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

Background document
Analysis of NRAs Responses to the Commission's Consultation¹
(Final public version of 15 July)
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1. Introduction

As indicated in the introductory document, the aim of the session is to revisit the concept of independence from the point of view of recent developments and initiatives undertaken at the level of European institutions, to discuss follow-up activities as well as to explore possible implications on strengthening the independence of European NRAs.

The present paper analyses the responses to the Commission's Consultation of regulatory authorities only, with the view to provide an insight into NRAs' position towards the issues covered by the Consultation as well as to highlight areas of particular concern of NRAs when it comes to independence and its implications on efficient functioning. It does not offer a comprehensive overview nor represents a common attitude of European regulatory authorities on the issue of independence, cooperation arrangements or other issues covered by the Consultation. Rather, the aim is to identify topics for further discussion among EPRA members and highlight issues that yet need to be addressed by present and future initiatives in this regard.

2. Independence provisions in the AVMS Directive

It is clear that existing provisions – and especially those contained in the AVMSD, do not offer adequate safeguards of independence of national regulatory authorities for audiovisual media, unlike those in some other regulated sectors. 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.

As is well-known, the AVMSD does not contain a requirement for an independent regulatory body; but there is a requirement for efficient functioning. Art. 30 instructs:

¹ **Disclaimer:** This document has been produced by EPRA, an informal network of 52 regulatory authorities in the field of broadcasting. It is not a fully comprehensive overview of the issues, nor does it purport to represent the views or the official position of EPRA or of any member within the EPRA network.

Member States shall take appropriate measures to provide each other and the Commission with the information necessary for the application of the provisions of this Directive, in particular Articles 2, 3 and 4 hereof, in particular through their competent independent regulatory bodies.

The implication of this provision is furthermore explained in Recitals (94) and (95):

(94) In accordance with the duties imposed on Member States by the Treaty on the Functioning of the European Union, they are responsible for the effective implementation of this Directive. They are free to choose the appropriate instruments according to their legal traditions and established structures, and, in particular, the form of their competent independent regulatory bodies, in order to be able to carry out their work in implementing this Directive impartially and transparently. More specifically, the instruments chosen by Member States should contribute to the promotion of media pluralism.

(95) Close cooperation between competent regulatory bodies of the Member States and the Commission is necessary to ensure the correct application of this Directive. (...)

As highlighted by the INDIREG study, Art. 30 clearly does not contain a strict formal obligation for the Member States to create an independent regulatory body if one does not already exist. In fact, Member States are completely free to choose the appropriate instrument for the implementation of the Directive; however, in the light of the recitals it can be construed that independent regulatory bodies are deemed as most capable of enforcing the aims of the Directive in an efficient and impartial manner.

It has been widely acknowledged, however, that independence is in a way a precondition for the efficient functioning of regulatory authorities, including the effective implementation of the AVMSD. Effectiveness requires that regulatory authorities are able to deploy their functions and powers in a way that ensures the protection of public interest and correction of market failures in a credible, transparent and impartial manner.

3. The Public Consultation on the Independence of Audiovisual Regulatory Bodies: background and context

On 22 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 of audiovisual regulatory bodies competent for audiovisual media, and on possible options for strengthening their independence, including a possible revision of Article 30 AVMSD.

The introduction to the Consultation highlights the need to examine the role that the independent regulatory bodies can play for the preservation of free and pluralistic media as essential democratic values. The need for the Consultation is justified by a number of recent reports and studies on media pluralism and the independence of audiovisual regulatory bodies - one of the most well-known being the INDIREG study of 2011 - as well as the Commission's own experience on the topic and recurring calls for a harmonised independence obligation by the European Parliament and society. The Final Report of the High Level Group on Media Freedom

and Pluralism², for example, recommends that Article 30 AVMSD be amended to guarantee the independence of audiovisual regulatory bodies. A study by the Centre for Media Pluralism and Media Freedom³ also describes the possible positive effects on media freedom and pluralism of establishing independent audiovisual regulatory bodies. It furthermore emphasizes the strong contrast with the electronic communications framework which contains a requirement of independence. The MEDIADEM study – though not expressly mentioned in the consultation – also highlighted the positive correlation between freedom of the media and independent governance.

In addition to addressing the limitations of Article 30 AVMSD, the Consultation also addressed the issue of a reinforced cooperation between regulatory authorities in the EU and the Commission. Several of the above-mentioned studies had recommended to formalise the cooperation between the regulatory authorities and the Commission in view of a more consistent and coherent application of the regulatory framework.

The Consultation ended on 14 June 2013. The responses were published on the website of the Directorate General for Communication Networks, Content and Technology⁴. According to the website, only 13 European regulatory authorities responded to the Consultation⁵: the Communications Regulatory Agency (BA)⁶, the CSA of the French speaking Community of Belgium (BE), the Directors Conference of the Lander Media Authorities (DE), the Radio and TV Board (DK), the Finnish Communications Regulatory Authority (FI), Ofcom (UK), the National Council for Radio and Television (GR), the Broadcasting Authority of Ireland (IE), the Conseil National des Programmes (LU), the National Electronic Media Council (LV), the National Broadcasting Council (PL), the Regulatory Authority for the Media (PT) and the National Audiovisual Council (RO). In addition, the French CSA contributed to the joint response submitted on behalf of the State of France.

