

INDIREG

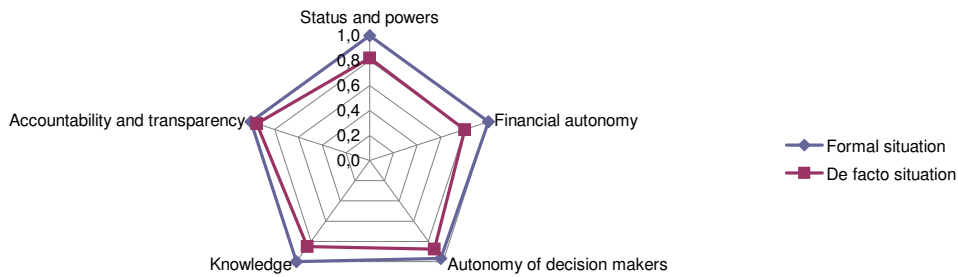
FINAL REPORT – ANNEX

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 VI – Ranking Tool

An online version of the ranking tool can be found at www.indireg.eu

	(Country)
	(Body)
	(Evaluator)
	(Date)



	Formal situation	De facto situation
Status and powers	1,000	0,820
Financial autonomy	1,000	0,800
Autonomy of decision makers	0,970	0,880
Knowledge	1,000	0,850
Accountability and transparency	1,000	0,950

Formal situation

Status and powers

points (out of): 100 100

<p>What is the legal structure of the regulatory body? _____</p> <p><input checked="" type="radio"/> A separate legal entity/autonomous body</p> <p><input type="radio"/> Not a separate legal entity/autonomous body but existence of sufficient safeguards (Chinese walls)</p> <p><input type="radio"/> Not a separate legal entity/autonomous body and no Chinese walls</p>	1	12	12
<p>How is independence of the regulatory body guaranteed? _____</p> <p><input checked="" type="radio"/> In the constitution / high court decision</p> <p><input type="radio"/> In an act of Parliament</p> <p><input type="radio"/> In a secondary act</p> <p><input type="radio"/> It is not recognised</p>	1	9	9
<p>What type of regulatory powers does the regulatory body have? _____</p> <p><input checked="" type="radio"/> Policy implementing powers and third party decision making powers</p> <p><input type="radio"/> Third party decision making powers only</p> <p><input type="radio"/> Consultative powers only / No third party decision making powers</p>	1	9	9
<p>Are these regulatory powers sufficiently defined in the law? _____</p> <p><input checked="" type="radio"/> Yes</p> <p><input type="radio"/> No</p>	1	3	3
<p>Does the regulatory body have supervision powers? _____</p> <p><input checked="" type="radio"/> Yes</p> <p><input type="radio"/> No</p>	1	13	13

Does the regulatory body have information collection powers towards regulatees (eg. regarding quotas)?	1	6	6
<input checked="" type="radio"/> Yes	6		
<input type="radio"/> No	0		
Can the regulatory body be instructed (other than by a court) in individual cases/decisions or in relation to its policy implementing powers (notwithstanding possible democratic control mechanisms such as by parliament)?	1	13	13
<input checked="" type="radio"/> No	13		
<input type="radio"/> Yes, by the parliament	4		
<input type="radio"/> Yes, by the government/minister in limited cases	3		
<input type="radio"/> Yes, by the government/minister in many cases	0		
Can the regulatory body's decisions be overturned (other than by a court/administrative tribunal)?	1	13	13
<input checked="" type="radio"/> No	13		
<input type="radio"/> Yes, by the parliament	4		
<input type="radio"/> Yes, by the government/minister in limited cases	3		
<input type="radio"/> Yes, by the government/minister in many cases	0		
What type of enforcement powers does the regulatory body have?	1	13	13
<input checked="" type="radio"/> Availability of a range of proportional enforcement powers (warnings, deterrent fines, suspension/revocation of licence)	13		
<input type="radio"/> Not all range of enforcement powers available, but power to impose deterrent fines	10		
<input type="radio"/> No power to impose deterrent fines	0		
Does the regulatory body have sufficient legal power to decide on internal organisation and human resources?	1	9	9
<input checked="" type="radio"/> Yes	9		
<input type="radio"/> No	0		

