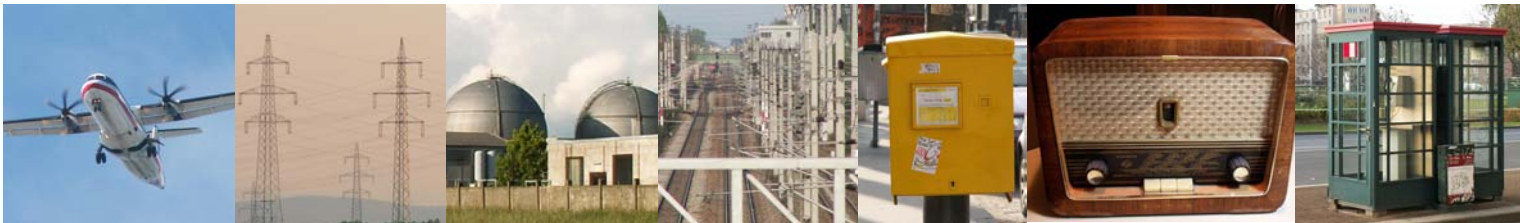


*Hans Peter Lehofer*

**Synopsis**  
**National Regulatory Agencies**  
**in EU Legal Texts**



**Updated 22 March 2008**

Electronic Communication Networks and Services

Electricity

Natural Gas

Railways

Postal Services

Audiovisual Media Services

Airports

## Introduction

A number of directives require EU Member States to set up national regulatory authorities (NRAs) in different industry sectors, for instance electronic communication networks and services, energy or postal services.

This synopsis is just a compilation (without further comments or explanation) of existing EU legislation and proposed legislation concerning NRAs in the fields of

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Currently in all these sectors there are either legislative proposals on the table (electronic communications networks and services, electricity, natural gas, airports) or recent directives where the deadline for transposition is still open (railways, postal services, audiovisual media services)

As regards audiovisual media services, the directive does not require Member States to set up NRAs in this field. However, this directive is still included in this synopsis since the Commission had proposed an obligation to create independent NRAs, and even the text of the directive mentions NRAs in a matter-of-fact way which seems to assume that independent regulatory bodies do in fact exist in the Member States (the recitals state that Member States are *“free to choose the appropriate instruments according to their legal traditions and established structures, and notably the form of their competent independent regulatory bodies”*). I have also included the text of a Council of Europe recommendation in this field as a reference to some sort of a common European standard on regulatory authorities for broadcasting.

## **Electronic Communication Networks and Services**

Articles 3 and 4 of the Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)

### **Article 3**

#### **National regulatory authorities**

1. Member States shall ensure that each of the tasks assigned to national regulatory authorities in this Directive and the Specific Directives is undertaken by a competent body.

2. Member States shall guarantee the independence of national regulatory authorities by ensuring that they are legally distinct from and functionally independent of all organisations providing electronic communications networks, equipment or services. Member States that retain ownership or control of undertakings providing electronic communications networks and/or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.

3. Member States shall ensure that national regulatory authorities exercise their powers impartially and transparently.

4. Member States shall publish the tasks to be undertaken by national regulatory authorities in an easily accessible form, in particular where those tasks are assigned to more than one body. Member States shall ensure, where appropriate, consultation and cooperation between those authorities, and between those authorities and national authorities entrusted with the implementation of competition law and national authorities entrusted with the implementation of consumer law, on matters of common interest. Where more than one authority has competence to address such matters, Member States shall ensure that the respective tasks of each authority are published in an easily accessible form.

5. National regulatory authorities and national competition authorities shall provide each other with the information necessary for the application of the provisions of this Directive and the Specific Directives. In respect of the information exchanged, the receiving authority shall ensure the same level of confidentiality as the originating authority.

6. Member States shall notify to the Commission all national regulatory authorities assigned tasks under this Directive and the Specific Directives, and their respective responsibilities.

### **Article 4**

#### **Right of appeal**

1. Member States shall ensure that effective mechanisms exist at national level under which any user or undertaking providing electronic communications networks and/or services who is affected by a decision of a national regulatory authority has the right of appeal against the decision to an appeal body that is independent of the parties involved. This body, which may be a court, shall have the appropriate expertise available to it to enable it to carry out its functions. Member States shall ensure that the merits of the case are duly taken into account and that there is an effective appeal mechanism. Pending the outcome of any such appeal, the decision of the national regulatory authority shall stand, unless the appeal body decides otherwise.

2. Where the appeal body referred to in paragraph 1 is not judicial in character, written reasons for its decision shall always be given. Furthermore, in such a case, its decision shall be subject to review by a court or tribunal within the meaning of Article 234 of the Treaty.

**Electronic Communication Networks and Services**  
**Proposal COM 2007(697)**

Articles 3 and 4 of the Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), as they would be amended according to the Proposal for a Directive of the European Parliament and of the Council amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and services, and 2002/20/EC on the authorisation of electronic communications networks and services (amended paragraphs in *italics*)

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3. *Member States shall ensure that national regulatory authorities exercise their powers independently, impartially and transparently. National regulatory authorities shall not seek or take instructions from any other body in relation to the day-to-day performance of the tasks assigned to them under national law implementing Community law. Only appeal bodies set up in accordance with Article 4 or national courts shall have the power to suspend or overturn decisions by the national regulatory authorities.*

*Member States shall ensure that the head of a national regulatory authority or his/her replacement may be dismissed only if he no longer fulfils the conditions required for the performance of his duties laid down in advance in national law, or if he has been guilty of*

*serious misconduct. The decision to dismiss the head of the national regulatory authority shall contain a statement of reasons and be made public at the time of dismissal.*

*Member States shall ensure that national regulatory authorities have adequate financial and human resources to carry out the tasks assigned to them and that they have separate annual budgets. The budgets shall be made public*

*Member States shall ensure that national regulatory authorities have adequate financial and human resources to carry out the tasks assigned to them and separate annual budgets which are made public.*

4. Member States shall publish the tasks to be undertaken by national regulatory authorities in an easily accessible form, in particular where those tasks are assigned to more than one body. Member States shall ensure, where appropriate, consultation and cooperation between those authorities, and between those authorities and national authorities entrusted with the implementation of competition law and national authorities entrusted with the implementation of consumer law, on matters of common interest. Where more than one authority has competence to address such matters, Member States shall ensure that the respective tasks of each authority are published in an easily accessible form.

5. National regulatory authorities and national competition authorities shall provide each other with the information necessary for the application of the provisions of this Directive and the Specific Directives. In respect of the information exchanged, the receiving authority shall ensure the same level of confidentiality as the originating authority.

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*Pending the outcome of any the appeal, the decision of the national regulatory authority shall stand, unless interim measures are granted. Interim measures may be granted if there is an urgent need to suspend the effect of the decision in order to prevent serious and irreparable damage to the party applying for those measures and the balance of interests so requires.*

2. Where the appeal body referred to in paragraph 1 is not judicial in character, written reasons for its decision shall always be given. Furthermore, in such a case, its decision shall be subject to review by a court or tribunal within the meaning of Article 234 of the Treaty.

