ERRA Survey:
INDEPENDENCE OF THE NATIONAL REGULATORY AUTHORITIES

June 2015
ERRA SURVEY:
Independence of the National Regulatory Authorities

Edited by:
dr. Gábor Szörényi
General Secretary, ERRA

June, 2015

The Analysis was prepared based on information collected from ERRA members in the period of July – September 2014. The collected information was verified and evaluated by ERRA members in 2015 May.

The following ERRA Members submitted their answers:

<table>
<thead>
<tr>
<th>NRA</th>
<th>Country</th>
<th>Abbrev. used</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albanian Energy Regulator</td>
<td>Albania</td>
<td>ALB</td>
</tr>
<tr>
<td>Public Services Regulatory Commission</td>
<td>Armenia</td>
<td>ARM</td>
</tr>
<tr>
<td>Tariff Council</td>
<td>Azerbaijan</td>
<td>AZE</td>
</tr>
<tr>
<td>State Electricity Regulatory Commission</td>
<td>Bosnia and Herzegovina</td>
<td>BIH</td>
</tr>
<tr>
<td>Energy and Water Regulatory Commission</td>
<td>Bulgaria</td>
<td>BGR</td>
</tr>
<tr>
<td>Electricity Sector Regulatory Agency</td>
<td>Cameroon</td>
<td>CMR</td>
</tr>
<tr>
<td>Croatian Energy Regulatory Agency</td>
<td>Croatia</td>
<td>HRV</td>
</tr>
<tr>
<td>Estonia Competition Authority</td>
<td>Estonia</td>
<td>EST</td>
</tr>
<tr>
<td>Georgian National Energy and Water Supply Regulatory Commission</td>
<td>Georgia</td>
<td>GEO</td>
</tr>
<tr>
<td>Hungarian Energy and Public Utility Regulatory Authority</td>
<td>Hungary</td>
<td>HUN</td>
</tr>
<tr>
<td>Committee for Regulation of Natural Monopolies at the Ministry of National Economy</td>
<td>Kazakhstan</td>
<td>KAZ</td>
</tr>
<tr>
<td>State Agency for Fuel and Energy Regulation under the Government of the KR</td>
<td>Kyrgyz Republic</td>
<td>KGZ</td>
</tr>
<tr>
<td>Public Utilities Commission</td>
<td>Latvia</td>
<td>LVA</td>
</tr>
<tr>
<td>National Commission for Energy Control and Prices</td>
<td>Lithuania</td>
<td>LTU</td>
</tr>
<tr>
<td>Energy Regulatory Commission</td>
<td>Macedonia</td>
<td>MKO</td>
</tr>
<tr>
<td>Energy Regulatory Agency</td>
<td>Montenegro</td>
<td>MNE</td>
</tr>
<tr>
<td>Nigerian Electricity Regulatory Commission</td>
<td>Nigeria</td>
<td>NGA</td>
</tr>
<tr>
<td>Energy Regulatory Office</td>
<td>Poland</td>
<td>POL</td>
</tr>
<tr>
<td>Romanian Energy Regulatory Authority</td>
<td>Romania</td>
<td>ROU</td>
</tr>
<tr>
<td>Federal Tariff Service</td>
<td>Russian Federation</td>
<td>RUS</td>
</tr>
<tr>
<td>Electricity and Co-Generation Regulatory Authority</td>
<td>Saudi Arabia</td>
<td>SAU</td>
</tr>
<tr>
<td>Energy Agency</td>
<td>Serbia</td>
<td>SRB</td>
</tr>
<tr>
<td>Regulatory Office for Network Industries</td>
<td>Slovakia</td>
<td>SVK</td>
</tr>
<tr>
<td>Energy Market Regulatory Authority</td>
<td>Turkey</td>
<td>TUR</td>
</tr>
<tr>
<td>National Commission for State Energy Regulation of Ukraine</td>
<td>Ukraine</td>
<td>UKR</td>
</tr>
<tr>
<td>Energy Regulatory Office</td>
<td>UNMIK</td>
<td>UNMIK</td>
</tr>
</tbody>
</table>

