



## Principles of Independence of National Regulatory Authorities

Fostering energy markets,  
empowering **consumers**.

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Malta, 19<sup>th</sup> May 2016

# Principles of Independence of National Regulatory Authorities

- **Background**
- **Pillars and aspects of independence**
- **Exercise of independence**

## **Background: Why do we need independence?**

**Independence of the Regulator is a necessary element for causing public, stakeholders and politicians feel confidence in the regulatory system**

### **Challenges and targets:**

- Most NRAs in the EU were set up more than ten years ago
- NRA tasks have been constantly expanded
- Achievement of a balance between all stakeholder interests to the final benefit of the consumer



## Background: What is independence?

- “A regulator is *de facto* independent to the degree that the regulator takes day-to-day decisions **without receiving and acting on the basis of instructions, threats, or other inducement from politicians or market players**, or the anticipation thereof; or considering whether the interests of those politicians or particular market players would be harmed by particular choices about those decisions”.
- “A regulator is *de jure* independent to the degree that the **legislation or statute governing the regulator** works so as to **make instructions, threats, or other inducements impossible**”.

*Independence, Accountability and Perceived Quality of National Regulatory Authorities; Larouche, P., Hanretty, C., Reindl, A., Denuit, T., The ICER Chronicle, Edition 1, December 2013*

## Background: Relevant legal base

### DIRECTIVE 2009/72/EC / DIRECTIVE 2009/73/EC

- **Recital 34 / Recital 30:** “Energy regulators need to be able to take decisions in relation to **all relevant regulatory issues** if the internal market in electricity is to function properly, and to be **fully independent from any other public or private interests**”.
- **Article 35(4) / Article 39(4):** “Member States shall **guarantee the independence of the regulatory authority** and shall ensure that it exercises its powers impartially and transparently”.

# Pillars and aspects of independence

## “Institutional” and “operational” independence

- Independence from politics
  - ▶ The regulator is able to take decisions **fully independent from any other public or private interest**, without precluding neither judicial review nor parliamentary supervision in accordance with the constitutional laws of the Member States.
- Independence from industry
  - ▶ The regulator is **independent from the industry it regulates**. At all times, the regulator acts to carry out the tasks entrusted to it by law.

# Pillars and aspects of independence

- Integrity

- ▶ The regulator performs the tasks and responsibilities at the **utmost consistency and transparency**.
- ▶ Any internal **conflict of interest** when it comes to decision-making needs **to be avoided**.
- ▶ Employees of the NRAs, including Board members, need to be assured that their individual actions contribute directly to the integrity of the NRA.
- ▶ The regulator has to establish **integrity rules** (a code of conduct) ruling:
  - the rights of employees to have stocks,
  - secrecy and privacy measures,
  - receipt of funding from any stakeholder or party in forms of gifts or support of any kind,
  - cooling-off periods for employees wishing to join the industry.

## Pillars and aspects of independence

- Board-level arrangements
  - ▶ The modalities **for appointment of the board of the regulator, its term of office, any reappointment possibilities etc. are set down in the law and are respected in practice.** The members of the board of the regulator cannot be removed (e.g. for political reasons) before the end of the term of office unless the removal criteria specified in the law apply.



# Pillars and aspects of independence

## “personnel and financial” independence

- Budgetary autonomy

- ▶ The regulator has to have its own budget.
- ▶ The budget must be sufficient for the regulator to carry out its mission.
- ▶ The budget should be adapted in proportion to the evolution of the regulator’s competences.
- ▶ The NRA must have autonomy in how to employ the budget.

# Pillars and aspects of independence

## “personnel and financial” independence

- Human resources

- ▶ The regulator must have adequate human resources to carry out its mission.
- ▶ The human resources have to be adapted in proportion to the evolution of the regulator’s competences. This applies to the number of employees, their qualification and the regulator’s ability to pay competitive wages
- ▶ The power to hire and dismiss employees lies with the regulator itself and does not require external approval.

