

**INDEPENDENT ADMINISTRATIVE AGENCIES**

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## 1. A DIFFERENT MODEL OF ADMINISTRATION

Independent administrative (regulatory) agencies are public administrations which protect constitutional interests related to the economy and to specific social needs. They are authorities with highly technical skills, independent from the executive power, from politics and from the private interests involved<sup>1</sup>. They represent an untraditional model of administration aimed at making the administrative action more effective and independent from the political influence. Such objectives are considered particularly relevant in order to face the challenges given by markets in continuous technological progress and no longer manageable by the traditional model of administrations<sup>2</sup>.

In the Italian legal system, independent agencies have developed since 1990, when several bodies were established by statutes and the independence of many traditional administrations – involved in the regulation of strategic economic sectors - was significantly strengthened.

The development of these administrations is strongly related to the privatization and liberalization of numerous economic activities, formerly in public hands. The transition

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<sup>1</sup> In general terms on independent authorities, see M. D'ALBERTI, *Autorità amministrative indipendenti (dir. amm.)*, in *Enc. Giur. Treccani*, IV, 1995, 1 ss.; R. PEREZ, *Autorità indipendenti e tutela dei diritti*, in *Riv. trim. pubb.*, 1996, 133 ss.; S. Cassese, C. Franchini (ed.), *I garanti delle regole*, Bologna, 1996; A. PREDIERI (ed.), *Le autorità indipendenti nei sistemi istituzionali ed economici*, Firenze, 1997; G. AMATO, *Autorità semi-indipendenti e autorità di garanzia*, in *Riv. trim. pubb.*, 1998, 645 ss.; F. MERUSI, M. PASSARO, *Autorità indipendenti*, in *Enc. Giur. Aggiornamenti*, VI, 143 ss.; M. CLARICH, *Autorità indipendenti: bilancio e prospettive di un modello*, Bologna, 2005; G. GRASSO, *Le autorità amministrative indipendenti della Repubblica. Tra legittimità costituzionale e legittimazione democratica*, Milano, 2006; N. LONGOBARDI, *Autorità amministrative indipendenti esistema giuridico-istituzionale*, Torino, 2009.

<sup>2</sup> For further clarification concerning the difficulty, for independent authorities, to keep pace with continuously changing markets, see also G. PERICU, *Brevi considerazioni sul ruolo istituzionale delle autorità amministrative indipendenti*, in *Dir. amm.*, 1996, 1 ss..

from State-dirigisme to the open market in several economic sectors increased the risk to create private dominant positions, compromising both some social objectives and the interests of the weakest market subjects (users and consumers). To avoid and reduce possible drawbacks, the liberalization process has consequently been combined with the establishment of suitable “rules of the game” and highly qualified public bodies fit to safeguard them. Such bodies were requested to act independently to protect market stability, free competition, the opening of the market, and specific social ends<sup>3</sup>.

## **2. A DISTINCTIVE FEATURE: “INDEPENDENCE”**

The distinctive feature of independent authorities is their independence. They are indeed separated from the political circuit and from the relevant interests of the economic sectors they are requested to regulate acting like a third and impartial subject<sup>4</sup>.

The independence concerns the authorities’ organization and functions.

As for the organization, a principle of clear separation between administration, political powers and stakeholders must be observed. In particular, the independence is mirrored by the requirements and the procedures to appoint the members’ of the several authorities, as well as by their incompatibilities, the mandate’s length and the prohibition of renewal (in many cases a renewal is allowed just for one time).

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<sup>3</sup> On the relationship between the development of independent agencies and the changing role of the State in economy, see L. TORCHIA (ed.), *Lezioni di diritto amministrativo progredito*, Bologna, 2010, 127 ss..

