

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

Country	Body	End-user broadcasting licence fees (max level)	State budget	Spectrum fees	Authorisation/licence fees paid by broadcasters	Fines	Other fees, e.g., 'market surveillance fee' based on % of revenues of broadcasters (or other operators – e.g. in case of converged regulators)	Source
Portugal	ERC	No	35.4% (2009)	No But ERC receives a contribution from ANACOM which is mainly financed by spectrum fees (€1m in 2008, €2m in 2009)	11.2% (2009)	1.4% (2009)	51.9% (including the "surveillance fees" and the amount of money transferred by ANACOM, data of 2009). These "regulation and supervision" fees are established by law for all media operators (in press, radio, open TV, cable TV and mobile communications), according to the scope and dimension of each operator. Three categories are established for each sector: tax of "high regulation", of "medium regulation" and of "low regulation".	ERC Annual Report – 2008 http://www.erc.pt/index.php?op=conteudo&lang=pt&id=121&mainLevel=12 Decree-Law Nr. 103/2006 (7 June), amended by the Decree-Law Nr. 70/2009 (31 March), on regulation and supervision taxes http://dre.pt/pdf1sdip/2009/03/06300/0194901961.pdf Law 3B/2010, of 28 of April

Table 26 - Annual budget

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

Country	Body	Who decides the annual budget?	Is the regulator involved in the process?	Rules on budget adjustment – who is involved in the process (e.g. parliament, government and/or industry) ?	De facto influence of third parties on budget amounts	Source
Portugal	ERC	The Regulatory Board, together with the Parliament. The role of the parliament in this process consists in the definition of the State funding in each budget and the definition of the financial allocations.	Yes.	The rules on budget adjustment are decided by the regulatory board together with the Parliament and with the Government. However, the decision on the amount to be transferred annually from ANACOM to ERC is taken by the Government.	No	ERC Statute (Art. 24 and 48)

Table 27 - Financial accountability – auditing

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

Country	Body	Is the regulatory body subject to periodic external auditing?					
		Yes/no	Periodicity	By national (state) audit office, etc.	Private audit firm	Other	Legal basis
Portugal	ERC	Yes	Annual	No A permanent auditor is appointed by the Parliament. A private auditing company has been selected and delivers an annual report for the five year ERC term	Yes		ERC Statute (Art. 34-37)

VI. CHECKS AND BALANCES

Table 28 - Formal accountability

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

Country	Body	Body accountable to		Accountability means	Legal basis
Portugal	ERC	Parliament	Yes	Annual report of regulation, annual report of activities and budget (both presented and discussed before the competent Parliamentary Commission (XIII Commission on Ethics, Society and Culture), monthly information of deliberations and activities. Meetings with the competent Parliamentary Commission, whenever asked by it.	ERC Statute (Art. 73)
		Government as a whole	No	N/A	N/A
		Specific ministers (e.g. Media, finance, etc.)	No	N/A	N/A
		Public at large	Yes	Informal accountability mechanism through public diffusion of an annual report about the general situation of the media sector, as well as activities of ERC regarding media regulation and media supervision. Site on the Internet, where all the relevant information, decisions, deliberations and recommendations, as well as legal and statutory norms and rules, must be publicly accessible.	ERC Statute
		Other	Yes	Consultative Council and Court of Auditors (<i>Tribunal de Contas</i>) - exclusively as regards financial and accountability issues. Within the regulatory body, there is a Consultative Council, composed of 16 members representing various sectors of media activity, both public and	ERC Statute (Art. 76)

Country	Body	Body accountable to		Accountability means	Legal basis
				<p>private (other regulators, industry, unions, consumers' associations, advertisers, journalists, etc.), to whom the Regulatory Board is supposed to give some account of its work and from whom the Regulatory Board can receive opinions and suggestions.</p> <p>Court of Auditors: submission of the annual accounts for approval.</p>	

