

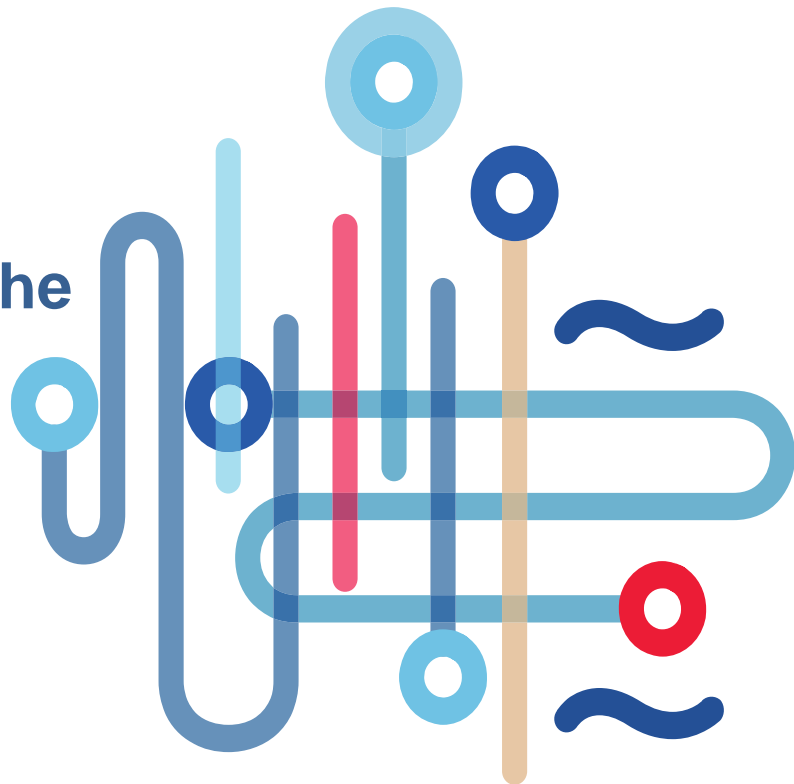


Republic of Serbia
RATEL
Regulatory Agency for
Electronic Communications
and Postal Services

Independence of RATEL and regulatory challenges in the process of harmonization with the Acquis

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Legal affairs division

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Regulatory agencies are an indispensable factor in a democratic order

In its reports, the European Commission highlighted the lack of independence of regulatory bodies

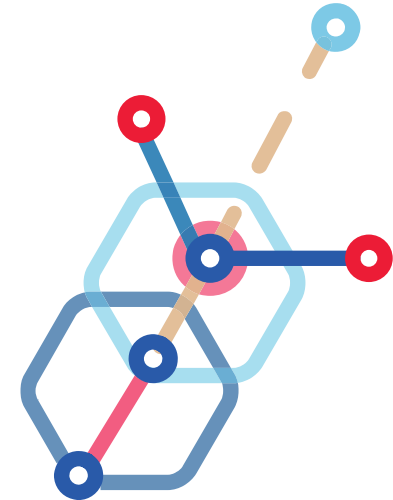
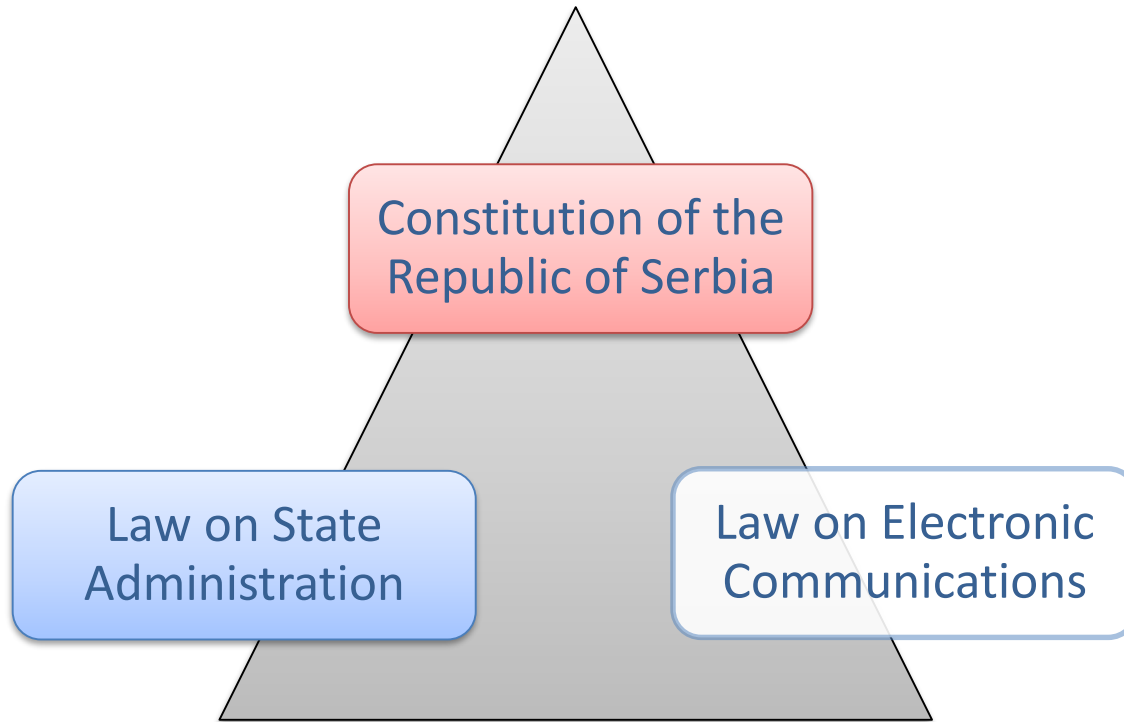
Implies independence: from the executive authority (political independence), from market players, financial, appeal mechanism, operational independence

