

# 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 – Switzerland

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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)
Switzerland	91 commercial channels	0	21 in total 8 Public service channels provided SRG SSR idée Suisse (under 1 licence): (SF 1, SF 2, SF info, TSR 1, TSR 2; RSI La 1, RSI La 2, HD Suisse) 13 local/regional channels with a performance mandate and fee-splitting according to Art 38—43 RTVA

**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
Switzerland	Information requirements (art. 5 AVMS Directive)	No requirement	N/A	N/A	N/A
	Audiovisual commercial communication, sponsorship, product placement (Art. 9 – 11 AVMS Directive)	Art 12 RTVA (sponsoring) Art 20 RTVV (sponsoring) Art 21 RTVV (product placement) Art 22—23 RTVV	Federal Office of Communications	N/A	Federal Office of Communications
	Accessibility to people with a disability (Art. 7 AVMS Directive)	Art 7 (3) RTVG Art 7—8 RTVV	Federal Office of Communications	N/A	Federal Office of Communications
	Broadcasting of major events (Art. 14 AVMS Directive)	Art 73 RTVG Art 71—72 RTVV	Federal Office of Communications	N/A	Federal Office of Communications

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
	Access to short news reports (Article 15 AVMS Directive)	Art 72 RTVG Art 68—70 RTVV	Federal Office of Communications	N/A	Federal Office of Communications
	Promotion of European works (Art. 13, 16, 17 AVMS Directive)	Art 7 (1) lit a RTVG Art 5 (1) a RTVV	Federal Office of Communications	N/A	Federal Office of Communications
	Hate speech (Art. 12 and 6 AVMS Directive)	Art 4 (1) RTVG	Independent Complaints Authority for Radio and Television	N/A	Independent Complaints Authority for Radio and Television
	Television advertising and teleshopping, (Art. 19 – 26 AVMS Directive)	Art 9—11 RTVG (advertising) Art 11—19 RTVV (advertising)	Independent Complaints Authority for Radio and Television	N/A	Federal Office of Communications  Independent Complaints Authority for Radio and Television
	Protection of minors (Art. 27 AVMS Directive)	Art 13 RTVG (advertising) Art 5 RTVG (watershed) Art 4 RTVV (labelling, access control)	Advertising: Federal Office of Communications  Editorial content: Independent Complaints Authority for Radio and Television	N/A	Advertising: Federal Office of Communications  Editorial content: Independent Complaints Authority for Radio and Television
	Right of reply (Art. 28 AVMS Directive)	Art 28g--28l ZGB (Swiss Civil Code)	Courts	Courts	Courts
	Communication and cooperation with other European regulation bodies and the Commission (Art. 30b AVMS Directive)	No requirement	N/A	N/A	N/A
	Abbreviations: RTVA: Federal Act of 24 March 2006 on Radio and Television (RTVA). For an unofficial English version see: <a href="http://www.admin.ch/ch/e/rs/7/784.40.en.pdf">www.admin.ch/ch/e/rs/7/784.40.en.pdf</a> RTVO: Ordinance of 9 March 2007 on Radio and Television (RTVO). See: <a href="http://www.admin.ch/ch/d/sr/c784_401.html">www.admin.ch/ch/d/sr/c784_401.html</a> (no English version available). ZGB: Swiss Civil Code of 10 dezember 1907. See: <a href="http://www.admin.ch/ch/d/sr/210/index.html">www.admin.ch/ch/d/sr/210/index.html</a> (no English version available).				

**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
Switzerland	Federal Office of Communications*	<a href="http://www.bakom.admin.ch/">www.bakom.admin.ch/</a>	1992	Federal Office of Communications Zukunftstrasse 44 P.O. Box 332 2501 Biel/Bienne
	Independent Complaints Authority for Radio and Television**	<a href="http://www.ubi.admin.ch/en/index.htm">www.ubi.admin.ch/en/index.htm</a>	1984	Independent Complaints Authority for Radio and Television P.O. Box 8547 3001 Bern
	* Bundesamt für Kommunikation (BAKOM) / Office fédéral de la communication (OFCOM) ** Unabhängige Beschwerdeinstanz für Radio und Fernsehen (UBI) / Autorité indépendante d'examen des plaintes en matière de radio-télévision (AIEP)			