The Energy Regulators Regional Association assumes no responsibility for the use that may be made of the information contained in this publication or any errors that may remain in the texts, despite the care taken in preparing them. All views, positions, and conclusions expressed in this publication should be understood to be solely those of ERRA and its members. This text may be used only for personal research purposes. Any additional reproduction for any other purposes, whether in hard copies or electronically, requires the consent of ERRA. If cited or quoted, reference should be made to the full name of the author, the title, the year and the publisher.
TABLE OF CONTENT:

1. Introduction .......................................................................................................................... 3
   1.1. Background .......................................................................................................................... 3
   1.2. Evaluation Process – Methodology ......................................................................................... 4
   1.3. Structure of the Survey ....................................................................................................... 6

2. Evaluation of different Dimensions of Regulatory Independence and Transparent Operation ........... 7
   2.1. The Importance and the General Meaning of the Regulatory Independence ....................... 7
   2.2. Political Independence ......................................................................................................... 12
   2.3. Legal Independence ............................................................................................................ 30
   2.4. Financial Independence ....................................................................................................... 34
   2.5. Transparency ....................................................................................................................... 45
   2.6. Other Regulatory Aspects of Independence ....................................................................... 47

3. Gilardi Index – Method and Results Measuring Regulatory Independence ........................................ 51
   3.1. Theoretical Background ...................................................................................................... 51
   3.2. Practical use of Gilardi Index (limitations and assumptions) in this Survey .............................. 54
   3.3. Results of Gilardi Index Calculation ..................................................................................... 55

4. Summary ...................................................................................................................................... 61

5. Bibliography .................................................................................................................................. 76
1. **Introduction**

1.1. **Background**

The Energy Regulatory Regional Association (ERRA) as a voluntary non-profit organization of independent energy regulatory bodies integrates 24 regulatory authorities as Full Members, 4 as Associate and 7 Affiliate Members in the region of the Central Eastern Europe (CEE), South East Europe (SEE), the Commonwealth of Independent States (CIS), the Baltic States and Affiliate members from Middle East, Africa and the USA.

The Constitution of ERRA describes the purposes and objectives of the Association. One of the purposes of the Association is to “...foster development of stable Energy Regulators with autonomy and authority...”. The common understanding of ERRA members is that predictable, transparent and non-discriminative decisions of the autonomous National Regulatory Authorities (NRA) are important for customers and energy companies as well. This autonomy is important for a stable investment climate, which could support security and quality of energy supply.

Due to this purpose of the Association ERRA is continuously engaged in the subject of regulatory autonomy and authority. In the past ERRA has already preformed (ordered/ supported) different surveys on regulatory autonomy among ERRA members:

- Regulatory Benchmarking Report for the CIS (2006) – prepared by Pierce Atwood,

Exchanging information with the representatives of different Regional Regulatory Associations (RRA) and with the Secretariat of the European Community Regulatory Board (ECRB) on the issue of measuring regulatory independence the following ideas occurred during 2014:

- Measuring and Benchmarking the „Regulatory Independence” of ERRA Members through the “Gilardi Index” (individual assessment with the Index) – this questioner and evaluation method was used in 2014 by the Ibero-American Association of Energy Regulators (ARIAE).
- The ERRA Secretariat learnt that ECRB was planning to launch a similar survey activity during the summer of 2014, so the ECRB and ERRA Secretariats started to discuss the possibility of a joint survey in order to avoid double workload on members who have membership in both organisations (13 ERRA members are members of the Energy Community as well).

ERRA Secretariat prepared the first version of questionnaire (based on the Gilardi Index method) and shared it with the ECRB Secretariat. The ECRB compiled a new joint questionnaire; taken into consideration the original, but changed some of the questions and restructured the potential (multiple choice) answers, which limit the use of answers calculating the Gilardi Index. To be able to calculate the different Gilardi indices and to create aggregated results for comparison of ERRA members to each other and with other RRAs, we made some assumptions (see the relevant chapter).

In July 2014 ERRA Presidium approved the concept of joint work with ECRB - together with the new form of the questionnaire - for practical reasons utilising the possible synergy effects.

In July 2014 ERRA Secretariat launched the common questionnaire and it was sent to ERRA members with the aim to provide ERRA members with a closer look into regulatory independence in terms of political, legal and financial independence and transparency. The questions were focusing on the main factors that influence these areas and identifying good practices among ERRA members.

