

Institutional issues in the new EU regulatory framework

The evolving position of NRAs

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Stronger independence of the NRAs ...

Changes to Article 3 FWD read in conjunction with Recital 13 of “Better Regulation” Directive have significantly strengthened independence of NRAs:

Framework 2002	Framework 2009
Independence vis-à-vis undertakings offering ECS	Idem
Structural separation between Member State activities in regulation and ownership/control	
But: no strict separation from political authority	Independence also vis-à-vis “ <i>any other body</i> ” in relation to tasks assigned to NRAs by the regulatory framework (art. 3a)
No reference to human and financial resources	Explicit reference to obligation to ensure adequate human and financial resources for NRAs

Stronger independence of the NRAs ... (2)

Framework 2002	Framework 2009
No reference to a “limitative” suspension or overturning power	No power to suspend or overturn decisions of NRAs except for appeal bodies
No specific obligations on rules for dismissing heads of NRAs	Dismissal only if “ <i>conditions required for the performance</i> ” are not met – these conditions must be established in advance in national law
	Dismissal decision to be made public (often also a requirement under administrative law)
No rules on budget	NRAs must have a separate budget

...in a more harmonization EU framework

1. Market analyses: role of BEREC and Commission

- Market analyses (art. 7) – BEREC and Commission have equal status for making comments (only Commission holds veto power however on market definition and SMP analysis)
- Remedies (art. 7a) – Commission can raise “serious doubts” (but no veto), BEREC issues opinion (by majority vote – not 2/3)
- BEREC assistance to NRAs (time limits)
- BEREC role for consolidating “best practices”

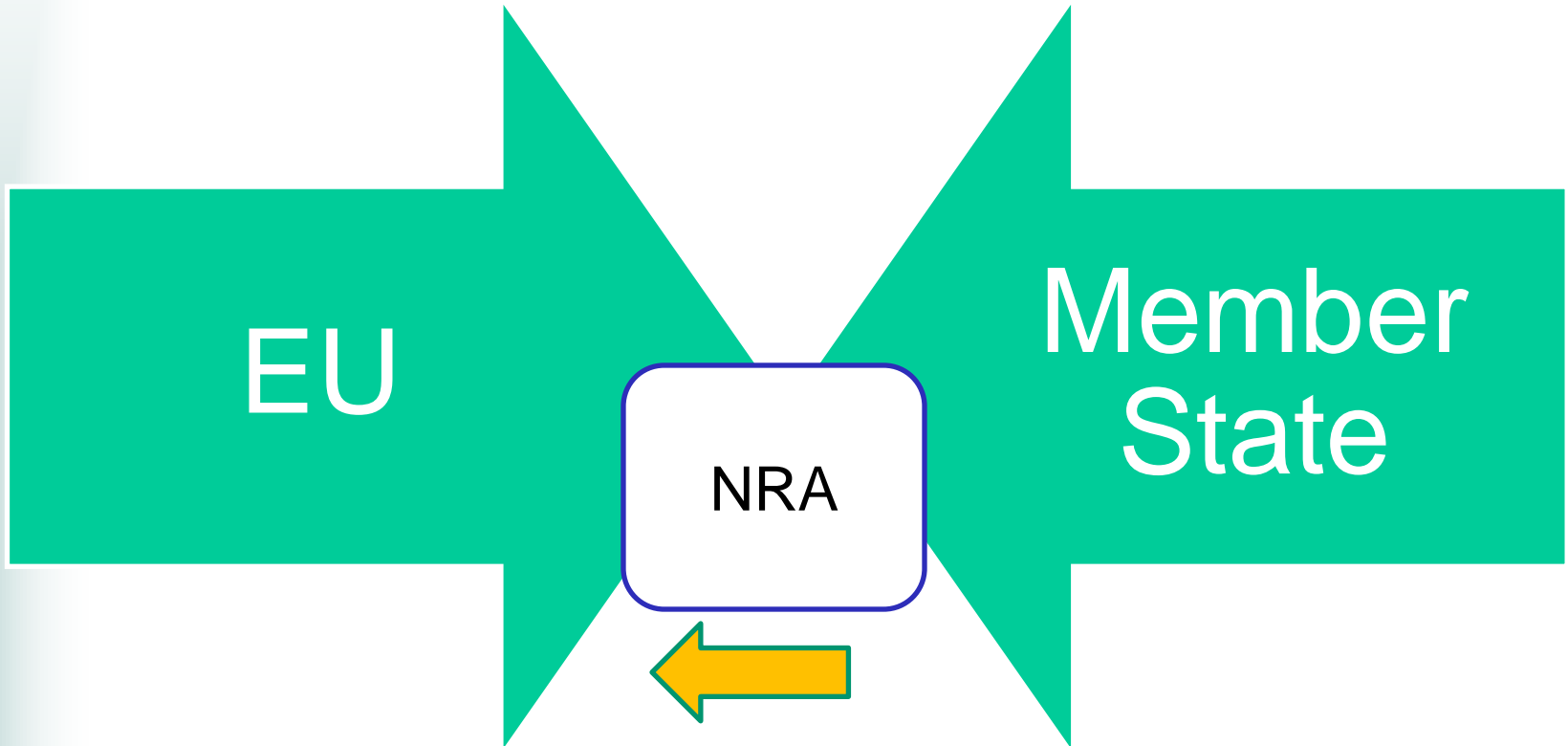
2. Harmonization (Article 19 FWD):

- Power of the Commission to issue a Recommendation or a Decision (2 years after Recommendation) in case of “*divergences in the implementation (...) of the regulatory tasks*”

3. Spectrum (art. 8a FWD)

- Cooperation among Member States and the Commission on “*planning, coordination and harmonization of the use of radio spectrum*”
- Multiannual radio spectrum policy programmes

NRA position after the 2009 framework



Implementation of directives

1. Which Belgian legislation is affected (non exhaustive):
 - Law on the status of the BIPT of 17 January 2003
 - Law on appeals of 17 January 2003
 - Law on rights of way of [date]
 - Law on electronic communications of 13 June 2005
 - Consumer protection laws
 - Media laws
 - + Secondary legislation (Royal Decrees etc.)
2. Different State entities are competent in Belgium (Federal / Regions / Communities)
3. Drafting is ongoing (approx. 50-80 articles of legislation and estimated impact on 30 Royal (or Ministerial) Decrees)

Tentative timetable

Q3 2010

- 1st draft presented by the relevant Minister(s)
- Government(s) agreement and consultation

Q1 2011

- Council of State review
- Adaptations where needed + Government(s) agreement and consultation

By 25 May
2011

- Parliament debate and amendments
- Publication

Note: Implementation of the former EU Regulatory Framework (in 2002) took 2 years in Belgium with one and the same Government (implementation started late, summer 2003)