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Audio-visual media: what regulation for a new landscape?

Introductory Discussion Paper

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Audio-visual media regulation is responding to another convergence debate, this time about the impact of new Internet-based services (mostly provided by so-called 'Over the top' or OTT providers) on audio-visual media regulation. In its 2013 Green Paper "Preparing for a Fully Converged Audio-visual World: Growth, Creation and Values",[2] the Commission has envisaged a fundamental review of audio-visual media regulation.

This CERRE Executive Seminar explores substantive and institutional issues raised in this review exercise. The present paper picks up some of the main issues from the Green Paper, together with the results from the consultation.[3] It aims to provide background information and spur the discussion.

Audiovisual media, public policy and EU law

The audiovisual media sector has always been at the intersection of a number of policy concerns. First of all, audiovisual media plays a role in cultural and social life, whether it reflects, documents or even drives it. Yet other media forms – books, fine arts, performances – also play a similar role. What always made audiovisual media special is the power that came with distribution through broadcasting, whereby a mass audience is reached simultaneously and unidirectionally. That peculiar impact – at collective and individual level – flowing from the combination of socio-cultural significance and the immediacy of broadcasting, provided a justification for public intervention to regulate broadcasting.

At the same time, audiovisual media also involve economic activity, throughout the long chain running from creation to distribution. Accordingly, they are also affected by core EU policies, namely

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[2] COM (2013) 231 (24 April 2013).
[3] As reflected in the document "Summaries of the replies to the public consultation launched by the Green Paper 'Preparing for a Fully Converged World: Growth, Creation and Values'", available at ec.europa.eu/digital-agenda/en/news/publication-summaries-green-paper-replies.

the internal market and competition law. The exception for Services of General Economic Interest at Article 106(2) TFEU has long been applied to audiovisual media in order to find a balance between these sometimes-conflicting policy objectives.

The Television Without Frontiers (TWF) Directive, when adopted in 1989, offered a textbook example of how to reconcile national policy objectives with the internal market.[4] It enshrined one of the cleanest home-country-control (country-of-origin) regimes, whereby Member States committed to the free movement of broadcasting signals. In return, Member States agreed to supervise broadcasters under their jurisdiction pursuant to a harmonised public policy framework, whose main themes were European content, advertising and the protection of minors (to which events of major importance to society were added later).

Television Without Frontiers provided the backdrop in EU law to the major changes experienced in audiovisual media in the 1990s, where most Member States allowed private broadcasters to compete with existing public service broadcasters, and pay-TV became a significant new model of content distribution.

The limitations of the TWF regulatory scheme became apparent in the 2000s. As it was conceived, TWF was closely linked to a specific technological and business model, namely the offering of audiovisual media content in a programme format, to be broadcast over a traditional terrestrial TV network, cable or satellite. Furthermore, TWF was based on command-and-control, resulting in a fairly detailed set of rules to be applied to broadcasters, and a lack of detail on institutional aspects.

Substance of audiovisual media regulation: back to the fundamentals

The end of technological silos and the survival of legal pigeonholes

Successive waves of convergence broke apart the technological and economic 'silo' of broadcasting. They were accounted for in EU law, but not in a way that fully internalised the impact of the changes that the audiovisual media sector was undergoing. At the start of the 20th century, the 2002 reform of EU electronic communications regulation brought all networks under a single regulatory framework. It also introduced the distinction between 'networks' or 'transport' as opposed to 'content', i.e. what is carried over the networks. Content regulation was expressly left outside of the 2002 framework.[5] And so it was that TWF became 'content regulation', together with the E-commerce Directive.[6]

[4] Directive 89/552 of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (Television Without Frontiers Directive) [1989] OJ L 298/23.

[5] Directive 2002/21 of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) [2002] OJ L 108/33, Rec. 5, Art 1(3) and 2(c).

[6] Directive 2000/31 of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) [2000] OJ L 178/1.

