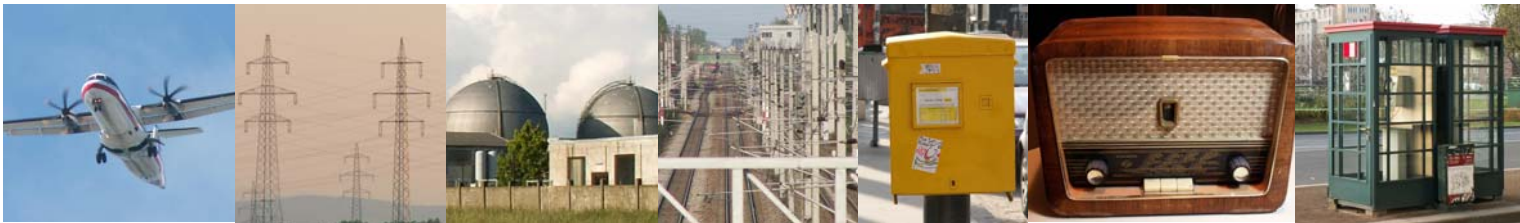


*Hans Peter Lehofer*

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



**Updated 24 March 2011**

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 concerning NRAs in the fields of

Electronic Communication Networks and Services .....	3
Electricity .....	5
Natural Gas.....	6
Railways .....	7
Postal Services .....	8
Audiovisual Media Services.....	9
Airport Charges .....	11

The focus of this synopsis is on the independence of the NRAs, so I have not included the – sometimes rather detailed – enumerations of the NRAs' tasks.

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**

[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 amended by

- [Regulation \(EC\) No 717/2007](#) of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC,
- [Regulation \(EC\) No 544/2009](#) of the European Parliament and of the Council of 18 June 2009 amending Regulation (EC) No 717/2007 on roaming on public mobile telephone networks within the Community and Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services, and
- [Directive 2009/140/EC](#) of the European Parliament and of the Council of 25 November 2009 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 associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services

[\(consolidated version\)](#)

### **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, transparently and in a timely manner. Member States shall ensure that national regulatory authorities have adequate financial and human resources to carry out the task assigned to them.

3a. Without prejudice to the provisions of paragraphs 4 and 5, national regulatory authorities responsible for ex-ante market

regulation or for the resolution of disputes between undertakings in accordance with Article 20 or 21 of this Directive shall act independently and shall not seek or take instructions from any other body in relation to the exercise of these tasks assigned to them under national law implementing Community law. This shall not prevent supervision in accordance with national constitutional law. Only appeal bodies set up in accordance with Article 4 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 where applicable, members of the collegiate body fulfilling that function within a national regulatory authority referred to in the first subparagraph or their replacements may be dismissed only if they no longer fulfil the conditions required for the performance of their duties which are laid down in advance in national law. The decision to dismiss the head of the national regulatory authority concerned, or where applicable members of the collegiate body fulfilling that function shall be made public at the time of dismissal. The dismissed head of the national regulatory authority, or where applicable, members of the collegiate body fulfilling that function shall receive a statement of reasons and shall have the right to request its

publication, where this would not otherwise take place, in which case it shall be published.

Member States shall ensure that national regulatory authorities referred to in the first subparagraph have separate annual budgets. The budgets shall be made public. Member States shall also ensure that national regulatory authorities have adequate financial and human resources to enable them to actively participate in and contribute to the Body of European Regulators for Electronic Communications (BEREC).

3b. Member States shall ensure that the goals of BEREC of promoting greater regulatory coordination and coherence are actively supported by the respective national regulatory authorities.

3c. Member States shall ensure that national regulatory authorities take utmost account of opinions and common positions adopted by BEREC when adopting their own decisions for their national markets.

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 to enable it to carry out its functions effectively. 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 the appeal, the decision of the national regulatory authority shall stand, unless interim measures are granted in accordance with national law.

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 general subject matter of appeals, the number of requests for appeal, the duration of the appeal proceedings and the number of decisions to grant interim measures. Member States shall provide such information to the Commission and BEREC after a reasoned request from either.

## **Electricity**

[Directive 2009/72/EC](#) of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC

### **Article 35**

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

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

2. Paragraph 1 of this Article shall be without prejudice to the designation of other regulatory authorities at regional level within Member States, provided that there is one senior representative for representation and contact purposes at Community level within the Board of Regulators of the Agency in accordance with Article 14(1) of Regulation (EC) No 713/2009.

3. By way of derogation from paragraph 1 of this Article, a Member State may designate regulatory authorities for small systems on a geographically separate region whose consumption, in 2008, accounted for less than 3 % of the total consumption of the Member State of which it is part. This derogation shall be without prejudice to the appointment of one senior representative for representation and contact purposes at Community level within the Board of Regulators of the Agency in compliance with Article 14(1) of Regulation (EC) No 713/2009.

4. 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 and related legislation, the regulatory authority:

(a) is legally distinct and functionally independent from any other public or private entity;

(b) ensures that its staff and the persons responsible for its management:

(i) act independently from any market interest; and

(ii) do not seek or take direct instructions from any government or other public or private entity when carrying out the regulatory tasks. This requirement is without prejudice to close cooperation, as appropriate, with other relevant national authorities or to general policy guidelines issued by the government not related to the regulatory powers and duties under Article 37.

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

(a) the regulatory authority can take autonomous decisions, independently from any political body, and has separate annual budget allocations, with autonomy in the implementation of the allocated budget, and adequate human and financial resources to carry out its duties; and

(b) the members of the board of the regulatory authority or, in the absence of a board, the regulatory authority's top management are appointed for a fixed term of five up to seven years, renewable once.

