
CEER note on
Codes of Conduct in National Regulatory Authorities
19 October 2017

1 Background

In 2016, CEER undertook a broad survey of the enabling framework within which its member national regulatory authorities (NRAs) exercise their tasks. This included a look at the national rules and regulations, but also practical arrangements, for NRAs' duties and powers, resources, independence, and transparency and accountability.¹

The report yielded extensive insight into the situation in almost all CEER member countries and enabled a number of direct recommendations to be made in the report itself and in follow-up work related to the European Commission's Clean Energy for All Europeans proposals.²

In other places, as is to be expected with a broad survey, the results delivered pointers for areas where further work might be useful. One of these was the area of codes of conduct. The report found that "[i]n addition to a dedicated NRA act and provisions in national legislation elsewhere, several NRAs mentioned that they have a dedicated code of conduct or similar document which lays down requirements on independence, conflict of interest and conduct for NRA management and staff."³ The report did not go into further detail on this matter but it became clear immediately from the descriptive, qualitative input received that the codes mentioned here were very diverse in several respects.

The relating recommendation in the report is quite general in stating that "several NRAs have drawn up an **internal guideline/manual or code of conduct** that either gives an overview of all the applicable rules or even includes additional rules on independence and conflict of interest. This can help avoid the risk of conflict of interests. It can be practical for NRA staff and at the same time can be used to demonstrate towards third parties the solid independence safeguards that are in place."⁴

Following up on the 2016 report, the issue of codes of conduct quickly emerged as being of particular interest for members' daily operations, as it is a measure that can be introduced by NRAs on their own initiative. Members judged it to be interesting to look into the different models that were already in place along a number of dimensions, with the aim to derive advice for NRAs that do not yet have a code of conduct but are considering introducing one in their own institution. This work is also meant to enable regulators that already have a code to share in others' experience and good practices; it can assist them when they intend to

¹ [CEER Report on Safeguarding Independence of Regulators](#), CEER, 13 December 2016, Ref. C16-RBM-06-03

² [CEER white paper #V: The independence of National Regulatory Authorities](#), CEER, 30 June 2017,

³ [CEER Report on Safeguarding Independence of Regulators](#), p. 19

⁴ [CEER Report on Safeguarding Independence of Regulators](#), p. 25, emphasis in original

revise their own code of conduct or wish to include topics that are new for them but might have been dealt with in other countries already.

2 Analysis

The range of models that can be pursued with codes of conduct is broad; it reaches, for instance, from moral engagements whose breach is not tied to immediate sanctions to binding rules that can, if infringed, mean serious consequences such as wage cuts or termination of employment. To reflect this range, regulators have also chosen different titles for their codes.

To shine a light on the possibilities that NRAs are already employing, CEER has now analysed five CEER members' codes of conduct along a number of dimensions. Though the features of the codes are presented in a streamlined way in this note in the interest of clarity and comparability, the individual characteristics are interlinked with each other and should, for each code, be considered as a package.

2.1 Rationale

Of the codes investigated, some were set up by the NRA on an entirely voluntary basis and on the NRA's own initiative, while others were prompted by a (binding or non-binding) external factor.

Substantive reasons ranged from a focus on the external image (increasing the NRA's credibility, proving itself worth of the public's trust) to an emphasis on the code as a reference document (reminding staff of their rights and obligations). Throughout, the rationale given underlines that a code of conduct strengthens the NRA's independence.

2.2 History

NRAs employed very different processes to arrive at their codes of conduct, though a common feature is the close involvement and final decision by the authorities' executive-level decision-makers.

Feeding into this stage, some NRAs applied a straightforward board decision process (top-down), while others involved a broader group to give input (mixed approach); in the latter case, the group composition varied (restricted to NRAs' employees only or including external expertise).

2.3 Addressees and relation with other (national) legislation and rules

In terms of addressees, some of the codes investigated apply to all employees (staff and management/board) of an authority, while others are relevant for staff only. A structure where different rules apply for staff and management is also conceivable.

Concerning the interfaces with other national legislation and rules, some of the codes replicate the rules and regulations that apply to the regulator's employees under national legislation in any case; others complement those rules; while a third type summarises them for the particular situation of the regulator.

2.4 Publication status

The question of whether a code of conduct is a public document or internal for the regulator is closely tied to the purpose it is meant to serve. Where a code is intended e.g. to reinforce the independence of the regulator in the public (and industry's) eye, it is published or at least the fact that there is a code of conduct is publicly known. Codes that serve to inform employees about their obligations and duties do not have this perspective and are sometimes kept internal.

2.5 Supervision and enforcement

A code of conduct can be binding or non-binding on its addressees and breaching the code can have a variety of consequences, all the way from a moral reminder to dismissal or even consequences under criminal law. In some cases, potential breaches are referred to a dedicated body within the regulator, which then decides how to proceed.

Codes that limit themselves to replicating the existing legal framework normally refer to the consequences foreseen for breaches under that legislation as well.

2.6 Assessment and update

Some of the codes that were analysed foresee a review and update whenever necessary, e.g. prompted by a change in the referenced legislation. Others include automatic mechanisms for reviews from the start (for instance by a dedicated body within the regulator) and provide for regular assessments of their effectivity and usefulness.

2.7 Granularity

The level of detail at which the code of conduct operates can vary from detailed rules with concrete instructions for its addressees to higher-level principles or outlines, giving general guidance for employees' behaviour. As can be expected, codes that contain (or reference) detailed rules seem to also have more concrete enforcement mechanisms.

3 Conclusions

For national regulatory authorities that consider setting up their own code of conduct, this note may serve as a useful starting point in conceptualising their process and envisaged outcome and effects. For authorities that already have a code, it could be of assistance if they are revising or overhauling it. It helps capitalise on the experience made by fellow regulators.

CEER recommends designing a package that accounts for all the above factors, thereby creating an outline with the future code's defining characteristics. The decisions taken for each of the above dimensions should then be considered together and scrutinised as to their fit in particular with the first dimension, i.e. the purpose the code is meant to fulfil.