*3. Member States shall collect information on the subject of appeals, the number of requests for appeal, the duration of the appeal proceedings, the number of decisions to grant interim measures taken in accordance with paragraph 1 and the reasons for such decisions. Member States shall make available such information to the Commission and the European Communications Market Authority (hereinafter referred to as 'the Authority') on an annual basis.*

## **Electricity**

Article 23 of the Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC

### **Article 23**

#### **Regulatory authorities**

1. Member States shall designate one or more competent bodies with the function of regulatory authorities. These authorities shall be wholly independent from the interests of the electricity industry. They shall, through the application of this Article, at least be responsible for ensuring non-discrimination, effective competition and the efficient functioning of the market, monitoring in particular:

(a) the rules on the management and allocation of interconnection capacity, in conjunction with the regulatory authority or authorities of those Member States with which interconnection exists;

(b) any mechanisms to deal with congested capacity within the national electricity system;

(c) the time taken by transmission and distribution undertakings to make connections and repairs;

(d) the publication of appropriate information by transmission and distribution system operators concerning interconnectors, grid usage and capacity allocation to interested parties, taking into account the need to treat non-aggregated information as commercially confidential;

(e) the effective unbundling of accounts, as referred to in Article 19, to ensure that there are no cross subsidies between generation, transmission, distribution and supply activities;

(f) the terms, conditions and tariffs for connecting new producers of electricity to guarantee that these are objective, transparent and non-discriminatory, in particular taking full account of the costs and benefits of the various renewable energy sources technologies, distributed generation and combined heat and power;

(g) the extent to which transmission and distribution system operators fulfil their tasks in accordance with Articles 9 and 14;

(h) the level of transparency and competition.

The authorities established pursuant to this Article shall publish an annual report on the outcome of their monitoring activities referred to in points (a) to (h).

2. The regulatory authorities shall be responsible for fixing or approving, prior to their entry into force, at least the methodologies used to calculate or establish the terms and conditions for:

(a) connection and access to national networks, including transmission and distribution tariffs. These tariffs, or methodologies, shall allow the necessary investments in the networks to be carried out in a manner allowing these investments to ensure the viability of the networks;

(b) the provision of balancing services.

3. Notwithstanding paragraph 2, Member States may provide that the regulatory authorities shall submit, for formal decision, to the relevant body in the Member State the tariffs or at least the methodologies referred to in that paragraph as well as the modifications in paragraph 4. The relevant body shall, in such a case, have the power to either approve or reject a draft decision submitted by the regulatory authority. These tariffs or the methodologies or modifications thereto shall be published together with the decision on formal adoption. Any formal rejection of a draft decision shall also be published, including its justification.

4. Regulatory authorities shall have the authority to require transmission and distribution system operators, if necessary, to modify the terms and conditions, tariffs, rules, mechanisms and methodologies referred to in paragraphs 1, 2 and 3, to ensure that they are proportionate and applied in a non-discriminatory manner.

5. Any party having a complaint against a transmission or distribution system operator with respect to the issues mentioned in paragraphs 1, 2 and 4 may refer the complaint to the regulatory authority which, acting as dispute settlement

authority, shall issue a decision within two months after receipt of the complaint. This period may be extended by two months where additional information is sought by the regulatory authority. This period may be further extended with the agreement of the complainant. Such a decision shall have binding effect unless and until overruled on appeal.

Where a complaint concerns connection tariffs for major new generation facilities, the two-month period may be extended by the regulatory authority.

6. Any party who is affected and has a right to complain concerning a decision on methodologies taken pursuant to paragraphs 2, 3 or 4 or, where the regulatory authority has a duty to consult, concerning the proposed methodologies, may, at the latest within two months, or a shorter time period as provided by Member States, following publication of the decision or proposal for a decision, submit a complaint for review. Such a complaint shall not have suspensive effect.

7. Member States shall take measures to ensure that regulatory authorities are able to carry out their duties referred to in paragraphs 1 to 5 in an efficient and expeditious manner.

8. Member States shall create appropriate and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of a dominant position, in particular to the detriment of consumers, and any predatory behaviour. These mechanisms shall take account of the provisions of the Treaty, and in particular Article 82 thereof.

Until 2010, the relevant authorities of the Member States shall provide, by 31 July of each year, in conformity with competition law, the Commission with a report on market dominance, predatory and anti competitive behaviour. This report shall, in addition, review the changing ownership patterns and any practical measures taken at national level to ensure a sufficient variety of market actors or practical measures taken to enhance interconnection and competition. From 2010 onwards, the relevant authorities shall provide such a report every two years.

9. Member States shall ensure that the appropriate measures are taken, including administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons responsible where confidentiality rules imposed by this Directive have not been respected.

10. In the event of cross border disputes, the deciding regulatory authority shall be the regulatory authority which has jurisdiction in respect of the system operator which refuses use of, or access to, the system.

11. Complaints referred to in paragraphs 5 and 6 shall be without prejudice to the exercise of rights of appeal under Community and national law.

12. National regulatory authorities shall contribute to the development of the internal market and of a level playing field by cooperating with each other and with the Commission in a transparent manner.



## **Electricity – Proposal COM(2007)528**

Chapter VIIa of the Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity in the version of the Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/54/EC concerning common rules for the internal market in electricity, COM(2007)528 final

The proposal inserts a new Chapter VIIa, the present Article 23 is deleted

### **CHAPTER VIIa**

#### **NATIONAL REGULATORY AUTHORITIES**

##### **Article 22a**

##### **Designation and independence of regulatory authorities**

1. Each Member State shall designate a single national regulatory authority.

2. Member States shall guarantee the independence of the regulatory authority and shall ensure that it exercises its powers impartially and transparently. For this purpose, Member State shall ensure that, when carrying out the regulatory tasks conferred upon it by this Directive, the regulatory authority is legally distinct and functionally independent from any other public or private entity, and that its staff and the persons responsible for its management act independently from any market interest and shall not seek or take instructions from any government or other public or private entity.

3. In order to protect the independence of the regulatory authority, Member States shall in particular ensure that:

(a) the regulatory authority has legal personality, budgetary autonomy, and adequate human and financial resources to carry out its duties;

(b) its management is appointed for a non renewable fixed term of at least five years, and may only be relieved from office during its term if it no longer fulfills the conditions set out in this Article or it has been guilty of serious misconduct.