<sup>4</sup> Focusing on the specific matter of independence, see also , V. CAIANIELLO, *Le autorità indipendenti tra potere politico e società civile*, in *Foro amm.*, 1997, II, 368 ss.; G. NAPOLITANO, *Autorità indipendenti e agenzie amministrative*, in M. CLARICH, G. FONDERICO (ed.), *Dizionario di diritto amministrativo*, Milano, 2007, 87 ss.; G. P. CIRILLO, R. CHIEPPA (ed.), *Le autorità amministrative indipendenti*, Padova, 2010, 27 ss.; L. CUOCOLO, *Le autorità indipendenti*, in G. F. Ferrari (ed.), *Diritto pubblico dell’economia*, Milano, 2010, 433

The appointment-mechanisms may involve the Parliament (especially the Chambers' Presidents or the whole assembly), the government, or both of them. However, when the government takes part into the appointment of the designated members, the authorities' independence is usually reduced.

Authorities' members must have scientific and technical capacity with reference to the specific sector involved; the incompatibilities are very rigorous since, during the tenure, it is forbidden to carry on advisory activities, other public tenures and working activities in the public or private sector. Generally, the mandate length is longer than one parliamentary legislature and the renewal is forbidden.

On the operational side, the independence is necessary in order to guarantee full impartiality of the agencies' action without influences from the government and from the regulated subjects.

From this point of view, independence means: i) **organizational autonomy**, whereby the Authorities regulate their own structure and staff; ii) **financial autonomy**, whereby they operate using their own resources without being dependent on the government; iii) **accounting autonomy**, which allows them to use their own funds and make their own balance applying different rules from the ones followed by the State government.

The Independence requirements have to be respected not only formally, but also in the every-day activities carried out by the authorities.

Two phenomena are called into question in this respect: on one hand, the possible capture of the regulators by the regulated subjects and, on the other hand, the risk of an unaccountable exercise of the authorities' powers. As a consequence, it becomes important to strengthen the authorities' technical capacity through the supply of suitable information and adequate tools in order to deter them from the strong influence exercised by the

regulated subjects, especially in the rule-making process. Moreover, an improvement of the accountability mechanisms is essential in order to compensate the authorities' separation from the political circuit<sup>5</sup>.

### **3. A GENERAL SURVEY OF THE ITALIAN INDEPENDENT AUTHORITIES**

Structurally, independent administrative authorities are quite different each other, even though<sup>6</sup> they can be classified under the sectors in which they operate.

A first group of authorities operates in the financial markets. Among them, only one has got general and horizontal competence (the Authority for Competition and Market – AGCM), while the others operate in specific sectors, as for example the Bank of Italy, the Companies and Stock Exchange Commission (CONSOB) and the Supervisory Institute for insurances (IVASS).

AGCM was established in 1990 by the Law 10.10.1990, n. 287. Its members are the chairman and four commissioners, jointly appointed by the Presidents of the two chambers of the Parliament.

This Authority guarantees the freedom of economic initiative and the protection of competition, according to art. 41 and 117.2.e) of the Italian Constitution. In particular, at the national level, the authority enforces the rules which prohibit anticompetitive

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<sup>5</sup> On the critical issues mentioned, see S. CASSESE, *Dalle regole del gioco al gioco con le regole*, in *Mercato, concorrenza, regole*, 2002, n. 2, 265 ss.; M. CLARICH, *Autorità indipendenti*, cit., 168 ss..

<sup>6</sup> For a general and well developed analysis concerning the several authorities, see the different contributions edited by G. P. CIRILLO, R. CHIEPPA (ed.), *Le autorità amministrative*, cit., 141 ss..

agreements among undertakings, abuses of dominant position, as well as any possible mergers which may create or strengthen dominant positions detrimental to competition.

According to European Regulation n. 1/2003, AGCM cooperates with the European Competition Network (“ECN”) for the enforcement of articles 101 and 102 TFEU. The Authority is also in charge of protecting consumers from any unfair commercial practices among undertakings (D. Lgs. 06.09.2005, n. 206) and from all misleading advertising (D. Lgs. 02.08.2007, n. 145 which implemented art. 14 of European Directive 2005/29/CE).

