



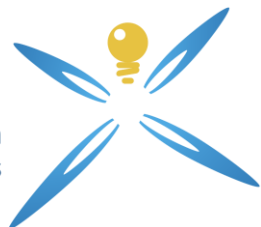
**CEER**  
Council of European  
Energy Regulators



**REPORT**

# How NRA independence is safeguarded as NRA competences keep expanding

**03.10.2024**



REPORT

# How NRA independence is safeguarded as NRA competences keep expanding

Regulatory Benchmarking and Legal Committee

## Information page

### Abstract

This document (C24-RBL-01-04) presents an examination of NRAs independence and follows from previous CEER work on this topic.

The report investigates how NRAs manage to preserve their independence in their national legal and institutional framework in executing their tasks in the energy field and, where applicable, in other sectors besides energy. The aim of the document is thus to address NRAs' independence arrangements outside their harmonised EU-level tasks (i.e. those in the Electricity and Gas Directives and further EU legislation that explicitly assigns tasks to NRAs).

### Target audience

NRAs, general public and interested parties.

### Keywords

NRAs' independence, Third Energy Package, Decarbonisation Package, TEN-E, REMIT.

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## Related documents

### CEER Documents

- [Safeguarding the independence of regulators](#) (2016)
- CEER Report on Monitoring NRAs' Independence (2021)

### External Documents

- OECD (2017), Creating a Culture of Independence: Practical Guidance against Undue Influence, The Governance of Regulators, OECD Publishing, Paris, <https://doi.org/10.1787/9789264274198-en>
- OECD indicators of product market regulation, <https://www.oecd.org/economy/reform/indicators-of-product-market-regulation/>
- OECD (2014), Best Practice Principles for Regulatory Policy, The Governance of Regulators, OECD Publishing, Paris, <https://www.oecd.org/gov/regulatory-policy/the-governance-of-regulators-9789264209015-en.htm>

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## Executive Summary

### Background

The Council of European Energy Regulators (CEER) has examined the independence of National regulatory authorities (NRAs) in multiple reports. The focus of these reports has mostly been on the compliance of the Member States (MS) with the provisions from the Electricity and Gas Directives that are designed to safeguard this NRA independence. Given that accountability and transparency are key elements of independence, CEER reports have also looked at these principles, including analyses of the tasks and powers of NRAs, and their resources.

This previous CEER work on independence has looked at institutional aspects (such as the appointment process of NRAs' Board members or heads) and at their independence in executing the tasks that have been harmonised at EU level (for instance, whether the NRA can receive any kind of instructions on such harmonised tasks).

The present report acknowledges the reality of daily regulatory work and the de facto situation of their governance arrangements. In 25 out of 29 CEER member countries, the NRA's responsibilities stemming from EU legislation go beyond the ones that are exclusive to NRAs and instead, are nationally assigned as "competent authorities" or under a similar concept. And while national legislation in 28 out of 29 CEER member countries expands NRA's tasks in energy, with a different scope in each country, it additionally entrusts NRAs in 14 out of 29 CEER member countries with regulating sectors outside energy. More recently, emergency measures were adopted at EU level and in many MS. In 24 out of 29 CEER member countries, NRAs have been asked to execute some of these emergency tasks<sup>1</sup>.

The independence of NRAs in handling all of their tasks stems from their national legislation. While the EU-level independence rules provide for harmonisation and a certain minimum level as from Directive (EU) 2024/1711 (amending Directive 944/2019) and Directive (EU) 2024/1788 (repealing Directive 2009/73), it is for national legislators to implement the proper national framework, which in many cases is enshrined in the instituting laws of NRAs.

### Objectives and contents of the document

In light of the above, the present report investigates how NRAs manage to preserve their independence in their national legal and institutional framework when executing their tasks in the energy field and, where applicable, in other sectors beyond energy. The aim of the document is thus to address NRAs' independence arrangements outside their harmonised EU-level tasks (i.e. those in the Electricity and Gas Directives and further EU legislation that explicitly assigns tasks to NRAs).

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<sup>1</sup> See CEER Report on NRAs Task from 2024.

For this purpose, the first chapter introduces the topic of the paper, explains the methodology used and lays out data coverage. The second chapter outlines the conceptual approach and categorises NRA tasks according to their different legal sources. The third chapter presents findings on the legal framework and day-to-day handling of independent decision-making, while the fourth chapter dives into the question of how NRAs are resourced. Finally, the report features main conclusions and takeaways.

## **Brief summary of the conclusions**

The independence of NRAs is laid down in their instituting laws or sectoral legislation in 26 out of 29 cases, in an overall national legal framework for independent institutions in 2 cases or in their national constitution in 4 cases<sup>2</sup>.