### **Article 22b**

#### **Policy objectives of the regulatory authority**

In carrying out the regulatory tasks specified in this Directive, the regulatory authority shall take all reasonable measures to achieve the following objectives:

(a) the promotion, in close cooperation with the Agency, regulatory authorities of other Member States and the Commission, of a competitive, secure and environmentally sustainable internal electricity market within the Community, and effective market opening for all consumers and suppliers in the Community;

(b) the development of competitive and properly functioning regional markets within the Community in view of the achievement of the objective mentioned in point (a);

(c) the suppression of restrictions to electricity trade between Member States, including the development of appropriate cross border transmission capacities to meet demand, enhance integration of national markets and to enable unrestrained electricity flow across the Community;

(d) ensuring the development of secure, reliable and efficient systems, promoting energy efficiency, system adequacy, and research and innovation to meet demand and the development of innovative renewable and low carbon technologies, in both short and long term;

(e) ensuring that network operators are granted adequate incentives, in both the short and the long term, to increase efficiencies in network performance and foster market integration;

(f) ensuring the efficient functioning of their national market, and to promote effective competition in cooperation with competition authorities.



## Article 22c

### Duties and powers of the regulatory authority

1. The regulatory authority shall have the following duties:

(a) ensuring compliance of transmission and distribution system operators, and where relevant system owners, as well as of any electricity undertakings, with their obligations under this Directive and other relevant Community legislation, including as regards cross border issues;

(b) cooperating on cross-border issues with the regulatory authority or authorities of those Member States;

(c) complying with, and implementing, decisions of the Agency and of the Commission;

(d) reporting on a yearly basis on its activity and the fulfilment of its duties to the relevant authorities of the Member States, the Agency and the Commission. This report shall cover the steps taken and the results obtained as regards each of the tasks listed in this Article;

(e) ensuring that there are no cross subsidies between transmission, distribution, and supply activities;

(f) reviewing investment plans of the transmission system operators, and providing in its annual report an assessment of the investment plan of the transmission system operators as regards its consistency with the European-wide 10-year network development plan mentioned in Article 2c(1) of Regulation (EC) No 1228/2003;

(g) monitoring network security and reliability, and reviewing network security and reliability rules;

(h) monitoring the level of transparency, ensuring compliance of electricity undertakings with transparency obligations;

(i) monitoring the level of market opening and competition at wholesale and retail levels, including on electricity exchanges, household prices, switching rates, disconnection rates and household complaints in an agreed format, as well as any distortion or restriction of competition in cooperation with competition authorities, including providing any relevant information, bringing any relevant cases to the attention of the relevant competition authorities;

(j) monitoring the time taken by transmission and distribution undertakings to make connections and repairs;

(k) without prejudice to the competence of other national regulatory authorities, ensuring high standards of universal and public service for electricity, the protection of vulnerable customers, and that consumer protection measures set out in Annex A are effective;

(l) publishing recommendations, at least on a yearly basis, on compliance of supply tariffs with Article 3;

(m) ensuring access to customer consumption data, the application of a harmonised format for consumption data and the access to data under paragraph (h) of Annex A;

(n) monitoring the implementation of rules relating to the roles and responsibilities of transmission system operators, distribution system operators, suppliers and customers and other market parties pursuant to Regulation (EC) 1228/2003;

(o) monitoring investment in generation capacities in relation to security of supply.

2. In addition to the tasks conferred upon it under paragraph 1, when an independent system operator has been designated under Article 10, the regulatory authority shall:

(a) monitor the transmission system owner's and the independent system operator's compliance with their obligations under this Article, and issue penalties for non compliance in accordance with paragraph 3(d);

(b) monitor the relations and communications between the independent system operator and the transmission system owner so as to ensure compliance of the independent system operator with its obligations, and in particular shall approve contracts and act as a dispute settlement authority between the independent system operator and the transmission system owner in respect of any complaint submitted by either party pursuant to paragraph 7;

(c) without prejudice to the procedure under paragraph 2c of Article 10, for the first ten year network development plan, approve the investments planning and the multi-annual network development plan presented on a yearly basis by the independent system operator;

(d) ensure that network access tariffs collected by independent system operators include a remuneration for the network owner or network owners that provide for an adequate remuneration of the network assets and of any new investments therein;

(e) have the powers to carry out inspections at the transmission system owner and independent system operator's premises;

(f) monitor the use of congestion rents collected by the independent system operator in accordance with Article 6(6) of Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity.

3. Member States shall ensure that regulatory authorities are granted the powers enabling them to carry out the duties referred to in paragraph 1 and 2 in an efficient and expeditious manner. For this purpose, the regulatory authority shall have at least the following powers:

(a) to issue binding decisions on electricity undertakings;

(b) to carry out in cooperation with the national competition authority investigations of the functioning of electricity markets, and to decide, in the absence of violations of competition rules, of any appropriate measures necessary and proportionate to promote effective competition and ensure the proper functioning of the market, including virtual power plants;

(c) to request any information from electricity undertakings relevant for the fulfilment of its tasks;

(d) to impose effective, appropriate and dissuasive sanctions to electricity undertakings not complying with their obligations under this Directive or any decisions of the regulatory authority or of the Agency;

(e) to have appropriate rights of investigations, and relevant powers of instructions for dispute settlement under paragraphs 7 and 8;

(f) to approve safeguards measures as referred to in Article 24.

4. The regulatory authorities shall be responsible for fixing or approving prior to their entry into force the terms and conditions for:

(a) connection and access to national networks, including transmission and distribution tariffs. These tariffs shall allow the

necessary investments in the networks to be carried out in a manner allowing these investments to ensure the viability of the networks;

(b) the provision of balancing services.

5. In fixing or approving the tariffs, the regulatory authorities shall ensure that network operators are granted adequate incentive, over both the short and long term, to increase efficiencies, foster market integration and support the related research activities.

6. Regulatory authorities shall have the authority to require transmission and distribution system operators, if necessary, to modify the terms and conditions, including tariffs referred to in this Article, to ensure that they are proportionate and applied in a non-discriminatory manner.

7. Any party having a complaint against a transmission or distribution system operator may refer the complaint to the regulatory authority which, acting as dispute settlement authority, shall issue a decision within two months after receipt of the complaint. This period may be extended by two months where additional information is sought by the regulatory authorities. This period may be extended with the agreement of the complainant. Such a decision shall have binding effect unless and until overruled on appeal.

8. Any party who is affected and who has a right to complain concerning a decision on methodologies taken pursuant to this Article or, where the regulatory authority has a duty to consult, concerning the proposed methodologies, may, at the latest within two months, or a shorter time period as provided by Member States, following publication of the decision or proposal for a decision, submit a complaint for review. Such a complaint shall not have suspensive effect.

9. Member States shall create appropriate and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of a dominant position, in particular to the detriment of consumers, and any predatory behaviour. These mechanisms shall take account of the provisions of the Treaty, and in particular Article 82 thereof.

10. Member States shall ensure that the appropriate measures are taken, including administrative action or criminal proceedings in

conformity with their national law, against the natural or legal persons responsible where confidentiality rules imposed by this Directive have not been respected.

11. Complaints referred to in paragraphs 7 and 8 shall be without prejudice to the exercise of rights of appeal under Community and national law.

12. Decisions taken by regulatory authorities shall be motivated.

13. Member States shall ensure that suitable mechanisms exist at national level under which a party affected by a decision of the national regulatory authority has a right of appeal to a body independent of the parties involved.