ERRA Secretariat collected the answers from those ERRA members (13 regulators), which are not members of the ECRB, through online electronic survey-tool between July and September, 2014.
We would like to express our gratitude to those employees of the 26 member organisations who took part in the data collection and provided us with all the information. The report could not be compiled without their great job.

1.2. Evaluation Process – Methodology

In the middle of September, 2014 ECRB internally agreed on the outline and timeline of the ECRB survey report development. ECRB has also decided on the main orientation of the assessment criteria:
- referring to the 3rd Energy package of the EU legislation (including DG ENER’s interpretative note on NRA independence),
- referring to the best practise experience in the Region and beyond,
- benchmarking of best/least good practise against EU best practise (not against practise within the Energy Community only),
- in some cases (to be specified in the analysis/review by the ECRB) averages might be published only with a view to respect confidentiality.

Taking into consideration, that several non-EU member ERRA members are not interested in the benchmark to the EU best practice in October, 2014 ERRA Presidium created the following position on the evaluation of the answers and analysis of the elements of regulatory independence:
- ERRA will evaluate all the ERRA members’ answers (separately from ECRB).
- The ERRA Report on Regulatory Independence will introduce the requirements of the 3rd Energy package, together with the meaning of these requirements (does not benchmark the ERRA members to these EU requirements and to the “best European practice”).
- ERRA will evaluate the answers to the average and to the best ERRA practices and point out the possible developments for reaching the requirements of the 3rd Package. The different national practices will not be assessed individually, but in the internal ERRA report there will be a possibility for all members to compare their legal/regulatory framework and their circumstances with the other solutions.
- ERRA will evaluate the answers of each ERRA members (participated in the Survey) with the “Gilardi index” method (with some assumptions and limitations) as well; to have a chance for comparison of the level of different indicators “measuring” regulatory independence among ERRA members and in a limited way with members of other RRAs.
- On the publication of the Report:
  - the detailed answers and comments of the ERRA members will be available for ERRA members only,
  - the ERRA members could discuss and comment the publicly available part of the assessment before publishing (in the form of a special open report),
  - the sensitive issues (salary level of regulatory staff and Board Members/decision makers) are planned to handle in a very general way.

The survey was filled by the following national regulatory organizations:
- **Albanian** Energy Regulator (ERE)
- Public Services Regulatory Commission of **Armenia** (PSRC)
- Tariff (Price) Council of **Azerbaijan**
- State Electricity Regulatory Commission of **Bosnia and Herzegovina** (SERC)
- State Energy and Water Regulatory Commission of **Bulgaria** (SEWRC)
- Electricity Sector Regulatory Agency of **Cameroon** (ARSEL)
- **Croatian** Energy Regulatory Agency (HERA)
- **Estonian** Competition Authority
- **Georgian** National Energy and Water Supply (GNERC)
- Hungarian Energy and Public Utility Regulatory Authority (HEA) *
- Committee for Regulation of Natural Monopolies and Protection of Competition at the Ministry of National Economy of the Republic of Kazakhstan
- State Agency for Fuel and Energy Regulation at the Government of the Kyrgyz Republic
- Public Utilities Commission of Latvia (PUC)
- National Commission for Energy Control and Prices of Lithuania (NCC)
- Energy Regulatory Commission of Macedonia (ERC) *
- Energy Regulatory Agency of Montenegro*
- Nigerian Electricity Regulatory Commission (NERC)
- Energy Regulatory Office of Poland (ERO)
- National Energy Regulatory Authority of Romania (ANRE) *
- Federal Tariff Service of the Russian Federation (FTS)
- Electricity and Cogeneration Regulatory Authority of Saudi Arabia (ECRA)
- Energy Agency of the Republic of Serbia*
- Regulatory Office for Network Industries of Slovakia (RONI)
- Energy Market Regulatory Authority of Turkey (EMRA) *
- National Commission for State Energy Regulation of Ukraine (NERC) *
- Energy Regulatory Office of UNMIK (ERO) *

Organizations highlighted with * are both ECRB and ERRA Members. ECRB is doing its detailed analysis separately.