Financial autonomy

points (out of): 100 100

How is the budget of the regulatory body determined?	1	40	40
<input checked="" type="radio"/> By the regulatory body only	40		
<input type="radio"/> By the parliament with involvement of regulatory body	29		
<input type="radio"/> By the government/minister with involvement of regulatory body	26		
<input type="radio"/> No involvement of regulatory body	0		
Does the law clearly specify the budget setting and approval procedure?	1	17	17
<input checked="" type="radio"/> Yes	17		
<input type="radio"/> No	0		
What are the sources of income of the regulatory body?	1	30	30
<input checked="" type="radio"/> Fees levied from industry - own funds, spectrum fees	30		
<input type="radio"/> Mixed fees (industry and government funding)	20		
<input type="radio"/> Government funding only	0		
Does the law clearly specify the source of funding?	1	13	13
<input checked="" type="radio"/> Yes	13		
<input type="radio"/> No	0		

Autonomy of decision makers

points (out of): 97 100

<p>What is the nature of the highest decision making organ of the regulatory body? _____</p> <p><input checked="" type="radio"/> A board</p> <p><input type="radio"/> An individual</p>	<p>1</p> <p>10</p> <p>0</p>	<p>10</p> <p>10</p> <p>0</p>	<p>10</p> <p>10</p> <p>0</p>
<p>Who has a decisive say in nomination/appointment of the regulatory body's highest decision making organ? _____</p> <p><input checked="" type="radio"/> Mix between parliament / government / civil society / professional associations</p> <p><input type="radio"/> Ruling and opposition parties involved</p> <p><input type="radio"/> Parliament and government</p> <p><input type="radio"/> Parliament and prime minister/president</p> <p><input type="radio"/> Parliament and political parties</p> <p><input type="radio"/> Parliament only</p> <p><input type="radio"/> Government only</p> <p><input type="radio"/> President/prime minister/minister only</p> <p><input type="radio"/> Not applicable/other procedures</p>	<p>1</p> <p>13</p> <p>12</p> <p>11</p> <p>9</p> <p>8</p> <p>7</p> <p>3</p> <p>0</p> <p>0</p>	<p>13</p> <p>12</p> <p>11</p> <p>9</p> <p>8</p> <p>7</p> <p>3</p> <p>0</p> <p>0</p>	<p>13</p> <p>13</p> <p>12</p> <p>11</p> <p>9</p> <p>8</p> <p>7</p> <p>3</p> <p>0</p> <p>0</p>
<p>What is the term of office of the chairman/board members? _____</p> <p><input checked="" type="radio"/> A fixed term of office of a certain duration (above the election cycle)</p> <p><input type="radio"/> A fixed term of office (lower or equal to the election cycle)</p> <p><input type="radio"/> Not specified</p>	<p>1</p> <p>7</p> <p>3</p> <p>0</p>	<p>7</p> <p>7</p> <p>3</p> <p>0</p>	<p>7</p> <p>7</p> <p>3</p> <p>0</p>
<p>Does the term of office coincide with the election cycle? _____</p> <p><input checked="" type="radio"/> No</p> <p><input type="radio"/> Yes/not specified</p>	<p>1</p> <p>10</p> <p>0</p>	<p>10</p> <p>10</p> <p>0</p>	<p>10</p> <p>10</p> <p>0</p>
<p>Does the law foresee that board members are appointed at different points in time (staggered appointment)? _____</p> <p><input checked="" type="radio"/> Yes</p> <p><input type="radio"/> No</p> <p><input type="radio"/> Not applicable (no board members)</p>	<p>1</p> <p>7</p> <p>0</p> <p>0</p>	<p>7</p> <p>7</p> <p>0</p> <p>0</p>	<p>7</p> <p>7</p> <p>0</p> <p>0</p>
<p>What is the situation regarding renewals of board members/chairman? _____</p> <p><input checked="" type="radio"/> Renewal not possible / limited to one or two instances</p> <p><input type="radio"/> Allowed in more than two instances / not specified</p> <p><input type="radio"/> Not applicable (no fixed term)</p>	<p>1</p> <p>7</p> <p>0</p> <p>0</p>	<p>7</p> <p>7</p> <p>0</p> <p>0</p>	<p>7</p> <p>7</p> <p>0</p> <p>0</p>
<p>Are there rules on incompatibility at the nomination/appointment stage of the members of the board/the chairman so that the highest decision making organ ...</p> <p><input checked="" type="radio"/> cannot be composed of members of government/parliament/industry</p> <p><input type="radio"/> can be composed of one or two of the following groups: government/parliament/industry</p> <p><input type="radio"/> can be composed of members of government/parliament/industry</p>	<p>1</p> <p>10</p> <p>3</p> <p>0</p>	<p>10</p> <p>10</p> <p>3</p> <p>0</p>	<p>10</p> <p>10</p> <p>3</p> <p>0</p>
<p>Incompatibility rules extended to relatives? _____</p> <p><input checked="" type="radio"/> Yes</p> <p><input type="radio"/> No</p> <p><input type="radio"/> Not applicable (no incompatibility rules)</p>	<p>1</p> <p>1</p> <p>0</p> <p>0</p>	<p>1</p> <p>1</p> <p>0</p> <p>0</p>	<p>1</p> <p>1</p> <p>0</p> <p>0</p>
<p>Requirement to act in an independent capacity? _____</p> <p><input type="radio"/> Yes</p> <p><input checked="" type="radio"/> No</p>	<p>2</p> <p>3</p> <p>0</p>	<p>3</p> <p>3</p> <p>0</p>	<p>3</p> <p>3</p> <p>0</p>