14. The Commission may adopt guidelines on the implementation by the regulatory authorities of the powers described in this Article. This measure designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27b(3)"

#### **Article 22d**

##### **Regulatory regime for cross border issues**

1. Regulatory authorities shall closely cooperate and consult with each other, and shall provide each other and the Agency with any information necessary for the fulfilment of their tasks under this Directive. In respect of the information exchanged, the receiving authority shall ensure the same level of confidentiality as that required of the originating authority.

2. Regulatory authorities shall cooperate at least on a regional level to foster the creation of operational arrangements in order to ensure an optimal management of the network, develop joint electricity exchanges and the allocation of cross-border capacity, and to ensure a minimum level of interconnection capacity within the region to allow for effective competition to develop.

3. The Agency shall decide upon the regulatory regime for infrastructure connecting at least two Member States:

a) upon a joint request from the competent national regulatory authorities, or,

b) where the competent national regulatory authorities have not been able to reach an

agreement on the appropriate regulatory regime within six months from the date the file was brought before the last of these regulatory authorities.

4. The Commission may adopt guidelines on the extent of the duties of the regulatory authorities to cooperate with each other and with the Agency, and on the situations in which the Agency becomes competent to decide upon the regulatory regime for infrastructures connecting at least two Member States. These measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27b(3).

#### **Article 22e**

##### **Compliance with Guidelines**

1. Any regulatory authority and the Commission may request the opinion of the Agency on the compliance of a decision taken by a regulatory authority with guidelines referred to in this Directive or in Regulation (EC) No 1228/2003.

2. The Agency shall provide its opinion to the regulatory authority which has requested it or to the Commission, respectively, and to the regulatory authority which has taken the decision in question within four months.

3. Where the regulatory authority which has taken the decision does not comply with the Agency's opinion within four months from the date of receipt, the Agency shall inform the Commission.

4. Any regulatory authority may inform the Commission where it considers that a decision taken by a regulatory authority does not comply with guidelines referred to in this Directive or in Regulation (EC) No 1228/2003 within two months from the date of that decision.

5. Where the Commission, within two months after having been informed by the Agency in accordance with paragraph 3 or by a regulatory authority in accordance with paragraph 4, or on its own initiative within three months from the date of the decision finds that the decision of a regulatory authority raises serious doubts as to its compatibility with guidelines referred to in this Directive or in Regulation (EC) No 1228/2003, the Commission

may decide to initiate proceedings. In such a case, it shall invite the regulatory authority and the parties to the proceedings before the regulatory authority to submit comments.

6. Where the Commission has decided to initiate proceedings, it shall, within not more than four months of the date of such decision, issue a final decision:

(a) not to raise objections against the decision of the regulatory authority;

or

(b) requiring the regulatory authority concerned to amend or withdraw its decision if it considers that guidelines have not been complied with.

7. Where the Commission has not taken a decision to initiate proceedings or a final decision within the time-limits set in paragraphs 5 and 6 respectively, it shall be deemed not to have raised objections against the decision of the regulatory authority.

8. The regulatory authority shall comply with the Commission decision to amend or withdraw their decision within a period of two months and shall inform the Commission accordingly.

9. The Commission shall adopt guidelines setting out the details of the procedure to be followed for the application of this Article. This measure designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27b(3).

## **Article 22f**

### **Record keeping**

1. Member States shall require supply undertakings to keep at the disposal of the national regulatory authority, the national competition authority and the Commission, for at least five years, the relevant data relating to all transactions in electricity supply contracts and electricity derivatives with wholesale customers and transmission system operators.

2. The data shall include details on the characteristics of the relevant transactions such as duration, delivery and settlement rules, the quantity, the dates and times of execution and the transaction prices and means of identifying the wholesale customer concerned, as well as specified details of all unsettled electricity supply contracts and electricity derivatives.

3. The regulatory authority may decide to make available to market participants elements of this information provided that commercially sensitive information on individual market players or individual transactions is not released. This paragraph shall not apply to information about financial instruments which fall within the scope of Directive 2004/39/EC.

4. To ensure the uniform application of this Article, the Commission may adopt guidelines which define the methods and arrangements for record keeping as well as the form and content of the data that shall be kept. These measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27b(3).

5. With respect to transactions in electricity derivatives of supply undertakings with wholesale customers and transmission system operators, this Article shall only apply once the Commission has adopted the guidelines referred to in paragraph 4.

6. The provisions of this Article shall not create additional obligations vis-à-vis the authorities mentioned in paragraph 1 for entities falling within the scope of Directive 2004/39/EC.

7. In case the authorities mentioned in paragraph 1 need access to data kept by entities falling within the scope of Directive 2004/39/EC, the authorities responsible under that Directive shall provide the authorities mentioned in paragraph 1 with the required data.

## Natural Gas

Article 25 of the Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC

### **Article 25**

#### **Regulatory authorities**

1. Member States shall designate one or more competent bodies with the function of regulatory authorities. These authorities shall be wholly independent of the interests of the gas industry. They shall, through the application of this Article, at least be responsible for ensuring non-discrimination, effective competition and the efficient functioning of the market, monitoring in particular:

(a) the rules on the management and allocation of interconnection capacity, in conjunction with the regulatory authority or authorities of those Member States with which interconnection exists;

(b) any mechanisms to deal with congested capacity within the national gas system;

(c) the time taken by transmission and distribution system operators to make connections and repairs;

(d) the publication of appropriate information by transmission and distribution system operators concerning interconnectors, grid usage and capacity allocation to interested parties, taking into account the need to treat non-aggregated information as commercially confidential;

(e) the effective unbundling of accounts as referred to in Article 17, to ensure there are no cross subsidies between transmission, distribution, storage, LNG and supply activities;

(f) the access conditions to storage, linepack and to other ancillary services as provided for in Article 19;

(g) the extent to which transmission and distribution system operators fulfil their tasks in accordance with Articles 8 and 12;

(h) the level of transparency and competition.

The authorities established pursuant to this Article shall publish an annual report on the

outcome of their monitoring activities referred to in points (a) to (h).

2. The regulatory authorities shall be responsible for fixing or approving prior to their entry into force, at least the methodologies used to calculate or establish the terms and conditions for:

(a) connection and access to national networks, including transmission and distribution tariffs, and terms, conditions and tariffs for access to LNG facilities. These tariffs, or methodologies, shall allow the necessary investments in the networks and LNG facilities to be carried out in a manner allowing these investments to ensure the viability of the networks and LNG facilities;

(b) the provision of balancing services.

3. Notwithstanding paragraph 2, Member States may provide that the regulatory authorities shall submit, for formal decision, to the relevant body in the Member State the tariffs or at least the methodologies referred to in that paragraph as well as the modifications in paragraph 4. The relevant body shall, in such a case, have the power to either approve or reject a draft decision submitted by the regulatory authority.

