THIRD ENERGY PACKAGE
- Regulatory Authorities –

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OVERVIEW

1. Key Changes
2. Reality Check
WHAT REMAINS UNCHANGED

- Practical implementation is key
- Active role of NRAs is needed
  - Defining, not administering the market
  - Taking position
- Compliance and commitment 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 independently
   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 \( \text{\textcopyright} \) but limited to global financial framework, no influence on NRA priorities!
   - Appointment of NRA board members possible \( \text{\textcopyright} \) 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 \(\bigwedge\) no hierarchy-links, no office / personell sharing

2. **Act independently**
   a. **Not seek or take instructions**
   b. **No other institution to give instructions**

3. **Take autonomous decisions**
   a. **Ex ante**
      - \(\bigwedge\) No external interference in decisions
      - \(\bigwedge\) Develop own Work Program without need for consent
   b. **Ex post**
      - \(\bigwedge\) Decisions immediately binding
      - \(\bigwedge\) Decisions cannot be subject to review / approval / veto \(\bigwedge\) 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
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     - Adopt and publish procedures / decision making rules
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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!
@ POWERS & DUTIES

QUESTIONS

DISCUSSION

EVALUATION

REALITY CHECK
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?
QUESTIONS

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REALITY CHECK