Table 29 - Reporting obligation

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

Country	Body	Report submitted to	Periodicity	Scope	Does statistical data need to be provided about own performance? Explain	Approval necessary?	Has a report been disapproved ?	Link
Portugal	ERC	Parliament	Annual (Besides that, monthly information must also be sent o the Parliament)	State of the media sector; Regulation and supervision activities; Monitoring activities; Financial and budgetary information.	Statistical data about own performance are usually provided in the annual reports of ERC, although no specific legal or statutory obligation on that exists.	No	No	ERC Statute (see Article 73 ^o) Regulation Reports Annual Accounts
			Monthly	Compendium of decisions	No	No	No	Source: Article 73 of ERC Statute
		Court of Auditors (<i>Tribunal de Contas</i>)	Annual	Annual Accounts	no	Yes	No	Annual Accounts

Table 30 - Auditing of work undertaken

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

Country	Body	Is body subject to periodic external auditing					
		Yes/no	Periodicity	By public authority	By private authority	Other	Legal basis
Portugal	ERC	Yes	Monthly/ annual	Yes A permanent auditor is	No	No	ERC Statute ; Art. 73

Country	Body	Is body subject to periodic external auditing					
		Yes/no	Periodicity	By public authority	By private authority	Other	Legal basis
				appointed by Parliament.			

Table 31 - Power to overturn/instruct

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

Country	Body			Ministry/Minister	Government	Parliament	Other	Source
Portugal	ERC	Does anybody have the power to overturn decisions of the regulator?	No	No	No	No	No	<i>No information available</i>
		Does anybody have the power to give instructions to the regulatory body?	No	No	No	No	No	<i>No information available</i>
		Are there limitations in the power to overturn (e.g. limited to legal supervision, which would exclude political supervision)	N/A	N/A	N/A	N/A	N/A	N/A

Country	Body			Ministry/Minister	Government	Parliament	Other	Source
		?						
		Are there limitations in the power to give instructions (e.g. limited to legal instructions which exclude instructions on political grounds)?	N/A	N/A	N/A	N/A	N/A	N/A

Table 32 - Number of stages in appeal procedure

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

Country	Body	Stage	Number of stages in appeal procedure and appeal body at each stage		Do internal procedures need to be followed before external recourse?	Who has the right to lodge an appeal?	Legal basis
Portugal	ERC	Internal	1	Regulatory Board of ERC	No	The entity for which the decision of the Regulatory Board was unfavourable.	Article 161 Decree-Law 442/91, of 15 November
		External	1	Court of Law			ERC Statute (article 75) Article 46 Law 15/2002 of 22 February

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

Country	Body	Does regulator decision stand pending appeal body decision?			
		Yes	No	Yes, unless appeal body suspends it	Other
Portugal	ERC			√	Internal appeal: unless body suspends it (article 163/2 Decree-Law 442/91, of 15 November). External appeal: unless the appellant files a temporary injunction (<i>providência cautelar</i>) (article 75/4 of ERC's Statutes).

Table 34 - Accepted grounds for appeal

Country	Body	Errors of fact	Errors of law (including failure to follow the due process)	Full re-examination	Other
Portugal	ERC	√	√	√	No specific grounds for appeal are indicated in the law or ERC Statute
	Court	√	√	√	N/A

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

Country	Body	Appeal stage	Yes	No	Comments
Portugal	ERC	Internal: 1 Regulatory Board of ERC	√		N/A
		External: 1 Court of law	√		In certain cases replacement is not possible (for instance, in tendering procedures for the award of television licences).

VII. PROCEDURAL LEGITIMACY

Table 36 - External advice regarding regulatory matters

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

Country	Body	Is a budget foreseen for outside advice?	If so, what is the budget/year?	Must the body respect public tender procedures?	Other requirements	Does the regulatory body de facto take external advice on a regular basis?
Portugal	ERC	No (not in specific terms, although outside advice	-	Not defined in specific term, except for the general rules of public administration (contracts above a certain amount (Decree-Law 18/2008, of January 29).		Yes, particularly in juridical issues.