These tariffs or the methodologies or modifications thereto shall be published together with the decision on formal adoption. Any formal rejection of a draft decision shall also be published, including its justification.

4. Regulatory authorities shall have the authority to require transmission, LNG and distribution system operators, if necessary, to modify the terms and conditions, including tariffs and methodologies referred to in paragraphs 1, 2 and 3, to ensure that they are proportionate and applied in a non-discriminatory manner.

5. Any party having a complaint against a transmission, LNG or distribution system operator with respect to the issues mentioned in paragraphs 1, 2 and 4 and in Article 19 may refer the complaint to the regulatory authority which, acting as dispute settlement authority, shall issue

a decision within two months after receipt of the complaint. This period may be extended by two months where additional information is sought by the regulatory authorities. This period may be extended with the agreement of the complainant. Such a decision shall have binding effect unless and until overruled on appeal.

6. Any party who is affected and who has a right to complain concerning a decision on methodologies taken pursuant to paragraphs 2, 3 or 4 or, where the regulatory authority has a duty to consult, concerning the proposed methodologies, may, at the latest within two months, or a shorter time period as provided by Member States, following publication of the decision or proposal for a decision, submit a complaint for review. Such a complaint shall not have suspensive effect.

7. Member States shall take measures to ensure that regulatory authorities are able to carry out their duties referred to in paragraphs 1 to 5 in an efficient and expeditious manner.

8. Member States shall create appropriate and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of a dominant position, in particular to the detriment of consumers, and any predatory behaviour. These mechanisms shall take account of the provisions of the Treaty, and in particular Article 82 thereof.

9. Member States shall ensure that the appropriate measures are taken, including administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons responsible where confidentiality rules imposed by this Directive have not been respected.

10. In the event of cross border disputes, the deciding regulatory authority shall be the regulatory authority which has jurisdiction in respect of the system operator, which refuses use of, or access to, the system.

11. Complaints referred to in paragraphs 5 and 6 shall be without prejudice to the exercise of rights of appeal under Community and national law.

12. National regulatory authorities shall contribute to the development of the internal market and of a level playing field by cooperating with each other and with the Commission in a transparent manner.



## **Natural Gas – Proposal COM(2007)529**

Article 25 of the Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC, in the version of the Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/55/EC concerning common rules for the internal market in natural gas, COM(2007)529

The proposal inserts a new Chapter VIa, the present Article 25 is deleted

### **CHAPTER VIa**

#### **NATIONAL REGULATORY AUTHORITIES**

##### **Article 24a**

##### **Designation and independence of regulatory authorities**

1. Each Member State shall designate a single national regulatory authority.

2. Member States shall guarantee the independence of the regulatory authority and shall ensure that it exercises its powers impartially and transparently. For this purpose, Member State shall ensure that, when carrying out the regulatory tasks conferred upon it by this Directive, the regulatory authority is legally distinct and functionally independent from any other public or private entity, and that its staff and the persons responsible for its management act independently from any market interest and shall not seek or take instructions from any government or other public or private entity.

3. In order to protect the independence of the regulatory authority, Member States shall in particular ensure that:

(a) the regulatory authority has legal personality, budgetary autonomy, and adequate human and financial resources to carry out its duties;

(b) its management is appointed for a non renewable fixed term of at least five years, and may only be relieved from office during its term if it no longer fulfills the conditions set out in this Article or it has been guilty of serious misconduct.

### **Article 24b**

#### **Policy objectives of the regulatory authority**

In carrying out the regulatory tasks specified in this Directive, the regulatory authority shall take all reasonable measures to achieve the following objectives:

(a) the promotion, in close cooperation with the Agency, regulatory authorities of other Member States and the Commission, of a competitive, secure and environmentally sustainable internal gas market within the Community, and effective market opening for all consumers and suppliers in the Community;

(b) the development of competitive and properly functioning regional markets within the Community in view of the achievement of the objective mentioned in point (a);

(c) the suppression of restrictions to natural gas trade between Member States, including the development of appropriate cross border transmission capacities to meet demand, enhance integration of national markets and to enable unrestrained natural gas flow across the Community;

(d) ensuring the development of secure, reliable and efficient systems, promoting energy efficiency, system adequacy and research and innovation to meet demand and the development of innovative renewable and low carbon technologies, in both short and long term;

(e) ensuring that network operators are granted adequate incentives, in both the short and the long term, to increase efficiencies in network performance and foster market integration;

(f) ensuring the efficient functioning of their national market, and to promote effective competition in cooperation with competition authorities.

## Article 24c

### Duties and powers of the regulatory authority

1. The regulatory authority shall have the following duties:

(a) ensuring compliance of transmission and distribution system operators, and where relevant system owners, as well as of any natural gas undertakings, with their obligations under this Directive and other relevant Community legislation, including as regards cross border issues;

(b) cooperating on cross-border issues with the regulatory authority or authorities of those Member States;

(c) complying with, and implementing, decisions of the Agency and of the Commission;

(d) reporting on a yearly basis on its activity and the fulfilment of its duties to the relevant authorities of the Member States, the Agency and the Commission. This report shall cover the steps taken and the results obtained as regards each of the tasks listed in this Article;

(e) ensuring that there are no cross subsidies between transmission, distribution, storage, LNG and supply activities;

(f) reviewing investment plans of the transmission system operators, and providing in its annual report an assessment of the investment plan of the transmission system operators as regards its consistency with the European-wide 10-year network development plan mentioned in Article 2c of Regulation (EC) No 1775/2005;

(g) monitoring network security and reliability, and reviewing network security and reliability rules;

(h) monitoring the level of transparency, ensuring compliance of natural gas undertakings with transparency obligations;

(i) monitoring the level of market opening and competition at wholesale and retail levels, including on natural gas exchanges, household prices, switching rates, disconnection rates and household complaints in an agreed format, as well as any distortion or restriction of competition in cooperation with competition authorities, including providing any relevant information, bringing any relevant cases to the attention of the relevant competition authorities;

(j) monitoring the time taken by transmission and distribution undertakings to make connections and repairs;

(k) monitoring and reviewing the access conditions to storage, linepack and other ancillary services as provided for in Article 19;

(l) without prejudice to the competence of other national regulatory authorities, ensuring high standards of public service for natural gas, the protection of vulnerable customers, and that consumer protection measures set out in Annex A are effective;

(m) publishing recommendations, at least on a yearly basis, on compliance of supply tariffs with Article 3;

(n) ensuring access to customer consumption data, the application of a harmonised format for consumption data and the access to data under paragraph (h) of Annex A;

(o) monitoring the implementation of rules relating to the roles and responsibilities of transmission system operators, distribution system operators, suppliers and customers and other market parties pursuant to Article 8b of Regulation (EC) No 1775/2005;

(p) monitoring the correct application of the criteria that determine whether a storage facility falls under Article 19(3) or 19(4).