Independence

Formal independence
Is determined through legal acts

Factual independence
is a prerequisite for formal independence but not a guarantor

Regulatory framework in the Republic of Serbia (1)



Regulatory framework in the Republic of Serbia (2)

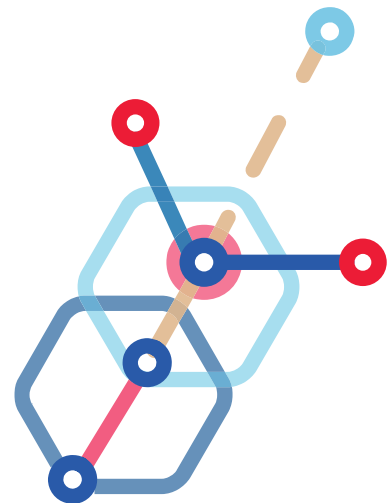
Constitution of the Republic of Serbia

- ❖ Contains general provisions regarding regulators
- ❖ Public authorities may also be entrusted by law as special bodies tasked with regulatory functions realized in particular areas or activities



Law on State Administration

- ❖ Certain public administration tasks may be entrusted by law to autonomous provinces, municipalities, cities and the city of Belgrade, public companies, institutions, public agencies and other organizations (holders of public authority)



Regulatory framework in the Republic of Serbia (3)

Law on Electronic Communications

(based on Directive 2002/21/EC)

- ❖ RATEL was established by the Law as an autonomous organization with the status of a legal entity which exercises public authorities in order to effectively implement the established electronic communications policy, promote competition in the sphere of electronic communications networks and services, enhance their capacity and/or quality, contribute to the development of electronic communications market and protect the interests of users of electronic communications services, in accordance with the Law and the bylaws adopted pursuant thereto.
- ❖ RATEL is **functionally** and **financially** independent of government authorities, organizations and entities engaged in the electronic communications sector.



Regulatory framework in the Republic of Serbia (4)