The low number of responses from NRAs is in clear contrast with their interest in the topic of independence, at least judging by the discussions at EPRA meetings. It would be interesting to explore possible reasons for the lack of wider participation of NRAs, be it the unwillingness to enter policy field, especially at the European level, complexity and sensitivity of the subject or scepticism about political will to introduce a formal requirement of independence – having in mind the developments concerning the wording of Article 30 during the drafting of the AVMSD and moreover its negotiation within the European Council.

Having said that, it is worth noting that a few individuals from NRAs have responded to the questionnaire in their personal capacity. It should also be mentioned that the website offers insight in responses only of those respondents who gave their consent to the publication of their submission.⁷ The analysis of responses presented below should therefore not be observed as final or all-encompassing.

¹ <http://ec.europa.eu/digital-agenda/en/high-level-group-media-freedom-and-pluralism>

² <http://cmpf.eui.eu/publications/policyreport.aspx>

³ <http://ec.europa.eu/digital-agenda/en/public-consultation-independence-audiovisual-regulatory-bodies>

⁴ Other respondents include: 6 public authorities, 2 political parties, 10 NGOs, 14 stakeholders (industry, trade associations), 1 research institution, 3 individual researchers and 15 citizens.

⁵ as the only NRA respondent from a non-EU country

⁷ Ms. Lorena Boix Alonso, Head of Converging Media and Content Unit, DG CONNECT, confirmed at the WG session that 18 NRAs altogether contributed to the Consultation.

A very important part of the Consultation seemed to be the discussion about options to strengthen independence under the AVMSD. The introduction to the Consultation contained a strong emphasis on the current limitations of Article 30 and enlists several possible options:

- **Status quo option:** The Commission will not propose any changes if the results of the Consultation show that the current situation is satisfactory
- **Non-legislative option:** no changes to the relevant provision of the AVMSD, but reinforcement of the Commission existing instruments (e.g. strengthening the monitoring activities)
- **Legislative option:** creating the explicit requirement for the Member States to guarantee the independence of national regulatory bodies and ensure that they exercise their powers impartially and transparently.
- **Further-reaching legislative option:**
 - More detailed criteria to ensure independence, such as explicit reference to the need for autonomous decision making, transparent and impartial dismissal rules and adequate human and financial resources. The institutional requirements included in the electronic communications framework could serve as a model in establishing a similar organisational set up for the independence of audiovisual regulatory bodies. Its rules prescribe that Member States protect national regulatory authorities (NRAs) against external intervention and political pressure which might jeopardize their independent assessment of matters coming before them, that they adopt rules regarding the grounds for dismissal of the Head of the NRA and that they guarantee that the NRAs have their own budget which is sufficient to allow them to recruit an adequate number of qualified staff.

The questionnaire, however, does not quite reflect this emphasis on the current limitations of Article 30 as the respondents were not expressly asked about their views about the possible options described in the introduction. Rather, the Consultation focuses on gathering views on various aspects of independence, as well the views on the implications of independence and its relevance for exercise of regulatory tasks. The purpose of such an approach is somewhat unclear since the background on key characteristics of independent regulatory bodies (most notably the INDIREG study) is already widely available. It is also worth highlighting that most questions were of the closed-ending type, even though Point II. 7 allowed the possibility of making “Closing Observations”.

A few regulators nevertheless provided an opinion on this matter. The Belgian CSA of the French-speaking community: *“among the options being considered by the European Commission to strengthen the independence of the regulatory bodies, the CSA believes that status quo is not an option and that a legislative option is more suitable”*.

In contrast, the German DLM pointed out in its response that the EU should make use of the **existing** legal maneuvering space and ensure active political support for media pluralism and diversity of opinion⁸.

⁸ „Im Rahmen der Medienaufsicht sollte die EU die bestehenden rechtlichen Spielräumen nutzen und die Sicherstellung von Medienpluralismus und Meinungsvielfalt aktiv politisch unterstützen.“

In its response, the National Broadcasting Council of Poland also refers to a modification of Art. 30 though this is placed in the context of a formalised cooperation platform for EU regulators: “after the Commission has proposed a new burden of Art. 30 AVMS Directive”.

4. NRAs Responses to the Questionnaire

A more detailed overview is provided as an annex to this paper.

As mentioned above, 13 European regulators responded to consultations, 11 of which directly answered to the questionnaire, 1 (LU) partially responded to the questionnaire and 1 (UK) provided a descriptive response. In their response, Ofcom set out the following:

- A. What they consider to be the principles of effective regulation which relate specifically to independent governance, accountability and funding, together with some examples of how Ofcom implements these principles (legislation underpinning Ofcom’s independent decision making, safeguards in place to ensure the independence of the Board and the Chairman, accountability, funding model);
- B. Summary of other principles of which relate to the operational independence (clear regulatory objectives set out in a code; clear and transparent processes, accessibility, powers of investigation, powers of enforcement and sanction);
- C. Observations on cooperation between European audiovisual regulatory bodies.

In addition to responding to the questionnaire, several regulators offered their views on some of the issues treated in the Consultation. Commenting generally on the subject, the German DLM underlines adequate powers, proper financial resources and the fact that only independent courts may overturn regulator’s decisions as principles that are at least formally enshrined in the independence of a regulatory body, in particular in its role of ensuring media freedom and pluralism. Independence is also deemed relevant with respect to the protection of minors and audiovisual commercial communications. As far as the convergence of media is concerned, there is an increased need for regulatory independence in the application the AVMS Directive.