In 2007, after a long review process, TWF was significantly amended, and even renamed to become the Audiovisual Media Services Directive (AMSD).[7] The aim of the review exercise was to adapt the directive to the new social and economic reality, where much audiovisual media content is made available to viewers outside of the traditional broadcasting channels. Despite all the discussion, the outcome remains underwhelming. The approach chosen by the Commission was to introduce a new category of 'on-demand' (or non-linear) services, next to broadcasting, and put them both under the umbrella category of 'audiovisual media services'. Broadcasting regulation was extended and transposed, as far as possible, to these new non-linear services. Accordingly, during the review exercise, most energies were dedicated not to reconsidering the appropriateness and the manner of regulation in a converged environment, but rather to chisel away at the definition of 'broadcasting' (or linear) and 'on-demand' (or non-linear) audiovisual media services in order to position certain services within one or the other box, or outside of them altogether.[8]

The result is an intricate system of pigeonholes, whereby services are supposed to fall under one and only one of the following: 'electronic communications services',[9] 'Information Society services' (falling under the e-commerce Directive)[10] or 'audiovisual media services' (the latter being further subdivided into 'linear' and 'non-linear' services).[11] Considering the rapid rate of innovation in this sector, such a pigeonholing approach can only hamper the development of the sector by forcing firms to navigate around the definitions to seek the preferred regulatory regime, instead of simply ensuring that their activities are in line with public policy objectives as they may be articulated in regulation. For instance, the regulatory treatment of major current issues, such as network neutrality, would be greatly improved if the tools of economic regulation developed in the EU framework for electronic communications – first and foremost the SMP procedure – could also be used at the 'content' level.

Indeed the audiovisual media sector is subject to the same challenge from innovative newcomers as, for instance, the taxi or hotel sectors, from firms like Uber or Airbnb. A purely repressive approach cannot work in the long run. The newcomers provide more than just innovative offerings for consumers; from a policy perspective, they also break down the technological models than underpin law and regulation, thereby creating the perceived loss of regulatory 'bite'. Typically, whereas the traditional environment involved relatively stable technology, with some bottlenecks on which public authorities could attach regulation, the new environment is characterised by innovation and a lack of clear technological 'attachment points' for regulation. In the heyday of TWF, even after the changes in the 1990s, Member States were still able to effectively apply regulation, since they typically faced a two-digit number of broadcasters, with a single-digit number of distribution networks on any given territory. Now, in contrast, they must contend with a quasi-limitless number of content producers

[7] The amendments were made by Directive 2007/65 [2007] OJ L 332/27. The directive has now been recast as Directive 2010/13 of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) [2010] OJ L 95/1.
[8] Directive 2010/13, ibid., Art. 1(a), (e) and (g), as well as Directive 2007/65, ibid., Rec. 16-25.
[9] Directive 2002/21, supra, Art. 2(c).
[10] Directive 2000/31, supra, Art. 2(a).
[11] Directive 2010/13, supra, Art. 1(a).

distributing via various Internet channels, and with a fairly limited ability to exert regulatory control at network level. What is more, many of the newcomers are not really within the jurisdictional reach of Member States; accordingly, the fulfilment of regulatory objectives might increasingly depend on co-regulation or even self-regulation.

It is against that background that the Commission finally went into a more fundamental review exercise in 2013, with its Green Paper "Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values".[12] The Green Paper does not shy away from the basic questions about whether policy objectives are appropriate and realistic.

The basic regulatory approach – Country-of-origin principle

As mentioned above, the TWF/AVMS directive is based on the country-of-origin principle. The directive contains jurisdictional rules designed to ensure that every provider of audiovisual media services is subject to the jurisdiction of one and only one Member State. The location of the head office and the editorial decisions are the guiding criteria to establish jurisdiction.[13] Each Member State is then in charge of enforcing the harmonised content regulation found in the directive as against the providers under its jurisdiction.[14] In return, other Member States may not hinder the cross-border transmission of audiovisual media services within the EU, save in very narrow circumstances (for broadcasting) or in limited circumstances (for on-demand services).[15] The country-of-origin principle, as embodied in the directive, follows directly from the basic principles of positive harmonisation in the EU internal market.

At the same time, a country-of-origin system was politically acceptable to Member States because it was technologically feasible. As mentioned above, the technological model of broadcasting – as a point-to-multipoint, one-directional, simultaneous distribution model – made it easy to attach regulation to the source, i.e. the point where content is originated for broadcasting (the broadcasting firm). In addition, other networks used to retransmit broadcasts – cable and satellite – were also limited in number, and following a point-to-multipoint model as well, so that there was a safety valve in case regulation of broadcasters failed. This model has now crumbled, with the distribution of content over the Internet: for instance, the jurisdictional rules have a serious gap, in that providers of content over the Internet whose head office is located, and whose editorial decisions are taken, outside the EU will escape the jurisdiction of any Member State.