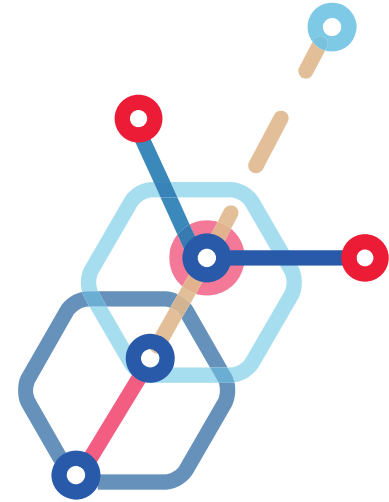
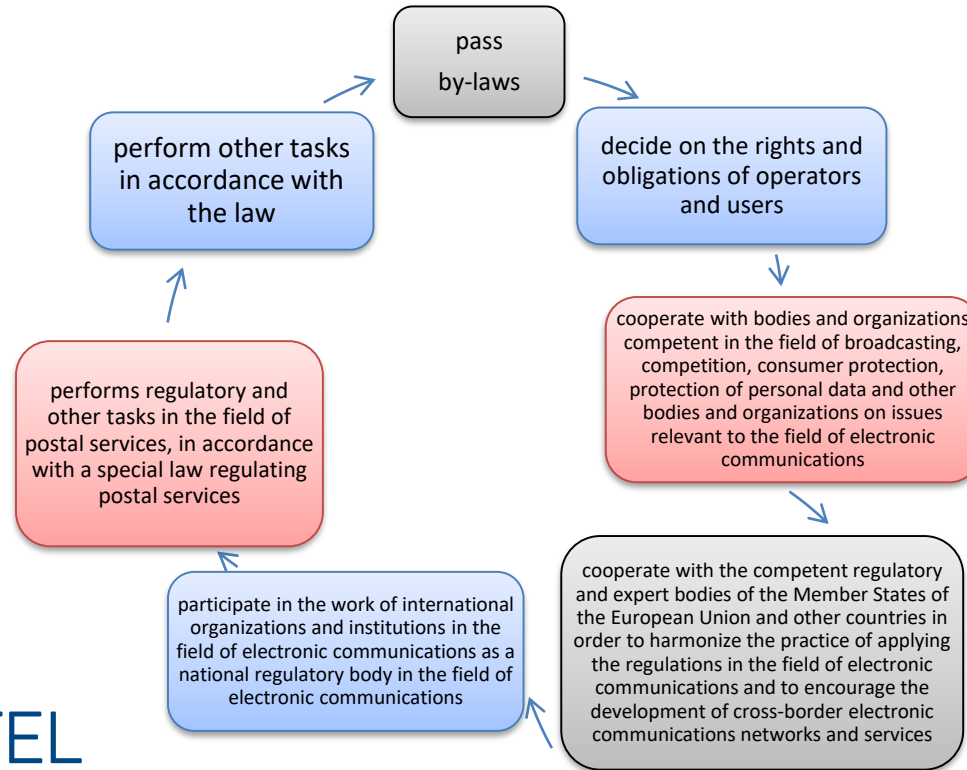
Relation between RATEL and public agencies

RATEL shall work pursuant to the regulations applied to the public agencies, that is to identify RATEL as a public agency subject to regulations applied to public agencies (e.g. Law on Budgetary System, Law Setting a Salary Cap in the Public Sector) thereby enabling an indirect control and limiting functional and financial independence of RATEL.

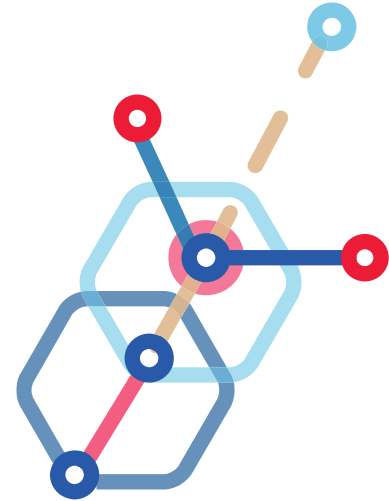
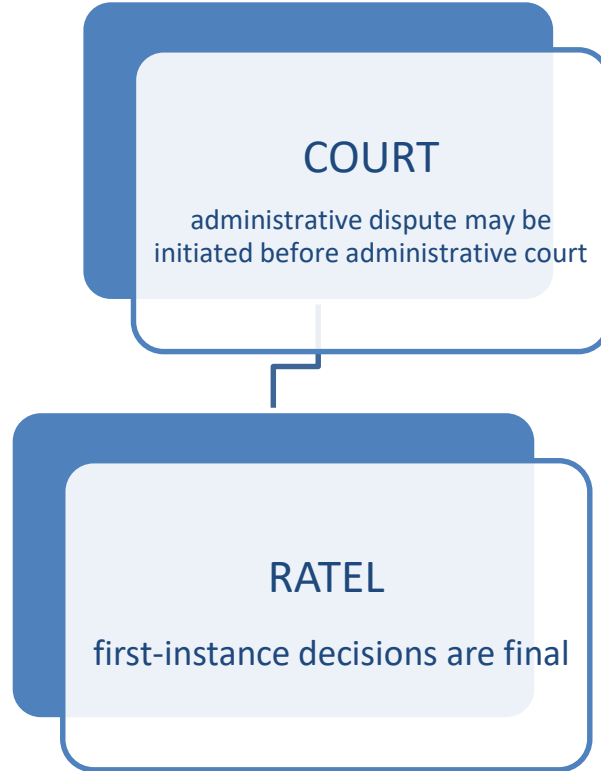


