

Art 23b “independent regulators” of the proposal for an “Audiovisual Media Services Directive”

This paper is based on the legislative proposal COM (2005) 646 final, especially the explanatory memorandum, as well as the related impact assessment and the relevant press releases. All these documents are available on the Commission’s website.¹

Article 23 b:

- 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:

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.

Art. 23 b of the Proposal requires Member States to guarantee the independence of national regulatory authorities where they exist. The purpose of this provision is to ensure the independence on national regulatory authorities but does not entail the obligation for Member States to create such authorities.

A provision on the independence of regulations is also provided for in Art. 3 of the Framework Directive 2002/21/EC in the field of electronic communications. This does not conflict with Member States’ freedom in the choice of means in the implementation of a Directive.

Independent regulatory authorities, where they exist, **may not be part of a governmental administration**, and must have their own “apparatus” and resources. They shall also be **independent from audiovisual media service providers** in order to be able to carry out their work impartially and transparently and to contribute

¹ http://europa.eu.int/comm/avpolicy/regul/regul_en.htm#4

to pluralism - as **Recital 47** states. The proper exercise of independent regulatory powers is vital to ensuring media pluralism.

The powers in question include the administration of the broadcasting sector (e.g. awarding broadcasting licences), supervision (e.g. programme monitoring), and rule-making (e.g. codes of practice). However, as Recital 12 states, this Directive should not require or encourage Member States to impose new systems of licensing or administrative authorisation on any type of media. Regulatory authorities are called to **supervise audiovisual programmes' compliance with European and national rules**. This does not necessarily mean ex-ante monitoring. Also ex-post complaint-based evaluations can be adequate. Central to this is the protection of minors, human dignity, non-discrimination and the enforcement of advertising rules. **Independent regulators can also develop and establish rules themselves** (e.g. codes of practice in the field of advertising).

Art. 23 b (2) states that these authorities "shall provide each other and the European Commission with the information necessary for the application of the provisions of the Directive." This shall guarantee the **close cooperation among national regulatory authorities and the Commission** which is necessary to ensure the correct application of this Directive as is explained in Recital 47. It does not entail any formal supplementary reporting requirements, but would apply as circumstances demanded.