

## **Executive summary**

### **9 areas to improve the regulation of industrial networks in France and Europe**

#### **To enhance the functioning of national regulatory authorities**

Europe enters a period of fiscal austerity, but regulation is still evolving, and its needs will grow in the future. Thus, it seems important to give financial independence to the regulator. We therefore advocate the funding of the national regulatory authority by a tax on the sector. This funding would be under the administrative control of the “Cour des Comptes”, and would be voted by Parliament. Finally, we recommend the appointment of full-time commissioners with different specialties and experiences, to encourage the consideration of all aspects of the regulation: Law, Economics, Management, public policy.

#### **Our proposals**

- National regulatory authority must be funded by a tax on the sector, with a rate proposed by the regulator and approved by Parliament.
- The college must be multidisciplinary (technician of the sector, economist, lawyer and representative of the general interest) and composed of qualified individuals.
- Full-time commissioners only.

#### **To improve methods of decision of the regulator**

During our study of foreign regulations, we noticed three good practices in particular, which seemed easy and useful to transpose in France. In terms of transparency, Swedish and English regulators provide, after a given consultation, the set of (non-confidential) elements provided by stakeholders to ensure transparency of the making of the decision. In addition, English regulators generally provide a scheduled timeline ahead of their decision, to give stakeholders greater visibility. Finally, prior impact studies, required for government to propose bills by the constitutional law of 23 July 2008, are also a good practice to systematize, in light of social, economic and environmental impacts of regulators' decisions.

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### Our proposals

- The regulator must use a mechanism of public consultation before any major decision and shall publish a summary of consultations together with the contributions of the actors.
- Accompany all major decisions by prior impact studies.
- Accompany any regulatory intervention by a schedule, known in advance.

### **To optimize the control of regulators**

Supervision of the regulation is up to the judge. Given the technical complexity and cost of regulated sectors and their social and economic impacts, it seems important to encourage the creation of specialized courts, with specific training and a minimum period of practice to allow the perpetuation of these skills.

### Our proposals

- Ensure the economic and technical training of judges to meet the specialization of lawyers and the complexity of economic, technical and financial affairs.
- Keep judges in office for three to six years while ensuring a gradual renewal of the bench specialist.

### **To enhance performance of regulatory authorities**

To improve the functional performance of regulatory authorities, it seems a good option to harmonize the methods of appointment, operation, powers and obligations of these regulators. Moreover, given the small size of the regulatory authorities, moving them in a single neighborhood would likely assure a performance gain regarding support functions (legal department, human resources management, budget...). These “little” gains at can gain meanings in times of scarce budgetary resources.

Finally, we recommend the creation of a parliamentary entity, whose mission would be a periodic economic and social analysis of all regulated sectors. This periodic information to the Parliament facilitates a feedback loop between regulation and sector policy.

### Our proposals

- Define an institutional model of regulator.
- Organize the pooling of resources and support functions of all regulators.
- New powers and duties to a parliamentary body : preparation and publication of a periodic report on the state of regulation in each sector.

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### **To detail the framework of the work of regulators**

Because of the interaction between regulation and policies, a regulator does not accomplish only its mission of regulating an industry, but it also adapts continuously regulation to allow the accomplishment of the objectives of sector policy(ies). As such, we propose that commissions of each regulation authorities issue a road map, detailing its medium-term objectives and vision of the challenges ahead. As implementation of sector policy, the roadmap must be approved by Parliament.

#### **Our proposals**

- A roadmap detailing the medium-term objectives and vision of the challenges ahead, prepared by the college and approved by Parliament.
- An annual reporting on the roadmap needs to be done and made public by the regulator.

### **About a regulation in the long-term**

Whether industrial networks are growing or declining, companies managers, but also the sector actors and investors perceive in most cases any change not treated by the regulator as a risk. Risk on how costs will be covered by tariffs, of course, but also on how political authorities and the regulator will tackle technical changes: bad decisions could lead to inappropriate development choices, stranded costs, or delay in these developments.

To prevent these effect potentially harmful to these sectors in France, compared to other countries, it seems important to give these players a predictable tariff principles, visibility of future investments, and organize forums for dialogue on future developments in the sector.

#### **Our proposals**

- Generalize the creation of prospective committees within the regulatory authorities.
- Release a guideline for tariff setting in the long term, to guarantee a fair remuneration of investments.

### **About the regulator as a technical expert in social debates**

If the need for independent experts to regulate industrial networks is recognized by the political powers, political power keeps the legislative initiative and responsibility for defining sector policies. These powers have a strong impact on the sector and, if the regulator is most often consulted, it seems important to formalize the consultation, allowing it to issue a public notice of the

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consequences of the laws in preparation of its field of expertise and focus on the economic effects for the sector, and pricing effects for the users/consumers.

### Our proposals

- Mandate the issuance of public notice of the regulator prior to the adoption of any law or regulation for the sector.
- On any proposed amendment concerning the sector, allow the government or a given number of MPs to ask the regulator a review.

### **About harmonizing European regulation**

The study of European legislation on these networks, its transposition and application in the Member States shows a wide disparity of authority, missions and organizations. A European law of regulation would seem desirable to spread good practice, ensure a minimum power and establish mechanisms for cooperation in decisions that have supranational impact.

### Our proposal

Develop a “European law of regulation” to define a common set of powers and duties for national regulators, and to develop modalities of cooperation between national regulators for problems affecting several Member States.

### **About a European regulation**

Although energy markets, transport, electronic communications and postal market (excluding the packages segment) is still largely national, trade between Member States seems to develop and requires a “European” vision of this international segment of these regulated sectors.

This vision must be supported by new European regulatory structures (an evolution of ACER and BEREC). The function of international dispute settlement and regulatory aspects of the European market seems to be a powerful incentive to harmonize the regulations of different Member States.

In addition, the creation of a European Observatory of network industries would help in ensuring transparency and consistency of assessment methods. This independent European-wide periodic study of the economic health of regulated sectors can provide the regulators, the Commission and European and national elected officials, an independent assessment of the evolution of each national sector, and its ability to fulfill the objectives of EU policies, particularly the construction of an efficient internal market, an efficient management of the network and a development consistent with the sector European objectives.

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### Our proposals

- Create a European regulation entities by “markets of European interest”.
- Create a European Observatory of network industries, independent, responsible of a periodic evaluation of policies in the areas of networks.