Are there rules preventing conflicts of interest of chairman/board members during their term of office?	1	3	3
<input checked="" type="radio"/> Yes	3		
<input type="radio"/> No	0		
Is there a period during which former board members are limited to work for the regulatees (so-called cooling-off period)?	1	3	3
<input checked="" type="radio"/> Yes	3		
<input type="radio"/> No	0		
How can the chairman / individual board members be dismissed?	1	13	13
<input checked="" type="radio"/> Dismissal not possible	13		
<input type="radio"/> Dismissal possible only for objective grounds listed in the law (no discretion)	13		
<input type="radio"/> Objective grounds listed in the law, but margin of discretion. Power of dismissal given to the regulator / the judiciary.	9		
<input type="radio"/> Objective grounds listed in the law, but margin of discretion. Power of dismissal not given to the regulator / the judiciary.	7		
<input type="radio"/> Dismissal possible, but grounds not listed in the law, or no rules on dismissal	0		
Dismissal of entire board	1	13	13
<input checked="" type="radio"/> Not possible to dismiss entire board	13		
<input type="radio"/> Entire board can be dismissed	0		
<input type="radio"/> Not applicable (no board)	0		

Knowledge

points (out of): 100 100

Are requirements for professional expertise (i.e. knowledge/experience) specified in the law? For board members/chairman?	1	19	19
<input checked="" type="radio"/> Yes	19		
<input type="radio"/> No	0		
Are requirements for professional expertise specified in the law? For senior staff?	1	19	19
<input checked="" type="radio"/> Yes	19		
<input type="radio"/> No	0		
<input type="radio"/> Not applicable (no senior staff)	0		
Are requirements for qualifications (eg. education, diploma requirements) specified in the law? For board members/chairman?	1	19	19
<input checked="" type="radio"/> Yes	19		
<input type="radio"/> No	0		
Are requirements for qualifications specified in the law? For senior staff?	1	19	19
<input checked="" type="radio"/> Yes	19		
<input type="radio"/> No	0		
<input type="radio"/> Not applicable (no senior staff)	0		
Does the law foresee that the regulatory body can seek external advice?	1	12	12
<input checked="" type="radio"/> Yes	12		
<input type="radio"/> No	0		
Is the regulatory body legally obliged to cooperate with other national or foreign regulators and does it have the required mandate to do so?	1	12	12
<input checked="" type="radio"/> Yes	12		
<input type="radio"/> No	0		

