Independence of Regulators

Nina Grall-Edler | Jelena Anicic
Overview

- **De iure** - what are legal independence requirements?

- **De facto** - where do we stand in the Energy Community?

- **Discussion**: from letter to spirit - what makes a regulator really independent?
Why regulatory independence?

- Original focus
  - De-couple from interests of the regulated industry
- Focus shift to (also) independence from other public bodies
  - Ref. 3rd package
De iure – legal independence requirements

1. Independence from public and private bodies
2. Independent decision making
3. Finally binding decisions
   - Subject only to judicial review
   - Therefore to be duly justified
4. Financial independence
5. Organisational independence (work program, statutes)
6. Independent management
   - fix term á max 7 years, renewable once
   - Rotation scheme
7. Competences
The jurisdiction of the Energy Community Contracting Parties (CPs) Albania, Bosnia and Herzegovina, FYR of Macedonia, Kosovo, Montenegro and Serbia as well as the neighboring EU Member States (MSs) Austria, Croatia, Greece and Romania was analyzed

De facto in the Energy Community

- Independence

In all countries the independence is stipulated by the law.

- Independence from public and private entities

Derogations: ME, GR, SRB
- Single regulatory authority

Requirement from Directives to establish a single regulatory authority at the national level is fulfilled in all the analysed jurisdictions except in Bosnia and Herzegovina

- Independent and binding decision making

In all countries regulator’s decisions are binding

- Transparency of NRA decision making

The requirements of the transparency of decision making, juridical review and publication of information

ECRB report 2015

Improvements made in the meantime

Name of the Event

Energy Community Secretariat
Appointment, dismissal and operation of the top management

Derogations in the appointment procedure - MK

All countries have a stipulated fix terms of office

Derogations in the dismissal procedure – BA, MK, ME

Financial independence

Salaries limitation – SR, GR, ME
De facto – where do we stand in the EnC?_el
De facto – where do we stand in the EnC?
Key challenges

- Financial independence SRB | MD
- Autonomy on organisation SRB | MNT
- Open cases BiH, MD, UA
- Recent ECS reviews: AERS, ANRE
Discussion: from letter to spirit

- Your / MedReg experience?
- What do you think of the picture in the EU?
- What makes a regulator really independent?
  - Would you consider civil servant status of NRA staff an advantage or disadvantage? Why? Cases: (+) BiH, AL, MNTG
  - Would you consider it a restriction to NRA independence in case another public authority sets the rules for the NRA’s public procurement?
  - Do you think that a NRA should take position in case a national market participant fails to comply with national legal requirements? If so, why and how?
  - What makes a really independent NRA in your view? Is it about persons?
Thank you for your attention!

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# Legal independence requirements – in detail

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<th>Legal set up and impartiality</th>
<th>NRA established as single regulatory authority with nation wide competences in gas + electricity</th>
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<tr>
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<td>NRA is established by law, i.e. not by decision of another public institution</td>
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<td>Functional independence from public and private interest is stipulated by law</td>
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<td>Management and staff are prohibited to hold political positions or have interest in regulated companies</td>
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<td>Violation of the prohibition to hold political positions or have interest in regulated companies exist (dismissal or other)</td>
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<td>Decision taking is by law defined as autonomous and independent</td>
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<td>Decisions are immediately legally binding</td>
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<td>Decisions are required to be duly substantiated and justified to allow for juridical review</td>
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<th>Appointment of top management</th>
<th>Selection criteria are defined by law</th>
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<td>Legal selection criteria are limited to education, experience, neutrality</td>
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<td>Vacancies are announced publically</td>
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<td>Selection process is defined by law and includes a selection committee</td>
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<td>Top management terms are limited to a fix term of 5-7 years</td>
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<td>Top management terms are renewable only once</td>
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<td>Rotation scheme in the sense of the 3rd package</td>
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| Operation                     | Management has autonomy on internal organisation (work program, statutes) including staff appointment and salaries |

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<th>Financial independence</th>
<th>NRA has a separate annual budget</th>
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<td>NRA has autonomy in using its annual budget</td>
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<td>Dismissal</td>
<td>Dismissal reasons are limited to cases of criminal offence or incompliance with independenc</td>
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<tr>
<td>Competences</td>
<td>NRA is equipped with all 3rd package competences</td>
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Minimum regulatory competences

1. Setting tariffs for network use
2. Defining rules for network access and connection
3. Defining rules for allocation of network capacity
4. Defining rules for treatment network capacities in case of congestion
5. Defining rules for system balancing
6. Check TSO compliance with unbundling requirements ("certifications")
7. Penalties
8. Right of data access & investigations
9. Decide upon and impose measures to promote effective competition and ensure functioning
10. Setting quality of supply standards
11. Dispute settlement
12. Consumer protection

Incl. right to require change