



Directive 2002/21/EC (Framework Directive)

DG Connect – Unit B1
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Framework Directive

- *lays down the principles underlying the Regulatory Framework (RF)*
- *establishes the institutional organisation*
- *lays down tasks of national regulatory authorities; enables NRAs and the Commission to control markets and ensure the proper functioning of the sector*

Scope & aim

IN

- *electronic communications networks*
- *electronic communications services*
- *associated facilities and associated services*
- *terminal equipment facilitating access for disabled users*

OUT

- *Content*
- *OTT*



National Regulatory Authorities (NRAs)

- *Institutional autonomy: Possibility of more than one NRA per MS (cf. CJEU, C-82/07, CMT, [2008] ECR I-1265)*
- *NRA vested with the tasks of ex-ante market regulation and dispute resolution = completely independent NRA*
- *NRA Administrative capacity (all bodies of NRA): adequate human & financial resources*

Independence from market players

- *All bodies of NRA*
- *Legal independence (an undertaking cannot be NRA, two different legal personalities)*
- *Functional independence (no connection may exist between the two functions (economic, regulatory at whatever level))*
- *Structural separation (when the State owns or controls a provider and at the same time exercises regulatory tasks)*

Political Independence

- *Only completely independent NRAs*
- *Procedural autonomy: MS remain free to organise the division of competences within their administration*
- *Limitations:*
 - No common budget*
 - Review only by RF-compatible appeal body or Court*
 - Regulation of dismissal*
 - Prohibition of instructions*
 - No NRA tasks to national legislators*



Budget

- *Budget autonomy : NRAs must have their own budget (Recital 13 Better Regulation Directive)*
- *Budget separation: And that budget must be separate (Article 3(3a))*
- *Budget execution: NRAs are free to devote their resources to the objectives they consider appropriate, as long as the RF ad national rules are respected*



Appeal mechanism

- *Only Article 4 appeal bodies may suspend or overturn decisions of the regulators*
- *Pending the outcome of the appeal, the decision of the NRA stands*

Dismissal

- *Reasons: only where the dismissed no longer fulfills the conditions required for the performance of their duties*
- *Publicity*
- *Motivation, publication on request*

Instructions

- *NRAs must not seek instructions*
- *NRAs shall not take instructions from any other body in*
- *No NRA tasks to national regulator*
- *The national legislator cannot limit the margin of discretion granted by the RF to the NRAs (cf. CJEU, C-424/07, [2009] ECR I-11431, par. 53 and following)*

NRA – Procedural aspects - Article 3(3)

- *Impartiality*
- *Transparency*
 - ❑ *In the definition of the NRA tasks: notification to the Commission – Article 3(6)*
 - ❑ *In the exercise of the tasks: public consultation – Article 6*
 - ❑ *Transfer of information to the Commission Article 5(2)*



Powers

Provision of information – Article 5 FwD

- *Power of NRAs to require information*
- *NRAs provide the Commission information upon request*
- *The Commission shares this information with NRAs in other MS, unless reasoned request to the contrary*
- *Commission and NRAs ensure confidentiality*
- *Rec. 14, FwD: if information confidential, it is shared only when strictly necessary*



Policy objectives (Art. 8)

- *Development of competition, efficiency*
- *Development of the internal market*
- *Serving the interests of the citizens of the EU*
- *Quality of infrastructure (network integrity, security and resilience)*



Regulatory principles (Art. 8)

- *Regulatory predictability*
- *Non-discrimination*
- *Efficient investment and innovation*
- *Proportionality*



Numbering, naming and addressing (Art. 10)

- *Establishment of objective, transparent and non-discriminatory procedures for granting rights of use of numbers*
- *Non-discrimination as regards number sequences*

Rights of way (Art. 11)

- *Public communications networks providers: on, over, or under public & private land*
- *Non public networks providers: on, over, or under public only land*
- *Simple, efficient, transparent, publicly available, non-discriminatory, & timely procedures*
- *Deadline: 6 months*
- *Transparent and non-discriminatory conditions*



Co-location and facility sharing (Art. 12)

- *Power & not obligation of the NRA*
- *Symmetric regulation: proportionality*
- *Sharing of in-building wiring, when duplication would be economically inefficient or physically impracticable*



Dispute resolution (Art. 20)

- *Dispute between network or services providers*
- *Deadline of 4 months*
- *Possibility for non-conventional conflict-resolution mechanisms*
- *Binding decision, published and reasoned*
- *Possibility to go directly to the Court*



Resolution of cross-border disputes (Art. 21)

- *Coordination between NRAs*
- *Criterion of competence: NRA of the establishment*
- *Not necessarily a binding decision*
- *Flexible time frame*
- *Possible consultation of BEREC*



Penalties (Art. 21a)

- *Appropriate*
- *Effective*
- *Proportionate*
- *Dissuasive*



Framework Directive

Thank you for your attention