2. In addition to the tasks conferred upon it under paragraph 1, when an independent system operator has been designated under Article 9, the regulatory authority shall:

(a) monitor the transmission system owner's and the independent system operator's compliance with their obligations under this Article, and issue penalties for non compliance in accordance with paragraph 3(d);

(b) monitor the relations and communications between the independent system operator and the transmission system owner so as to ensure compliance of the independent system operator with its obligations, and in particular shall approve contracts and act as a dispute settlement authority between the independent system operator and the transmission system owner in respect of any complaint submitted by either party pursuant to paragraph 7;

(c) without prejudice to the procedure under paragraph 2c of Article 9, for the first ten year network development plan, approve the investments planning and the multi-annual

network development plan presented on a yearly basis by the independent system operator;

(d) ensure that network access tariffs collected by independent system operators include a remuneration for the network owner or network owners that provide for an adequate remuneration of the network assets and of any new investments therein;

(e) have the powers to carry out inspections at the transmission system owner and independent system operator's premises.

3. Member States shall ensure that regulatory authorities are granted the powers enabling them to carry out the duties referred to in paragraph 1 and 2 in an efficient and expeditious manner. For this purpose, the regulatory authority shall have at least the following powers:

(a) to issue binding decisions on gas undertakings;

(b) to carry out in cooperation with the national competition authority investigations of the functioning of gas markets, and to decide, in the absence of violations of competition rules, of any appropriate measures necessary and proportionate to promote effective competition and ensure the proper functioning of the market, including gas release programs;

(c) to request any information from natural gas undertakings relevant for the fulfilment of its tasks;

(d) to impose effective, appropriate and dissuasive sanctions to natural gas undertakings not complying with their obligations under this Directive or any decisions of the regulatory authority or of the Agency;

(e) to have appropriate rights of investigations, and relevant powers of instructions for dispute settlement under paragraphs 7 and 8;

(f) to approve safeguards measures as referred to in Article 26.

4. The regulatory authorities shall be responsible for fixing or approving prior to their entry into force the terms and conditions for:

(a) connection and access to national networks, including transmission and distribution tariffs, and terms, conditions and tariffs for access to LNG facilities. These tariffs shall allow the necessary investments in the networks and LNG facilities to be carried out in a manner allowing these investments to ensure the viability of the networks and LNG facilities;

(b) the provision of balancing services.

5. In fixing or approving the tariffs, the regulatory authorities shall ensure that network operators are granted adequate incentive, over both the short and long term, to increase efficiencies, foster market integration, and support the related research activities.

6. Regulatory authorities shall have the authority to require transmission, storage, LNG and distribution system operators, if necessary, to modify the terms and conditions, including tariffs referred to in this Article, to ensure that they are proportionate and applied in a non-discriminatory manner.

7. Any party having a complaint against a transmission, LNG or distribution system operator may refer the complaint to the regulatory authority which, acting as dispute settlement authority, shall issue a decision within two months after receipt of the complaint. This period may be extended by two months where additional information is sought by the regulatory authorities. This period may be extended with the agreement of the complainant. Such a decision shall have binding effect unless and until overruled on appeal.

8. Any party who is affected and who has a right to complain concerning a decision on methodologies taken pursuant to this Article or, where the regulatory authority has a duty to consult, concerning the proposed methodologies, may, at the latest within two months, or a shorter time period as provided by Member States, following publication of the decision or proposal for a decision, submit a complaint for review. Such a complaint shall not have suspensive effect.

9. Member States shall create appropriate and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of a dominant position, in particular to the detriment of consumers, and any predatory behaviour. These mechanisms shall take account of the provisions of the Treaty, and in particular Article 82 thereof.

10. Member States shall ensure that the appropriate measures are taken, including administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons responsible where confidentiality rules imposed by this Directive have not been respected.

11. Complaints referred to in paragraphs 7 and 8 shall be without prejudice to the exercise of rights of appeal under Community and national law.

12. Decisions taken by regulatory authorities shall be motivated.

13. Member States shall ensure that suitable mechanisms exist at national level under which a party affected by a decision of the national regulatory authority has a right of appeal to a body independent of the parties involved.

14. The Commission may adopt guidelines on the implementation by the regulatory authorities of the powers described in this Article. This measure designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 30(3).

#### **Article 24d**

##### **Regulatory regime for cross border issues**

1. Regulatory authorities shall closely cooperate and consult with each other, and shall provide each other and the Agency with any information necessary for the fulfilment of their tasks under this Directive. In respect of the information exchanged, the receiving authority shall ensure the same level of confidentiality as that required of the originating authority.

2. Regulatory authorities shall cooperate at least on a regional level to foster the creation of operational arrangements in order to ensure an optimal management of the network, develop joint gas exchanges and the allocation of cross-border capacity, and to ensure a minimum level of interconnection capacity within the region to allow for effective competition to develop.

3. The Agency shall decide upon the regulatory regime for infrastructure connecting at least two Member States:

(a) upon a joint request from the competent national regulatory authorities, or,

(b) where the competent national regulatory authorities have not been able to reach an agreement on the appropriate regulatory regime within six months from the date the file was brought before the last of these regulatory authorities.

4. The Commission may adopt guidelines on the extent of the duties of the regulatory authorities to cooperate with each other and with the Agency, and on the situations in which the Agency becomes competent to decide upon the regulatory regime for infrastructures connecting at least two Member States. These measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 30(3).

#### **Article 24e**

##### **Compliance with Guidelines**

1. Any regulatory authority and the Commission may request the opinion of the Agency on the compliance of a decision taken by a regulatory authority with guidelines referred to in this Directive or in Regulation (EC) No 1775/2005.

2. The Agency shall provide its opinion to the regulatory authority which has requested it or to the Commission, respectively, and to the regulatory authority which has taken the decision in question within four months.

3. Where the regulatory authority which has taken the decision does not comply with the Agency's opinion within four months from the date of receipt, the Agency shall inform the Commission.

4. Any regulatory authority may inform the Commission where it considers that a decision taken by a regulatory authority does not comply with guidelines referred to in this Directive or in Regulation (EC) No 1775/2005 within two months from the date of that decision.

5. Where the Commission, within two months after having been informed by the Agency in accordance with paragraph 3 or by a regulatory authority in accordance with paragraph 4, or on its own initiative within three months from the date of the decision finds that the decision of a regulatory authority raises serious doubts as to its compatibility with guidelines referred to in this Directive or in Regulation (EC) No 1775/2005, the Commission may decide to initiate proceedings. In such a case, it shall invite the regulatory authority and the parties to the proceedings before the regulatory authority to submit comments.

6. Where the Commission has decided to initiate proceedings, it shall, within not more than four months of the date of such decision, issue a final decision:

(a) not to raise objections against the decision of the regulatory authority;

or

(b) requiring the regulatory authority concerned to amend or withdraw its decision if it considers that guidelines have not been complied with.

7. Where the Commission has not taken a decision to initiate proceedings or a final decision within the time-limits set in paragraphs 5 and 6 respectively, it shall be deemed not to have raised objections against the decision of the regulatory authority.