I. The first part of the questionnaire concerns the issues of MEDIA FREEDOM, PLURALISM AND THE ROLE OF REGULATORY INDEPENDENCE

It is not surprising that all regulatory authorities who responded to the questionnaire consider the independence of audiovisual regulatory bodies to be either very relevant (9 respondents) or relevant (3 respondents) both for the preservation of free and pluralistic media (when applying the AVMSD) as well as for the effective transposition and application of the AVMSD (questions 1 and 2).

In question 3, respondents were asked to attach relevance of a lack of independence for the application of the following areas of AVMSD: jurisdiction, audiovisual commercial communications, promotion of European works, protection of minors and right of reply. Relevance of the independence for the application of AVMSD is perceived as most significant in the area of **audiovisual commercial communications**, with respondents marking it as either very relevant (6 RAs out of 12) or relevant (6 RAs). This proves that influences from the market players and various interest groups are perceived to have the potential to exert inappropriate influence over decision-making and pose a high risk for independence. **Protection of minors** is

high on the scale too, although two RAs do not see a lack of independence to be very relevant for the application of AVMSD in this area, possibly because this matter is not of immediate interest to either political structures or market players. Relevance of lack of independence seems to be perceived as lesser in the fields of promotion of **European works and jurisdiction** – possibly these issues are seen as more or less clearly regulated under the AVMSD. Significance of independence for the application of **right of reply** is clearly deemed as high, although three respondents did not have an opinion on this matter. This is somewhat surprising because right of reply can be, and indeed often is, a very sensitive issue in which regulatory authorities can be put under direct pressure by politicians or public figures.

Question 4 examines the link of **convergence of the media and the necessity of independence**. The majority of respondents deem that convergence of the media (greatly) reinforces the need for regulatory independence for the application of AVMSD. Interestingly, two NRAs think that it does not affect the need for independence.

Concerns over potential risks of convergence for regulatory independence do exist and not without reason: challenges that increasing convergence across media platforms currently poses for media freedom and plurality, effective competition and protection of public interest are numerous: net neutrality issues, the potential for private individuals and organisations to engage in censorship, control over access to content, to name a few. Convergence is gradually becoming more tangible and is likely to have an impact on the regulatory framework and practice – as has been acknowledged by the European Commission in its Green Paper “Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values”⁹. At the very least, as platforms and services continue to merge, the competences of NRAs for audiovisual media will inevitably intersect with other regulated sectors such as electronic commerce.

Question 5 inquires about relevance attached to specific elements of the independence of regulatory bodies (matching those identified in the INDIREG study), on the scale from “very relevant” to “not relevant”. Again, the vast majority of respondents among NRAs place great importance to all elements, but there are nevertheless some elements that are considered slightly more relevant than the others:

1. **Autonomy of decision-makers** is highlighted by all NRAs who responded to consultations as a very relevant element of independence. Within this category, “not being subject to instructions” and “dismissal conditions” are seen as more relevant than “length of term”.
2. **Financial autonomy**
3. **Status and powers and Transparency** are equally evaluated
4. **Accountability mechanisms**
5. **Knowledge**

With regard to **knowledge**, this is the only element that was considered as “not very relevant” for the independence by one regulatory authority. The aspect of knowledge, i.e. qualifications and professional expertise of staff and their relevance to independence (e.g. potential to counter asymmetric access to information, expertise as a source of resistance) is indeed a very interesting one for discussion.

Questions 6, 7 and 8 deal with cooperation between regulatory bodies

⁹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2013:0231:FIN>

The respondents consider the cooperation with their counterparts within the EU to be either very relevant or relevant in the convergent environment. In addition to challenges posed by the convergence of the media and rapid development of new technologies in which cooperation and exchange of experience may be of crucial importance, there is also a matter of cooperation with regulators from other sectors. The issues at stake here include, but are by no means limited to different cultures of regulation or the potential conflict between the aims and objectives of market and content regulation. Not least, the challenges for independence may be greater with more different (and often conflicting) interests at stake.

The experience of converged regulators may be especially beneficial for debate on these issues, such as difficulties in harmonising approaches to regulation, the problems of managing large and complex organisations, and the fact that the regulation of content becomes less central compared to the regulation of access. The experience of telecommunications regulators can have a valuable input in the evaluation of markets with the goal of ensuring media pluralism, equality of access to platforms and non-discriminatory establishment of technical standards. Broadcasting regulation should also address essential issues of democratic, cultural and social roles and responsibilities of the media with regard to content, to pluralism of voices, protection of vulnerable members of society such as minors, and promoting a culture of tolerance by restricting incitement to hatred, concepts that may need implementation across new transmission platforms or with regard to new services¹⁰.

The link between convergence of regulators and independence was already discussed at EPRA meeting in Prague in 2007. The responses from converged regulators to the questionnaire in preparation for the session indicated that converged regulatory structure does not have any significant impact on the issue of political interference. The converged regulators also had differing opinions with regard to the statement according to which a convergent regulatory structure is less likely to be exposed to the interference of market players.

Cooperation in all of the following fields is considered as very relevant or relevant, with only a slight prevalence of certain elements which resulted in the following ranking (by relevance):

- 1) Jurisdiction
- 2) Commercial communications
- 3) Protection of minors
- 4) Hate speech / Media pluralism
- 5) Media ownership

It is obvious that RAs did not necessarily evaluate the relevance of cooperation in the abovementioned fields from the point of view of ensuring independence, but perhaps rather from the point of view of which areas or regulation (when applying the AVMSD) can benefit most from the exchange of experience and best practices.