## **Exercise of independence: Transparency and communication**

- Decision-making rules and organisation
  - ▶ The NRA has to publish its rules of procedure and provide information about its organisation and structure.
- Publication of decisions
  - ▶ The actions of the NRA, including decisions, rules, white papers etc. and statements of grounds for these actions have to be made publicly available without undue delay. Data protection standards (e.g. relating to commercially sensitive data) must respected.
- Reports
  - ▶ The publications by the NRA should include at least all reports that are legally required (e.g. the annual report) and present the information contained in a way that fits the publication's target group.

## Exercise of independence: Ways to achieve independence

- Need to set goals:
  - ▶ Institutional goals
  - ▶ Regulatory goals
- Rules and measures for (self-)performance assessment – detection of deficits
  - ▶ Acer “*Recommendation On Ensuring The Independence of The Agency For The Cooperation Of Energy Regulators And Of National Regulatory Authorities*”
  - ▶ CEER Internal NRA Performance Assessment Manual
  - ▶ NRA Internal Rules

## **Exercise of independence: Ways to achieve independence**

- Institutional goals:
  - ▶ living independence
  - ▶ clear objectives
  - ▶ institutional cooperation
  - ▶ stakeholder involvement
  - ▶ accountability
  - ▶ transparency and communication
  - ▶ enforcement
  - ▶ empowering market players and consumers
  - ▶ solid management and expert staff



## **Exercise of independence: Ways to achieve independence**

- Regulatory goals:
  - ▶ security of supply
  - ▶ efficient use of infrastructure
  - ▶ wholesale competition
  - ▶ cross-border activity
  - ▶ retail competition
  - ▶ monitoring
  - ▶ customer protection
  - ▶ sustainability



## Exercise of independence: Independence ≠ Arbitrariness

**Independence should be a balance between the powers of NRA and its accountability obligations**

- **Accountability of the regulators to the legislature for oversight of the regulator's performance** to ensure that the regulator fulfills its obligations and tasks in the public good.
- **Accountability to the courts for regulatory decisions.**

## Exercise of independence: Accountability

- Internal performance monitoring
  - ▶ The NRA should regularly assesses its own vision, mission and methods in regard to developments of the sector and stakeholder expectations
- Performance measurement
  - ▶ The NRA should regularly assesses its performance
- Appeals
  - ▶ There should be easily accessible internal reviews and external appeals processes for all stakeholders to object to NRA decisions.
  - ▶ Both processes must be transparent, timely and conducted at arm's length.
  - ▶ The regulator provides guidance material to inform about these processes.



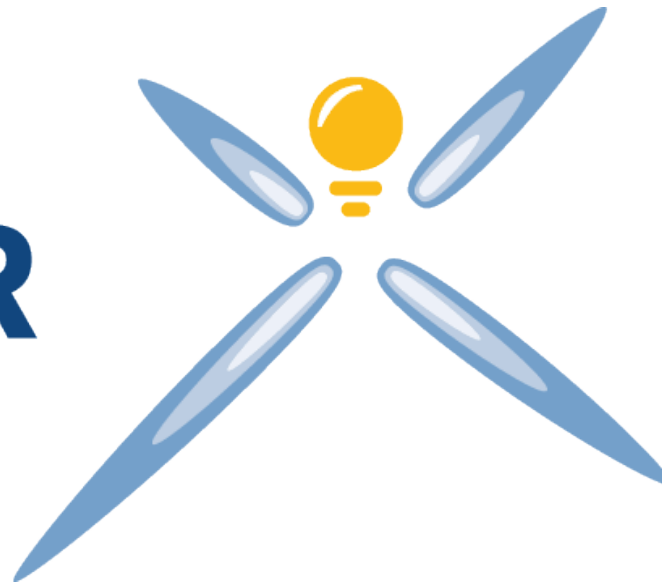
## Exercise of independence: Accountability

- Reporting to the legislature
  - ▶ The regulator presents the efforts it has undertaken to reach the goals set by law as well as achievements to the legislature on an annual basis (e.g. in the annual report to parliament).
- Regulatory impact assessment
  - ▶ Before taking decisions, the regulator has to consider the options at its disposal (including the default option of doing nothing)
  - ▶ The regulator has to choose such option which would achieve the desired target by applying the least intrusive measures.
- Justifiability
  - ▶ The NRA has to be able to give grounds for its actions upon request by entitled parties.

# Thank you for your attention!

**CEER**

**Council of European  
Energy Regulators**



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