In 25 out of 29 NRAs, the national independence rules mean that the NRA cannot receive instructions from political institutions on any of their tasks<sup>3</sup>. New tasks entrusted to them are automatically protected by the independence provisions that safeguard the independence of the NRA in the first place. In all multi-sector regulators with the exception of one, the independence provisions apply equally to all sectors regulated by the same NRA.

Looking at the different sources of funding, 9 out of 29 NRAs are funded through state budget, 11 NRAs are funded by a levy on regulated entities, and 9 NRAs are funded by a combination of these two. In addition, 8 NRAs collect fees for particular services they provide.

When emergency legislation was agreed at EU level and in many MS across 2022/2023, 24 out of 29 NRAs were given new tasks which, they reported, involved substantial increase of the business-as-usual workload, while 2 NRAs mentioned that the additional tasks did not involve considerable additional workload. Of the remaining 22 NRAs which reported a substantial increase of their workload, 9 NRAs received no additional resources, either in terms of staff or funding, to cope with these new tasks. Another 3 NRAs reported that they received additional resources which were considered to be insufficient. Finally, 5 NRAs did receive (some) additional resources although it took time until these resources became available. In the meantime, these 5 NRAs had to cope with the additional workload with their existing resources. In 5 of 22 cases, the NRA could mobilise additional resources (e.g. from reserves or special funds) that enabled it to operationalise them for the additional tasks.

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<sup>2</sup> Please note that 3 NRAs are counted twice, as their independence relies on a combination of legal instruments.

<sup>3</sup> NRAs must also be independent of any public or private entities, according to the Electricity/Gas Directives of 2009. However, the practical implementation of this independence was not the subject of the present report.

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## 1 Introduction

CEER has a long tradition of examining NRA independence, with the goal of championing and strengthening that independence, given the notion that being an independent NRA is a prerequisite for CEER Membership enshrined in its Statutes. This has gone hand in hand with investigating the tasks and duties of regulators, their resources, their accountability, etc., as they are key elements of independence. This exercise is a well-established strand of work for CEER.

While the institution of NRAs has been mandated by EU legislation since the Second Energy Package, prescribing its independence (from industry), and while the Third Energy Package enlarged the perimeter of independence to politics and all stakeholders in general, many NRAs had already been created by national legislation even before EU law. And of course, national legislation is responsible for creating regulatory authorities, attributing them with specific tasks and providing for their independence. Regulatory models thus differ substantially across CEER membership.

As regulation evolves, NRAs receive increasingly (diverse) tasks, both by national and by EU legislation. CEER has thus decided to take its assessment of regulatory independence a step further and explore independence in delivering tasks in the areas that are not assigned directly by EU legislation, but where national legislation provides for differing arrangements (i.e. cases in which a competent authority, which is not necessarily a regulator, is identified to perform specific tasks). The present report therefore looks into how the independent conduct of NRAs in executing these tasks is ensured. In this context, the report investigates:

- Are NRAs equally independent in executing their nationally differing tasks? How is this ensured in legislation and in practice?
- Are NRAs given sufficient resources to handle these tasks? How is this ensured in legislation and in practice?

To answer these questions, the report draws on the factual situation in 29 out of 30 CEER Member Countries as of June 2024.



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## 2 Legal sources of NRA tasks

The increasing demand of our society's daily life for electricity and the unprecedented developments on energy markets over the past two years have increasingly moved energy into the political limelight, which makes it all the more important to protect and strengthen NRAs' ability to act in an independent way.

### 2.1 Tasks exclusive to NRAs according to EU legislation

All European energy NRAs have a common basis of tasks. These are either listed in the Electricity and Gas Directives of the Third Energy Package or explicitly assigned to them by other EU legislation (i.e. Clean Energy Package, Gas Decarbonization Package, TEN-E, REMIT etc.). If based on Directives, these tasks are ultimately anchored in national legislation given that Directives need to be transposed into national law. There, they might be either replicated or assigned to the NRA by reference to the relevant European legislative norms. If based on Regulations (such as REMIT), these tasks do not require transposition or reference in national legislation but are directly assigned to NRAs by virtue of EU law.

The independence of NRAs in the context of these EU tasks has received much attention. The European Commission (EC) has an obligation to report to the European Parliament (EP) and the Council on compliance with the independence provisions every four years under Article 57(7) of Directive (EU) 2024/1711 and 76(6) of Directive (EU) 2024/1788. CEER has itself issued a series of previous reports monitoring the compliance of MS national instituting laws with the independence criteria and rules from EU level, including NRA powers, competences, designation of Board members/heads, resources, accountability, and transparency. The most recent of these was the CEER Report on Monitoring NRAs' Independence published in 2021.<sup>4</sup> In addition, CEER members have also contributed to the OECD's work on independence.<sup>5</sup>

As far as EU legislation is concerned, the main references to the criteria of independence are made in Article 57(4 and 5) of the Electricity Directive 2019/944 and Article 76(4 and 5) of the Directive (EU) 2024/1788.