**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)
Switzerland	Federal Office of Communications	Yes	Yes	Yes	Yes	Yes	Yes Telecommunications
	Independent Complaints Authority for Radio and Television	Yes radio / TV; on demand media services are not regulated.	No	No	No	No	No

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)
		Monitoring of the content of editorial programmes only after complaints					

**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
Switzerland	Ofcom	Not specified	275 (audiovisual matters: 26)	Not specified	CHF 82m (€57,622,700) (audiovisual matters: CHF 36m; €25,297,800)	2009
	ICA	9 members of the ICA	9 members of the ICA (additional activity) Art 82 and 85 RTVA Secretariat with two legal advisers (rate of occupation: 130 %) and an administrative secretary (rate of occupation 50 %) Art. 85 par.3 RTVA Art. 3 ICA regulation (SR 784.409, <a href="http://www.admin.ch/ch/d/sr/c784_409.html">www.admin.ch/ch/d/sr/c784_409.html</a> )	The General Secretariat of the federal Department of the Environment, Transport, Energy and Communications (DETEC) manages the budget of ICA Art. 6 ICA regulation	CHF 500,000 (€379,766)	2010

## 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
Switzerland	Federal Office of Communications	Federal Office of Communications was set up by* <ul style="list-style-type: none"> <li>the Telecommunications Act of 21 June 1991</li> <li>an amendment of Art 58 (1) c Administration Organization Act of 19 September 1978</li> </ul>	Government and Administration Organization Act *** Administrative Procedure Act****
	Independent Complaints Authority for Radio and Television	Federal Decision on the Independent Complaints Authority for Radio and Television**	Art 82—85 RTGV Rules of procedure of the Independent Complaints Authority for Radio and Television*****
<p>* Both acts are not in force any more: The Telecommunications Act of 21 June 1991 was replaced by the Telecommunications Act of 30 April 1997 (SR 784.10). The Administration Organization Act of 19 September 1978 was replaced by the Government and Administration Organization Act of 21 March 1997 (SR 172.010). ** See: Bundesbeschluss über die unabhängige Beschwerdeinstanz für Radio und Fernsehen, BBl 1983 III 1077ff. *** See: Federal Act of 21 March 1997 on Government and Administration Organization (GAOA) / Regierungs- und Verwaltungsorganisationsgesetz vom 21. März 1997 (RVOG) / Loi du 21 mars 1997 sur l'organisation du gouvernement et de l'administration (LOGA) / Legge del 21 marzo 1997 sull'organizzazione del Governo e dell'Amministrazione (LOGA). SR 172.010. **** See: Federal Act of 20 December 1968 on Administrative Procedure (APA) / Bundesgesetz vom 20. Dezember 1968 über das Verwaltungsverfahren (VwVG) / Loi fédérale du 20 décembre 1968 sur la procédure administrative (PA) / Legge federale del 20 dicembre 1968 sulla procedura amministrativa (PA). SR 172.021. ***** See: Rules of procedure of the Independent Complaints Authority for Radio and Television / Geschäftsreglement der Unabhängigen Beschwerdeinstanz für Radio und Fernsehen vom 1. März 2007 / Règlement du 1er mars 2007 de l'autorité indépendante d'examen des plaintes en matière de radio-télévision (AIEP) / Regolamento del 1° marzo 2007 dell'autorità indipendente di ricorso in materia radiotelevisiva. SR 784.409.</p>			

**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
Switzerland	Ofcom	Federal Office	No	Swiss Confederation		-
	ICA	Quasi-judicial authority		It is part of the Swiss Confederation (extraparliamentary commission). Although it represents a federal authority, it is not bound in its area of responsibility by any directives from the Federal Assembly, the Federal Council and the Federal Administration. This authority reports to the General Secretary of federal Department of the Environment, Transport, Energy and Communications for administrative and financial purposes only.		Art. 84 and 85 par. 1 RTVA