The Bank of Italy has a longer history compared with the other independent authorities. It was established in 1893 and was reorganized in the ‘90s by the D. Lgs. 01.09.1993, n. 385 (T.U. Bancario) and the Law 28.12.2005, n. 262. Presently its structure is regulated by art. 19 of the Law n. 261/2005; its members are the Governor - which is appointed by decree of the President of the Republic, which follows a resolution of the Ministers’ Council on the recommendation of the Prime Minister accompanied by the advice of the Bank of Italy’s Supreme Council – and the Directorate composed of the Director General and the three Deputy Directors General. All the members’ mandate lasts six year with the possibility to renew it only for one time. The Bank of Italy is the central bank of the Republic of Italy and is part of the European System of Central Banks (ESCB) for monetary matters. It has regulatory functions providing guidance and control of banks and financial intermediaries, ensuring the stability of the financial system and fostering the effectiveness of monetary policy. In the exercise of its guidance functions the Bank of Italy is part of the European financial supervision system (SEVIT).

The CONSOB was established in 1974 as an internal division of the Italian Minister of Treasury; it became an independent authority after some changes in its legal nature through the Law 04.06.1985, n. 281. Its membership is composed of the chairman and four members, appointed by decree of the President of the Republic, which follows a resolution of the Ministers’ Council on recommendation of the Prime Minister. The members hold their tenure for five years and one renewal is allowed. It is the supervisory authority of the Italian financial products’ market with powers of guidance and control on

the Stock Exchange and companies; it regulates companies listed on regulated markets and subjects which appeal for public investment. It protects investors and promotes the efficiency, transparency and development of the market.

The CONSOB is part of the Committee of European Securities Regulators set up by the Decision of the European Commission n. 2001/527/EC.

The IVASS was established by art. 13, D.l. 06.07.2012, n. 95 (Law 07.08.2012, n. 135). Since the 1<sup>st</sup> of January 2013 it has replaced the ISVAP (Supervisory Institute for private insurances” established by the Law 12.08.1982, n. 576) in supervising the Italian insurance market. Its membership strengthens the coordination with the Bank of Italy and comprises the Chairman, appointed by the Bank of Italy’s Governor, and two Counselors, appointed for six years with the possibility of one renewal by the Prime Minister after the resolution of the Ministers’ Council on the recommendation of the Bank of Italy’s Governor and with the agreement of the Minister for the Economic Development. Some of its functions are delegated to the Directorate of the Bank of Italy integrated by the two Counselors of IVASS. Its mission includes the control on the sound and prudent operation of insurance companies, the guarantee of transparency and fairness of economic operations in the market and the protection of the stability, the efficiency, and the competition inside the market with specific reference to the consumers’ interests.

Another Authority, the “Supervisory Commission for pension schemes (COVIP)” protects consumers’ interests in the sector of social security services. It was established by the D. Lgs. 21.04.1993, n. 124 and is nowadays ruled by the D. lgs. 05.12.2005, n. 252. Its Chairman and its four members are appointed for four years with the possibility to be renewed by a resolution of the Ministers’ Council, on the recommendation of the Minister of the Welfare with the agreement of the Minister of Economy and Finance. The Department of the Welfare has a power of direction on COVIP which reduces its operational independence. However, COVIP can be assimilated to other Independent Authorities because it guarantees the good functioning of the Pension funds’ market, assuring its fairness and a sound and prudent functioning. COVIP regulates the access to the market through a licensing power and protects the beneficiaries of pension schemes.

Among the Authorities which operate in specific sectors, there is the Authority for the electricity and the gas, established by the Law 14.11.1995, n. 481. It is composed by the Chairman and two members appointed by decree of the President of the Republic, which follows a resolution of the Ministers' Council on the recommendation of the competent Minister accompanied by the advice of the competent Commissions set up in the Parliament. The Authority protects the final clients and guarantees an effective competition in the markets. In order to achieve these goals it sets the tariffs for the regulated services and supervises their quality, establishing mechanisms to refund consumers in case of inobservance of quality standards.

