

Directive 2002/21/EC (Framework Directive)

DG Connect – Unit B1 Brussels, 22 May 2014

Disclaimer: The views expressed in this presentation are those of the author and do not necessarily reflect the opinion of the European Commission



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)

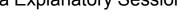




Powers

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 <u>only</u> 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 conflictresolution 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