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***Round Table : Does Smart Governance mean something in  
the EU Utility Sector ?  
A practical point of view***

*Workshop «New Competitive Tools and  
Smart Regulators' Policy ?»*

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# "Astonishment report" concerning typical governance issues

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## First reaction I had after few weeks as commissioner :

- The general agreement concerning board organisation (le "collège") rather than individual regulator is fully justified. In the real life, the board collective decision-making is crucial (**independence, transparency**).
- "**Accountability**" is always considered as very important but very few people understand what regulators are actually doing and how to evaluate impacts of their actions and decisions.
  - What is ART/ ARCEP ?
  - What are the objectives and powers ?
  - What is ARCEP day to day activity?
  - .....
- Besides operators and may be more than some operators, financial analysts watch regulators very carefully. But for non expert (full-time experts are necessary), entry costs to understand what a telecom regulator is doing are very high.

# *The last postal Commission's proposal has very few (and light) mandatory rules concerning powers and organisation of the regulator*

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## *'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 undertakings providing postal services 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 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 of the Member States shall work in close collaboration and shall provide mutual assistance** in order to facilitate application of this Directive.

3. Member States shall ensure that effective mechanisms exist at national level under which any user or undertaking providing postal services who is 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.

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## *In Telecom a framework directive exists*

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- 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 » includes much more mandatory provisions.
- May be the devil hides on the details and on subsidiarity ....
- But you can find big differences between France, UK Italy or Germany in regulators institutional design.
- Euro-regulator ? More coordination between diverse organizations ?

## *Regulatory frameworks in Europe are diverse ..... so are regulators*

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- Institutional designs, regulatory rules as well as industrial organizations can be very different between countries (postal, telecom, electricity, ...).
- Regulators in Europe : very different organizations and rules amongst countries and even in the same country.
- Two interesting appendices of a French parliamentary report concerning ( “Les Autorités Administratives Indépendantes : évaluation d’un objet juridique non identifié”)
  - **Agencies assessment in France (more than 50 agencies)**
  - **Legal benchmark (15 countries + EU).**
- This diversity concerns :
  - **Board organization vs. individual, members nomination and renewal, competencies. How ever different there are, the criteria are seen as crucial for “Independence”.**
  - **Accountability /control : parliament, government, appeal body (check and balance system), ... European Commission ...**

# *Economic analysis will help clearer political debates about smart governance*

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## Political issues in France

- Nomination criteria and board organization
- Forbidden activities when leaving regulators
- Converging / merging regulators ?
- .....

## Intuitions : Economic criteria will enrich legal proceedings

- Ex 1: If technical skills are mandatory, the regulator scope of activity can't be extended too much.
- Ex 2: The accountability issue can't be solved by purely national solution nor by commission impact assessment. A European evaluation organisation is probably needed. Should not it be independent from the Commission ?