**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	
Switzerland	Federal Office of Communications	√		
	Independent Complaints Authority for Radio and Television		√ According to Art 93 (5) of the Federal Constitution “programme complaints can be presented to an <u>independent complaints authority</u> ”. There is a constitutional protection of the independent status of the Independent Complaints Authority for Radio and Television.  According to Art 84 RTVA the Complaints Authority is independent and is not bound by any directives from the Federal Assembly, the Federal Council and the federal administration.	Federal Constitution*
*See: Art 93 (5) der Bundesverfassung der Schweizerischen Eidgenossenschaft vom 18. April 1999 (BV) / Constitution fédérale de la Confédération suisse du 18 avril 1999 / Costituzione federale della Confederazione Svizzera del 18 aprile 1999 (Cost.). SR 101. Unofficial English version: <a href="http://www.admin.ch/ch/e/rs/1/101.en.pdf">www.admin.ch/ch/e/rs/1/101.en.pdf</a> .				

### 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
Switzerland	Federal Office of Communications	Tick boxes	√	√	√
		Areas	Licensing; Supervision (license requirements; advertisement / sponsoring; information requirements; for details see no. 2)	Licensing; Supervision (license requirements; advertisement / sponsoring; information requirements; for details see no. 2)	Licensing; s; for details see no. 2)
		Source	Radio and Television Act (RTVA ) Radio and Television Ordinance (RTVO)	Radio and Television Act (RTVA ) Radio and Television Ordinance (RTVO)	Radio and Television Act (RTVA ) Radio and Television Ordinance (RTVO)
	Independent Complaints Authority for Radio and Television	Tick boxes	No	No	√
		Areas			No information available
		Source			No information available

**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)
Switzerland	Ofcom	Quotas	√	√	√			RTVA / RTVO
		Advertising	√	√	√			RTVA / RTVO
		Protection of minors	√	√	√			RTVA / RTVO
	ICA	Protection of minors				√		Art. 5 RTVA and 4 RTVO

**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	
Switzerland	Federal Office of Communications	Quotas	√	No	N/A	No	√		
		Advertising	√	√	N/A	No	√		
		Protection of minors	√	√	N/A	No	√		
	Independent Complaints Authority for Radio and Television	Quotas	No	No	No	No	No	No	No
		Advertising	No	No	No	No	No	No	No
		Protection of minors	√	√	No	No			
	All sanctions are discretionary.								

**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
Switzerland	Ofcom	√	√	√	√	√	√	√
	ICA	N/A	N/A	N/A	N/A	N/A	N/A	√

**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)
Switzerland	Ofcom	√	√	N/A (outside Ofcom's reference)	No*	No
	ICA	√	No, not used since 2008	N/A (publication in an online databank, but anonymized and not intended as sanction mechanism)	N/A	N/A
*In Switzerland, it is not always necessary to have a license to broadcast a programme, under certain conditions a notification is sufficient. In general—according to Art 89 RTVA—the power to suspend/revoke a license does not rest with the regulatory authorities (Ofcom; ICA) but with the grantors of a license (Federal Council; Department of the Environment, Transport, Energy and Communications). Ofcom itself may grant, suspend and—as an ultima ratio—revoke a license only for the limited field of short-term licenses ('Kurzveranstaltungslicenzen') which are granted for 30 days.						

**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
Switzerland	Federal Office of Communications	No Programme-related complaints of viewers are examined by the Independent Complaints Authority for Radio and Television (see below)	
	Independent Complaints Authority for Radio and Television	Yes Procedure according to Art 91—98 RTVA (The regulations also include the procedures of the ombudsmen which disburden the Independent Complaints Authority. The ombudsmen act as arbitrators and mediators in each regional-language region.)	UBI: <a href="http://www.ubi.admin.ch/de/">www.ubi.admin.ch/de/</a> Procedure: <a href="http://www.ubi.admin.ch/de/themen_verfahren.htm">www.ubi.admin.ch/de/themen_verfahren.htm</a>

#### IV. INTERNAL ORGANISATION AND STAFFING

**Table 15 - Highest decision-making organ – composition**

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

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

Country	Body	Individual or Board	Legal requirements regarding composition of highest decision-making organ							Implicit representation structures?	Source
			Number of Board members	Representatives of civil society	Representatives of government	Representatives of parliament	Representatives of industry	Experts	Others (e.g. regions)		
Switzerland	Ofcom	Federal Office / Director General	No board	n/a							No information available
	ICA	Board	9	Yes, in so far as gender parity is required	No	No	No	Yes, 9 experts (journalists/lawyers/professors in the media field) Rate: 100%	Everyone filling in the conditions to work in the federal administration can be appointed as a member of the ICA  The 4 linguistic regions of Switzerland have to be represented (German, Italian, French and Romansh).	No information available	Art. 82 RTVA and 75 RTVO