The EU framework aims at ensuring full independence for the energy regulators by defining general and specific principles and criteria of independence in the Articles cited above, that MS need to respect when implementing EU legislation into national law. The concept of independence is not limited to the enactment of a legal framework that provides for the independence of the regulators from any political or market influence. It also establishes specific criteria for the selection and dismissal of the head of the regulator. Indeed, the notion of independence, as stated in the Third Package Directives, encompasses the functionality

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<sup>4</sup> <https://www.ceer.eu/publication/ceer-report-on-monitoring-nras-independence/>

<sup>5</sup> [https://www.oecd-ilibrary.org/governance/the-governance-of-regulators\\_24151440#:~:text=Building%20on%20its%20work%20on,regulatory%20agencies%20from%20undue%20influence.](https://www.oecd-ilibrary.org/governance/the-governance-of-regulators_24151440#:~:text=Building%20on%20its%20work%20on,regulatory%20agencies%20from%20undue%20influence.)

and practicality criteria underlining the general principle that the regulator should have all the necessary human and financial resources in order to be able to act independently.

While the present report does not focus on the EU-level tasks that are explicitly assigned to regulators, two of the independence criteria are of particular interest. First, that the NRA must be enabled to take decisions independently from any political body; and second, that the NRA must be given the necessary resources to do so.

## **2.2 Sectors regulated by NRAs**

CEER Members include both energy-only and multi-sector regulators. This means that some NRA duties extend to sectors that go beyond energy, such as water, transport, or telecommunications.

All CEER members are NRAs. Within the energy sector, almost all are responsible for electricity and gas (though of course, the tasks within these sectors may vary if some of them are also identified as competent authorities by the same legislation or have additional national duties, as discussed in chapters 2.3 and 2.4), and some have further energy-sector competences, e.g. in the field of fuels or heating. Beyond that, 14 out of 29 NRAs have competences in additional sectors that do not fall within energy, as the table below shows. The most frequent combination is that of energy with water and/or sewage regulation.

Some of these are sectors where EU legislation provides for regulatory authorities (e.g. telecommunication), while for others, there is no EU-level legislation that would require for these sectors to be entrusted to a regulatory authority (e.g. water). In all cases, it is up to the national legislator to decide how to handle these sectors. In addition to the table and chart below, a number of NRAs' sectoral competences are currently under revision.