Regulatory framework in the Republic of Serbia (5)

TASKS ENTRUSTED BY LAW



Position of RATEL in the State Structure in RS



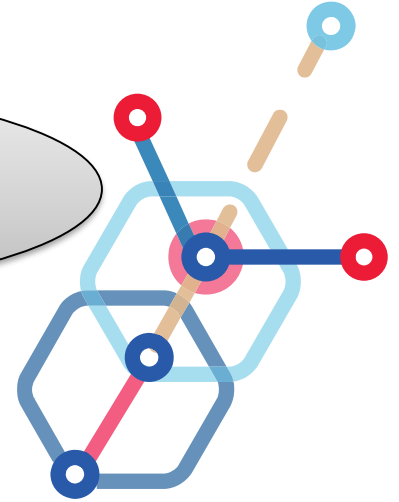
Indicators of independency (1)

Functional Independence

Powers and resources guaranteed by law

Organizational separation from the Ministry and the Government

Independence in decision making without seeking and receiving instructions from other bodies or organizations



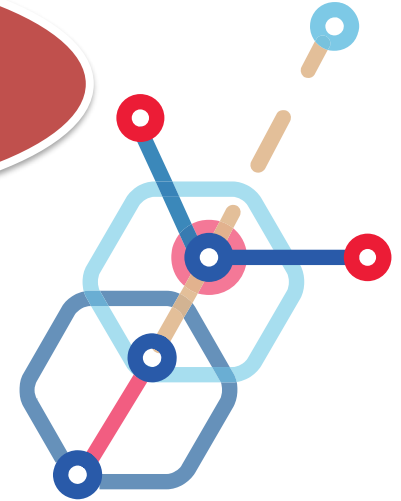
Indicators of independency (2)

Financial independance

➤ Own budget and not beneficiary of the state budget

➤ Freedom to determine the priorities in the implementation of the financial plan when allocating funds

➤ The surplus of total revenues over the expenditures is paid into the budget



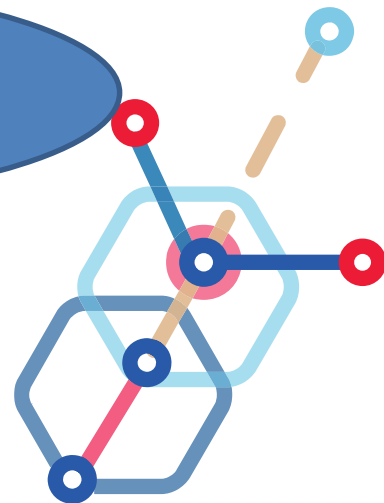
Indicators of independency (3)

Operational independence

❖ The management is neither elected, nor is it directly subordinate to Minister

❖ Transparent and pre-prescribed conditions for dismissal of directors and board members

❖ Ability to recruit and retain competent staff

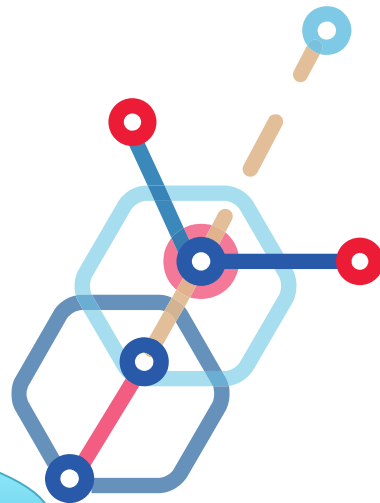


INDICATORS OF INDEPENDENCE-Regulatory challenges

Indicators of independence in the EU regulatory framework

Challenging issues in the regulatory framework of the RS

Goals



THE INDEPENDENCE OF NRA IN EU REGULATORY FRAMEWORK

DIRECTIVE 2009/140/EC

The independence of the NRA's was strengthened in order to ensure a more effective application of the regulatory framework and to increase authority and the predictability of NRA's decisions