Country	Body	Is a budget foreseen for outside advice?	If so, what is the budget/year?	Must the body respect public tender procedures?	Other requirements	Does the regulatory body de facto take external advice on a regular basis?
		is sometimes taken)				

Table 37 - Public consultations

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

Country	Body	Which decisions require prior public consultation?	Requirements on who must be consulted? (e.g. broadcasters, consumer organisations, academics etc.)	Consultation period	Consultation responses published		Legal basis
					Full responses (if authorised by contributor)	Summaries prepared by regulator	
Portugal	ERC	<p>According to the Code of Administrative Proceedings (which also obliges ERC), the parts with relevant interests must be consulted before a decision that might harm their legitimate interests.</p> <p>Regulations (prior public consultation is mandatory)</p> <p>Directives (prior public consultation is optional)</p>	Any interested party may give opinion.	30 days	Not specified (In some situations, full consultation responses are published, as it happened with ERC Deliberation 1/LIC-TV 2010, of 17 March, regarding the situation of a license for Terrestrial Digital Television (TDT) – cf. www.erc.pt/documentos/Deliberacao1LICTV2010canexosv2.pdf)	Not specified but in practice yes	<p>Decree-Law Nr. 442/91 (15 November), amended by Decree-Law Nr. 6/96 (31 January) – Código de Procedimento Administrativo (Code of Administrative proceedings), specially arts. 100^o e 101^o.</p> <p>Article 62 of ERC' Statutes.</p>

Table 38 - Public consultations – figures

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

Country	Body	Year	Number of public consultations
Portugal	ERC	2010	Project of Regulation on electronic guides of radio and television programmes.
		2009	Directive 2/2008, on the right of reply in periodical publications, which will be extended to audiovisual media. Project of Directive on the insertion of self-promotions in the interior of television programmes.
		2008	Global figures not available. At least three public consultations were made: one general consultation regarding printed periodicals published by the regional or local administration, and two consultations of all TV operators regarding (1) rules about self-promotional insertions during television programmes and (2) special measures concerning people with disabilities.
		2007	Global figures not available.
		2006	Global figures not available.
		2005	(Does not apply)

Table 39 - Publication of regulator's decisions

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

Country	Body	Which decisions required by law to be published?	Obligation to motivate decisions? Legal basis?	Obligation to include/publish impact assessment? Legal basis?	
				Ex ante	Ex post
Portugal	ERC	All the ERC recommendations and deliberations must be published / diffused by the medium or media to which they address, within a defined period of time and within certain limitations (maximum of 500 words for press, maximum of 300 words for radio or tv). See ERC Statute: http://apollo.atomicdns.com/~ercfront/documentos/lei53.pdf (Article 65º) Regulations with external effects Recommendations Directives	Yes Art. 58 of ERC's Statutes and article 18/3 Law 27/2007, of July 30	No	No

Country	Body	Which decisions required by law to be published?	Obligation to motivate decisions? Legal basis?	Obligation to include/publish impact assessment? Legal basis?	
				Ex ante	Ex post
		Decisions Article 65 of ERC's Statutes Article 18/6 Law 27/2007, of July 30			

VIII. COOPERATION

Table 40 - Cooperation with other regulatory authorities

Country	Body	Describe the mechanism of cooperation with other bodies	Source and form of cooperation	Can body receive instructions from other bodies? If so, state which and explain	Comments
Portugal	ERC	No specific mechanisms are prescribed, apart from the general duty of cooperation, as well as the specific duty to promote co-regulation, both pointed out by ERC Statute (see Art. 8º, 9º, 11º)	Ad-hoc cooperation (the organization of periodical working meetings with the regulatory authorities for Competition and for Communications are specifically suggested in ERC Statute (see Art. 11º)	No	ERC is somehow obliged to cooperate with other regulatory authorities (and vice-versa), since some of its areas of supervision and regulation are partly shared with other bodies. (For example, in a public contest to grant licenses for the exploration of TDT platforms, ERC grants the habilitating distribution license for