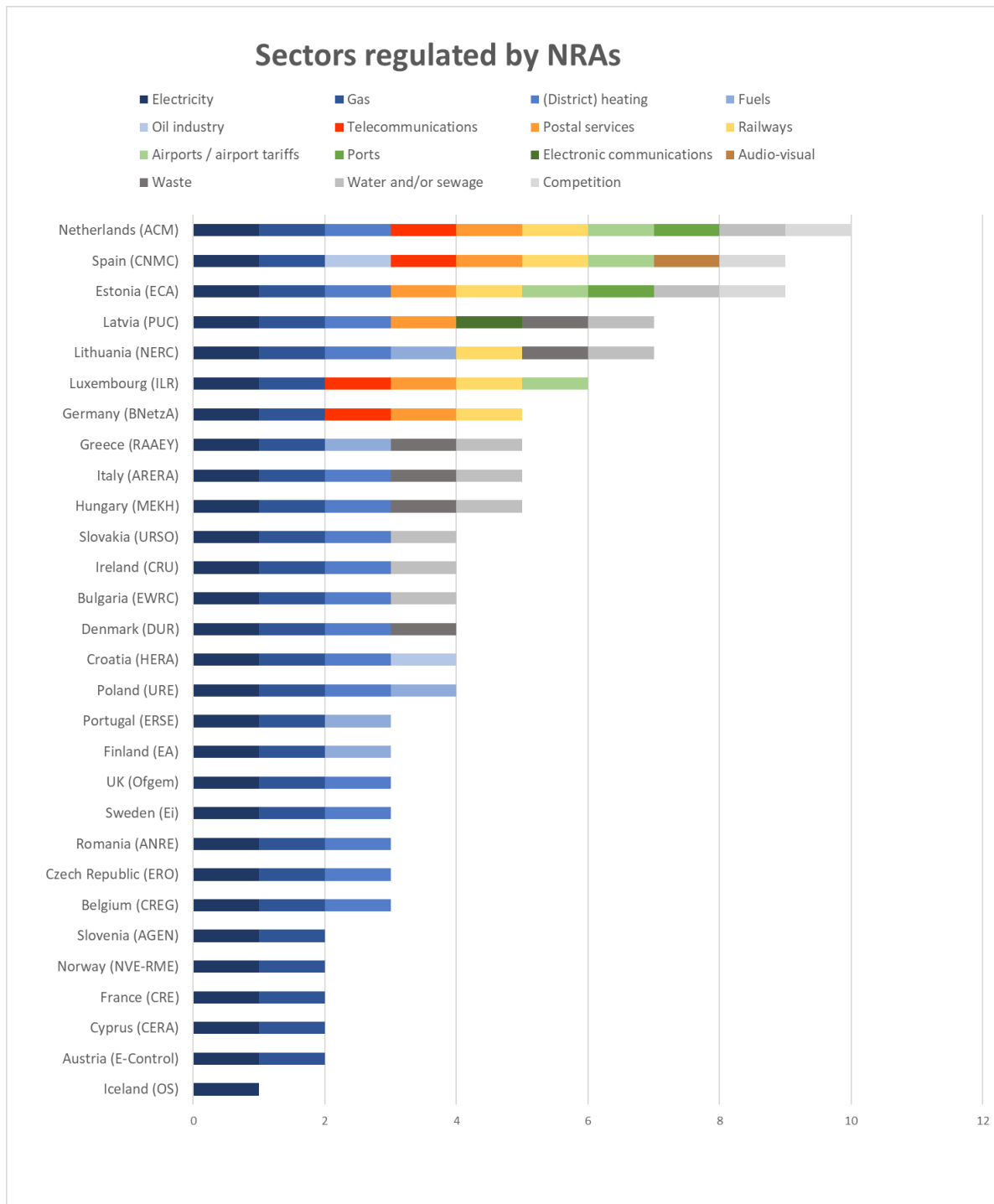


Figure 1: Sectors regulated by NRAs

Country (NRA)	Energy					Telecommunications	Postal services	Railways	Airports / airport tariffs	Ports	Electronic communications	Audio-visual	Waste	Water and/or sewage	Competition
	Electricity	Gas	(District) heating	Fuels	Oil industry										
Austria (E-Control)	x	x													
Belgium (CREG)	x	x	x												
Bulgaria (EWRC)	x	x	x											x	
Croatia (HERA)	x	x	x		x										
Cyprus (CERA)	x	x													
Czech Republic (ERO)	x	x	x												
Denmark (DUR)	x	x	x										x		
Estonia (ECA)	x	x	x				x	x	x	x				x	x
Finland (EA)	x	x		x											
France (CRE)	x	x													
Germany (BNetzA)	x	x				x	x	x							
Greece (RAAEY)	x	x			x								x	x	
Hungary (MEKH)	x	x	x										x	x	
Iceland (OS)	x														
Ireland (CRU)	x	x	x											x	

Country (NRA)	Energy					Telecommunications	Postal services	Railways	Airports / airport tariffs	Ports	Electronic communications	Audio-visual	Waste	Water and/or sewage	Competition
	Electricity	Gas	(District) heating	Fuels	Oil industry										
Italy (ARERA)	x	x	x										x	x	
Latvia (PUC)	x	x	x				x				x		x	x	
Lithuania (NERC)	x	x	x	x				x					x	x	
Luxembourg (ILR)	x	x				x	x	x	x						
Netherlands (ACM)	x	x	x			x	x	x	x	x				x	x
Norway (NVE-RME)	x	x													
Poland (URE)	x	x	x	x											
Portugal (ERSE)	x	x		x											
Romania (ANRE)	x	x	x												
Slovakia (URSO)	x	x	x											x	
Slovenia (AGEN)	x	x													
Spain (CNMC)	x	x			x	x	x	x	x			x			x
Sweden (Ei)	x	x	x												
UK (Ofgem)	x	x	x												

### 2.3 Nationally assigned EU tasks

Certain EU legislation assigns tasks to a “competent authority” identified by the MS or similar. In some MS, the legislator has decided to bestow some, most or all of these tasks to the NRA, while in others they have been assigned to different authorities or bodies in the national framework (e.g. antitrust bodies, environmental agencies etc.).

A total of 25 of 29 NRAs<sup>6</sup> confirmed that their national legislator has entrusted them with such assigned tasks on a case-by-case basis. As further pointed out, NRAs can be designated as the “competent authority” under the NIS 2 Directive 2022/2555 and are indeed the “default competent authority” in the Cybersecurity Network Code.<sup>7</sup>

### 2.4 NRA tasks specific to national legislation

The full extent of NRA duties is laid down in national legislation. In areas that are harmonised at EU level and in the case of competences that are anchored there, national legislation either transposes or implements the EU-level provisions or references them. In addition, 28 of 29 NRAs have been entrusted by their national legislator with tasks that are specific to their country and are thus not harmonised or reflected at EU level. Naturally, these tasks vary widely in scope and nature.