The distribution of the NRAs between different organisations could be seen below:

<table>
<thead>
<tr>
<th>NRA</th>
<th>ERRA</th>
<th>ECRB</th>
<th>EU</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania (ERE)</td>
<td>+</td>
<td>+</td>
<td></td>
</tr>
<tr>
<td>Armenia (PSRC)</td>
<td>+</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Azerbaijan (TC)</td>
<td>+</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bosnia and Herzegovina (SERC)</td>
<td>+</td>
<td>+</td>
<td></td>
</tr>
<tr>
<td>Bulgaria (SEWRC)</td>
<td>+</td>
<td>+</td>
<td>+</td>
</tr>
<tr>
<td>Cameroon (ARSEL)</td>
<td>+</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Croatia (HERA)</td>
<td>+</td>
<td>+</td>
<td>+</td>
</tr>
<tr>
<td>Estonia (ECA)</td>
<td>+</td>
<td>+</td>
<td></td>
</tr>
<tr>
<td>Georgia (GNERC)</td>
<td>+</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hungary (HEA)</td>
<td>+</td>
<td>+</td>
<td>+</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>+</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kyrgyz Republic</td>
<td>+</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Latvia (PUC)</td>
<td>+</td>
<td>+</td>
<td></td>
</tr>
<tr>
<td>Lithuania (NCC)</td>
<td>+</td>
<td>+</td>
<td></td>
</tr>
<tr>
<td>Macedonia (ERC)</td>
<td>+</td>
<td>+</td>
<td></td>
</tr>
<tr>
<td>Montenegro (ERA)</td>
<td>+</td>
<td>+</td>
<td></td>
</tr>
<tr>
<td>Nigeria (NERC)</td>
<td>+</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Poland (ERO)</td>
<td>+</td>
<td>+</td>
<td></td>
</tr>
<tr>
<td>Romania (ANRE)</td>
<td>+</td>
<td>+</td>
<td>+</td>
</tr>
<tr>
<td>Russian Federation (FTS)</td>
<td>+</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Saudi Arabia (ECRA)</td>
<td>+</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Serbia (AERS)</td>
<td>+</td>
<td>+</td>
<td></td>
</tr>
<tr>
<td>Slovakia (RONI)</td>
<td>+</td>
<td>+</td>
<td></td>
</tr>
<tr>
<td>Turkey (EMRA)</td>
<td>+</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ukraine (NERC)</td>
<td>+</td>
<td>+</td>
<td></td>
</tr>
<tr>
<td>UNMIK (ERO)</td>
<td>+</td>
<td>+</td>
<td></td>
</tr>
</tbody>
</table>

© ERRA 2015
In the Survey the data and information of the following ERRA members were assessed/analysed and in the Report the results are introduced:
Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Cameroon, Croatia, Estonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Macedonia, Montenegro, Nigeria, Poland, Romania, Russia, Saudi Arabia, Serbia, Slovakia, Turkey, Ukraine and UNMIK.

1.3. Structure of the Survey

The objective of this paper is to provide ERRA members with a closer look into regulatory autonomy in terms of political, legal and financial independence, transparency and some other special issues. Each of these different terms of regulatory independence will be discussed in separate chapters of this Report;

- introducing the requirements of the 3rd Energy package with their description (based on the DG ENER's interpretative note on NRA independence (Brussels, 22 January 2010: European Commission Staff Working Paper: „Interpretative Note on Directive 2009/72/EC Concerning Common Rules for the Internal Market in Electricity and Directive 2009/73/EC Concerning Common Rules for the Internal Market in Natural Gas - The Regulatory Authorities”);
- highlighting the factors that influence the main areas of regulatory independence and transparent operation;
- evaluating the submitted answers by determining good practices and measures in ERRA members, and comparing some less robust national practices to the average and to the best ERRA practices,
- identifying possible developments.

The calculation results of the different “Gilardi index” elements for each NRA will be introduced in a separate chapter.
2. Evaluation of different Dimensions of Regulatory Independence and Transparent Operation

2.1. The Importance and the General Meaning of the Regulatory Independence

ERRA members are deeply involved in the liberalisation process of their energy sector. National Regulatory Authorities – as independent agencies empowered with regulatory responsibilities – are important elements of the ongoing energy reform.

Establishing an independent agency and creating legal framework to ensure its operation independently from investor’s interest and short term political interventions is no easy task and even more challenging in countries with limited tradition of independent public institutions and limited regulatory experience and capacity.