In regard to point (b) of the first subparagraph, Member States shall ensure an appropriate rotation scheme for the board or the top management. The members of the board or, in the absence of a board, members of the top management may be relieved from office during their term only if they no longer fulfil the conditions set out in this Article or have been guilty of misconduct under national law.

## Natural Gas

[Directive 2009/73/EC](#) of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC

### **Article 39**

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

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

2. Paragraph 1 of this Article shall be without prejudice to the designation of other regulatory authorities at regional level within Member States, provided that there is one senior representative for representation and contact purposes at Community level within the Board of Regulators of the Agency in accordance with Article 14(1) of Regulation (EC) No 713/2009.

3. By way of derogation from paragraph 1 of this Article, a Member State may designate regulatory authorities for small systems on a geographically separate region whose consumption, in 2008, accounted for less than 3 % of the total consumption of the Member State of which it is part. That derogation shall be without prejudice to the appointment of one senior representative for representation and contact purposes at Community level within the Board of Regulators of the Agency in compliance with Article 14(1) of Regulation (EC) No 713/2009.

4. 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 States shall ensure that, when carrying out the regulatory tasks conferred upon it by this Directive and related legislation, the regulatory authority:

(a) is legally distinct and functionally independent from any other public or private entity;

(b) ensures that its staff and the persons responsible for its management:

(i) act independently from any market interest; and

(ii) do not seek or take direct instructions from any government or other public or private entity when carrying out the regulatory tasks. That requirement is without prejudice to close cooperation, as appropriate, with other relevant national authorities or to general policy guidelines issued by the government not related to the regulatory powers and duties under Article 41.

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

(a) the regulatory authority can take autonomous decisions, independently from any political body, and has separate annual budget allocations, with autonomy in the implementation of the allocated budget, and adequate human and financial resources to carry out its duties; and

(b) the members of the board of the regulatory authority or, in the absence of a board, the regulatory authority's top management are appointed for a fixed term of five up to seven years, renewable once.

In regard to point (b) of the first subparagraph, Member States shall ensure an appropriate rotation scheme for the board or the top management. The members of the board or, in the absence of a board, members of the top management may be relieved from office during their term only if they no longer fulfil the conditions set out in this Article or have been guilty of misconduct under national law.

## **Railways**

[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 [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 ([consolidated version](#))

### **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**

[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, and
- [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

([consolidated version](#))

### **Article 22**

#### **The national regulatory authority**

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 2010/13/EU](#) of the European Parliament and of the Council 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) (codified version)

([consolidated version](#), including a [corrigendum](#))

### **Cooperation between regulatory bodies of the Member States**

#### **Article 30**

Member States shall take appropriate measures to provide each other and the Commission with the information necessary for the application of this Directive, in particular Articles 2, 3 and 4, in particular through their competent independent regulatory bodies.

#### **Recitals 94 and 95**

(94) In accordance with the duties imposed on Member States by the Treaty on the Functioning of the European Union, they are responsible for the effective implementation of this Directive. They are free to choose the appropriate instruments according to their legal traditions and established structures, and, in particular, 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.

(95) Close cooperation between competent regulatory bodies of the Member States and the Commission is necessary to ensure the correct application of this Directive. Similarly close cooperation between Member States and between their 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 this Directive.

*(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.

## Airport Charges

[Directive 2009/12/EC](#) of the European Parliament and of the Council of 11 March 2009 on airport charges

### **Article 11**

#### **Independent supervisory authority**

1. Member States shall nominate or establish an independent authority as their national independent supervisory authority in order to ensure the correct application of the measures taken to comply with this Directive and to assume, at least, the tasks assigned under Article 6. Such an authority 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(5), including with the approval of the charging system and/or the level of airport charges, provided that it meets the requirements of paragraph 3 of this Article.

2. In compliance with national law, this Directive shall not prevent the independent supervisory authority from delegating, under its supervision and full responsibility, the implementation of this Directive to other independent supervisory authorities, provided that implementation takes place in accordance with the same standards.

3. Member States shall guarantee the independence of the independent supervisory 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 of airports, airport managing bodies or air carriers or control of airport managing bodies or air carriers shall ensure that the functions relating to such ownership or control are not vested in the independent supervisory authority. Member States shall ensure that the independent supervisory authority exercises its powers impartially and transparently.

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

5. Member States may establish a funding mechanism for the independent supervisory

authority, which may include levying a charge on airport users and airport managing bodies.

6. Member States shall ensure, in respect of disagreements referred to in Article 6(3), that measures are taken to:

(a) establish a procedure for resolving disagreements between the airport managing body and the airport users;

(b) determine the conditions under which a disagreement may be brought to the independent supervisory authority. The authority shall, in particular, dismiss complaints which it deems are not properly justified or adequately documented; and

(c) determine the criteria against which disagreements will be assessed for resolution.

These procedures, conditions and criteria shall be non-discriminatory, transparent and objective.

7. When undertaking an investigation into the justification for the modification of the system or the level of airport charges as set out in Article 6, the independent supervisory authority shall have access to necessary information from the parties concerned and shall be required to consult the parties concerned in order to reach its decision. Without prejudice to Article 6(4), it shall issue a final decision as soon as possible, and in any case within four months of the matter being brought before it. This period may be extended by two months in exceptional and duly justified cases. The decisions of the independent supervisory authority shall have binding effect, without prejudice to parliamentary or judicial review, as applicable in the Member States.

8. The independent supervisory authority shall publish an annual report concerning its activities.