

# THIRD ENERGY PACKAGE

## - Regulatory Authorities -

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- 1. Key Changes**
- 2. Reality Check**

- ***Practical* implementation is key**
- ***Active* role of NRAs is needed**
  - Defining, not administrating the market
  - Taking position
- **Compliance and committment of *other* state bodies is crucial**

## 1. Independence

- Legally distinct and functionally independent
- Acting independently
- Taking autonomous decisions
- Exercising powers impartially and transparently
- Annual budget
- Human and financial resources
- Management

## 2. Enhanced powers and duties

- Duties
- Obligations
- Powers

## 3. Organisation

- Single NRA (electricity and gas)

## 1. Legally distinct and functionally independent

- Independent from industry (2nd p) ± any public body
- Decide on own management ☞ no hierarchy-links, no office / personell sharing

## 2. Act indepently

- a. Not *seek or take* instructions
- b. No other institution to *give* instructions

## 3. Take autonomous decisions

### a. *Ex ante*

- ☞ No external interference in decisions
- ☞ Develop own Work Program without need for consent

### b. *Ex post*

- ☞ Decisions immediately binding
- ☞ Decisions cannot be subject to review / approval / veto ☞ exemption juridical review

## 4. Separate annual budget with autonomy in its implementation

- Can be part of the state budget
- Approval by parliament possible ☞ but limited to global financial framework, no influence on NRA priorities!
- Appointment of NRA board members possible ☞ but not resulting in instructions!

## 5. Human and financial resources

- Adequate to execute powers [ref. ITO!]
- Benchmark: other NRAs / bodies (e.g. national banks)

## 6. Management

- Fix term 5-7 years, renewable once
- Rotation scheme
- Members appointed before the implementation of the 3rd package: max 7 years +
- Relief from office *only* if not compliant with independence criteria

## 7. Exercising powers impartially and transparently

- „*Impartially*“: neutral, based on objective criteria and methodology
- „*transparently*“
  - Adopt and publish procedures / decision making rules
  - Publish information on organisation and structure, including contact points
  - Consult stakeholders before taking decisions – at least by publishing drafts, ideally including PCs / hearings / publication of comments and their reflection
  - *Reasoned* opinions – appropriate for juridical review

### Remarks

- Setting of national energy policy by government not affected
- Independence does not contradict cooperation

QUESTIONS

DISCUSSION

EVALUATION

REALITY CHECK



1. **Legally distinct and functionally independent**
  - Independent from industry (2nd p) ± any public body
  - Decide on own management ☞ no hierarchy-links, no office / personell sharing
2. **Act indepently**
  - a. **Not seek or take instructions**
  - b. **No other institution to give instructions**
3. **Take autonomous decisions**
  - a. *Ex ante*
    - ☞ No external interference in decisions
    - ☞ Develop own Work Program without need for consent
  - b. *Ex post*
    - ☞ **Decisions immediately binding**
    - ☞ **Decisions cannot be subject to review / approval / veto** ☞ exemption juridical review
4. **Separate annual budget with autonomy in its implementation**
5. **Human and financial resources**
  - **Adequate to execute powers**
  - Benchmark: other NRAs / bodies (e.g. national banks)
6. **Management**
  - **Fix term 5-7 years, renewable once**
  - **Rotation scheme**
  - Members appointed before the implementation of the 3rd package: max 7 years +
  - **Relief from office *only* if not compliant with independence criteria**
7. **Exercising powers impartially and transparently**
  - „*Impartially*“: neutral, based on objective criteria and methodology
  - „*transparently*“
    - Adopt and **publish procedures / decision making rules**
    - Publish information on organisation and structure, including contact points
    - **Consult stakeholders before taking decisions**

## Overview

- Duties
- Objectives
- Powers

## 1. Duties

### a. Approval of tariffs (DS/TS) & balancing services (or methodologies)

- General policy guidelines by CPs possible (e.g. *general* guideline on attracting investments in RES) *to the extent* not limiting NRA on content (e.g. rule setting profit margin for tariffs)

### b. Enforce consumer protection

### c. Monitoring

## 2. Objectives

- To be respected when executing duties
- *Obligation* to take reasonable measures to implement the objectives
- ☞ Competitive / secure / environmentally sustainable internal market
- ☞ Active role!

## 3. Powers

a. **Issue binding decisions** [*link independence*]

b. **Carry out investigations on functioning of the market**

c. **Impose proportionate measures to promote competition / market functioning** (e.g. gas / capacity release) [*link cooperation with NCA*]

d. **Require any information from e/g undertakings relevant for execution of tasks**

☞ broad understanding – similar to NCA competences; e.g. Including inspections

☞ „relevance“ to be decided by NRA – but open to juridical review

e. **Impose effective, proportionate and dissuasive penalties**

– NRA or NRA propose to court (*not* to any other private / public body)

– Up to 10% of the annual turnover (of TSO on TSO / of vertically integrated company on v.i.c.)

– Includes compliance with market rules!

☞ **Execution of powers and duties strongly links to independent decision making / taking!**

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## Single NRA on national level with all regulatory duties / powers

- **Several decision making bodies** possible but
  - Must be integral part of the NRA
  - Each of the bodies must meet the independence requirements
- **Regional RAs** remain possible provided that there is 1 senior representative for representation on EnC level [ECRB]
- Designation of a **separate RA** possible
  - for small systems in a geographically separate region whose 2008 consumption < 3% of the total CP consumption
  - Little interconnection ⇒ island?

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