Even if a number of measures have already been set by law ensuring regulatory independence, many issues still remain questionable. Governments are very often reluctant to restrain political control/influence over regulatory decisions. The key issue is to balance the interest of the regulated natural monopolies (investors and licensed companies), market players and the different segments of consumers (household customers, small and medium sized energy users and industrial end-users) and to implement the energy policy measures, set by the government. The NRA should have the necessary power to represent – in all regulatory decisions – the short and long term interests of the consumers;

- as short term interest: “continuous” energy supply with sufficient service quality level on affordable energy prices for households, and on market based prices for industry ensuring their international competitiveness,
- as long term interest: ensuring security of energy supply, which means adequate regulatory incentives to keep healthy capacity balance/generation adequacy (new generation investment) and support for continuous development of the network systems.

Although many countries have established institutional framework, it is questionable whether they operate as truly independent regulatory authorities. The formal independence – provided by the existing legal framework with full authorisation delegated to the regulator – does not necessarily mean real (de facto) autonomous operation and decisions of the regulator. There are cases, when the regulatory decision makers voluntary follow the short term political interest.

The lack of autonomous regulatory decisions, the missing predictability, level playing field and transparency in the regulatory actions represent uncertainty, which means regulatory risk. This regulatory risk could be reflected in risk premium, which is a painful burden on the end-users; in the form of delayed or even suspended investments (generation, production, storage and network), in higher network tariffs and commodity prices. The regulatory risk could negatively influence the social welfare and the competitiveness of the national economy.

Articles 35(4) of the Electricity Directive\(^1\) and 39(4) of the Gas Directive\(^2\) provide for the following: ‘Member States shall guarantee the Independence of the regulatory authority and shall ensure that it exercises its powers impartially and transparently’. These Articles refer to - ‘regulatory tasks conferred upon it by [these] Directive[s] and related legislation’.

The European Commission Directorate General Energy (DG ENER) issued an interpretative note on NRA independence\(^3\) which states that this phrase is to be understood as the duties and powers under Articles 37 of the Electricity Directive and 41 of the Gas Directive but also as any other duty of the NRA originated from

---

1. Directive 2009/72/EC Concerning Common Rules for the Internal Market in Electricity
2. Directive 2009/73/EC Concerning Common Rules for the Internal Market in Natural Gas

© ERRA 2015
Impartiality
Impartiality is aimed at guaranteeing that the NRA acts and takes decisions in a neutral way, based on objective criteria and methodologies. In the view of the European Commission’s (legal) services this requirement means that Member States must provide for dissuasive civil, administrative and/or criminal sanctions in case of violations of the provisions on impartiality.

Transparency
The NRA must also carry out its tasks in a transparent manner. In the view of the Commission’s (legal) services this means first that the NRAs must adopt and publish their rules of procedure. These should include at least procedures for decision making. Compliance with the transparency requirement also means that the NRAs must have clear contact points for all stakeholders and publish information on their own organisation and structure.

A second aspect of transparency, in the view of the Commission’s (legal) services, is that the NRAs should consult stakeholders before taking important decisions. This should at least include publishing documents ahead of public consultations and organising public hearings.

Preferably this would also include the obligation, for the NRA, to publish a document after public consultation giving an overview of the comments received, of those that were taken into account and the reasons why other comments were not taken into account.

Thirdly, decisions of the NRA must be made available to the public (cf. with the “accountability” requirements). This will enable the parties affected by a decision and the public to be informed about the reasons why a decision was taken and, hence, become aware of the impartiality with which the NRA fulfils its duties and exercises its powers.

Independence
Article 35(4) of the Electricity Directive and Article 39(4) of the Gas Directive spell out in more detail the independence requirements that need to be met by the NRA. Whereas subparagraph (a) refers to the independence of the NRA as an organisation, subparagraph (b) refers to the independence of the NRA staff and persons responsible for its management.

Independence of the NRA as an organisation
Pursuant to Article 35(4) (a) of the Electricity Directive and Article 39(4) (a) of the Gas Directive, ‘the regulatory authority is legally distinct and functionally independent from any other public or private entity’ when carrying out the regulatory tasks conferred upon it by the Electricity and Gas Directives.

Independence in the legislation of the Third Energy Package concerns not only the electricity and gas industry but also any other public body (including national, local or regional government, municipalities and political organisations or structures) or private body.

“Legally distinct” means that the NRA must be created as a separate and distinct legal entity from any Ministry or other government body. This provision is closely linked to the requirement that the NRA should be able to take autonomous decisions.