8. The regulatory authority shall comply with the Commission decision to amend or withdraw their decision within a period of two months and shall inform the Commission accordingly.

9. The Commission shall adopt guidelines setting out the details of the procedure to be followed for the application of this Article. This measure designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 30(3).

## **Article 24f**

### **Record keeping**

1. Member States shall require supply undertakings to keep at the disposal of the national regulatory authority, the national competition authority and the Commission, for at least five years, the relevant data relating to all transactions in gas supply contracts and gas derivatives with wholesale customers and transmission system operators as well as storage and LNG operators.

2. The data shall include details on the characteristics of the relevant transactions such as duration, delivery and settlement rules, the quantity, the dates and times of execution and the transaction prices and means of identifying the wholesale customer concerned, as well as specified details of all unsettled gas supply contracts and gas derivatives.

3. The regulatory authority may decide to make available to market participants elements of this information provided that commercially sensitive information on individual market players or individual transactions is not released. This paragraph shall not apply to information about financial instruments which fall within the scope of Directive 2004/39/EC.

4. To ensure the uniform application of this Article, the Commission may adopt guidelines which define the methods and arrangements for record keeping as well as the form and content of the data that shall be kept. These measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 30(3).

5. With respect to transactions in gas derivatives of supply undertakings with wholesale customers and transmission system operators as well as storage and LNG operators, this Article shall only apply once the Commission has adopted the guidelines referred to in paragraph 4.

6. The provisions of this Article shall not create additional obligations vis-à-vis the authorities mentioned in paragraph 1 for entities falling within the scope of Directive 2004/39/EC.

7. In case the authorities mentioned in paragraph 1 need access to data kept by entities falling within the scope of Directive 2004/39/EC, the authorities responsible under that Directive shall provide the authorities mentioned in paragraph 1 with the required data.

## Railways

Article 30 of the Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification

### **Article 30**

#### **Regulatory body**

1. Without prejudice to Article 21(6), Member States shall establish a regulatory body. This body, which can be the Ministry responsible for transport matters or any other body, shall be independent in its organisation, funding decisions, legal structure and decision-making from any infrastructure manager, charging body, allocation body or applicant. The body shall function according to the principles outlined in this Article whereby appeal and regulatory functions may be attributed to separate bodies.

2. An applicant shall have a right to appeal to the regulatory body if it believes that it has been unfairly treated, discriminated against or is in any other way aggrieved, and in particular against decisions adopted by the infrastructure manager or where appropriate the railway undertaking concerning:

- a) the network statement;
- b) criteria contained within it;
- c) the allocation process and its result;
- d) the charging scheme;
- e) level or structure of infrastructure fees which it is, or may be, required to pay;
- f) safety certificate, enforcement and monitoring of the safety standards and rules.

3. The regulatory body shall ensure that charges set by the infrastructure manager comply with chapter II and are non-discriminatory. Negotiation between applicants and an infrastructure manager concerning the level of infrastructure charges shall only be permitted if these are carried out under the supervision of the regulatory body. The regulatory body shall intervene if negotiations are likely to contravene the requirements of this Directive.

4. The regulatory body shall have the power to request relevant information from the infrastructure manager, applicants and any third party involved within the Member State concerned, which must be supplied without undue delay.

5. The regulatory body shall be required to decide on any complaints and take action to remedy the situation within a maximum period of two months from receipt of all information.

Notwithstanding paragraph 6, a decision of the regulatory body shall be binding on all parties covered by that decision.

In the event of an appeal against a refusal to grant infrastructure capacity, or against the terms of an offer of capacity, the regulatory body shall either confirm that no modification of the infrastructure manager's decision is required, or it shall require modification of that decision in accordance with directions specified by the regulatory body.

6. Member States shall take the measures necessary to ensure that decisions taken by the regulatory body are subject to judicial review.



## **Railways – as amended by the “Third Railway Package”**

Article 30 of the Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification – as amended by the Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007 amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC of the European Parliament and of the Council on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure

one sentence added in Article 30 (1) – here shown in *italics*

### **Article 30**

#### **Regulatory body**

1. Without prejudice to Article 21(6), Member States shall establish a regulatory body. This body, which can be the Ministry responsible for transport matters or any other body, shall be independent in its organisation, funding decisions, legal structure and decision-making from any infrastructure manager, charging body, allocation body or applicant. *It shall furthermore be functionally independent from any competent authority involved in the award of a public service contract.* The body shall function according to the principles outlined in this Article whereby appeal and regulatory functions may be attributed to separate bodies.

2. An applicant shall have a right to appeal to the regulatory body if it believes that it has been unfairly treated, discriminated against or is in any other way aggrieved, and in particular against decisions adopted by the infrastructure manager or where appropriate the railway undertaking concerning:

- a) the network statement;
- b) criteria contained within it;
- c) the allocation process and its result;
- d) the charging scheme;
- e) level or structure of infrastructure fees which it is, or may be, required to pay;
- f) safety certificate, enforcement and monitoring of the safety standards and rules.

3. The regulatory body shall ensure that charges set by the infrastructure manager comply with chapter II and are non-discriminatory. Negotiation between applicants and an infrastructure manager concerning the level of infrastructure charges shall only be permitted if these are carried out under the supervision of the regulatory body. The regulatory body shall intervene if negotiations are likely to contravene the requirements of this Directive.

4. The regulatory body shall have the power to request relevant information from the infrastructure manager, applicants and any third party involved within the Member State concerned, which must be supplied without undue delay.

5. The regulatory body shall be required to decide on any complaints and take action to remedy the situation within a maximum period of two months from receipt of all information.

Notwithstanding paragraph 6, a decision of the regulatory body shall be binding on all parties covered by that decision.

In the event of an appeal against a refusal to grant infrastructure capacity, or against the terms of an offer of capacity, the regulatory body shall either confirm that no modification of the infrastructure manager's decision is required, or it shall require modification of that decision in accordance with directions specified by the regulatory body.

6. Member States shall take the measures necessary to ensure that decisions taken by the regulatory body are subject to judicial review.

## **Postal Services**

Article 22 of the Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, as amended by Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services

### **The national regulatory authority**

#### **Article 22**

Each Member State shall designate one or more national regulatory authorities for the postal sector that are legally separate from and operationally independent of the postal operators.

Member States shall inform the Commission which national regulatory authorities they have designated to carry out the tasks arising from this Directive.

The national regulatory authorities shall have as a particular task ensuring compliance with the obligations arising from this Directive and shall, where appropriate, establish controls and specific procedures to ensure that the reserved services are respected. They may also be charged with ensuring compliance with competition rules in the postal sector.

## **Postal Services**

Article 22 of the Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, as amended by the Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services

### **The national regulatory authority**

#### **Article 22**

1. Each Member State shall designate one or more national regulatory authorities for the postal sector that are legally separate from and operationally independent of the postal operators. Member States that retain ownership or control of postal service providers shall ensure effective structural separation of the regulatory functions from activities associated with ownership or control.