**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?
Switzerland	Ofcom	The Ofcom operates on the basis of a performance mandate issued by the Federal Council (Government) after consultation of the Parliament. Based on this performance mandate the Ofcom and the Department decide annually on a performance agreement.	Director General	The public has the legal right to obtain all official documents for information purposes (Freedom of Information Act (FIA), SR 152.3).	n/a
	ICA	Competence to adopt decisions regarding the contents of editorial programmes (protection of fundamental rights, protection of minors, objectivity, diversity of opinions, protection of international law). Implementation and monitoring of ombudsman Competence to determine its internal organisation and to adopt its own regulation.	By majority vote. Presence quorum of 6 members. The chairman has a casting vote. (art 12 ICA regulation).	The ICA shall inform the public of its activities. In particular, it may publish decisions on administrative matters and make them accessible online (art. 87 RTVA).  The deliberations are public, unless private interests require protection. The ICA publishes its decisions on its website. Most important decisions are also published in the casebook of the federal administrative authorities (Jurisprudence des autorités administratives de la Confédération/JAAC).  FIA is not applicable for the official documents in the ICA's procedure (art. 3 par. 1 let. a 5.)	Minutes are not published. Dates of the next deliberations are mentioned on the website of the ICA.

**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
Switzerland	Ofcom	Chairman No other board member	Yes	The Director General is nominated by the competent minister. Beforehand an assessment process is carried out that is dependent on the actual requirements. No fixed rules apply.	The Director General is appointed by the Federal Council.	Yes	No information available
	ICA	Chairman	No	n/a	Federal Council	n/a	Art. 82 par. 2 RTVA
		Board members	No	n/a	Federal Council	n/a	Art. 82 par. 2 RTVA

**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
Switzerland	Ofcom	Chairman of the board (no other members)	Not specified (The director General is appointed by the Federal Council; there is no fixed term). However, the ordinance on the federal staff provides for a dismissal for convenience if the working relationship between the director general and the head of Department is no longer successful.	n/a	n/a	-
	ICA	Chairman of the board	4 years	The term has to coincide with the legislature of the National Council	Yes. 3 terms of 4 years in total; 4 terms in particular cases. Term renewal for the chairman is not specified by law/statute; regulations for board members apply.	



Country	Body		Term of office	Is the term staggered not to coincide with election cycle?	Renewal possible? If so, state how many times	Source
		Board members	4 years	The term has to coincide with the legislature of the National Council	Yes. The term of office is limited to 12 years (in particular cases, 16 years); the legislature ends in the end of the civil year.	Art. 8g and 8i Ordinance on Government and Administration).

**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
Switzerland	Ofcom	Chairman of the board	Personnel Policy of the Federal Administration applies; no fixed set of rules		No information available
	ICA	Chairman of the board	Yes (knowledge of the media law)	No	No information available
		Board members	Yes (knowledge of the media law)	No	No information available

**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						
Switzerland	Ofcom	Chairman		No						
		Board members		No						
		Senior staff		No						
	ICA	Chairman	Yes		Yes Cannot be members of the Federal Assembly or persons serving the Swiss confederation.	No	Yes Cannot be members of the management or employees of the Swiss broadcasters.	No information available	No information available	Art. 82 par. 3 and 84 RTVA
		Board members	Yes		Same as above	Same as above	Same as above	No information available	No information available	

**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				
Switzerland	Ofcom	All the personnel		No	The ofcom is part of the federal administration	No restrictions apply; however, nobody working within the Federal Administration may become a member of the national Parliament		<a href="http://www.admin.ch/ch/d/sr/172_220_111_3/a91.html">www.admin.ch/ch/d/sr/172_220_111_3/a91.html</a>
	ICA	Chairman / Board members	Yes		Yes Incompatibilities with the members of the Federal Assembly, and persons in the service of the Swiss Confederation	No	Yes Incompatibilities with the members of the management and the employees of the Swiss broadcasters.	Art. 82 par. 3 and 84 RTVA

