

# **Evaluation of the independence of supervisory and regulatory authorities in the decentralised Federal Administration**

## **Summary of the report of the Parliamentary Control of the Administration for the attention of the Council of States Control Committee**

of 2 February 2015

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### ***Overview***

*The issue of the independence of the supervisory and regulatory authorities in the decentralised Federal Administration is frequently questioned. The Control Committees (CC) therefore commissioned the Parliamentary Control of the Administration (PCA) with investigating if and how the independence of these supervisory and regulatory authorities is ensured. On 21 August 2013 the competent FDHA/DETEC subcommittee of the Control Committee of the Council of States (CC-S) set the focus of this investigation.*

### ***Overview of results***

*The normative systems governing the independence of supervisory and regulatory authorities generally function well, although they differ greatly. Statutory norms are adequately specified in the ordinances in which they appear, and there is no duplication; however, there are shortcomings, especially as regards functional independence and the independence of personnel. The standards are not always considered adequate in terms of their application, although no major difficulties were noted in practice. This is attributed mainly to the awareness of those responsible for these issues in the authorities and the Confederation.*

### ***Shortcomings or rudimentary statutory regulations***

*Independence of the supervisory and regulatory authorities is understood to be independence from politics, i.e. the authorities are not influenced by the government or the Administration, and independence from the market, in particular from those who are directly supervised. Although regulations regarding independence apply to the executive bodies, management and personnel, the standards for the various authorities investigated do not describe all aspects of independence in a systematic fashion. For example, some authorities do not have regulations regarding the concentration of roles or conflicts of interests, profiles for the executive body or requirements at operative level, and nor do they require employees to abide by a code of conduct and/or to take measures to ensure independence, for example by avoiding conflicts of interests.*

*Some authorities' statutory regulations do not mention the need for ongoing self-regulation of independence.*

### ***Lack of institutional separation in some cases***

*Whereas most authorities are clearly separate from the Confederation on an institutional level, in some cases authorities are very closely linked to the central Federal Administration. For example, not all authorities have their own specialist secretariat, and have to rely on the services of a federal office; for this they must have the authority to give instructions to this office. This is a pragmatic and economic solution, allowing synergies to be exploited and duplication avoided.*

*However, this close cooperation between an authority and a federal office can lead to independence being compromised if the federal office receives instructions from both the authority and its department. The members of the authority's executive body must therefore question critically the preparatory work done by the federal office. For reasons of efficiency, some authorities are also affiliated to a department at an administrative level. However, these authorities stated that such a situation is less problematic in practice than in theory. As the employees in key positions are sufficiently aware of the problems, independence can still be ensured.*

### ***Federal Council exercises minimal influence in selection of executive body members***

*The Federal Council should be able to select members of executive bodies on the basis of a profile. However, profiles do not exist for all authorities. Nonetheless, the selection procedure is similar in all the authorities investigated. Whilst preparations are made by the department – with varying degrees of involvement from the authority making the appointment – the Federal Council makes the final decision in all instances.*

*The different departments are involved to widely varying degrees. Whereas some departments search for candidates themselves, as well as accepting the authorities' nominations, in some cases the department or the Federal Council barely examines the proposed candidatures. No cases are known in which the Federal Council did not accept the proposed candidates. It would seem, therefore, that the Federal Council does not always make use of its control function regarding the selection of members. There were similar findings in the PCA evaluation of the selection procedure for top management in the Federal Administration.*

### ***Importance of a culture of independence***

*Ultimately any standards set cannot on their own determine and ensure the independence of an authority in practice. The awareness of those responsible of the importance for independence, their everyday actions and the public perception of their behaviour play a far greater role. All of these aspects create a culture of independence in a public authority. It is the individuals in key positions who determine whether or not independence is maintained in practice.*

*However, this should not distract from the importance of having clear guidelines on who is responsible for ensuring that a code of conduct is respected and the reporting process carried out in order to maintain a culture of independence. Then again, it was found that even if clear standards are in place regarding independence, not everything can be definitively regulated. However, guidelines must be in place so that in case of doubt a superior authority can assess if and how independence is ensured in a given case.*

### ***Evaluation procedure***

*In the assessment of the supervisory and regulatory authorities in the decentralised Federal Administration, both the nature of the normative bases and the way they are applied were considered. The analysis of the standards in the sixteen authorities under review and detailed analyses of the standards in five cases selected by the relevant subcommittee (Swissmedic, ENSI, FAOA, ComCom, COMCO) were carried out externally. The PCA considered the application of standards in the five selected cases on the basis of documents and discussions with the authorities involved and their departments, as well as with representatives of the supervised or regulated sector.*

The full report is available in German and French; the Italian version should be ready around December 2015: [www.parlament.ch](http://www.parlament.ch) > Bodies and Council Members > Committees > Parliamentary Control of the Administration PCA