Accountability and transparency

points (out of): 100 100

Does the law specify that the regulatory body's decisions need to be published?	1	12	12
<input checked="" type="radio"/> Yes	12		
<input type="radio"/> No	0		
Does the law specify that the regulatory body's decisions need to be motivated?	1	12	12
<input checked="" type="radio"/> Yes	12		
<input type="radio"/> No	0		
Is the regulatory body required by law to organise consultations?	1	8	8
<input checked="" type="radio"/> Yes, in all cases (which have a direct or indirect impact on more than one stakeholder)	8		
<input type="radio"/> Yes, but only in cases specified by law	4		
<input type="radio"/> No	0		
<input type="radio"/> Not applicable	0		
Is the regulatory body required to organise these consultations as open or closed consultations?	1	8	8
<input checked="" type="radio"/> Open consultations	8		
<input type="radio"/> Closed consultations	4		
<input type="radio"/> No consultations required	0		
Is the regulatory body subject to a reporting obligation and is it specified in law?	1	12	12
<input checked="" type="radio"/> Yes, the reporting obligation is specified in law and is addressed to the public at large (including public bodies)	12		
<input type="radio"/> Yes, the reporting obligation is specified in law and is limited to public bodies only (e.g. Parliament and/or government)	9		
<input type="radio"/> No	0		
Does the law specify a mechanism of ex-post control by a democratically elected body (e.g. approval of annual report by the parliament or a political/public debate with participation of the body)?	1	16	16
<input checked="" type="radio"/> Yes	16		
<input type="radio"/> No	0		
Is an appeal procedure against the decisions of the regulatory body foreseen in the law?	1	12	12
<input checked="" type="radio"/> Yes, in all circumstances and before an external court/administrative tribunal	12		
<input type="radio"/> Yes, in all circumstances, but only before an independent body (with no further appeal before a court/admin tribunal)	9		
<input type="radio"/> Yes, but in some circumstances only and before an external court/administrative tribunal	6		
<input type="radio"/> Yes, but in some circumstances only, and only before an independent body (with no further appeal before a court/admin trib)	4		
<input type="radio"/> No	0		
What are the accepted grounds for appeal?	1	8	8
<input checked="" type="radio"/> Errors of fact and errors of law (ie. the merits)	8		
<input type="radio"/> Errors in law only	5		
<input type="radio"/> Errors in fact only	3		
<input type="radio"/> Not applicable (no appeal procedure exists)	0		
Is external auditing of the financial situation foreseen in the law?	1	12	12
<input checked="" type="radio"/> Yes	12		
<input type="radio"/> No	0		