**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		
Switzerland	Ofcom	All the personnel		No		
	ICA	Chairman		No		

**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				
Switzerland	Ofcom	Chairman	No information available		Federal Council, on request of the competent minister			
	ICA			No				

**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		
Switzerland	Ofcom / ICA	2005-2009	Chairman		No		

## V. FINANCIAL RESOURCES

**Table 25 - Sources of income**

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

Country	Body	End-user broadcasting licence fees (max level)	State budget	Spectrum fees	Authorisation/licence fees paid by broadcasters	Fines	Other fees, e.g., 'market surveillance fee' based on % of revenues of broadcasters (or other operators – e.g. in case of converged regulators)	Source
Switzerland	Ofcom	11% 2009: CHF4m (€3m)	State funding 14%	37%	33%	1%	4% (advertisement and sponsoring concession tax from radio and TV stations)	Not published
	ICA	No	State funding 100% 2010: CHF 500,000 (€374,636) (see table 5)	No	No	No	No	Not published

**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
Switzerland	Ofcom	Parliament	Yes	parliament, government, regulatory body	Impossible to measure	
	ICA	The funds of the ICA are paid into the budget of General Secretariat of the DETEC, that decides the annual budget	Yes	DETEC/General Secretary	See above	Art. 6 ICA regulation

**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
Switzerland	Ofcom	Yes	Varying (approx. every 2 years)	Yes National audit office	No	No	Federal Act on Financial Control
	ICA	No					

## 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
Switzerland	Ofcom	Parliament	Yes	Reports, parliamentary questions, consultations	Federal Act on Government and Administration
		Government as a whole	Yes	Reports, questions	
		Specific ministers (e.g. Media, finance, etc.)	Yes	Consultations, reports	
		Public at large	No	N/A	
		Other	No	N/A	
	ICA	Parliament	Yes	The ICA has to reply to the parliamentary interventions regarding itself.	<i>No information available</i>
		Government as a whole	Yes	The ICA has to submit an annual report on its activities to the Federal Council.	Art. 83 par. 2 RTVA Art. 22 ICA regulation
		Specific ministers (e.g. Media, finance, etc.)	No	N/A	N/A
		Public at large	Yes	The ICA has to inform the public of its position and its activities. It makes public the decisions on its website. It publishes its report in the four Swiss official languages.	Art. 87 RTVA Art. 20 ICA regulation
		Other	No	N/A	N/A

**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
Switzerland	Ofcom	Parliament/ministry	Annual	Financial auditing, performance linked to objectives and clearly defined indicators	Yes Results of cost and activity accounting, achievement of objectives	Yes Approval of the Federal Finance Administration	No	<a href="http://www.bakom.admin.ch/org/jahresberichte/">www.bakom.admin.ch/org/jahresberichte/</a>
		Public	Annual	Same as above	Yes Same as above	No	No	<a href="http://www.bakom.admin.ch/org/jahresberichte/">www.bakom.admin.ch/org/jahresberichte/</a>
	ICA	The Federal Council	Annual (art. 83 par. 2 RTVA)	ICA composition, financial state, complaints proceedings, legal precedents, decisions of the Supreme Court, international activities	No	Yes	No	<a href="http://www.ubi.admin.ch">www.ubi.admin.ch</a> (Cf under "documentation") <a href="http://www.ubi.admin.ch/de/dokumentation_jahresberichte.htm">www.ubi.admin.ch/de/dokumentation_jahresberichte.htm</a>

**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
Switzerland	Ofcom	Yes	No	Yes Parliamentary Commissions	No	No	Art. 7 Federal Act on the Federal Assembly (Parlamentsgesetz - ParlG (SR 171.10)



**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	
Switzerland	Ofcom	Does anybody have the power to overturn decisions of the regulator?	No	No	No	No	No	Federal Act on Radio and Television / Federal Act on the Administrative Procedure	
		Does anybody have the power to give instructions to the regulatory body?	Yes	Yes	Yes	Yes	No	Art. 38(1) Government and Administration Organisation Act (GAOA)*	
		Heads of Departments can resort to unlimited rights to instruct and control staff members of Federal Offices and to encroach tasks to themselves (Art. 38 (1) RVOG).							
		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	N/A
Are there limitations in the power to give instructions (e.g. limited to legal	Yes	Yes	Government and Administration have to act on the grounds of the Constitution and the laws.	Yes	See previous column	Yes	See previous column	N/A	Federal Act on Government and Administration Organisation

Country	Body			Ministry/Minister	Government	Parliament	Other	Source
		instructions which exclude instructions on political grounds)?						

