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Explanatory Memorandum

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,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress;

Bearing in mind Article 10 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights;

Recalling the importance for democratic societies of the existence of a wide range of independent and autonomous means of communication, making it possible to reflect the diversity of ideas and opinions, as set out in the Declaration on freedom of expression and information of 29 April 1982;

Highlighting the important role played by the broadcasting media in modern, democratic societies;

Emphasising that, to guarantee the existence of a wide range of independent and autonomous media in the broadcasting sector, it is essential to provide for adequate and proportionate regulation of that sector, in order to guarantee the freedom of the media whilst at the same time ensuring a balance between that freedom and other legitimate rights and interests;

Considering that for this purpose, specially appointed independent regulatory authorities for the broadcasting sector, with expert knowledge in the area, have an important role to play within the framework of the law;

Noting that the technical and economic developments, which lead to the expansion and the further complexity of the sector, will have an impact on the role of these authorities and may create a need for greater adaptability of regulation, over and above self-regulatory measures adopted by broadcasters themselves;

Recognising that according to their legal systems and democratic and cultural traditions, member states have established regulatory authorities in different ways, and that consequently there is diversity with regard to the means by which - and the extent to which - independence, effective powers and transparency are achieved;

Considering, in view of these developments, that it is important that member States should guarantee the regulatory authorities for the broadcasting sector genuine independence, in particular, through a set of rules covering all aspects of their work, and through measures enabling them to perform their functions effectively and efficiently,

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.

dix to Recommendation Rec(2000)23

*elines concerning the independence and functions of
latory authorities for the broadcasting sector*

I. General legislative framework

1. Member states should ensure the establishment and unimpeded functioning of regulatory authorities for the broadcasting sector by devising an **appropriate legislative framework** for this purpose. The rules and procedures governing or affecting the functioning of regulatory authorities should clearly affirm and protect their **independence**.

2. The duties and powers of regulatory authorities for the broadcasting sector, as well as the ways of making them accountable, **the procedures for appointment of their members and the means of their funding should be clearly defined in law**.

II. Appointment, composition and functioning

3. The rules governing regulatory authorities for the broadcasting sector, especially their **membership, are a key element of their independence**. Therefore, they should be defined so as to **protect them against any interference, in particular by political forces or economic interests**.

4. For this purpose, specific rules should be defined as regards **incompatibilities** in order to avoid that:

- regulatory authorities are under the influence of political power;
- members of regulatory authorities exercise functions or hold interests in enterprises or other organisations in the media or related sectors, which might lead to a conflict of interest in connection with membership of the regulatory authority.

5. Furthermore, rules should guarantee that the members of these authorities:

- **are appointed in a democratic and transparent manner;**
- **may not receive any mandate or take any instructions from any person or body;**
- **do not make any statement or undertake any action which may prejudice the independence** of their functions and do not take any advantage of them.

6. Finally, precise rules should be defined as regards the possibility to dismiss members of regulatory authorities so as to **avoid that dismissal be used as a means of political pressure**.

7. In particular, dismissal should only be **possible in case of non-respect of the rules of incompatibility** with which they must comply **or incapacity to exercise their functions duly noted**, without prejudice to the possibility for the person concerned to **appeal** to the courts against the dismissal. Furthermore, dismissal on the grounds of an offence connected or not with their functions should only be possible in serious instances clearly defined by law, subject to a final sentence by a court.

8. Given the broadcasting sector's specific nature and the peculiarities of their missions, regulatory **authorities should include experts** in the areas which fall within their competence.

III. Financial independence

9. Arrangements for the funding of regulatory authorities - another key element in their independence - should be specified in law in accordance with a clearly defined plan, with reference to the estimated cost of the regulatory authorities' activities, so as to allow them to carry out their functions fully and independently.

10. **Public authorities should not use their financial decision-making power to interfere with the independence of regulatory authorities**. Furthermore, recourse to the services or expertise of the national administration or third parties should not affect their independence.