From a technological perspective, it is more efficient and effective to attach regulation to a bottleneck somewhere in the production and distribution chain, since this is the location where the number of firms to regulate is likely to be the lowest, and where those firms are likely to be the most visible. In addition, in keeping with the principle of technological neutrality, the locus of regulation should be defined in such a way as to be adaptable to technological change and not to pre-empt technology choices. Hence the reliance on Significant Market Power (SMP) in electronic

[12] COM(2013) 231 (24 April 2013).
[13] Directive 2010/13, supra, Art. 2(2) to 2(5).
[14] Ibid., Art. 2(1).
[15] Ibid., Art. 3.

communications regulation, an *economic* concept which is applicable to differing technological environments. While the application of the SMP regime to content regulation as well would help to deal with a number of pressing policy concerns – including network neutrality – many of the policy objectives pursued by the AVMS directive are not really dependent on the presence of SMP.

If one explores technology-neutral *functional* concepts instead, the two most obvious candidates are the source and the recipient; irrespective of the technology used, audiovisual media content always flows from a source and ends up with a recipient.

As was explained above, attaching regulation at the *source* is no longer practicable, given that the number of sources of audiovisual media content is exploding, and that many, if not most, of them escape the jurisdiction of EU Member States.

Attaching regulation on the *recipient* side (i.e. next to the user) would of course represent a major break from the country-of-origin principle, and could be seen as a step backwards for the internal market. Still, audiovisual media regulation would not be alone: electronic communications regulation remains based on the host-country principle, and the remaining SMP regulation is clearly attached to entities which are close to the recipient (termination network operators and local network providers). In practice, for audiovisual media services, attaching regulation to the recipient side would mean either relying on user-controlled tools (filters, etc.) or imposing obligations on the firms whose networks complete the delivery of audiovisual media content directly to the user (the ISPs, as well as the cable, terrestrial and satellite broadcasting networks). These firms are relatively few in number in each Member State. At the same time, compelling them to enforce content regulation would put them in a contradictory position as regards a number of established and emerging policy principles: under the e-commerce Directive,[16] 'mere conduits' are not liable for matters relating to content; furthermore, should any network neutrality rule appear in EU law, ISPs would presumably be compelled not to distinguish between the various content, services and applications running over its networks.

An alternative suggestion, which came up in the replies to the Commission consultation, is to shift the regulatory onus to 'platform providers'. The concept of a platform can be defined in a technology-neutral manner, using the literature on two-sided markets.[17] A platform would be a service which seeks to bring together two or more market sides (users, content providers, advertisers, etc.), and which relies on a feedback loop between indirect network effects from the two sides (i.e. the greater the number of users, the more attractive the platform becomes for content providers, and *vice versa*). Platforms can arise at various levels down the production and distribution chain, and the definition is sufficiently general to accommodate many technologies, from on-line retailing platforms (iTunes, Amazon) to search engines (Google) and distribution platforms (Netflix), also including more classical programming platforms (cable providers, etc.). Given that platform operators rely on network effects, the number of platforms is bound to be limited once network effects play out fully. Not all platforms will necessarily fall under the jurisdiction of a Member State;

[16] Directive 2000/31, supra, Art. 12.
[17] Including the seminal work of the 2014 Nobel Prize laureate, Jean Tirole.

however given the size of the leading platforms, it is difficult to operate them without having any presence in the EU at all.

We have looked at the basic question of how and whom to regulate; of course, that discussion is only meaningful if regulation is justified.

Securing the production and the availability of distribution outlets for quality European content

One of the main objectives of EU audiovisual media policy has always been to ensure that quality European content is produced and distributed to EU viewers. Broadly speaking, the objectives were pursued through two different policy avenues.

First of all, Member States and the EU itself have provided direct support to the production and distribution of quality European audiovisual content. This is done through various support measures for the production of such content.[18] More significantly, all Member States created, and maintain, a public service broadcaster, whose mission always includes the production and distribution of quality European content. Public service broadcasters in the EU typically receive public support, either directly from the State treasury, or indirectly via a system of compulsory viewer license fees.

Secondly, the EU also imposed regulation designed to foster the production and distribution of European content, by requiring broadcasters to dedicate the majority of their programming time to European productions;[19] non-linear audiovisual media providers are subject to a weaker obligation.[20]

After examining whether supporting measures are still needed, we will look at each of these two policy avenues in turn.