**Table 32 - Number of stages in appeal procedure**

The following tables are concerned with the appeal procedure relating to decisions taken in relation to the enforcement of the rules listed in the AVMS directive (eg. non-compliance with quota requirements if binding, advertising, protection of minors, etc.). The stages 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
Switzerland	Ofcom	External	1	Federal Administrative Court	No information available	Decision's addressee	Federal Act on the Administrative Procedure
			2	Federal Court (not in the case of license decisions)			
	ICA	External	1	Appeals may be lodged directly with the Federal Supreme Court (Tribunal fédéral)		The plaintiff and the broadcaster have the right to lodge an appeal.	Art. 99 RTVA

**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
Switzerland	Ofcom	√			Licence decisions may be given effect provisionally; decisions on infringements concerning advertising etc. are not observed by the broadcasters at their own risk; But Ofcom may obligate the broadcaster to surrender to the Confederation the revenue derived as a result of the infringement. This provides incentives for broadcasters to comply with the decision even if it is not yet entered into force.
	ICA	√			N/A

**Table 34 - Accepted grounds for appeal**

Country	Body	Errors of fact	Errors of law (including failure to follow the due process)	Full re-examination	Other
Switzerland	Ofcom	√ Federal administrative Court	√	√	N/A
		No Federal Court (except for arbitrariness)	√		N/A
	ICA	Federal Court: No, except when the established fact is obviously wrong	√		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
Switzerland	Ofcom	1 Federal Administrative Court	√		N/A
		2 Federal Court (not in the case of licence decisions)	√		
	ICA	1 Appeals may be lodged directly with the Federal Supreme Court	√		The Supreme Court cancels the ICA decision and notes if the programme violates or not the law. If the ICA has declared the case inadmissible, the Supreme Court can return it to the ICA so that it can be judged

## 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?
Switzerland	Ofcom	Yes	Information not available	If the amount exceeds CHF 50,000 (€37,463): Yes	-	Yes
	ICA	No	N/A	N/A	DETEC General Secretariat has an extra budget foreseen for outside advices	No

**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	
Switzerland	Ofcom	All the projects that are of major political, financial, economic, ecological, social or cultural significance or if their enforcement will to a substantial extent be the responsibility of bodies outside the Federal Administration.  Not individual decisions against broadcasters for instance.	Depends on the project; however, as the consultations are public everybody may submit an opinion.	Depends on the project; the general target is 3 months.	Yes (no authorisation required)	Yes	Federal Act on the Consultation Procedure
	ICA	None					

**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
Switzerland	Ofcom	2009	6
		2008	3
		2007	4
		2006	1
		2005	No information available
	ICA	2005-2009	None

**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
Switzerland	Federal Office of Communications (Ofcom)	<p>*General “information provisions” for the Federal Council and the public administration according to Art 180 (2) Federal Constitution and Art 10 (1)—10 (2) GAOA</p> <p>**Right to obtain all official documents for information purposes according to 6 (1) Transparency Act</p> <p>***Hardly any specifications/ requirements related to special types of decisions. According to Art 87 (1) RTVA the supervisory authorities (...) <u>may</u> publish the decisions on administrative and criminal matters and make them accessible online.</p>	<p>Yes</p> <p>*****General provisions according to the Administrative Procedures Act, e.g. Art 35 (1) and Art 61 (2)</p> <p>The necessity to set up such general provisions derives from the Constitution, it provides for the state authorities to treat everyone in good faith and in a non-arbitrary manner.</p>	No information available	No information available
	Independent Complaints Authority for Radio and Television (ICA)	<p>According to Art 87 (1) RTVA <u>may</u> publish the decisions on administrative and criminal matters and make them accessible online.</p> <p>****Requirement to publish decisions in an online databank according to Art 21 (2) of the Rules of Procedure of the Independent Complaints Authority</p> <p>*****Moreover, most meetings are open to the public according to Art 97 (1) RTVA and Art 11 of the Rules of Procedure of the Independent Complaints Authority</p>	<p>Yes</p> <p>*****General provisions according to the Administrative Procedures Act, e.g. Art 35 (1) and Art 61 (2)</p> <p>Additional options according to Art 13 of the Rules of Procedure of the Independent Complaints Authority: Opinions of board members who oppose the final majority decision of the board may also be published in an annex to the decision.</p>		