The area of renewables, be it in the field of support schemes or in the area of guarantees of origin, is one where 23 of 29 NRAs play some role. In energy efficiency, 14 out of 29 NRAs have some competencies. Apart from these fields, NRAs have been entrusted with a wide variety of tasks which differ both in matter and in granularity.

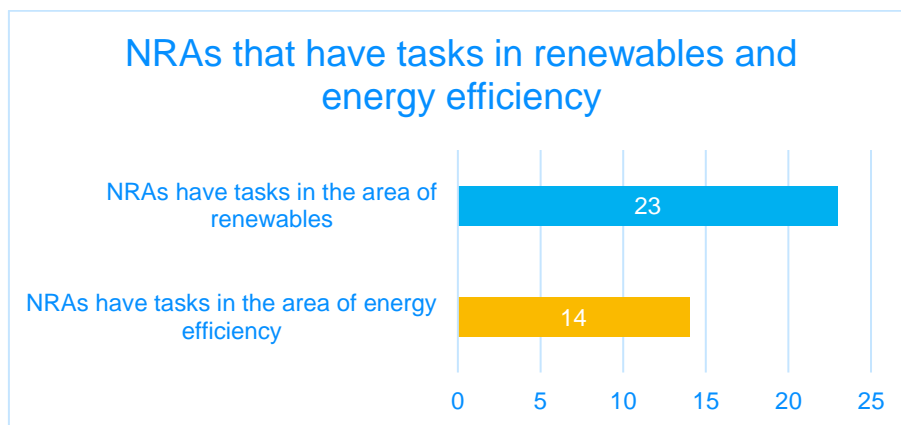


Figure 2: Number of NRAs with tasks in the areas of renewables and energy efficiency

<sup>6</sup> Note that the question is not relevant in the case of Ofgem as the UK is not part of the EU.

<sup>7</sup> Commission Delegated Regulation (EU) 2024/1366 of 11 March 2024 supplementing Regulation (EU) 2019/943 of the EP and of the Council by establishing a network code on sector-specific rules for cybersecurity aspects of cross-border electricity flows

## 2.5 European Emergency measures following the energy crisis 2022-2023

Emergency legislation was quickly enacted to counter the price crisis in 2022-2023, either at EU or national level. In some CEER Member Countries, the tasks emanating from this emergency legislation have been entrusted to NRAs, in others they have been assigned to other authorities or bodies. Some of the emergency tasks stem directly from the EU legislative level and others are of purely national origin.

A total of 24 out of 29 NRAs received additional tasks under the emergency legislation, be it from EU or national level. These tasks varied greatly. They also meant considerable additional workload for some NRAs, while hardly affecting others (for further details on the resourcing situation, please consult chapter 4). Also, please note that in some countries, these tasks have been phased out, while they are still ongoing in others.

Following from the above analyses of the different sources of NRA tasks in chapters 2.2 to 2.5, the figure below displays the number of NRAs that have tasks in each of these different fields.