Country	Body	Describe the mechanism of cooperation with other bodies	Source and form of cooperation	Can body receive instructions from other bodies? If so, state which and explain	Comments
					<p>a given operator, but ICP-ANACOM grants the licenses to the use of certain frequencies.</p> <p>(For example, when it comes to media ownership, ERC has the general duty to prevent concentration, and must be consulted about any transaction going on, but the Competition Authority, which deals with the economic and financial issues in the market context, has specific competences to authorize ownership transactions.</p>
	Anacom	<p>Prior legal opinion of ERC and vice-versa.</p> <p>Source: Articles 14, 15/9, 16/4, 16/8, 17/1, 18/7, 25/2 and 25/6 Law 27/2007, of 30 July and article 8, h) of ERC's Statutes</p>	Ad-hoc manner	No	
	Competition Authority (<i>Autoridade da Concorrência</i>)	<p>Prior legal opinion of ERC.</p> <p>Source: Article 39 Law 18/2003 of 11 June, article 24/3,o) of ERC's Statutes and article 25/6 Law 27/2007, of 30 July</p>	Ad-hoc manner	No	

Country	Body	Describe the mechanism of cooperation with other bodies	Source and form of cooperation	Can body receive instructions from other bodies? If so, state which and explain	Comments
	Commission for the Application of Fines on Economic Matters and Advertisement (<i>Comissão de Aplicação de Coimas em Matéria Económica e Publicidade - CACMEP</i>)	ERC is competent as far as sponsorship, advertising breaks and teleshopping matters are concerned, without prejudice to the competences of CACMEP. Source: Article 40 Decree-Law 330/90, of 23 October	Ad-hoc manner	No	
	Civil Institute of Self-Discipline of Commercial Communication (<i>Instituto Civil da Autodisciplina da Comunicação Comercial</i>) - ICAP	Self-regulation agreements. Code of conduct of ICAP Self-regulation Agreement on product placement and sponsorship Self-regulation Agreement on commercial communication of food and drinks for the children	Ad-hoc manner	No	

Table 41 - International cooperation

Country	Body	Does it cooperate with other national regulatory bodies in EU and international fora?	Source and form of cooperation (legal basis)	Comments
Portugal	ERC	Yes.	ERC Statute (Art. 11 ^o) suggests that the Regulatory Entity may establish relations of	1) ERC is a member of EPRA – European Platform of Regulatory Authorities, which joins together regulatory authorities for the media (Articles 11 and 24/3, ad) of ERC’s Statutes) 2) ERC is a member of RIRM – Réseau des Instances de Régulation Méditerranéennes,

Country	Body	Does it cooperate with other national regulatory bodies in EU and international fora?	Source and form of cooperation (legal basis)	Comments
			<p>cooperation or association with other entities, public or private, from the country or from abroad, "namely in the context of the European Union".</p>	<p>which joins together regulatory bodies from Mediterranean countries (Articles 11 and 24/3, ad) of ERC's Statutes)</p> <p>3) By initiative of ERC, regulatory bodies for the media from the Iberian Peninsula, in a total of four (3 from Spain and 1 from Portugal) met in February 2008, in Lisbon, and decided to go on with regular cooperation meetings.</p> <p>4) By initiative of ERC, public entities regulating or supervising the media in Portuguese-speaking countries (the former Portuguese colonies of Angola, São Tomé e Príncipe, Cape Verde, Mozambique and East-Timor) met in October 2009, in Lisbon, and decided to create a joint platform: PER Plataforma das Entidades Reguladoras da Comunicação Social dos Países e Territórios de Língua Portuguesa (Articles 11 and 24/3, ad) of ERC's Statutes) The members of this platform shall meet at least once-a-year and intend to cooperate and research on common issues regarding media regulation.</p> <p>Encontro de Reguladores Ibéricos de Comunicação Social (Meeting of Iberian Media Regulators) Articles 11 and 24/3, ad) of ERC's Statutes</p>