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
		Note: The Right to obtain all official documents for information purposes according to 6 (1) Transparency Act does <u>not apply</u> to documents regarding complaints procedures of the Independent Complaints Authority (an exception according to Art 3 (1) a 5 Transparency Act)			
		<p>*According to Art 180 (2) of the Federal Constitution, the Federal Council "informs the public in due time and comprehensively about its activities, as far as there is no predominant concern regarding private or public interests".</p> <p>*According to Art 10 (1) and Art 10 (2) of the Government and Administration Organization Act, the Federal Council "ensures information of (...) the public" and ensures the provision of consistent, continuous information on its assessments, planning, decisions and precautionary measures.</p> <p>**According to Art 6 (1) of the Federal Act on the Principle of Transparency in the Administration (Transparency Act), every person has the right to obtain all official documents for information purposes. But far reaching exceptions to the principle according to Art 7 of the Transparency Act have to be taken into consideration. See: Bundesgesetz vom 17. Dezember 2004 über das Öffentlichkeitsprinzip der Verwaltung (Öffentlichkeitsgesetz, BGÖ) / Loi fédérale du 17 décembre 2004 sur le principe de la transparence dans l'administration (Loi sur la transparence, LTrans) / Legge federale del 17 dicembre 2004 sul principio di trasparenza dell'amministrazione (Legge sulla trasparenza, LTras). (SR 152.3).</p> <p>***According to Art 87 (1) RTVA the supervisory authorities shall inform the public of their activities. In particular, they <u>may publish</u> the decisions on administrative and criminal matters and make them accessible online.</p> <p>****According to Art 21 of the Rules of Procedure of the Independent Complaints Authority, the authority informs the public about their functions and activities. The Authority publishes its decisions in an unabbreviated and anonymous form in a databank on its website. Access to the databank is free of charge. Decisions of the Complaints Authority are published on its website, see: <a href="http://www.ubi.admin.ch/de/dokumentation_entscheide.htm">http://www.ubi.admin.ch/de/dokumentation_entscheide.htm</a>.</p> <p>*****According to Art 97 (1) RTVA and Art 11 of the Rules of Procedure of the Independent Complaints Authority, meetings of the Independent Complaints Authority for Radio and Television are <u>open to the public</u>, as far as there is no predominant concern regarding private interests.</p> <p>*****Art 86 (3) RTVA determines that provisions of the Administrative Procedure Act apply for supervisory procedures (Aufsichtsverfahren) regarding the RTVA. According to Art 35 (1) of the Administrative Procedures Act, written decisions (Verfügungen) have to contain the rational/motivation (Begründung) and an instruction regarding the right to appeal (Rechtsmittelbelehrung). According to Art 61 (2) Administrative Procedure Act, appeals decisions contain a summary of the facts of a case, a rational/motivation (Erwägungen) and the decision formula (Dispositiv). See: Federal Act of 20 December 1968 on Administrative Procedure (APA / Bundesgesetz über das Verwaltungsverfahren vom 20. Dezember 1968 / Loi fédérale du 20 décembre 1968 sur la procédure administrative / Legge federale del 20 dicembre 1968 sulla procedura amministrativa. (SR 172.021).</p>			

## 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
Switzerland		The administrative entities are obliged to cooperate with each other and to offer support and information whenever needed (Art. 14 Ordinance on Government and Administration). As the ICA as well as the Ofcom are administrative entities (although they differ as far as the dependence is concerned) this provision applies.	See left	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
Switzerland	Ofcom	Yes	Art. 104 Federal Act on Radio and Television; Art. 50 Federal Act on Government and Administration	
	ICA	Yes, notably cooperation with the European Platform of Regulatory Authorities (EPRA)		