Member States shall inform the Commission which national regulatory authorities they have designated to carry out the tasks arising from this Directive. They shall publish the tasks to be undertaken by national regulatory authorities in an easily accessible form, in particular where those tasks are assigned to more than one body. Member States shall ensure, where appropriate, consultation and cooperation between those authorities and national authorities entrusted with the implementation of competition law and consumer protection law on matters of common interest.

2. The national regulatory authorities shall have as a particular task ensuring compliance with the obligations arising from this Directive, in particular by establishing monitoring and regulatory procedures to ensure the provision of the universal service. They may also be charged with ensuring compliance with competition rules in the postal sector.

The national regulatory authorities shall work in close collaboration and shall provide mutual assistance in order to facilitate the application of this Directive within the appropriate existing bodies.

3. Member States shall ensure that effective mechanisms exist at national level under which any user or postal service provider affected by a decision of a national regulatory authority has the right to appeal against the decision to an appeal body which is independent of the parties involved. Pending the outcome of any such appeal, the decision of the national regulatory authority shall stand, unless the appeal body decides otherwise.

## **Audiovisual Media Services**

Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities

### **Cooperation between Member States' regulatory bodies**

#### **Article 23b**

Member States shall take appropriate measures to provide each other and the Commission with the information necessary for the application of the provisions of this Directive, in particular Articles 2, 2a and 3 hereof, notably through their competent independent regulatory bodies.

Recitals 65 and 66 read:

(65) According to the duties conferred upon Member States by the Treaty, they are responsible for the transposition and effective implementation of this Directive. They are free to choose the appropriate instruments according to their legal traditions and established structures, and notably the form of their competent independent regulatory bodies, in order to be able to carry out their work in implementing this Directive impartially and transparently. More specifically, the instruments chosen by Member States should contribute to the promotion of media pluralism.

(66) Close cooperation between competent Member States' regulatory bodies and the Commission is necessary to ensure the correct application of this Directive. Similarly close cooperation between Member States and between Member States' regulatory bodies is particularly important with regard to the impact which broadcasters established in one Member State might have on another Member State. Where licensing procedures are provided for in national law and if more than one Member State is concerned, it is desirable that contacts between the respective bodies take place before such licences are granted. This cooperation should cover all fields coordinated by Directive 89/552/EEC as amended by this Directive and in particular Articles 2, 2a and 3 hereof.

*(The Commission proposal read:*

*1. Member States shall guarantee the independence of national regulatory authorities and ensure that they exercise their powers impartially and transparently.*

*2. National regulatory authorities shall provide each other and the Commission with the information necessary for the application of the provisions of this Directive.”*

*Recital 47 of the proposal read as follows:*

*“Regulators should be independent from national governments as well as from audiovisual media service providers in order to be able to carry out their work impartially and transparently and to contribute to pluralism. Close cooperation among national regulatory authorities and the Commission is necessary to ensure the correct application of this Directive”)*

Not from the European Union, but from the **Council of Europe's** Committee of Ministers comes a recommendation on the independence of broadcasting regulators, which is included here to point out a reference point for a sort of common European standard for broadcasting regulatory authorities:

COUNCIL OF EUROPE – COMMITTEE OF MINISTERS, RECOMMENDATION REC (2000) 23 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE INDEPENDENCE AND FUNCTIONS OF REGULATORY AUTHORITIES FOR THE BROADCASTING SECTOR (Adopted by the Committee of Ministers on 20 December 2000 at the 735th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe, ...

Recommends that the governments of member States:

a. establish, if they have not already done so, independent regulatory authorities for the broadcasting sector;

b. include provisions in their legislation and measures in their policies entrusting the regulatory authorities for the broadcasting sector with powers which enable them to fulfil their missions, as prescribed by national law, in an effective, independent and transparent manner, in accordance with the guidelines set out in the appendix to this recommendation;

c. bring these guidelines to the attention of the regulatory authorities for the broadcasting sector, public authorities and professional groups concerned, as well as to the general public, while ensuring the effective respect of the independence of the regulatory authorities with regard to any interference in their activities.

## Airports

Proposal for a directive of the European Parliament and of the Council on airport charges, COM(2006) 820 final

### **Article 10**

#### **Independent regulatory authority**

1. Member States shall nominate or establish an independent body as their national independent regulatory authority in order to ensure the correct application of the measures taken to comply with this Directive and to assume the tasks assigned under Articles 4 and 7. Such body may be the same as the entity entrusted by a Member State with the application of the additional regulatory measures referred to in Article 1(2), including with the approval of the charging system and/or the level of charges, provided that it meets the requirements of paragraph 2.

2. Member States shall guarantee the independence of the independent regulatory authority by ensuring that it is legally distinct from and functionally independent of any airport managing body and air carrier. Member States that retain ownership or control of airports, airport managing bodies or air carriers shall ensure effective structural separation of the regulatory function from activities associated with ownership or control. Member States shall ensure that the independent regulatory authority exercises its powers impartially and transparently.

3. Member States shall notify to the Commission of the name and address of the independent regulatory authority, their assigned tasks and responsibilities, and of the measures taken to ensure compliance with paragraph 2.

4. Whenever an airport managing body or an airport user has a complaint with regard to any matter within the scope of this Directive, it may refer the complaint to the independent regulatory authority which, acting as dispute settlement authority, shall issue a decision within two months after receipt of the complaint. The independent regulatory authority shall have the right to request the necessary information from the parties for the decision. The decisions of the regulatory authority shall have binding effect.

5. The independent regulatory authority shall publish an annual report concerning its activities.

#### **European Parliament legislative resolution of 15 January 2008** (changes in *italics*)

1. Member States shall nominate or establish an independent body as their national independent regulatory authority in order to ensure the correct application of the measures taken to comply with this Directive and to *ensure that* the tasks assigned under Articles 4 and 7 *are carried out*. Such body may be the same as the entity entrusted by a Member State with the application of the additional regulatory measures referred to in Article 1(2), including with the approval of the charging system and/or the level of charges, provided that it meets the requirements of paragraph 2.

*1a. The national independent regulatory authority may delegate, under its supervision, the implementation of the provisions, or parts of the provisions, of this Directive to regional independent regulatory authorities, provided that the implementation takes place in accordance with the same standards. The national independent regulatory authority shall continue to bear responsibility for ensuring the correct application of the provisions of this Directive. The provisions of paragraph 2 shall also apply to regional independent regulatory authorities.*

[2 and 3: no changes]

4. *When carrying out an investigation into the justification for modifying the structure, level or airport charge, as provided for in Article 4, the independent regulatory authority shall be able to request necessary information from the parties concerned and shall be required to consult the parties concerned and any other affected parties in order to reach its decision. It shall reach its decision as soon as practical within three months of the receipt of a complaint and shall be required to publish the decision and the reasons behind it.* The decisions of the regulatory authority *shall* have binding effect.