Respondents were furthermore asked to evaluate the appropriateness of three arrangements of cooperation: a voluntary gathering of competent regulatory bodies, a legally mandated gathering of competent regulatory bodies and an agency. Among the regulators, the most

¹⁰ See http://www.coe.int/t/dghl/standardsetting/media/doc/Converging%20media%20-%20converging%20regulators_en.pdf (Conclusions)

appropriate arrangement is considered to be a voluntary gathering of competent regulatory bodies. A legally mandated gathering of competent RAs seems to be less appropriate and an agency is mostly considered as not appropriate.

Several authorities further elaborated their view on possible cooperation arrangements:

- British Ofcom believes that existing mechanisms are sufficient for the exchange of information and experiences. If the purpose were to enable the formal adoption of common regulatory positions/best practices (particularly if they were intended to carry some legal weight), then some formalisation of cooperation could be warranted. Ofcom expressed belief that this is an area that merits further consideration in the context of the eventual review of the AVMSD and any role in that framework that there might be for audiovisual regulators acting collectively.
- The Greek National Council for Radio and Television supported the idea of the establishment of a European Independent Authority for the audiovisual sector, which would cooperate and supervise the national regulatory bodies.
- The Polish KRRiT expressed their full support to strengthening of multilateral cooperation between NRAs, as well as cooperation between the regulators and the European Commission. However, they pointed out that the inevitable strengthening and formalizing rules of cooperation at the EU level should not affect the principle of independence of RAs from governments, market participants and the Commission.
- The German DLM highlighted that cooperation of NRAs with the Commission already exists and functions well within a working group on EU level. Besides, EPRA provides an important network reaching beyond the EU area. Duplication of these existing mechanisms or any legally binding assembly of NRAs seems to be neither necessary nor desirable.

II. The second part of the Consultation deals with the IMPACT OF REGULATORY INDEPENDENCE (or the lack thereof) on the freedom and pluralism of the media and the markets in which they operate, as well as its economic and administrative economic implications.

Respondents agree that both media freedom and media pluralism significantly worsen because of lack of independence, whereas its impact on market conditions seems to be perceived as slightly smaller.

As far as economic implications of independence are concerned, opinions are by far not as unambiguous as in case of media freedom and pluralism. Most believe that independence either moderately increases or has no impact on economic parameters such as staffing costs, administrative costs, costs of enforcement activity, private litigation costs industrial growth, market concentration and welfare gains. One respondent even believes these are moderately decreased by independence.

On the contrary, the majority of respondents among the NRAs sees mostly positive impacts of independence on administrative issues: though it either increases or has no implications on

average procedural duration, it is seen to have mostly positive effect on effective application of the law, impartiality and public-private collaboration, whereas the majority believes that it significantly decreases responsiveness to external pressures.

III. The third part concerns the EXERCISE OF REGULATORY TASKS

The opinions on this aspect are unanimous: all respondents state that it is very relevant or essential to the independence for a regulatory authority to:

- exercise their regulatory powers without any political or other external influence
- reserve the power to overturn the decisions to a court rather than to the government
- have sanctioning powers to enforce decisions applying rules.

In this regard, it is worth mentioning that one respondent among the regulators (the Polish KRRiT) openly reported a case of political interference, pointing out that regulator's independence should not be tested by politicians under cover of parliamentary hearings and its yearly report approval:

"In 2012 four parliamentary commissions discussed 14 times one decision of the Polish regulator: the result of a contest for multiplex slots, in which Roman Catholic Television Trwam lost its bid. As the only one out of 17 contestants, TV Trwam was given multiple chances to present its case during these proceedings. The special public hearing about TV Trwam bid for digital broadcasting was organized in the European Parliament on June 5, 2012. Pressure to change the decision of KRRiT was also made by conference of Roman Catholic bishops of Poland (statements of January 2012 and October 2012). The regulator got over 2m signatures under petitions to reverse this decision.

The KRRiT decision about TV Trwam was upheld by administrative court. Notwithstanding that, four members of the regulator have been called in front of Constitutional Responsibility Commission which decides about eventually accusing them of breaking the law and putting on trial by State Tribunal.

In 2013, with opening of a new contest for slots on multiplex in which TV Trwam repeated its bid, the campaign of exerting influence on KRRiT has been continued. Two parliamentary commissions were calling members of the regulator to report about the ongoing contest; the head of the applicant station publicly accused the regulator of "setting up" the contest.

The discussions about 2013 yearly report of KRRiT to lower and upper chambers of Parliament, were devoted primarily to TV Trwam case, as in 2012."

IV. The fourth part deals with RESOURCES

Not surprisingly, adequate financial and human resources are consistently seen as very relevant for a regulator's independence.

The opinions on relevance of the sources of revenue for the regulator's independence however slightly differ. State funding is seen as very relevant or relevant, but when it comes to operator licence fees, operator turnover levies and other commercial revenue sources (e.g. advertising tax), opinions are differing and vary from very relevant to not relevant. It seems therefore that financial independence is predominantly perceived as autonomy from the state, i.e. stakes are highest in that case because there can be pressures to get politically motivated decisions from the regulator, as well as threats of inadequate financing which can undermine regulator's operational capacity. Regarding sources of revenues and their relevance for regulatory

independence, the Belgian CSA highlighted that it is important that they are stable, predictable (e.g. over a period of five years) and diversified (to avoid possible capture).