The Authority for the guarantees in telecommunications (AGCOM) was established by the Law 31.07.1997, n. 249 in place of the Guarantor for broadcasting and publishing, established by Law 06.08.1990, n. 223. Its members are the Chairman, appointed on recommendation of the Prime Minister with the agreement of the Minister of Communications, and four Commissioners, two of them chosen by the Senate and two by the Chamber of the Deputies. It has regulatory, supervisory and semi-judicial functions in the telecommunications' sector, promoting the competition in it, protecting the users, supervising the services' quality and settling issues between operators and users.

The Supervisory Authority for public contracts for works, services and supplies was established by art. 4 of the D. lgs. 12.04.2006, n. 163 in place of the Authority for public works established by art. 4 of the Law 11.02.1994, n. 109. Its membership, whose mandate lasts seven years without possibility of renewal, is jointly appointed by the Presidents of the two Chambers of the Parliament. The members elect the chairman among themselves. The Authority supervises public contracts for works, services and supplies, protecting the fairness and openness in the public procurement procedures and the efficiency in contracts' implementation. Moreover, it supervises the observance of competition in public tenders.

In order to guarantee constitutional rights, the Commission for the right to strike in public fundamental services and the Guarantor of privacy have been set up.



The first was established by art. 12 of the Law 12.06.1990, n. 146 (modified by the Law 26.02.2010, n. 25). It has nine members, which elect the Chairman among themselves. The members are appointed on the recommendation of the Presidents of the two chambers of the Parliament for six years with the possibility of one renewal. The Authority is called to balance the right to strike (guaranteed by art. 40 of the Italian Constitution) and other constitutional personal rights, such as the right to live, to health, to liberty, to safety, to movement, to welfare and social security schemes, to education and communications. To achieve these goals it has powers of conciliation and supervision for the observance of the rules set for the right to strike in fundamental services (advance notice, guarantee of essential services, gap from the previous strike, duration of the strike). It shall inform the competent administrations in case of noncompliance for the adoption of suitable decisions (sanctions etc.).

The Guarantor of privacy was established by the Law 31.12.1996, n. 675 and it is disciplined by art. 153 of the D. lgs 30.06.2003, n. 196. It has four members, two of which chosen by the Senate and two by the Chamber of the Deputies. Their mandate lasts four years with the possibility of one renewal. The members elect the Chairman among themselves; the chairman's vote prevails in case of parity. The Authority assures that personal data of the citizens are treated by public and private entities according to the "so called" Code of Privacy. To achieve such goals, it can request information to the data holders, make investigations and, if necessary, intervene to stop illegal treatment inflicting sanctions. It has also quasi judicial functions.

The Independent Commission for the evaluation, the transparency and the integrity of the public administrations (COVIP), established by art. 13 of the Dlgs 27.10.2009, n. 150, has many of the typical characters of the Independent Authorities. It is made of members appointed by a decree of the President of the Republic, which follows a resolution of the Ministers' Council on the recommendation of the Minister for Public Administration and Innovation in accordance with the Minister for the Enforcement of the Government's Program, accompanied by the advice of the Commissions set-up in the Parliament by qualified majority (2/3). The Commission is called to operate independently and autonomously in order to guide, coordinate and supervise the processes of public

administrations' evaluation, assuring the opening of the evaluation's systems and the transparency of the management's indicators.

#### **4. RELATIONSHIPS BETWEEN INDEPENDENT AUTHORITIES**

Independent authorities are generally characterized by sectorial powers and duties, since they are usually entitled to regulate specific economic sectors, even though there are authorities with general and horizontal powers, as for example the competition and the data protection agencies (AGCM and the Guarantor of privacy).

