

ERGA statement on the independence of NRAs in the audiovisual sector

The independence of regulatory bodies in the communications sectors is key to their effectiveness, supporting the fulfillment of their role to protect the interests of citizens and consumers and, at the same time, to ensure a predictable and dynamic competitive environment in their sectors. At a high level, regulators should be able to carry out their regulatory tasks without direction or interference from political or commercial interests.

In the audiovisual field, in particular, the principle of independence is central to enable regulators to have effective oversight of the sector and to carry out their regulatory functions efficiently in areas covered by the European audiovisual framework such as audience protection, including the protection of minors, freedom of expression, diversity, pluralism and other areas such as media ownership.

Although the Audiovisual Media Services (AVMS) Directive does not explicitly require Member States to set up an independent regulatory body, or define the terms of this independence, ERGA notes that Recital 94 and Article 30 of the same Directive presume that the regulatory entities responsible for implementing its provisions are “independent regulatory bodies”.

Recognizing the differences in constitutional systems in the EU and the variety of institutional and organizational set-ups among the audiovisual regulators of the Member States, ERGA would welcome the identification, at European level, of common characteristics that any independent regulator in our sector should be equipped with. Based on regulatory best practice in related sectors, such characteristics could include: independence both from private parties (including regulated entities) and public authorities; transparent decision-making processes and accountability to relevant stakeholders; open and transparent procedures for the nomination, appointment and removal of Board Members; knowledge and expertise of human resources; financial, operational and decision making autonomy; effective enforcement powers; availability of dispute resolution mechanisms; the possibility only for judicial power to review the NRAs’ decisions.

ERGA would ask the European Commission, as the initiator of European legislation, to take these considerations and the following work into account in the context of the upcoming REFIT exercise of the AVMS Directive. The Group will continue the analysis of the characteristics of independence in the light of the existing studies and

the experiences of regulatory authorities and it will present the results to the European Commission.