In this regard, perhaps it is worth mentioning the guidelines concerning financial independence as formulated in the Appendix to the Council of Europe Recommendation 2000(23) – Guidelines concerning the independence and functions of regulatory authorities for the broadcasting sector:

11. *Funding arrangements should take advantage, where appropriate, of mechanisms which do not depend on ad-hoc decision-making of public or private bodies.*

As pointed out in the INDIREG study, two aspects are important in assessing the funding of regulators. The first is the amount of funding itself - without sufficient finance, the broadcasting regulators cannot carry out their activities. The second is the source of funding. If funding comes exclusively from the state budget for example, this can affect the independence of the regulators. The Study concludes that a mixed funding, comprising fees levied from industry and government funding, can reduce risk potentials for dependencies and can therefore be qualified as best practice.

V. The fifth part deals with NOMINATION, APPOINTMENT & DISMISSAL OF KEY STAFF

The respondents mostly agree that all of the following is very relevant for the independence of a regulatory body:

- the nomination process of the head of a regulatory body
- the nomination procedure of the members of the decision-making body of a regulatory body
- the appointment procedure of the head of a regulatory body
- the appointment procedure of the decision-making body of a regulatory body
- the expertise of its head and decision-making bodies
- following applicable rules on conflicts of interest in the appointment and nomination procedures.

Respondents also mostly agree that, where nominations and/or appointments of members of regulatory bodies are made by Parliament, all political groups should participate in those processes. This is understandable, as it should be avoided that the interests of one or a few political options prevail. In reality, however, it is not uncommon that the political groups represented in the Parliament agree amongst themselves on the distribution of key functions in the country, while formally ensuring pluralistic participation in the nomination/appointment processes.

Interestingly, the opinions on relevance of **non-renewability of the term of office of the head and members of the decision-making body** to the independence of a regulatory body are not as undivided: only one responded consider it very relevant, five NRAs consider it relevant, two say that it is not relevant, two NRAs consider it not relevant and two do not have an opinion on relevance of non-renewability of term of office. It is perhaps worth mentioning that the issue of the renewability of the appointment, according to the theoretical overview provided in the INDIREG study, is not necessarily recognized as a safeguard of independence: on the one hand, the possibility to renew a term of office fosters the knowledge building of the regulatory body and the continuity of the regulatory practice. On the other hand, the possibility of renewal

provokes informal influence potentials through the person or body responsible for reappointment as members of the regulatory body are most likely eager to be reappointed.

The relevance of **staggered appointment**, i.e. spreading the appointment of the members of the regulatory body over several time periods (rather than exchanging all of them at once) for the independence of a regulatory body is also perceived differently: two respondents think it is very relevant, six NRAs agree that it is relevant, one thinks it is not very relevant, two say that it is not relevant, whereas one NRA does not have an opinion. Indeed, the INDIREG study points out that the significance of the staggered term of office for independence and efficient functioning is contradictory. On the one hand, a rotation within the board can prevent the board from reflecting political majorities and thereby increase its independence and efficient functioning. On the other hand, it can be detrimental to the consistency of the decision making processes within the board and therefore impair the efficient functioning of the board.

The majority of regulators (9 of 11 who answered this question) think that **Parliament** should have the right to dismiss the head of a regulatory body. However, two NRAs (GR and DK) answered that right should be reserved for the **Court**.

Similarly, 8 out of 11 NRAs believe that Parliament should have the right to dismiss the (members of the) decision-making body, whereas three (GR, DK and FI) think it should be done by the Court. Interestingly, the INDIREG study mentions under best practices that the power of dismissal of board members should be given to the regulatory body itself or to the judiciary¹¹.

Finally, all respondents but one agree that the grounds of dismissal applicable to the head of a regulatory body and the members of its decision-making body should be limited to non-fulfilment of the conditions defined in advance by law for the performance of professional duties.

VI. The sixth and final part deals with RESPONSIBILITY

All respondents agree that transparency and accountability for the exercise of its tasks are an essential condition for a regulator's independence. As pointed out during debates on the topic of independence at earlier EPRA meetings, transparency and accountability are particularly important to media regulators because of their potential to safeguard independence by enhancing public trust, particularly that of the regulated industry and the citizens.

¹¹ INDIREG Final Report, p. 363:
http://ec.europa.eu/avpolicy/docs/library/studies/regulators/final_report.pdf

5. Summary and Conclusions

The overview of NRAs responses to Commission's Consultations clearly indicates that independence is seen as a highly important and relevant aspect of efficient functioning and exercise of regulatory tasks, including the ones resulting from the application of the AVMSD. Regulators strongly agree that a lack of independence may have a devastating effect on the freedom and pluralism of the media and the market conditions. When asked about economic or administrative implications, the opinions are very differing and do not seem to indicate a trend. Economic or administrative implications such as increased costs should therefore not be used as a prevailing argument in a debate on independence, unlike the arguments of protecting media freedom, pluralism and public interest. The responses furthermore confirm relevance of the following key elements of independence: exercise of powers without interference, adequate financial and human resources, autonomy of decision-makers, as well as transparency and accountability mechanisms. The issue that is perhaps of most relevance to NRAs in this context – and the one that could have had the most tangible results, namely possible options for overcoming the limitations of Article 30, however was not expressly addressed in the questionnaire.

