

2. Functions of the Minister and of the NRA

PART II – FUNCTIONS OF THE MINISTER

- RECOMMENDATION: RESPONSIBILITIES AND MANDATE OF EACH PLAYER MUST BE CLEARLY DEFINED SO THAT MISUNDERSTANDINGS OR DUPLICATION OF EFFORTS ARE AVOIDED. ISSUES:
 - The issue of the actual mandate of the Authority is really a question of delegation of powers of the State and the degree of delegation of such powers depends on the political tradition and context of the country and on the political will to create an independent and competent Regulatory Authority or not. This will, in fact, determine the true future of the sector.
 - In practice, there is a wide diversity in how countries divide regulatory roles and responsibilities between the Ministry and the independent regulatory authority. This is partly due to a lack of a clear-cut distinction between policy functions and regulatory functions. To look at international examples, it has often been the case that where an independent regulatory authority has been set up the establishment of the regulatory framework is in principle the responsibility of the Ministry and the implementation and administration of this regulatory framework is the responsibility of the independent regulatory authority.
 - In order to ensure regulatory clarity and confidence though, it is essential to define the institutional structure in the sector clearly. This was appropriately described in the McKinsey Quarterly of 1995 which stated that: "Where a regulator exists, it is important to ensure clarity of jurisdiction and defined resolution mechanisms, adequate organizational competence and funding and political insulation. Independence derives more from this latter factor than from a formal definition, and manifests itself by the regulators powers to dissent".
 - The division of tasks must be reflected in any Law governing the sector as it will determine the relationship between the different entities in the future and really determine the credibility of each in fulfilling their roles. Too many countries do not spell this out clearly from the start and thus set the scene for power-struggles in the worst case or uncertainy about who does what in the "best" case.





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	Licensing public telecommunicatio ns networks and services	General Authorizations/ class licenses	Operators with Significant Market Power	Interconnection	USO	Frequency allocation and assignment	Consumer protection	Tariff control	Number management and allocation
Austria	NRA	NRA	NRA	NRA	NRA	MIN	NRA	NRA	NRA
Belgium	MIN	NRA	NRA	NRA	NRA	MIN	NRA	NRA	NRA
Denmark	NRA	N/A	NRA	NRA	NRA	NRA	NRA	NRA	NRA
Finland	MIN	MIN	MIN	NRA	MIN	NRA	MIN	N/A	NRA
France	MIN	NRA	NRA	NRA	NRA	ANF		COMP. DIR.	NRA
Ireland	NRA	NRA	NRA	NRA	NRA	NRA	NRA	NRA	NRA
Portugal	NRA/Min	NRA	NRA	NRA	NRA	NRA	NRA	NRA/Dir. Gen Comp.	NRA
Spain	MIN	NRA	NRA	NRA	NRA	Min.Dev.	NRA	NRA	NRA
Sweden	NRA	NRA	NRA	NRA	NRA	NRA	NRA	NRA	NRA
Italy	MIN	NRA	NRA	NRA	NRA	MIN	NRA	NRA	NRA
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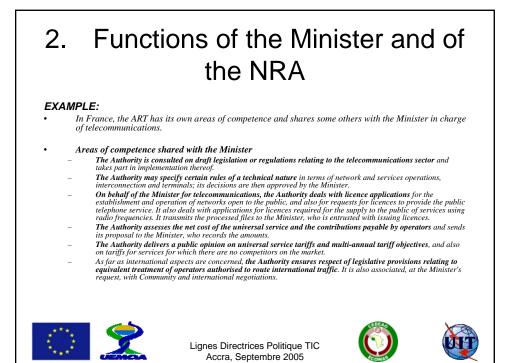
EXAMPLE:

a Portugal the government is responsible for the definition of the general communications policy. ICP- ANACOM (the regulator) acts in its advisory capacity when necessary. There are a few areas where a combined action between the Government and ICP is needed.

- ICP- ANACOM is a public institute, which differs from public administrations as it has more powers in decisions concerning the internal management of the organization including financial and human resources.
- Article 5, entitled Telecommunications Tutelage, of Law no. 91/97, of 1 of August (the Basic Law) states that:
 - It is the State's duty to define the strategic guidelines and the general policies, the approval of the applicable legislation to the sector, the supervision and inspection of telecommunications and of the activity of the telecommunications operators. 1.
 - activity of the telecommunications operators. Within the carrying out of the State's responsibilities, it is the duty of the "Instituto das Comunicações de Portugal", as the sector's regulatory entity, and without prejudice of other duties under the law: a. to manage the radio electric spectrum and of the orbital positions; b. to normalize, approve and certify the telecommunications equipment and materials, according to the applicable legislation; c. to inspect the telecommunications apparatus for compliance with the respective legal and regulatory provisions concerning their use, as well as the application of corresponding sanctions; and d. to define the conditions of interconnection of public use telecommunications services and networks exploited by operators holding a significant position in the markets. 2.