11. Funding arrangements should take advantage, where appropriate, of mechanisms which do not depend on ad-hoc decision-making of public or private bodies.

IV. Powers and competence

ory powers

12. Subject to clearly defined delegation by the legislator, regulatory authorities should **have the power to adopt regulations and guidelines concerning broadcasting activities**. Within the framework of the law, they should also have the power to adopt internal rules.

g of licences

13. One of the essential tasks of regulatory authorities in the broadcasting sector is normally the **granting of broadcasting licences**. The basic conditions and criteria governing the granting and renewal of broadcasting licences should be clearly defined in the law.

14. The regulations governing the **broadcasting licensing procedure should be clear and precise and should be applied in an open, transparent and impartial manner**. The decisions made by the regulatory authorities in this context should be subject to adequate publicity.

15. Regulatory authorities in the broadcasting sector should be involved in the process of planning the range of national frequencies allocated to broadcasting services. They should have the power to authorise broadcasters to provide programme services on frequencies allocated to broadcasting. This does not have a bearing on the allocation of frequencies to transmission network operators under telecommunications legislation.

16. Once a list of frequencies has been drawn up, a **call for tenders should be made public** in appropriate ways by regulatory authorities. Calls for tender should define a number of specifications, such as type of service, minimum duration of programmes, geographical coverage, type of funding, any licensing fees and, as far as necessary for those tenders, technical parameters to be met by the applicants. Given the general interest involved, member states may follow different procedures for allocating broadcasting frequencies to public service broadcasters.

17. Calls for tender should also specify the content of the licence application and the documents to be submitted by candidates. In particular, candidates should indicate their company's structure, owners and capital, and the content and duration of the programmes they are proposing.

Monitoring broadcasters' compliance with their commitments and obligations

18. Another essential function of regulatory authorities should be **monitoring compliance with the conditions laid down in law and in the licences granted to broadcasters**. They should, in particular, ensure that broadcasters who fall within their jurisdiction respect the basic principles laid down in the European Convention on Transfrontier Television, and in particular those defined in Article 7.

19. Regulatory authorities **should not exercise a priori control** over programming and the monitoring of programmes should therefore always take place after the broadcasting of programmes.

20. Regulatory authorities should be given the right to request and receive information from broadcasters in so far as this is necessary for the performance of their tasks.

21. Regulatory authorities **should have the power to consider complaints**, within their field of competence, concerning the broadcasters' activity and to publish their conclusions regularly.

22. When a broadcaster fails to respect the law or the conditions specified in his licence, the regulatory authorities should have the power to impose **sanctions, in accordance with the law**.

23. A range of sanctions which have to be prescribed by law should be available, starting with a warning. Sanctions should be proportionate and should not be decided upon until the broadcaster in question has been given an opportunity to be heard. All sanctions should also be open to review by the competent jurisdictions according to national law.

Powers in relation to public service broadcasters

24. Regulatory authorities may also be given the mission to carry out tasks often incumbent on specific supervisory bodies of public service broadcasting organisations, while at the same time respecting their editorial independence and their institutional autonomy.

V. Accountability

25. Regulatory authorities **should be accountable to the public for their activities**, and should, for example, publish regular or ad hoc reports relevant to their work or the exercise of their missions.

26. In order to protect the regulatory authorities' independence, whilst at the same time making them accountable for their activities, it is necessary that they **should be supervised only in respect of the lawfulness of their activities, and the correctness and transparency of their financial activities**. With respect to the legality of their activities, this supervision should be exercised *a posteriori* only. The regulations on responsibility and supervision of the regulatory authorities should be clearly defined in the laws applying to them.

27. All decisions taken and regulations adopted by the regulatory authorities should be:

- duly reasoned, in accordance with national law;
- open to review by the competent jurisdictions according to national law;
- made available to the public.

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