De facto situation

Status and powers

points (out of): 82 100

Has the act on the status of the regulatory body been modified in a way that has reduced its tasks and powers?	2	0	9
<input type="radio"/> No	9		
<input checked="" type="radio"/> Yes	0		
<input type="radio"/> Not applicable (not set up as separate body)	0		
Has the governing law of the regulatory body been modified to influence a particular case/conflict?	1	9	9
<input checked="" type="radio"/> No	9		
<input type="radio"/> Yes	0		
Have the formally granted powers (policy implementing powers and third party decision making powers, excluding sanctions) been used?	1	10	10
<input checked="" type="radio"/> Yes, for all types of powers and in all instances	10		
<input type="radio"/> Yes, but not for all types of powers or in all instances	5		
<input type="radio"/> No	0		
How does the regulatory body supervise whether the rules are correctly applied by the regulatees?	1	9	9
<input checked="" type="radio"/> Through monitoring according to a set strategy and/or methodology	9		
<input type="radio"/> Through adhoc monitoring/monitoring after complaints, with concrete procedures to follow complaints	5		
<input type="radio"/> Through adhoc monitoring/monitoring after complaints, without concrete procedures to follow complaints	0		
Has the regulatory body received instructions by a body other than a court in individual cases/decisions or in relation to its policy implementing powers in the last 5 years?	1	9	9
<input checked="" type="radio"/> No	9		
<input type="radio"/> Yes	0		
Have the decisions of the regulatory body been overturned by a body other than a court/administrative tribunal in the last 5 years?	1	9	9
<input checked="" type="radio"/> No	9		
<input type="radio"/> Yes	0		
Has the regulatory body taken adequate measures in case of material breach by an AVMS/TVwF provider?	1	9	9
<input checked="" type="radio"/> Yes	9		
<input type="radio"/> No	0		
<input type="radio"/> Not applicable (no material breach has occurred)	0		
Has the regulatory body taken adequate sanctions in case of continued breach by an AVMS/TVwF provider?	1	9	9
<input checked="" type="radio"/> Yes	9		
<input type="radio"/> No	0		
<input type="radio"/> Not applicable (no continued breach has occurred)	0		
In case of several breaches by different AVMS/TVwF providers: Have even-handed/comparable measures been taken against all providers?	2	0	9
<input type="radio"/> Yes	9		
<input checked="" type="radio"/> No	0		
<input type="radio"/> Not applicable (no breaches by different providers has occurred)	0		

Does the regulatory body effectively decide on internal organisation and human resources? —	1	9	9
<input checked="" type="radio"/> Yes	9		
<input type="radio"/> No	0		
Does the regulatory body have a sufficient number of staff to fulfill its tasks and duties? —	1	9	9
<input checked="" type="radio"/> Yes	9		
<input type="radio"/> No	0		

Financial autonomy

points (out of): 80 100

Is the regulatory body's budget sufficient to carry out its tasks and duties? —	1	40	40
<input checked="" type="radio"/> Yes	40		
<input type="radio"/> No	0		
Is the regulatory body's budget sufficiently stable over time? —	2	0	20
<input type="radio"/> Yes	20		
<input checked="" type="radio"/> No	0		
Does the regulatory body have sufficient autonomy to decide for which tasks it spends its budget? —	1	20	20
<input checked="" type="radio"/> Yes	20		
<input type="radio"/> No	0		
Is the regulatory body under pressure to compensate a lack of stable funding from the state or from the market, by imposing fines or requesting ad-hoc financial contributions from the state? —	1	20	20
<input checked="" type="radio"/> No	20		
<input type="radio"/> Yes	0		
<input type="radio"/> Not applicable	0		

Autonomy of decision makers

points (out of): 88 100

Composition of the highest decision making organ (board or council) of the regulatory body

Are political majorities or political power structures reflected in the composition of the highest decision making organ? —	1	19	19
<input checked="" type="radio"/> No	19		
<input type="radio"/> Yes	0		
<input type="radio"/> Impossible to say	0		
Have there been cases where the appointer failed to appoint the nominated candidate? —	2	0	12
<input type="radio"/> No	12		
<input checked="" type="radio"/> Yes	0		
<input type="radio"/> Not applicable (no nomination stage/no obligation to appoint nominees)	0		
Have board members/chairman resigned before their term of office due to political conflicts? —	1	19	19
<input checked="" type="radio"/> No	19		
<input type="radio"/> Yes	0		
Have one or more board members been dismissed for non-objective grounds in the past 5 years? —	1	25	25
<input checked="" type="radio"/> No	25		
<input type="radio"/> Yes	0		

