



**40th EPRA Meeting
Tbilisi - 8-10 October 2014**

Working Group 2

Independence of NRAs: Tools and Best Practices

Summary of the WG

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The second meeting of the [yearly Working Group on Independence of Regulatory Authorities](#) addressed different practices and experiences concerning actual, de facto independence of regulators, in particular work processes, accountability and transparency.

The independence of NRA is a recurring issue on the EPRA agenda and one that EPRA is always coming back to, proving the importance of the continuous exchange of experiences and practices related to strengthening independence beyond the legal obligations.

The Working Group session opened with a [keynote address by Dr. Kristina Irion](#) of the University of Amsterdam, who was part of the team that conducted the [INDIREG study](#) and developed indicators for assessing NRA independence.

She provided an overview over methods to assess the de facto independence of NRAs and outlined the findings of the INDIREG stakeholder survey. She also elaborated on the role of accountability in supporting independence, highlighting a significant positive correlation between transparency/accountability and impartial regulation found in the INDIREG study.

Among other things she highlighted that independence is not an end in itself but a means for ensuring that the regulator performs the decision-making process meeting the normative requirements for which the independence of the regulator is called for. De-facto independence is shaped by a complex chain of aspects, from statutory provisions granting independence to behavioural patterns demonstrating independence and policy decisions. It is an acquired property that needs time to build.

The keynote address was followed by a panel of three EPRA members: *Johanna Fell* (DLM/BLM - DE), *Maria Borkowska* (KRRIT - PL) and *Frédéric Riehl* (Swiss OFCOM).

Ms. Fell stressed some crucial elements of independence from the perspective of the German regulators such as a stable funding model to ensure sustainability and secure fulfilling the mission independently from financial pressure. Furthermore, it is important to offer maximum transparency to those on whose behalf the RA acts (the public) through mechanisms such as holding decision-making meetings in public.

Ms. Borkowska elaborated on some examples which clearly undermined the independence of the Polish regulator such as legislative amendments of the appointment rules without any prior debate and made within emergency procedures. She talked about what a regulator can do, whereas there are situations especially in case of strong political pressure (over-night changes of legislation) when a RA cannot do much while in other cases RA practices can contribute to trust in the institution by ensuring efficiency, drafting strategies and plans to give predictability of actions, conduct and report on consultations.

Mr Riehl presented the Swiss model which is quite specific and includes two authorities, the Independent complaints authority which is formally independent and the other, OFCOM, which is part of the Swiss “governmental structure”. He highlighted that this model works for Switzerland and its particular structure and political context, however it might not work in other environments.

In the debate about what we as regulators can do, several good practices were highlighted such as the British Ofcom’s self-imposed informal transparency measure, namely the "purdah rule" applied in the licensing and spectrum award procedures in order to make sure that procedures are not compromised.

The discussion with the panellists and the audience resulted in several conclusions:

- regulatory authorities need time to establish traditions and build reputation; changes take time;
- the human factor is important: it takes not only professional quality but also personal integrity in order to sustain the pressure and endure influence;
- informal means of influence will always exist; it is important to be constantly aware of them and to have processes that are as transparent as possible;
- the media industry is changing and so should the regulators in order to be partners to the industry and the audience alike. Every so often, we should step back and reflect and define what we want to be;
- a culture of independence should be in place, both external (all other stakeholders should understand and respect it) and internal (it should be part of the awareness of NRA members);
- discussions about independence should be kept high on the agenda;
- indicators developed by the Indireg and other studies should be creatively used.

Finally, Francesco Sciacchitano from Agcom as the coordinator of the [ERGA Sub-group on the independence of regulatory authorities](#) informed the Working group about the proposal to adopt a high-level statement on the independence of RAs and invited members to support these efforts as a sign of our clear commitment to this issue.

Lejla Dervišagić of the Council of Europe provided an update on the regional project “Promoting freedom of expression and information and freedom of the media in South-East Europe¹”, announced that a study of the independence of the Albanian Audiovisual Media Authority (AMA) was currently underway and expressed the Council of Europe’s readiness to assist other member states to conduct similar assessments.

¹ http://www.coe.int/t/dghl/cooperation/media/projects/project_JP_SEE_en.asp