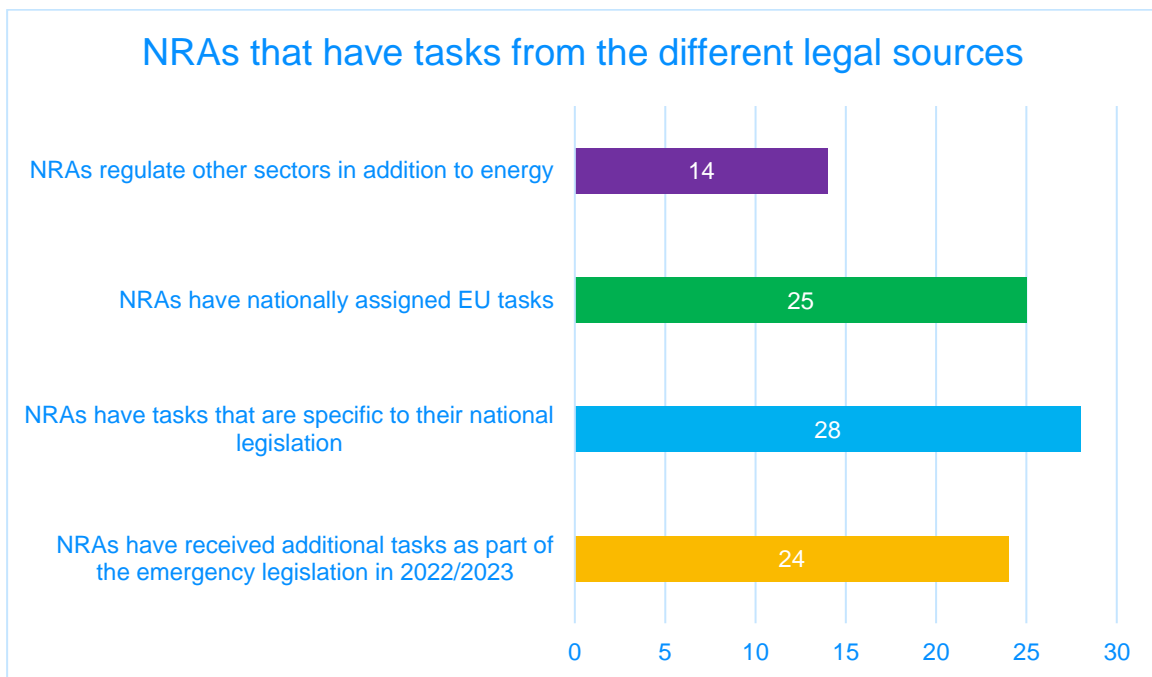


Figure 3: Number of NRAs with tasks from the different legal sources

### 3 NRA independence

NRAs' independence stems from their national legislation. While EU legislation, through the Electricity and Gas Directives, provides for some harmonisation of general principles and criteria, it is at the national level where NRA independence is anchored. The whole construct of independence comprises institutional principles that apply for the NRA as an organisation and executive tenets that enable the NRA to act in an independent way. The present report looks at two aspects of the latter, namely the independence of the NRA from political instructions and the resources granted to NRAs. This chapter deals with the former issue.

NRAs reported that their independence requirements, and the rule that they cannot receive instructions from politics on the execution of their tasks, is enshrined in their instituting or sectoral legislation (26 out of 29 NRAs), an overall national legal framework for independent institutions (2 NRAs) or in their national constitution (4 NRAs).<sup>8</sup>

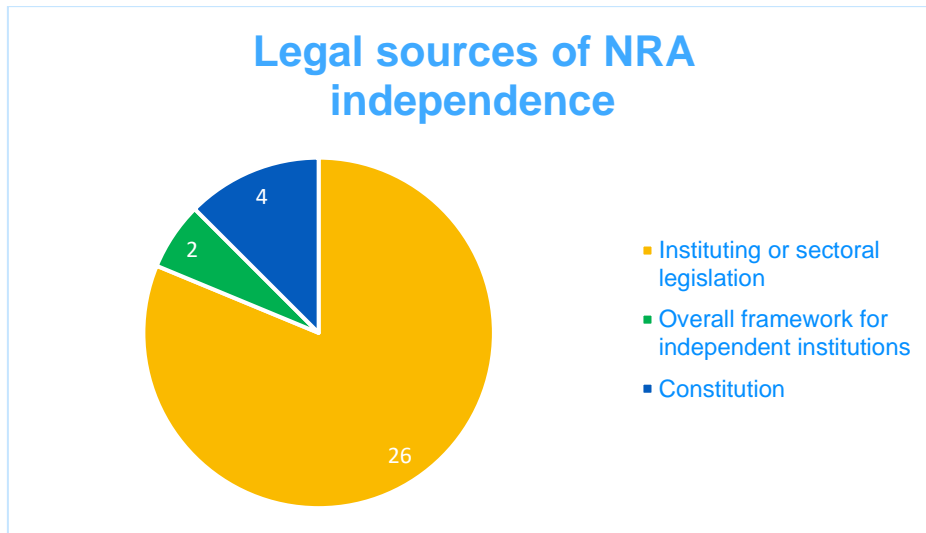


Figure 4: Legal sources of NRA independence

In 25 of 29 NRAs, the national independence rules mean that the NRA cannot receive instructions from political institutions on any of their tasks.<sup>9</sup> New tasks entrusted to them are automatically protected by the independence provisions that safeguard the independence of the NRA in the first place. For 4 NRAs, the statement that the NRA cannot receive instructions from political institutions does not apply to all tasks.

<sup>8</sup> Please note that 3 NRAs are counted twice, as their independence relies on a combination of legal instruments.

<sup>9</sup> NRAs must also be independent of any public or private entities, according to the Electricity/Gas Directives of 2009. However, the practical implementation of this independence was not the subject of the present report.