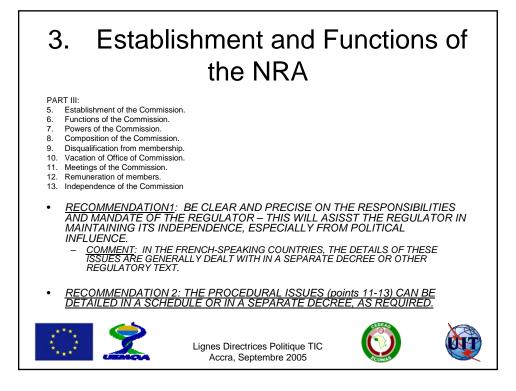




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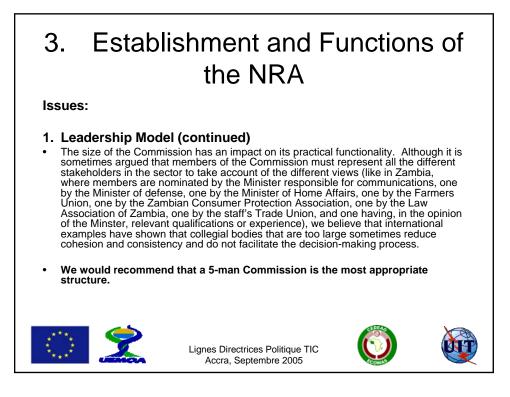
3. Establishment and Functions of the NRA Susses 1. Leadership Model 9. In theory, collegial bodies offer a broader perspective for decision making and allow for thorough consideration and debate of the issues. It should also allow the Regulator to be more independent, more objective, and less susceptible to regulatory capture. 9. number of members (varying from 3 to 15), 9. autority of the collegial bodit. 9. dedication of members (part-time or full-time), 9. the background of members, and

- the nomination and possible termination of the duties and contract of the members.
- These are all issues which must be considered in the drafting of an ICT Law.

In the region, a variety of models are present. Burkina Faso, for example has a Director General. Cape Verde has a full time 3-person Board. Ivory Coast has a Director General and a Board consisting of 7 people, and Mali has a Director General with an Adminsitrative Board. The Regulator of Niger has a 5 person Board, and Senegal has a Director General and a Regulatory Council. Togo has a 5 person Board. Looking at practical examples and the economic background of the countries in guestion

 Looking at practical examples and the economic background of the countries in question, it is logical that the Commission be composed of part-time members.





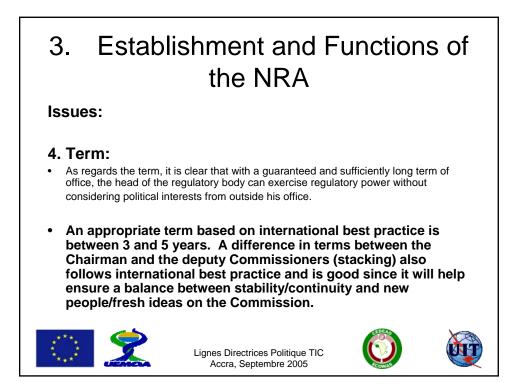
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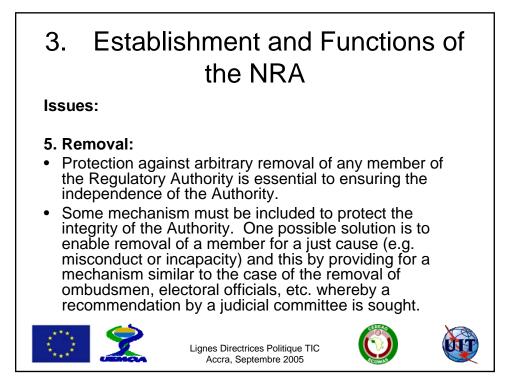
Issues:

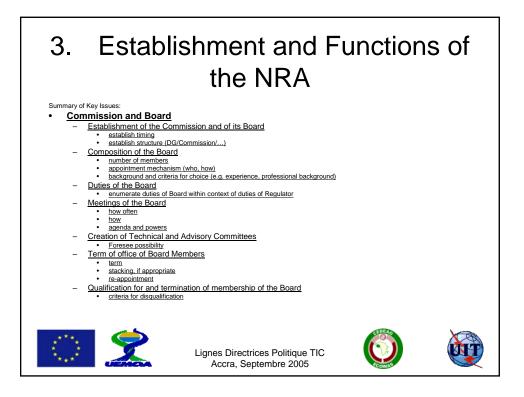
- 2. Appointment of Leadership
- International Best practice shows that, as regards the appointment of the Leadership of the Regulatory Authority, a number of principles are particularly relevant, namely:
 - Members should be appointed on the basis of their competence and integrity rather than on political considerations
 - A consultative process in the selection of the members and of the CEO of the Authority seems to ensure the appointment of the best people
 - The appointment of the Members by different branches of the government can help in guaranteeing independence
 - Members should have appropriate professional qualifications
 - Members should be free from disqualification relevant to appointments to high public office – as such, the office of Board Member or Director General of the NRA should be incompatible with offices in those organizations from which legal separation from the NRA is required