FUNCTIONAL

- Protected against external intervention or political pressure
- Reaches decisions independently and does not seek or receive instructions to do so from other bodies and organizations
- Revision of NRA's decisions is possible either by a court or an independent body the complaint is being filed to

FINANCIAL

- Is not a budget beneficiary and has a separate annual budget
- Is free to set priorities in the financial plan execution

OPERATIONAL

- Is free to set priorities in the financial plan execution in a way that it allows NRA's to recruit a sufficient number of qualified staff
- Transparent and clearly prescribed requirements regarding dismissal of the head and members of the management board

THE INDEPENDENCE OF NRA IN EU REGULATORY FRAMEWORK

DIRECTIVE (EU) 2018/1972 (EECC)

The independence of NRA should be guaranteed with a view to ensuring the impartiality of their decisions, and as well should be in possession of all the necessary resources, in terms of staffing, expertise, and financial means, for the performance of their tasks.

FUNCTIONAL

- to provide minimum appointment qualifications and a minimum duration for mandate of the head or member
- to set grounds for the dismissal of the head of the NRA in order to remove any reasonable doubt as to the neutrality of that body and its imperviousness to external factors
- dismissals should relate only to the personal or professional qualifications of the head or member
- to set up an appropriate rotation scheme for the board and the top management
- to report annually rather than ad hoc, which, if disproportionate, could limit the independence of NRA