It may happen to face an intersection between the interventions carried out by two different independent authorities empowered with general and specific powers or with different specific powers (i.e. competition and electronic communications or competition and energy)<sup>7</sup>. The law does not provide for specific rules to solve conflicts, even though there are rules aimed at coordinating the action of the several authorities. A very useful first check in order to address this issue usually implies a careful evaluation about the authority more suited to deal on the specific subject matter. If that does not solve the conflict, the authority with horizontal and broader powers overcomes the other one<sup>8</sup>.

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<sup>7</sup> See, for instance, art. 7 par. 5 of D. Lgs. n. 385/1993, according to which "Bank of Italy, CONSOB, COVIP, and ISVAP [ora IVASS] cooperate each other, by exchanging information, in order to facilitate the respective duties. On the collaboration between independent authorities, see M. CLARICH, *I procedimenti e le forme di collaborazione tra Autorità di vigilanza*, in *Dir. proc. amm.*, 2007, 301 ss..

<sup>8</sup> In this respect, see Cons. Stato, sez. VI, 16.10.2002, n. 5640, in [www.giustiziamministrativa.it](http://www.giustiziamministrativa.it).

## 5. THE POWERS EXERCISED

As for the functions exercised, independent authorities have been granted not just administrative and executive powers, but also quasi-adjudicative and quasi-legislative ones<sup>9</sup>.

### *5.1 Administrative functions and duties*

Independent authorities have been granted administrative, adjudication and rule-making powers.

The administrative powers are exercised advising the Parliament with specific regard to the sector supervised by any single authority. As to the matter, independent authorities are entitled to send specific recommendations to the Parliament and to produce annual surveys concerning the specific sector supervised. More importantly, they perform their role adopting administrative orders that imply discretionary evaluations concerning technical aspects and concepts set forth by the law.

In particular, independent authorities play a fundamental role in regulating the access to markets, issuing specific authorizations necessary to allow enterprises to be operative in a given specific sector, or approving regulatory orders concerning specific market conducts<sup>10</sup>. These duties are sometimes combined with “certification powers” related to the managements of public registers including the list of economic subjects formally authorized to operate on regulated markets.

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<sup>9</sup> On the coexistence between different powers as a typical feature of independent authorities, see M. D’ALBERTI, *Autorità amministrative indipendenti*, cit., 1 ss..

<sup>10</sup> On the discretion granted to independent authorities, see M. CLARICH, *Le autorità indipendenti tra regole, discrezionalità e controllo giurisdizionale*, in *I TAR*, 2002, 3858 ss..

Independent authorities can also regulate the market activities of specific enterprises, fixing prices and setting tariffs concerning the services performed and exchanged. Moreover, they perform supervising and controlling functions, specifically implemented through inspection powers and tools, including the possibility to collect information at the premises of the regulated enterprises.

The powers to issue cease and desist orders toward specific enterprises, if necessary supplemented by pecuniary sanctions, are generally considered part of the administrative powers granted to independent authorities. Such orders are aimed at reestablishing the correct functioning of the market, if needed through the revocation of previous authorizations or administrative permits<sup>11</sup>.

As far as the procedure is concerned, independent agencies are bound by the rules and the principles set forth in the general law on administrative procedure n. 241/1990. Consequently, the rules concerning the duty to give reason, the proceeding officer, the right to be heard and the access to the file have been incorporated into specific regulations concerning the different authorities and are applied accordingly. Fair procedural rules are fundamental in order to fully protect the rights of enterprises interested by the action of the independent authorities<sup>12</sup>. For this reason, the rules concerning procedures involving the possibility to impose fines against one or more enterprises always provide for the right to be heard and the connected right to have full access to the file. Sometimes, in order to

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<sup>11</sup> On the power to impose financial fines, see G. P. CIRILLO, *Il procedimento sanzionatorio delle autorità amministrative indipendenti e la decisione contenziosa alternativa del Garante per la protezione dei dati personali*, in *Foro amm.*, 1998, 262 ss.; L. CUOCOLO, *Il potere sanzionatorio delle autorità indipendenti: spunti per una comparazione*, in *Quad. reg.*, 2007, 33 ss. For a detailed analysis concerning the power to impose monetary sanctions, see M. FRATINI, *Le sanzioni delle autorità amministrative indipendenti*, Padova, 2011.