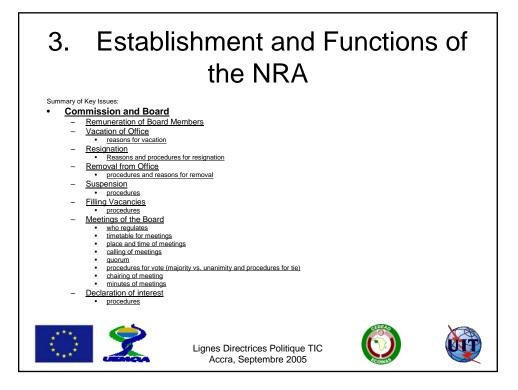


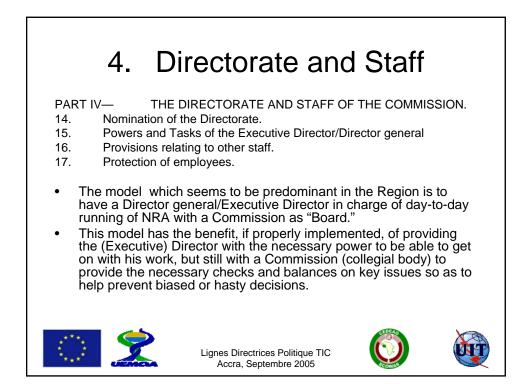


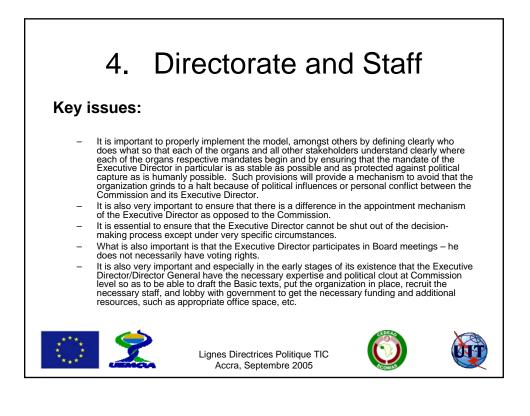


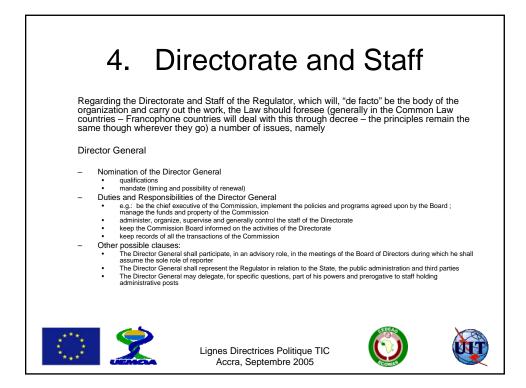


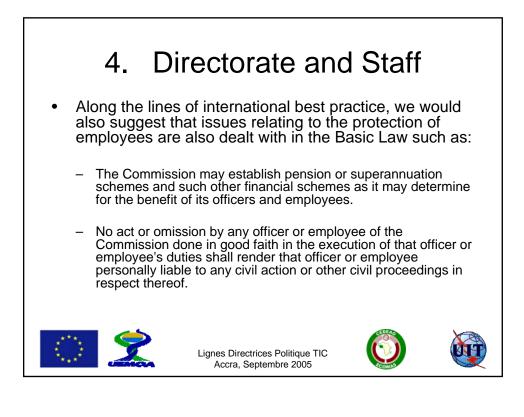


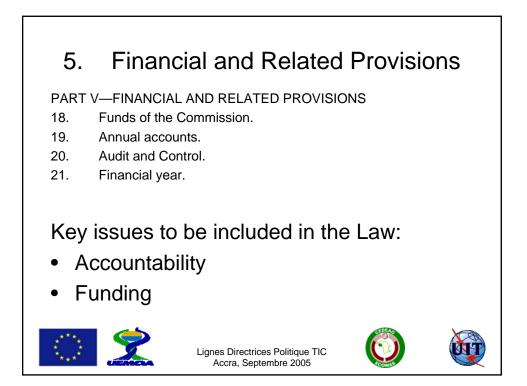


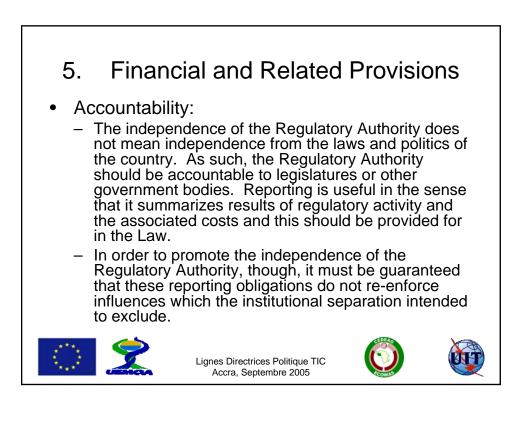


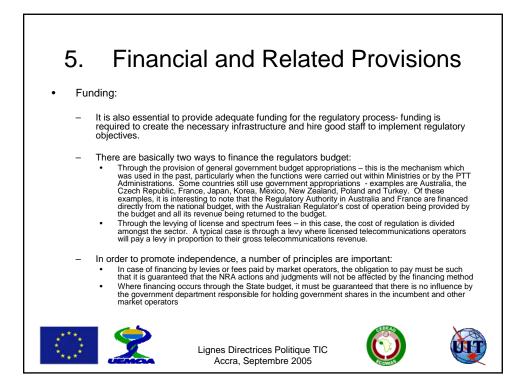




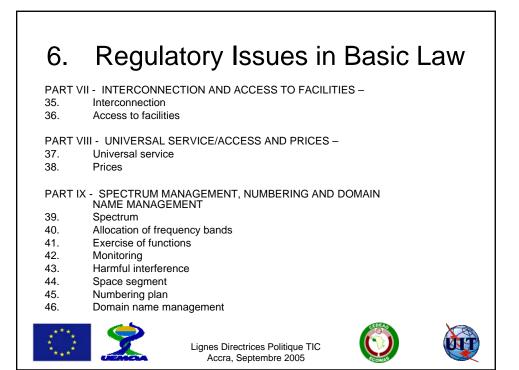


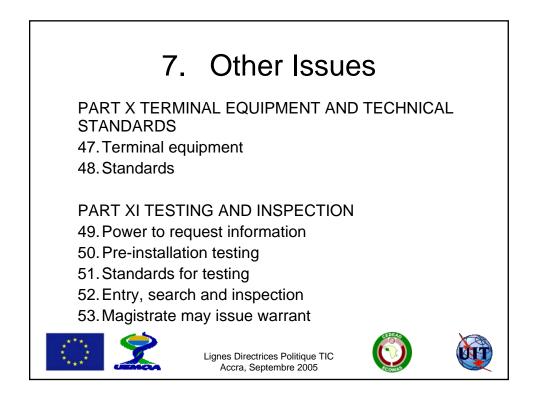




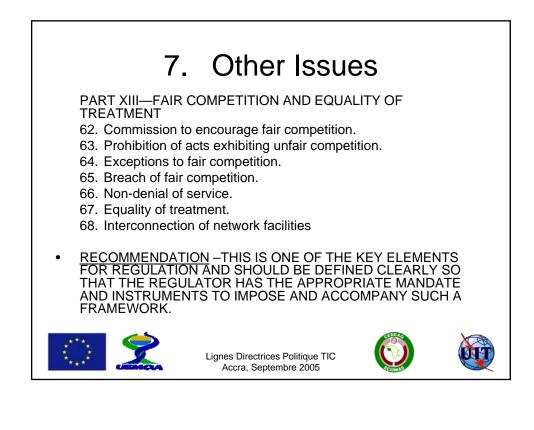


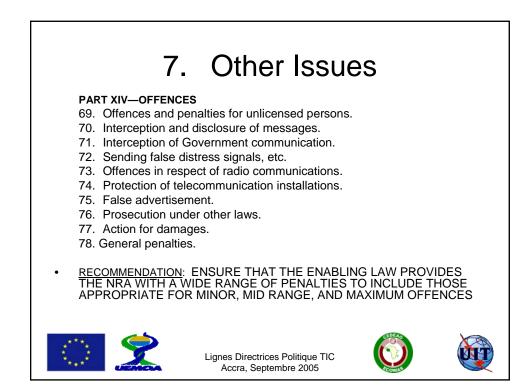


















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