The number of respondents among regulators was quite low, but this should not to be interpreted as a lack of interest in this subject. Information on exact reasons for not participating in the consultations might be useful for further debate on the issue, whether indicating distance from policy-level issues or simple scepticism.

Apart from the above – mostly already widely acknowledged – conclusions on the relevance of independence and its key aspects, there is little else substantial to be concluded from the overview of NRAs responses to Commission's Consultation. The Consultation also enquired about views on formalizing the cooperation between audiovisual regulatory bodies. The debate on cooperation has already resulted in the establishment of the Group of European Regulators for audiovisual media services (ERGA) which was formally established by a Decision of the European Commission on 3 February 2014, with the main objectives *to advise and assist the Commission in its work, to ensure a consistent implementation of the AVMSD as well as in any other matters related to audiovisual media services within the Commission's competence; to facilitate cooperation between the regulatory bodies in the EU, as provided for in the directive regulating audiovisual media services; to allow for an exchange of experience and good practices.*

Almost a year afterwards, the debate about measures for strengthening independence is still open. So far, the results of the Consultation have not been summarised nor been made public and it remains to be seen whether and how the Commission's clearly expressed intention of overcoming the limitations of Article 30 will evolve. The key [Conclusions](#) on media freedom and pluralism in the digital environment of the Council of the European Union were silent on this point – even though among other measures, the Council invited the Member States to: "*18. ensure the independence of their audiovisual regulatory authorities*".

The strengthening of cooperation is without doubt a very positive development, the one that will probably ensure better coordination of activities in the audiovisual sector at the EU level. In fact, independence of NRAs will be included in the ERGA's Annual Work Programme. Also, EPRA

will continue its work on independence at the next meeting in Tbilisi In October 2014, focusing on tools and practices.

However, the issue of independence and the very much needed strengthening of mechanisms to safeguard it, which seemed to be at the forefront of the consultation, remained unanswered. Will national regulatory authorities finally be given a sound mechanism to ensure their independence or is the stronger cooperation with their counterparts all they have been left with?

Annex – Overview of NRA responses to the Questionnaire

II. QUESTIONS REGARDING THE INDEPENDENCE OF AUDIOVISUAL REGULATORY BODIES

II.1 MEDIA FREEDOM, PLURALISM AND THE ROLE OF REGULATORY INDEPENDENCE

1. In your view, how relevant is the independence of audiovisual regulatory bodies for the preservation of free and pluralistic media when applying the Audiovisual Media Services Directive?

- Very relevant BA, IE, DK, LV, RO, FI, PT, BE, LU
- Relevant GR, PL, DE
- Not very relevant
- Not relevant
- No opinion

2. How relevant do you consider the independence of audiovisual regulatory bodies for the effective transposition and application of the Audiovisual Media Services Directive?

- Very relevant BA, IE, DK, LV, RO, FI, PT, BE, LU
- Relevant GR, PL, DE
- Not very relevant
- Not relevant
- No opinion

3. In your view does a lack of independence of audiovisual media regulatory bodies cause problems for the application of the Audiovisual Media Services Directive in any of the following areas:

	Very relevant	Relevant	Not very relevant	Not relevant	No opinion
Jurisdiction	GR, IE, FI, BE, LU	BA, DK, PT, DE	PL	LV, RO	
Audiovisual commercial communication (including television advertising, teleshopping etc.)	GR, BA, IE, RO, FI, BE	DK, LV, PL, PT, DE, LU			
Promotion of European works	GR, IE, BE	BA, LV, PL, FI, PT, DE	DK, RO, LU		
Protection of minors	GR, IE, BE, LU	BA, LV, PL, FI, PT, DE	DK, RO		
Right of reply	GR, BA, IE, DK, RO	LV, PL, PT, DE			FI, BE

4. In your view, how does convergence of the media affect the necessity of regulatory independence for the application of the AVMSD?

- o Greatly reinforces the need for independence GR, BA, IE, LV, PT, BE
- o Reinforces the need for independence DK, PL, DE, LU
- o Slightly reinforces the need for independence
- o Does not affect the need for independence RO, FI
- o Reduces the need for independence
- o No opinion

5. Overall, what relevance do you attach to the following elements for the independence of regulatory bodies?

	Very relevant	Relevant	Not very relevant	Not relevant	No opinion
Status and powers	GR, BA, IE, LV, RO, FI, PT, BE, DE	DK, PL			
Financial autonomy	GR, BA, IE, LV, RO, PL, FI, PT, BE, DE; LU	DK			
Autonomy of decision-makers	GR, BA, IE, DK, LV, RO, PL, FI, PT, BE, DE, LU				
Not being subject to instructions	GR, BA, IE, DK, LV, RO, FI, PT, BE, DE	PL			
Dismissal conditions	GR, BA, IE, DK, LV, RO, FI, PL, BE, DE	PT			
Length of term	GR, BA, IE, RO, FI, BE	DK, LV, PL, PT			DE
Knowledge	GR, BA, IE, DK, LV, FI, DE	RO, PT, BE, LU	PL		
Transparency	GR, BA, IE, DK, LV, RO, FI, PT, DE, LU	PL, BE			
Accountability mechanisms	GR, BA, IE, DK, LV, RO, FI, BE	PL, PT, DE, LU			

6. Do you think that it is relevant in the convergent environment for audiovisual regulatory bodies to cooperate with their counterparts within the EU when acting within the scope of the AVMSD?

