



**39<sup>th</sup> EPRA meeting:  
Budva – 4 - 6 June 2014**

**Working Group 2  
Independence of NRAs:  
Key Developments and Current Debates**

**Introduction, Objectives and Structure of the Working Group<sup>1</sup>**

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## **1. Introduction**

The fact that the independence of NRAs has been chosen by the EPRA members as a topic for a yearly working group in 2014, even though it has been treated several times during EPRA meetings (Prague 2007<sup>2</sup>, Tallinn 2009<sup>3</sup>, Ohrid 2011<sup>4</sup>) speaks volumes about its importance for the effective functioning of regulatory authorities. This time, the concept of independence will be revisited from the point of view of recent developments and initiatives undertaken both at the EU level and beyond, and their potential impact on strengthening the independence of European NRAs.

In March 2013, the European Commission launched a public consultation on the independence of audiovisual regulatory bodies, with the aim to gather views on the issue of independence and on possible options for strengthening it, including a possible revision of Article 30 of the Audiovisual Media Services Directive (AVMSD). The Consultation had been preceded by a number of studies and reports on the topic, all acknowledging the importance of independence and its positive effects on media freedom. Recent efforts of the Council of Europe, as will be reported during the session, include a series of regional events on the topic of independence aimed at six South-East European countries, the latest of which is scheduled just a day before EPRA meeting in Budva, with a focus on defining indicators for establishing and monitoring transparency, responsibility and operational efficiency of media regulatory bodies.

But concerns over independence are by no means reserved to new democracies. Independence seems to be a pressing matter across EPRA members, from the east or from the west, from the north or from the south, from “old” or “young” democracies. There are evidently questions unanswered, aspects of independence underdiscussed, but most of all, there is an evident lack of binding and implementable instruments for ensuring independence, in the EU space or beyond. It is clear that existing provisions – and especially those contained in the AVMSD, do not offer adequate safeguards, unlike those in some other regulated sectors (electronic communications, postal services, energy, transports, privacy, data protection...). This problem has been emphasized in the past, and is now again brought to the forefront in light of the European Commission’s (renewed) interest in the topic and announced steps on possible revision of Article 30 AVMSD.

<sup>1</sup> The session and background documents were prepared with very valuable input from Emmanuelle Machet, Secretary to the EPRA.

<sup>2</sup> <http://www.epra.org/attachments/prague-plenary-1-independence-of-ras-background-paper-public-version>

<sup>3</sup> <http://www.epra.org/attachments/tallinn-plenary-2-transparency-accountability-of-ras-background-document>

<sup>4</sup> <http://www.epra.org/attachments/ohrid-plenary-2-independence-introduction>

## **2. Objectives of the session**

As indicated in the EPRA Annual Work Programme for 2014, the WG on the Independence of NRAs is a yearly working group that will convene twice – in Budva (June) and in Tbilisi (October).

Starting from the responses of regulatory authorities to the Commission's Consultation, the present session aims at identifying common trends and challenges, analysing existing models and discussing any envisaged follow-up actions. In particular, the session will focus on the following aspects:

- Relevance of the independence of NRAs regulatory bodies for the effective transposition and application of the AVMS Directive;
- Link between convergence and the need for regulatory independence for the application of AVMSD;
- Issue of Art. 30 AVMS vs. independence of telecom regulators;
- Impact of independence on the exercise of regulatory tasks and what can regulators do;
- Cooperation Arrangements between NRAs and between international/European organisations on the issue of independence.

The next WG session in October will be devoted to more practice - and experience - oriented aspects of independence, in particular work processes, effectiveness and transparency.

## **3. Structure of the Session**

The session will be structured as a roundtable discussion with three distinctive parts. All participants are strongly encouraged to actively participate in discussion and share their views and experience.

### **Part 1: Focus on the Commission's Consultation on Independence of NRAs**

#### **Part 1 will include:**

- A presentation of the responses of NRAs to the EC consultation
- An Intervention from the Commission on the follow-up (Lorena Boix Alonso)
- A Roundtable discussion focusing on:
  - Relevance of the independence of NRAs regulatory bodies for the effective transposition and application of the AVMS Directive
  - Link between convergence and the need for regulatory independence for the application of AVMSD
  - Issue of Art. 30 AVMS /vs. independence of telecom regulators as required in Article 3(3)a and 4 of the [Framework Directive](#), which protects the independence of the NRA responsible for market regulation and dispute resolution, as regards all telecoms tasks with which it is entrusted.

(Non-exhaustive) list of questions to guide Part 1 of the debate:

- Please report on concrete cases when independence underpinned freedom and/or pluralism of the media? What about vice-versa?
- What particular RA's quality or practice do you think helps preserve freedom and/or pluralism of the media in your country?
- What areas of AVMSD (including the ones mentioned in the consultation) do you find particularly dependent on the independence or lack thereof? Why? Any examples?
- What challenges to the independence does convergence pose?
- Why did you respond/not respond to the consultation?
- What are your expectations from the consultation?
- Art. 30 follow-up: any views on the three options presented in the consultation i.e. non legislative options, vs. legislative option, vs. further reaching legislative option? Have you envisaged any follow-up actions in light of the consultation?

**Part 2: Impact of independence on the exercise of regulatory tasks & what can regulators do?**

- Presentation of the outcome of the Council of Europe regional event on 4 June defining Indicators for establishing and monitoring the transparency, responsibility and operational efficiency of media regulatory bodies in six countries and other recent actions (i.e. Tirana conference)
- Roundtable discussion - part two, focusing on link of independence with accountability and transparency and operational efficiency & actions from NRAs.

(Non-exhaustive) list of questions to guide Part 2 of the debate:

- Can you give concrete examples where independence was key to successful and effective regulatory action?
- What do you consider to be the main principles of effective regulation?
- Formal independence is no guarantee of actual independence. Is there anything else you wish to highlight as essential for strengthening the culture of independence?
- Specific examples of how your RA implements those principles, i.e. demonstrates in practice? Best practices?
- Concrete examples of practices that enhanced de facto independence / undermine (last 5 years), can you report any cases of actual use of powers of elected politicians to overturn decisions?

- Are there any other relevant factors acting as safeguards of independence (e.g. cultural context, long existing national traditions such as traditional neutrality of the civil service) you wish to emphasize?
- Do you agree that independence also a matter of personal responsibility and integrity?
- Can you share any capacity-building strategies that can be used to overcome influence or lack of de facto independence?
- Has your RA's independence been subject to external assessment by a third party in your country (NGO, civil society organization...), for instance via the INDIREG ranking tool or some other method of evaluation?

### **Part 3: Cooperation Arrangements between NRAs and between international/European organisations on the issue of independence**

- Report on recent actions of OSCE-RFOM in the field of independence of NRAs (Joan Barata Mir)
- Roundtable discussion - part three, focusing on cooperation arrangements between NRAs and between international/European organisations on the issue of independence, such as joint actions etc.

#### (Non-exhaustive) list of questions to guide Part 3 of the debate:

- Do you believe that the cooperation arrangements currently available (including the newly established European Regulators Group for Audiovisual Media Services) can underpin your RA's independence and in what way?
- Any experience so far and in what areas was cooperation most valuable?
- What about joint CoE / EC initiatives concerning the independence of regulators?