The need for supporting measures

In principle, given the strength and vitality of culture in Europe, there should be enough interest for European content, and enough resources available to produce it. The main argument for supporting measures has always been relative: the production of non-European content (mostly American) has typically been amortised on its home market, and such content can hence be distributed in Europe at very low prices. European content is put at a competitive disadvantage and risks being displaced by non-European content, with the attendant impact on the self-perception of European society and culture. Support measures would then help to keep European content in the running. At the same time, competition cases and policy documents insist on the significance of *premium content* to attract users. Such premium content includes essentially major sport events and blockbuster movies and TV series; no price undercutting takes place on such content, quite to the contrary. As for sport events, European audiences seem to prefer European sports, leaving European audiovisual media providers in a favourable position. Blockbuster movies and TV series, on the other hand, tend to be a US stronghold.

[18] In keeping with EU State aid rules, as far as Member State measures are concerned.
[19] Directive 2010/13, supra, Art. 16.
[20] Ibid., Art. 13.

Recent changes in content production and distribution, related to the rise of new models based on the Internet, have affected not only audiovisual media, but also other content forms, such as books and music. In essence, large production firms ('majors') are no longer able to secure the level of revenue which enables them to cross-subsidise production internally. The rise of Internet-based distribution platforms not only erodes their revenues, but it also considerably lowers distribution costs, so that low-cost productions find new distribution channels. As a result, the majors are increasingly focusing on a narrower set of premium content – the blockbusters – where the expected revenue justifies the expense.[21] Low-cost production[22] survives on the new distribution channels. The middle is in danger of falling right out, however: this includes content with mid-level production costs, but with a higher degree of commercial risk than blockbusters; it also includes content with lower commercial expectations, because of smaller markets.[23] That trend is not favourable to quality European content, which tends to fall in that middle.

Accordingly, to the extent that public commitment to quality European content remains, support measures might be needed more than ever. As far as financial support is concerned, given that distribution costs have plummeted, production should be targeted.

Public Service Broadcasters

To some extent, most of the measures in the AVMS directive play into the hands of public service broadcasters, since they tend to be in compliance with them already; compliance costs are mostly borne by private broadcasters. Yet EU State aid law has had a much larger impact on public service broadcasting than the AVMS directive. Most of the support schemes for public broadcasters have been challenged under EU State aid rules by private broadcasters; litigation raged throughout the 1990s and the 2000s. There is no room here to explain these cases in detail: by and large, Member States and public service broadcasters were successful in defending public support measures, but the application of State aid rules has forced greater discipline in the definition of the public mission, the specification of the support scheme and its operation (in particular as regards accounting).

What is the role of public service broadcasters in a converged environment then? Given the decline of broadcasting as a distribution model, surely their mission must be recast in a more technology-neutral way. Public service broadcasters have moved beyond broadcasting, to newer forms of distribution, including specialised channels (sometimes available only against payment) and Internet-based distribution (streaming of current programmes, but also of archives). When branching out of broadcasting, however, public mission broadcasters have faced more objections under State aid rules, with greater insistence that they demonstrate a market gap before expanding their operations.[24]

[21] This leads to far less adventurous production, from an artistic standpoint.
[22] Low-cost does not imply low artistic value or quality, quite to the contrary.
[23] Which cannot then be produced as lavishly as the blockbusters, and could therefore pale in comparison.
[24] See the Commission Communication on the application of State aid rules to public service broadcasting [2009] OJ C 257/1.

In the end, the case for public mission broadcasting could come down to two lines of argument. First of all, as far as distribution is concerned, public mission broadcasters could very well become the only outlets still distributing content for free, without any other restriction either (such as need to subscribe and deliver personal data, for instance). Some content (including but not limited to major sport events) might be of such significance for society that it should be made available for free and without restrictions, and public mission broadcasters would be tasked with doing so. Secondly, to the extent that some quality content is deemed of public interest (news, public affairs, cultural programmes, etc.) and the State is willing to support its production, it might make sense to concentrate such production in the hands of the public service broadcaster. Not only would this allow for economies of scale and scope, but it would also strengthen a certain public service ethos running through the production of all these content items.