<sup>12</sup> On this specific point, M. CLARICH, *Garanzia del contraddittorio nel procedimento*, in *Dir. amm.*, 2004, 59 ss..

pursue full impartiality, the authority entitled to carry out the discovery is different from the one appointed to approve the final order<sup>13</sup>.

### *5.2 Quasi-legislative powers*

As previously mentioned, independent authorities have also been granted legislative and regulatory powers in order to technically implement and integrate the often-vague statutes approved by the Parliament<sup>14</sup>. In general terms, the rules approved by independent authorities are hierarchically subordinated to the statutes approved by the parliamentary assembly. However, in practical terms, statutes often grant very wide powers to independent agencies, establishing the objectives to be pursued without setting specific limitations. Such a situation is caused by the very same reasons that historically justified the birth and development of independent agencies. On one hand, a detailed and thorough legislative regulation approved by the Parliament could make useless the existence of administrative authorities independent from the government and, in part, from the legislator itself. On the other hand, the Parliament does not seem in the right position to approve technical regulations, better managed and carried on by independent and highly qualified bodies.

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<sup>13</sup> For a general survey on the proceedings carried out by independent authorities, L. TORCHIA (ed.) *Lezioni*, cit., 131 ss..

<sup>14</sup> On the legislative powers of independent authorities, see also M. FOGLIA, *I poteri normativi delle Autorità amministrative indipendenti*, in *Quad. reg.*, 2008, 559 ss.; V. CERULLI IRELLI, *Sul potere normativo delle autorità amministrative indipendenti*, in *www. astrid-online.it*, 2009.

Having remarked that, it is necessary to understand the judicial fundamentals of the powers acknowledged to independent authorities not elected by the citizens and therefore located outside the so called “democratic circuit”<sup>15</sup>.

First, notwithstanding the lack of constitutional rules specifically regarding the independent authorities, the constitutional relevance of such public bodies has been pointed out several times, since they protect constitutional principles and values (see, in particular, articles 21, 41, 47 e 97 Const.).

Second, several scholars have underlined the consistency between the role of the independent authorities and several fundamental principles embedded in the European law, such as the principles of competition, free circulation of goods, freedom of establishment, and consumers protection.

Moreover, it has been observed that independent authorities have to comply with the “rule of law principle”, since their powers are set forth by parliamentary statutes and given that they are accountable to the legislator<sup>16</sup>.

Finally, it is interesting to recall how the above mentioned strict procedural rules binding independent authorities can contribute to a more democratic and impartial exercise of their powers<sup>17</sup>.

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<sup>15</sup> See the exhaustive analysis carried on by Sezione consultiva per gli atti normativi of the Supreme administrative Court, dated February 14<sup>th</sup> 2005, no 11603/2004, in [www.giustiziamministrativa.it](http://www.giustiziamministrativa.it).

<sup>16</sup> According to a part of the case law, the quasi legislative powers of independent authorities would have implicit judicial base: see, for instance TAR Lazio, Roma, Sez. II, 13 dicembre 2011, n. 9710, in [www.giustiziamministrativa.it](http://www.giustiziamministrativa.it)

<sup>17</sup> See G. NAPOLITANO, *Autorità indipendenti*, cit., 88.

In particular, the right to be heard and the right to access the file are relevant with reference to the approval of technical rules (regulatory powers)<sup>18</sup>. The general law on administrative procedure no. 241/1990 does not apply to the procedures aimed at the adoption of regulatory acts, since art. 13 of the same law excludes its application “*for the adoption of legislative act and general administrative orders*”. Apart from such a provision, the participation of the stakeholder into the proceedings is always allowed by specific and detailed procedural rules both to allow a full protection of the stakeholder and to protect the democratic dialogue between the several parties involved<sup>19</sup>.