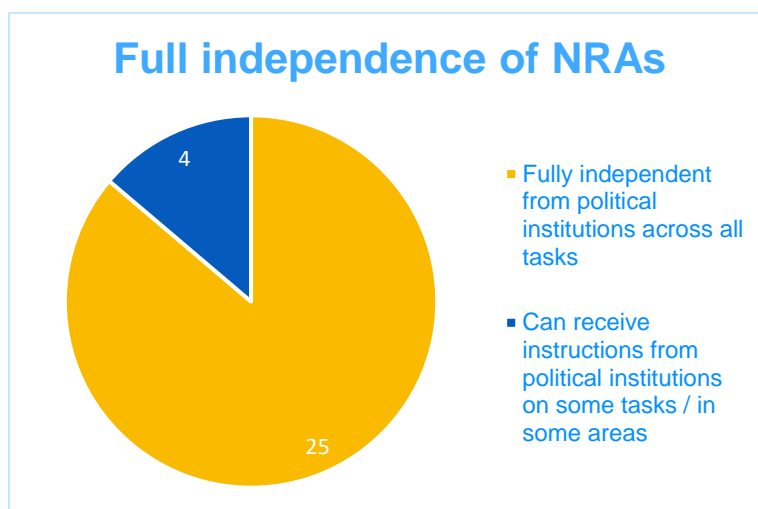


Figure 5: Number of NRAs that are fully independent from politics across all tasks

In all multi-sector regulators with the exception of one, **the independence provisions apply equally to all sectors regulated by the same NRA**. This holds not only for governance arrangements such as the appointment of the NRA board/head; it also means that the NRA acts independently in all its tasks, regardless of the sector. The independence provisions of the individual sectors are effectively levelled up to the highest denominator of the sector with the strongest independence provisions.

## 4 Resources and the consequences of the lack of resources

Appropriate resources are essential for regulators to carry out their mandate and act independently. Sufficient funding and the way they attract and motivate their staff determine the ability of the regulator to act independently and take decisions.

“The amount and source of funding for a regulator will determine its organisation and operations. It should not influence the regulatory decisions, and the regulator should be enabled to be impartial and efficient to achieve its objectives.”<sup>10</sup>

Looking at the various sources of funding, 9 out of 29 NRAs are funded through state budget, 11 NRAs are funded through a levy on regulated entities and 9 NRAs are funded by a combination of these two. In addition, 8 NRAs collect fees for particular services they provide. These funds might be collected by the NRA itself or be funnelled through the state budget. The budget can be set by the regulator itself, in a process that involves the regulator and the government or parliament, or by these actors alone. The way it is set can determine how easily NRAs can accommodate new tasks or exceptional workload (see further details below).

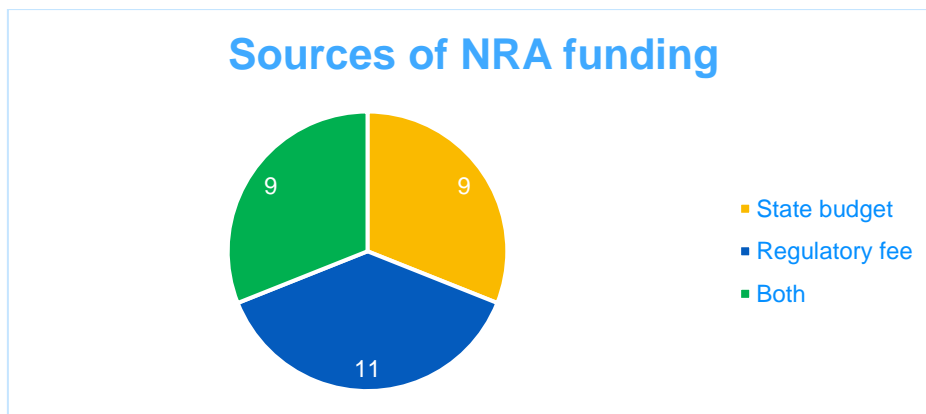


Figure 6: Sources of NRA funding

A situation of (temporary) under-resourcing can arise when NRAs are given additional tasks and granted additional resources, but the timelines do not match. **When European emergency legislation was passed at EU level and in many MS in 2022/2023, 24 out of 29 NRAs were given new tasks**, with 2 NRAs mentioning that the additional tasks did not involve considerable additional workload. Of the remaining 22 NRAs which reported a substantial increase of their workload, 9 NRAs received no additional resources, either in terms of staff or funding, to cope with these new tasks. Another 3 NRAs reported that they received additional resources which were considered to be insufficient. Finally, 5 NRAs did receive (some) additional resources although it took time until these resources became available. In 5

<sup>10</sup> OECD (2014), Best Practice Principles for Regulatory Policy, The Governance of Regulators, OECD Publishing, Paris

cases, the NRA could mobilise additional resources that enabled it to operationalise them for the additional tasks.