Regulatory measures to support quality European content

Without doubt, the European content rules regarding broadcasters remain the most controversial part of the AVMS directive. These rules aim to support European content by requiring every broadcaster – public or private – to dedicate the majority of its programming time to European content.[25] To a large extent, these rules only make sense in the specific technological context of broadcasting. Indeed, a rule that would only bind the source to offer European content would be dependent on the choices of customers and viewers. In contrast, a rule that would force customers and viewers to watch European content would breach fundamental rights. Because broadcasting is based on programming, a rule attached to programming – as in the AVMS directive – is more effective than a mere obligation to offer, and it affects fundamental rights to a lesser extent, since it appears to bear on broadcasters, rather than viewers.

Because new alternative distribution models do not rest on programming, the European content rules for broadcasters are meaningless to them. That much is acknowledged in the AVMS directive, where providers of non-linear services are subject to watered-down European content rules. This leads to two questions.

The first one is whether any type of rule is needed outside of broadcasting. A mere obligation to have European content on offer is not that effective, and viewer choices must be respected. That leaves some room for obligations inspired by the must-carry rules of the Universal Service Directive,[26] designed to ensure that quality European content is at least brought to the attention of the customer and made easily available. A number of options exist: from must-list obligations, to more intrusive must-highlight, or even must-suggest obligations. In the end, this discussion branches into the more general access issues known to electronic communications regulation, and more specifically to the

[25] Directive 2010/13, supra, Article 16. The text of that provision is replete with loopholes, which broadcasters have not failed to exploit. In that sense, it remains a fairly weak legal provision. Nevertheless, its impact is documented in the successive Commission reports on the application of that provision: broadcasters feel compelled – for reasons including but not limited to Article 16 – to increase the proportion of European content in their programming over time, so that most broadcasters end up complying with Article 16 sooner or later.

[26] Directive 2002/22 of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) [2002] OJ L 108/51, Art. 31.

network neutrality debate. In principle, a non-dominant, non-vertically integrated platform for non-linear audiovisual media services should have little or no incentive to discriminate against quality European content. However, dominant platforms, especially if vertically integrated into content production, might have an incentive to favour affiliated content, and thus to discriminate against unaffiliated content (including unaffiliated quality European content). Therefore, these must-list, must-highlight or must-suggest obligations should be considered within that broader context of access and network neutrality.

A second question is of course whether broadcasters are hampered by European content rules, seeing that they compete with non-linear providers that face less stringent rules (even if rules such as discussed in the previous paragraph are introduced). Considering that the European content rules for broadcasters are fairly flexible in practice, and that broadcasters have proven apt at interpreting them to their advantage, maybe the competitive impairment remains acceptable, given the continued significance of the policy objective pursued by the rules.

Advertising

The advertising rules of the original TWF directive were loosened up when it became the AVMS directive, but they continue to limit the ability of broadcasters – in particular private ones – to sell airtime to advertisers. In a converged environment, this can put broadcasters at a disadvantage compared to non-linear audiovisual media providers, which face no such restrictions. Here as well, in order to properly ascertain how these rules could and should apply in a converged environment, it is necessary to go back to the policy concerns. Leaving aside their impact on the relationship between private and public broadcasters,[27] limitations on the quantity of advertising were introduced with a view to prevent programmes being flooded with advertising. That reasoning ignores the two-sidedness of broadcasting: if excessive amounts of advertising drive away the viewers, a broadcaster will face reduced demand from advertisers as well. There is therefore a natural limit on advertising.

In fact, in a converged environment, concerns about the quantity of advertising appear almost secondary, next to issues of privacy and personal data. Indeed advertisement in broadcasting can be annoying because it can appear so misdirected and repetitive, given that the broadcaster and advertiser have limited knowledge of the audience and no ability to differentiate the message. In contrast, advertisement on non-linear providers can be tailored to the viewer by exploiting the personal data in the hands of the provider (as is done with great commercial success by Google, for instance). This gives rise to serious privacy concerns. In the end, these concerns might justify intervention to limit the ability of audiovisual media providers to exploit personal data for advertising purposes (or at least to seek the consent of the user before doing so). Audiovisual media service providers would therefore face more quantitative restrictions if they exploit more traditional advertising platforms, and more qualitative restrictions (linked to privacy and personal data) if they exploit more modern, tailored platforms.

[27] Quantitative restrictions on advertising directly affect private broadcasters that rely on advertising to finance their operations. In contrast, public broadcasters typically also receive support from the State; to the extent that they may advertise at all, they are far less dependent on advertising revenues than their private rivals.