Besides, facilitating the participation is also useful in order to reduce drawbacks related to information asymmetry, allowing the stakeholder to share their information and expertise with the competent authorities to achieve better and more accurate regulatory solutions<sup>20</sup>. The procedural rules on the adoption of rule-making orders establish both the

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<sup>18</sup> On the right to take part into the procedure, see for instance M. CLARICH, *Autorità indipendenti*, cit., 163 ss.; N. LONGOBARDI, *Autorità amministrative*, cit., 281 ss.; L. TORCHIA (ed.), *Lezioni*, cit., 127 ss.; M. COCCONI, *La partecipazione all'attività amministrativa generale*, Padova, 2010, 141 ss.; M. RAMAJOLI, *Procedimento regolatorio e partecipazione*, in E. BRUTI LIBERATI, F. DONATI, *La regolazione dei servizi di interesse economico generale*, Torino, Giappichelli, 2010, 189 ss..

<sup>19</sup> See the previous note. Administrative courts deem the right to take part into the procedure not just a procedural right, but also a meaningful democratic tool: see for example, Cons. stato, sez. VI, 20 aprile 2006, n. 2201; Cons. Stato, sez. VI, 2 maggio 2006, n. 2444; Cons. Stato, sez. VI, 27 dicembre 2006, n. 7972; Cons. Stato, Sez. VI, 2 marzo 2010, n. 1215; TAR Lazio, Roma, n. 9710/2011, cit., in [www.giustiziamministrativa.it](http://www.giustiziamministrativa.it).

<sup>20</sup> On the reduction of informative asymmetries related to the participation into the procedure, see M. CLARICH, *Autorità indipendenti*, cit., 168 ss. and the recommendation sent by the competition authority (AGCM) to the Italian Parliament, on January 14<sup>th</sup> 2002, n. 226.

duty to give reason<sup>21</sup> on behalf of the proceeding authority and the necessity of a previous impact assessment analysis (see art. 12 of the Law 29.07.2003, n. 229)<sup>22</sup>.

### ***5.3 Quasi judicial powers***

Finally, independent authorities enjoy adjudication powers in order to solve disputes between markets operators in an adversary context. In such cases, the right to take part into the proceeding plays a fundamental role to ensure a fair and regular resolution of the disputes arose.

## **6. JUDICIAL REVIEW ON THE INDEPENDENT AGENCIES ACTION**

According to articles 101 and 113 of the Italian Constitution - the former setting the ban to give equal authority to judicial ruling and administrative orders and the latter establishing the right to judicial review on administrative action - the judicial review on the independent authorities action is always acknowledged and allowed<sup>23</sup>.

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<sup>21</sup> On this specific matter, the case law is consistent: see Cons. Stato, sez. VI, n. 7972/2006, cit.; Cons. Stato, Sez. VI, n. 1215/2010, cit.; TAR Lazio, Roma, n. 9710/2011, cit.

<sup>22</sup> On the participation right into the adjudication procedure, see M. CLARICH, *Garanzia del contraddittorio*, cit., 59 ss.; E. L. CAMILLI, M. CLARICH, *Poteri quasi-giudiziali delle autorità indipendenti*, in *www. astrid-online.it*, 2007.

<sup>23</sup> For a general survey on the right to judicial review on the independent authorities action, see L. TORCHIA (ed.), *Lezioni*, cit., 144 ss.; R. CHIEPPA, *La tutela giurisdizionale*, in G. P. CIRILLO, R. CHIEPPA (ed.), *Le autorità amministrative*, cit., 91 ss..



The competent courts are generally the administrative ones, except for the action of the Guarantor of privacy, allocated to ordinary courts.

According to most scholars, administrative courts must pay a substantial deference to the conclusions reached by the independent authorities. Consequently, they are usually allowed to verify if the relevant rules (procedural and technical) have been applied fairly and respecting the objectives set forth by the law. Following the same principles, administrative courts cannot replace the conclusions reached by the independent authority with their own evaluations and conclusions.