- o Very relevant GR, BA, IE, DK, LV, RO, PT, BE
- o Relevant PL, FI, DE, LU
- o Not very relevant
- o Not relevant
- o No opinion

7. If you considered cooperation between regulatory bodies in question 6 either as 'relevant' or 'very relevant', do you consider cooperation in the following fields:

	Very relevant	Relevant	Not very relevant	Not relevant	No opinion
Jurisdiction	GR, BA, IE, DK, LV, RO, PL, PT, BE, LU	FI, DE			
Protection of minors	GR, BA, IE, LV, RO, PL, LU	DK, PT, BE, DE			FI
Hate speech	GR, BA, IE, LV, PL, LU	DK, RO, PT, BE, DE			FI
Commercial communications	GR, BA, IE, LV, RO, PT, BE	DK, PL, FI, DE, LU			
Media pluralism	GR, BA, IE, LV, BE	DK, RO, PL, PT, DE, LU			FI
Media ownership	GR, BA, IE, LV, PT, BE	RO, PL, DE, LU			DK, FI

8. If you considered cooperation between regulatory bodies in question 6 either as 'relevant' or 'very relevant', how appropriate would you consider the following arrangements to enable cooperation between regulatory bodies?

		Very appropriate	Appropriate	Not very appropriate	Not appropriate	No opinion
A voluntary gathering of competent	At EU level	IE, DK, LV, RO, LU	GR, FI, PT, BE, DE		BA	
	At pan-European level	BA, LV, BE, LU	GR, IE, DK, PT, DE	RO		FI

regulatory bodies						
	At international level		GR, IE, LV, RO, PT, BE, DE, LU	BA, DK		FI
		Very appropriate	Appropriate	Not very appropriate	Not appropriate	No opinion
A legally mandated gathering of competent regulatory bodies	At EU level	GR, RO, BE	IE, FI	DK, PT	BA, LV, DE	
	At pan-European level	GR	RO, BE	BA, IE, DK, PT	LV, DE	FI
	At international level		GR, RO	IE, DK, PT	BA, LV, BE, DE	FI
An agency	At EU level	GR	PT	RO	BA, IE, DK, LV, BE, DE	FI
	At pan-European level	GR	PT	RO	BA, IE, DK, LV, BE, DE	FI
	At international level		GR, PT		BA, IE, DK, LV, RO, BE, DE	FI

II.2 IMPACT OF REGULATORY INDEPENDENCE

9. In your view, what is the impact of a lack of independence of regulatory bodies when acting within the scope of the AVMSD on the freedom and pluralism of the media and the markets in which they operate?

	Significantly improve	Moderately improve	No impact	Moderately worsen	Significantly worsen	No opinion
Media freedom					GR, BA, IE, DK, LV, RO, PL, PT, BE, DE	FI

Media pluralism					GR, BA, IE, DK, LV, RO, PL, PT, BE, DE	FI
Market conditions			DK	IE, PT	GR, BA, LV, RO, PL, BE, DE	FI

10. In economic terms, the independence of regulatory bodies may produce specific benefits and costs linked to the direct execution of their tasks and to the results that this produces. In your view, what economic implications does the independence of regulatory bodies have on the dimensions listed in the left-hand column when acting within the scope of the AVMSD?

	Significantly increase	Moderately increase	No implications	Moderately decrease	Significantly decrease	No opinion
Staffing costs		GR, DK, LV, RO, PL, PT, DE, LU		BE		BA, IE, FI
Administrative costs	RO	GR, DK, LV, DE, LU	PL, PT	BE		BA, IE, FI
Costs of enforcement activity	LV	GR, RO, LU	DK, PL, PT, DE	BE		BA, IE, FI
Private litigation costs		GR, LV	DK, RO, PL, PT, DE	BE		BA, IE, FI
Industrial growth	BA, DE	GR	DK, LV, RO, PT			IE, PL, FI, BE
Market concentration	BA, LV	GR, PT	DK, RO, PL	BE	DE	IE, FI
Welfare gains	DE	BA, BE	DK, LV, PT			GR, IE, RO, PL, FI

11. In your view, what administrative implications does the independence of regulatory bodies have when acting within the scope of the AVMSD on:

	Significantly increase	Moderately increase	No implications	Moderately decrease	Significantly decrease	No opinion
Average procedural duration	PL	DK, LV, RO	GR, BA, PT, BE			IE, FI, DE
Effective application of the law	BA, DK, LV, RO, PL, FI, BE, DE		GR, PT			IE
Impartiality	BA, DK, LV, RO, PL, FI, BE, DE, LU		GR, PT			IE
Responsiveness to external pressures	BA		GR, RO, PT		DK, LV, PL, FI, BE, DE	IE
Public-private collaboration (between regulatory bodies, industry and other stakeholders)	LU	BA, LV, PL, FI, PT, BE	GR, RO			IE, DK, DE

II.3 EXERCISE OF REGULATORY TASKS

12. In your view, how relevant is it for audiovisual regulatory bodies to exercise their powers without any political or other external influence when acting within the scope of the AVMSD?