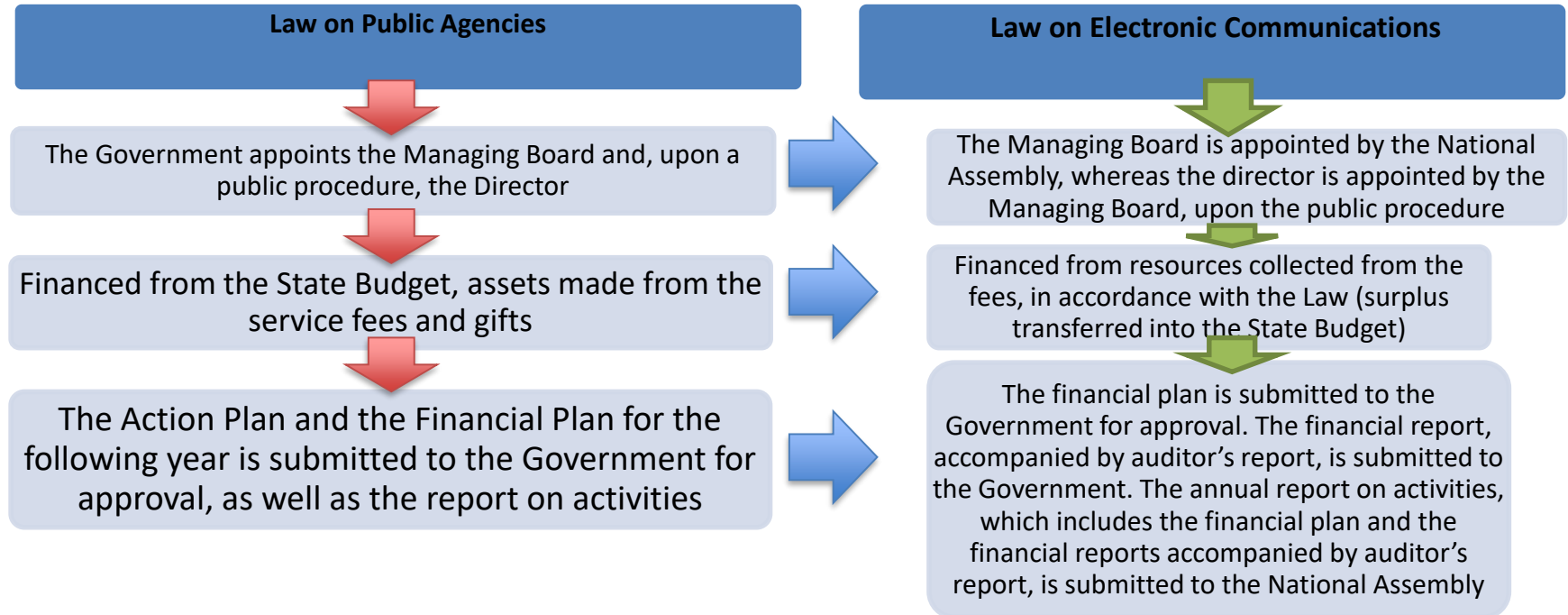
FINANCIAL

- NRA should have autonomy in managing their financial resources

OPERATIONAL

- NRA should have autonomy in managing their human resources

CHALLENGE-FUNCTIONAL INDEPENDENCE



CHALLENGE-FUNCTIONAL INDEPENDENCE

Law on Public Agencies

Adopts first instance decisions, whereas the second-instance complaint body is the responsible ministry

The agencies established under separate laws to which the Law on Public Agencies applies are specified in the Art. 57 thereof

Law on Electronic Communications

The first-instance decisions are final and administrative dispute may be initiated against them before administrative court

RATEL is not on the list of agencies referred to in Art. 57 of the Law on Public Agencies

FUNCTIONAL INDEPENDENCE

DIRECTIVE 2009/140/EC

- Reaches decisions independently and does not seek or receive instructions to do so from other bodies and organizations
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- dismissals should relate only to the personal or professional qualifications of the head or member
- to set up an appropriate rotation scheme for the board and the top management
- an annual reporting obligation rather than ad hoc reporting requests, which, if disproportionate, could limit their independence

CHALLENGE

- Supervising only the lawfulness of functioning of the Agency in performing the entrusted duties
- Provisions pertinent to public agencies (the Law on Public Agencies) should not be applied to RATEL

CHALLENGE-OPERATIONAL INDEPENDENCE

Law on Budgetary System stipulates the proscription for the beneficiaries of the public assets to hire new employees in order to fill job vacancies, either existing or created by employment termination



Law on Temporary Setting the Base for Salary Calculation and Payment, Wages and Other Income of the Public Assets Beneficiaries



Law Setting a Salary Cap in the Public Sector applies to the salaries of RATEL's employees, setting the cap for the maximum and the minimum salary in the public sector

consequences

- Reduced salaries
- Influencing the ability of the RATEL to employ and keep competent staff
- Increased tendency for highly qualified employees to leave RATEL and join the private sector
- Emerging problem of filling the vacancies after the retirement of a number of employees

OPERATIONAL INDEPENDENCE

DIRECTIVE 2009/140/EC

- Is free to set priorities in the financial plan execution that, in particular, provides NRA's to recruit a sufficient number of qualified staff
- Transparent and clearly prescribed requirements regarding dismissal of NRA's director and members of the management board

DIRECTIVE (EU) 2018/1972 (EECC)

- NRA should have autonomy in managing their human resource

CHALLENGE

- RATEL to have the autonomy and ability to set priorities in the financial plan execution that, in particular, provides it to recruit and keep a sufficient number of qualified staff

FINANCIAL INDEPENDENCE

**DIRECTIVE
2009/140/EC**

- Is not a budget beneficiary and has a separate annual budget
- Is free to set priorities in the financial plan execution

**DIRECTIVE (EU)
2018/1972 (EECC)**

- NRA should have autonomy in managing their financial resources

CHALLENGE

- RATEL to have the autonomy to set priorities in the financial plan execution
- Persistence of the revenue funds as a source of RATEL's financing

GOALS

Short-term

- New Law on Electronic Communications fully harmonized with the relevant EU regulatory framework in terms of satisfying level of functional, financial and operational independence

Long-term

- Taking into account the constitutional ground, it would be advisable and necessary to adopt an umbrella law which would govern the status and functioning of independent regulatory bodies in a unique way

Thank you for your attention!

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