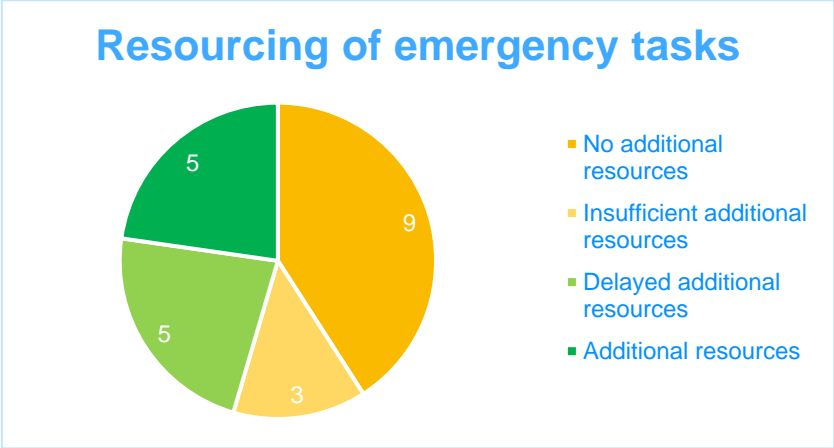


Figure 7: Resourcing of emergency tasks

## 5 Conclusions

The present report has undertaken a categorisation of the tasks that are entrusted to CEER members depending on their legal source: EU-level tasks that are exclusive to NRAs, non-energy regulation, nationally assigned EU-level tasks, specifically national tasks, and emergency legislation. Along with a brief explanation of the concept, it has found that out of the 29 NRAs that contributed to the report

- **25 NRAs have nationally assigned EU tasks;**
- **14 NRAs regulate other sectors in addition to energy;**
- **28 NRAs have tasks that are specific to their national legislation; and**
- **24 NRAs have received additional tasks as part of the emergency legislation in 2022/2023.**

The independence of NRAs is laid down in their instituting or sectoral legislation in 26 cases, in an overall national legal framework for independent institutions in 2 cases or in their national constitution in 4 cases.

In 25 out of 29 NRAs, the national independence rules mean that the NRA cannot receive instructions from political institutions on any of their tasks. **New tasks entrusted** to them are automatically protected by the independence provisions that safeguard the independence of the NRA in the first place.

In all multi-sector regulators with the exception of one, the independence provisions apply equally to all sectors regulated by the same NRA.

Looking at the different sources of funding, 9 out of 29 NRAs are funded through the state budget, 11 NRAs receive a regulatory fee and 9 NRAs are funded by a combination of these two. In addition, 8 NRAs collect fees for particular services they provide.

When emergency legislation was passed at EU level and in many MS in 2022/2023, 24 out of 29 NRAs were given new tasks, with 2 NRAs mentioning that the additional tasks did not involve considerable additional workload. Of the remaining 22 NRAs which reported a substantial increase of their workload, 9 NRAs received no additional resources, either in terms of staff or funding, to cope with these new tasks. Another 3 NRAs reported that they received additional resources which were considered to be insufficient. Finally, 5 NRAs did receive (some) additional resources although it took time until these resources became available. In 5 cases, the NRA could mobilise additional resources that enabled it to operationalise them for the additional tasks.

## Annex 1 – List of abbreviations

Term	Definition
CEER	Council of European Energy Regulators
EC	European Commission
EP	European Parliament
MS	Member States
NRA	National Regulatory Authorities

## About CEER

The Council of European Energy Regulators (CEER) is the voice of Europe's national energy regulators. CEER's members and observers comprise 39 national energy regulatory authorities (NRAs) from across Europe.

CEER is legally established as a not-for-profit association under Belgian law, with a small Secretariat based in Brussels to assist the organisation.

CEER supports its NRA members/observers in their responsibilities, sharing experience and developing regulatory capacity and best practices. It does so by facilitating expert working group meetings, hosting workshops and events, supporting the development and publication of regulatory papers, and through an in-house Training Academy. Through CEER, European NRAs cooperate and develop common position papers, advice, and forward-thinking recommendations to improve the electricity and gas markets for the benefit of consumers and businesses.

In terms of policy, CEER actively promotes an investment friendly, harmonised regulatory environment and the consistent application of existing EU legislation. A key objective of CEER is to facilitate the creation of a single, competitive, efficient, and sustainable Internal Energy Market in Europe that works in the consumer interest.

Specifically, CEER deals with a range of energy regulatory issues including wholesale and retail markets; consumer issues; distribution networks; smart grids; flexibility; sustainability; and international cooperation.

CEER wishes to thank in particular the following regulatory experts for their work in preparing this report: Slobodan Vidovic, Alexander Linov, Ana Filipa Santos, Nadia Horstmann and all the CEER members who have taken the time for interviews and generously shared their information.

More information is available at [www.ceer.eu](http://www.ceer.eu).

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