- Very relevant GR, BA, IE, DK, LV, RO, PL, FI, PT, BE, DE, LU
- Relevant
- Not very relevant
- Not relevant
- No opinion

13. Do you consider that reserving the power to overturn the decisions to a court rather than to the government is essential to the independence of an audiovisual regulatory body?

- Yes GR, BA, IE, DK, LV, RO, PL, FI, PT, BE, DE, LU
- No
- No opinion

14. In your view, are sanctioning powers to enforce decisions applying rules addressed to the audiovisual media a defining element of the regulator's independence?

- Yes GR, BA, IE, DK, LV, RO, PL, FI, PT, BE, DE, LU
- No
- No opinion

II.4 RESOURCES

15. In your view, how relevant are adequate financial resources for a regulator's independence?

- Very relevant GR, BA, IE, DK, LV, RO, PL, FI, PT, BE, DE, LU
- Relevant
- Not very relevant
- Not relevant
- No opinion

16. How relevant are adequate human resources for a regulator's independence?

- Very relevant GR, BA, IE, DK, LV, RO, FI, PT, BE, DE, LU
- Relevant PL
- Not very relevant
- Not relevant
- No opinion

17. In your view, what is the relevance of the sources of revenue for the regulator's independence?

	Very relevant	Relevant	Not very relevant	Not relevant	No opinion
State funding	BA, DK, LV, PT, DE	GR, IE, RO, PL, BE, LU			FI
Operator licence fees	BA, RO	IE, LV, PL, BE, LU	PT, DE	GR, DK	FI
Operator turnover levy		IE, LV, RO, PT, BE	BA, DE	GR, DK	PL, FI
Other commercial revenue sources (such as an		IE, LV, RO	BA, DE	GR, DK	PL, FI

advertising tax)					
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II.5 NOMINATION, APPOINTMENT & DISMISSAL OF KEY STAFF

18. In your view, how relevant is the nomination process of the head of a regulatory body for its independence?

- Very relevant GR, BA, IE, DK, LV, RO, PL, PT, BE, LU
- Relevant FI, DE
- Not very relevant
- Not relevant
- No opinion

19. In your view, how relevant is the nomination procedure of the members of the decision-making body of a regulatory body for its independence?

- Very relevant GR, BA, IE, DK, LV, RO, PL, PT, BE, LU
- Relevant FI, DE
- Not very relevant
- Not relevant
- No opinion

20. In your view, how relevant is the appointment procedure of the head of a regulatory body for its independence?

- Very relevant GR, BA, DK, LV, RO, PL, PT, BE, LU
- Relevant IE, FI, DE
- Not very relevant
- Not relevant
- No opinion

21. In your view, how relevant is the appointment procedure of the decision-making body of a regulatory body for its independence?

- Very relevant GR, BA, IE, DK, LV, RO, PL, PT, BE, LU
- Relevant FI, DE
- Not very relevant
- Not relevant
- No opinion

22. In your view, how relevant for the independence of a regulatory body is the expertise of its head and decision-making bodies?

- Very relevant GR, BA, IE, DK, LV, RO, PL, PT, BE, DE, LU
- Relevant FI
- Not very relevant
- Not relevant
- No opinion

23. Where nominations and/or appointments of members of regulatory bodies are made by Parliament, do you consider that all political groups should participate in those processes?

- Yes GR, BA, IE, DK, LV, RO, PL, PT, BE, DE, LU
- No
- No opinion FI

24. In your view, how relevant for a regulator's independence is following applicable rules on conflicts of interest in the appointment and nomination procedures?

- Very relevant GR, BA, IE, DK, LV, RO, PL, PT, BE, LU
- Relevant FI, DE
- Not very relevant
- Not relevant
- No opinion

25. How relevant do you consider non-renewability of the term of office of the head and members of the decision-making body to the independence of a regulatory body?

- Very relevant PT
- Relevant GR, BA, RO, PL, LU
- Not very relevant IE, LV
- Not relevant DK, DE
- No opinion FI, BE

26. How relevant do you consider spreading the appointment of the members of the regulatory body over several time periods (rather than exchanging all of them at once) for the independence of a regulatory body?

- Very relevant RO, BE
- Relevant GR, BA, LV, PL, PT, LU
- Not very relevant IE
- Not relevant DK, DE
- No opinion FI

27. In your opinion, who should have the right to dismiss the head of a regulatory body?

- Parliament BA, IE, LV, RO, PL, FI, PT, BE, LU
- Minister
- Court GR, DK
- Citizens

28. In your opinion, who should have the right to dismiss the (members of the) decision-making body of a regulatory body?

- Parliament BA, IE, LV, RO, PL, PT, BE, LU
- Minister
- Court GR, DK, FI
- Citizens

29. In your opinion, should the grounds of dismissal applicable to the head of a regulatory body and the members of its decision-making body be limited to non-fulfillment of the conditions defined in advance by law for the performance of professional duties?

- Yes GR, BA, IE, DK, LV, RO, PL, PT, BE, DE
- No
- No opinion FI

II.6 RESPONSIBILITY

30. In your view is transparency of the exercise of its tasks an essential condition for a regulator's independence?

- Yes GR, BA, IE, DK, LV, RO, PL, FI, PT, BE, DE, LU
- No
- No opinion

31. In your view is accountability for the exercise of its tasks, for example through a recurrent reporting obligation, an essential condition for a regulator's independence?

- Yes GR, BA, IE, DK, LV, RO, PL, FI, PT, BE, DE, LU
- No
- No opinion