In addition, many of the assumptions underpinning advertising rules – the separation of advertising from other parts of audiovisual media, the prohibition of surreptitious advertising, etc. – are put in question by new advertising techniques, which allow advertising to blend more into content (split screens, superimposition, product placement, etc.). In that respect, the rules of the AVMS directive could be further refined to make them as technology-neutral as possible,[28] but there is no obvious reason to change them.

Institutions: the missing dimension

As mentioned earlier, the TWF/AVMS directive eschews institutional issues: it is drafted in command-and-control mode, containing relatively detailed rules to be applied by 'Member States' to regulated firms. With respect to the substantive content of the directive, the previous pages indicated that detailed rules are likely to be displaced by more general clauses, relying on broader concepts such as platforms, access to users, and privacy. These clauses must then be further operationalised through regulation, including co-regulation. This implies that, on the institutional side, regulatory authorities are in place to handle these tasks. Yet the directive is surprisingly silent when it comes to such authorities: the AVMS directive pre-supposes that Member States create 'competent independent regulatory bodies',[29] without actually compelling them to do so. Of course, in practice, Member States have created such national regulatory authorities (NRAs), as the membership of the European Platform of Regulatory Authorities (EPRA) shows.

The lack of attention to institutional aspects becomes all the more striking when EU audiovisual media regulation is compared to EU electronic communications or energy regulation. Both contain extensive institutional provisions that oblige Member States not only to create NRAs, but also to make them independent, to endow them with adequate means and powers and to subject them to procedural constraints and judicial review.[30]

We know from experience in a number of Member States that the setup and operation of NRAs in the audiovisual media sector can become controversial. In particular, independence of the NRA towards the executive and legislative powers, and accountability towards these powers, has proven problematic.

In the CERRE Code of Conduct and Best Practices for the setup, operations and procedure of regulatory authorities,[31] we formulated the EU standard for NRA independence and accountability as follows, at principle 1.3.:

[28] Much has already been done in that respect in 2007, when the TWF directive became the AVMS directive.
[29] See the mentions at Recitals 94 and 95, at Article 5 (but only 'where applicable'). The provisions concerning institutional matters at EU level, including the contact committee (Article 29) and cooperation between regulatory bodies (Article 30), are the most explicit in assuming that Member States do create independent regulatory authorities.
[30] See on these points the two CERRE reports on "Independence, accountability and perceived quality of regulators" and "Enforcement and judicial review of decisions of NRAs" , available at www.cerre.eu.
[31] Available at www.cerre.eu.

1.3. The regulatory authority is independent of, and accountable to, the national executive and legislative powers.

Independence implies that the regulatory authority does not receive any instruction, threat or inducement from the national executive or legislative powers, directly or indirectly, regarding the decisions it takes or envisages taking.

Accountability can be achieved through many different means, including procedural obligations (e.g. statement of reasons), reporting obligations, appearance before a parliamentary committee, *ex post* evaluations, and judicial review.

On this point, the Code of conduct was based on a previous CERRE study, where we summed up the main elements of NRA independence as follows:[32]

1. The NRA is described in legislation as being independent;
2. The executive may not instruct the NRA, and certainly not on specific issues;
3. NRA decisions cannot be overturned by the executive;
4. The NRA finances are separate from state finances, and the NRA controls its own budget;
5. The head of the NRA is appointed for a fixed term of 4-6 years, non-renewable or at most once. He or she may not hold political office. He or she can only be removed for non-policy related causes, such as illness or incapacity.

Similarly, that study outlined the main elements of accountability as follows:[33]

1. *At the procedural stage*: The NRA has clearly defined regulatory objectives. It must explain to stakeholders how it intends to achieve them. It must issue reasoned decisions, following established procedures. It has an advisory body made up of stakeholders.
2. *At the information stage*: The NRA issues publicly available annual reports (including reports to the Commission) and press releases. It provides information, voluntarily and when requested.
3. *At the discovery stage*: The NRA appears before parliamentary committees, holds public consultations and makes its records available to the public.
4. *At the evaluation stage*: The NRA issues a prospective annual plan. It is bound by a Code of Conduct. Its work is subject to periodic performance evaluations. It is subject to review by the Commission (if required under EU law), to judicial review and to peer review within an NRA network.

We would suggest that these models could be made applicable to NRAs in the audiovisual media sector as well.

Considering the current controversies, it would also be advisable to incorporate principle 1.3. of the CERRE Code of Conduct, as set out above, in EU audiovisual media law.

[32] Ibid., p. 29.
[33] Ibid. at 41.