Has the entire board been dismissed or otherwise replaced before the end of term in the last 5 years?	1	25	25
<input checked="" type="radio"/> No	25		
<input type="radio"/> Yes	0		
<input type="radio"/> Not applicable (not possible)	0		

Knowledge

points (out of): 85 100

Do board members/chairman have adequate qualifications and professional expertise to fulfill the duties of the regulatory body?	2	15	30
<input type="radio"/> Yes, all	30		
<input checked="" type="radio"/> Yes, a majority	15		
<input type="radio"/> No	0		

Does senior staff have adequate qualifications and professional expertise to fulfill the duties of the regulatory body?	1	30	30
<input checked="" type="radio"/> Yes, all	30		
<input type="radio"/> Yes, a majority	15		
<input type="radio"/> No	0		
<input type="radio"/> Not applicable (no senior staff)	0		

Does the regulatory body seek external advice when needed?	1	20	20
<input checked="" type="radio"/> Yes	20		
<input type="radio"/> No	0		

Does the regulatory body cooperate with other national/foreign regulators in charge of audio-visual media regulation?	1	20	20
<input checked="" type="radio"/> Yes	20		
<input type="radio"/> No	0		

Accountability and transparency

points (out of): 95 100

Does the regulatory body publish its decisions (together with motivations)?	2	5	10
<input type="radio"/> Yes, all decisions (and motivations) are published	10		
<input checked="" type="radio"/> Yes, but only some decisions are published	5		
<input type="radio"/> No	0		

Where are the decisions published?	1	6	6
<input checked="" type="radio"/> On the website (and eventually other official channels)	6		
<input type="radio"/> In the official journal or other official channels (but not on the website)	0		
<input type="radio"/> Not applicable (decisions are not published)	0		

Does the regulatory body organise consultations?	1	8	8
<input checked="" type="radio"/> Yes, in all cases (which have a direct or indirect impact on more than one stakeholder)	8		
<input type="radio"/> Yes, but only in cases specified by law	4		
<input type="radio"/> No	0		

Does the regulatory body organise these consultations as open or closed consultations?	1	7	7
<input checked="" type="radio"/> Open consultations	7		
<input type="radio"/> Closed consultations	4		
<input type="radio"/> No consultations	0		

Does the regulatory body publish responses to consultation?	1	6	6
<input checked="" type="radio"/> Yes	6		
<input type="radio"/> No	0		
<input type="radio"/> Not applicable (no consultations are organised)	0		
Does the regulatory body explain the extent to which responses are taken into account in final decisions?	1	9	9
<input checked="" type="radio"/> Yes	9		
<input type="radio"/> No	0		
<input type="radio"/> Not applicable (no consultations are organised)	0		
Does the regulatory body publish periodical reports on its activities?	1	9	9
<input checked="" type="radio"/> Yes	9		
<input type="radio"/> No	0		
Has the regulatory body been assessed / controlled by a democratically elected body in the last five years?	1	9	9
<input checked="" type="radio"/> Yes	9		
<input type="radio"/> No	0		
Have there been cases where the report (or other form of approval by a democratically elected body) has been refused in the last 5 years?	1	9	9
<input checked="" type="radio"/> No	9		
<input type="radio"/> Yes	0		
<input type="radio"/> Not applicable (no requirement to have a report approved by an external body)	0		
Have the decisions of the regulatory body been overturned by a court/administrative tribunal in a significant number of cases?	1	9	9
<input checked="" type="radio"/> No	9		
<input type="radio"/> Yes	0		
<input type="radio"/> Not applicable (not possible)	0		
Is the regulatory body subject to periodic external financial auditing?	1	9	9
<input checked="" type="radio"/> Yes	9		
<input type="radio"/> No	0		
Has auditing revealed serious financial malpractices?	1	9	9
<input checked="" type="radio"/> No	9		
<input type="radio"/> Yes	0		
<input type="radio"/> Not applicable (not subject to periodic external auditing)	0		