Notwithstanding national administrative rules, it should be the sole responsibility of the NRA to determine how it operates and is managed, including staffing-related matters. These provisions thus seem to rule out any hierarchical link between the NRA and any other body or institution. Based on this interpretation; moreover, the NRA can no longer be part of a Ministry.
Independence of the NRA staff and persons responsible for its management

Article 35(4) (b) of the Electricity Directive and Article 39(4) (b) of the Gas Directive stipulate the following:

"Member States shall ensure that, when carrying out the regulatory tasks conferred upon it by this Directive and related legislation, the regulatory authority ensures that its staff and the persons responsible for its management:

(i) act independently from any market interest;
(ii) and do not seek or take direct instructions from any government or other public or private entity when carrying out the regulatory tasks. This requirement is without prejudice to close cooperation, as appropriate, with other relevant national authorities or to general policy guidelines issued by the government not related to the regulatory powers and duties [...]."

These provisions on the independence of the NRA’s staff and persons responsible for their management are key requirements because they are aimed at ensuring that regulatory decisions are not affected by political and specific economic interests, thereby creating a stable and predictable investment climate. The aim of the provision is indeed to guarantee that all staff and the persons responsible for the NRA’s management (Commissioners, Directors, Board members, members of the chamber, etc.) act independently from any market interest (covering both the private and the public sectors) and impartially in the exercise of their powers and the fulfilment of their duties. When taking a decision, NRA’s staff and management must not be inclined to take account of considerations other than the general interest.

Based on the Interpretative Note the above mentioned Articles [35(4) (b) and 39(4) (b)] of the Directives require EU Member States to develop rules preventing all staff and the persons responsible for their management from pursuing any activity or holding any position or office with an electricity or gas undertaking, and from holding shares or having any other interests in an electricity or gas undertaking. The ERRA survey devoted some questions to the existence and content of these rules.

Apart from the establishment of general rules on the independence of NRA’s staff and persons responsible for their management it is important that the assessment of compliance with the independence criteria is done on a case-by-case basis.

Depending on the national constitution, it could be the government’s competency to determine the policy framework within which the NRA must operate, e.g. concerning security of supply, renewables or energy efficiency targets. However, general energy policy guidelines issued by the government must not encroach on the NRA’s independence and autonomy.

The provisions on independence do not deprive the NRA of the possibility (and duty) to consult and cooperate with other relevant (national and regional) authorities, such as regulatory authorities at regional level or competition authorities. This follows from the text of the Electricity and Gas Directives concerning cooperation at national and supranational level. Pursuant to Article 38(1) of the Electricity Directive and Article 42(1) of the Gas Directive, NRAs have the duty to closely consult and cooperate with each other and with the Agency (ACER), especially on cross-border issues. This provision gives the NRA a broad mandate and clear duty to exchange ‘any information necessary for the fulfilment of their tasks’. The text of the Directive gives guidance on the exchange of confidential information in this context: the receiving authority must ensure the same level of confidentiality as that required of the originating authority.

Article 35(5) of the Electricity Directive and Article 39(5) of the Gas Directive provide for two specific sets of (legal and financial) rules aimed at protecting the independence of the NRA. They require EU Member States to ensure that:

“(a) the regulatory authority can take autonomous decisions, independently from any political body, and has separate annual budget allocations, with autonomy in the implementation of the allocated budget, and adequate human and financial resources to carry out its duties; and
(b) the members of the board of the regulatory authority or, in the absence of a board, the regulatory authority’s top management are appointed for a fixed term of five up to seven years, renewable once."
In regard to point (b) of the first subparagraph, Member States shall ensure an appropriate rotation scheme for the board or the top management. The members of the board or, in the absence of a board, members of the top management may be relieved from office during their term only if they no longer fulfil the conditions set out in this Article or have been guilty of misconduct under national law.

Based on the Interpretative Note these – above mentioned – provisions imply the following legal and financial conditions ensuring regulatory independence:

- **The NRA must be able to take autonomous decisions**, independently from any political, public or private body. This has consequences ex ante (before a decision is taken) and ex post (after a decision is taken). From an ex ante perspective, this requirement excludes any interference from the government or any other public or private entity prior to an NRA decision. It also implies that if the NRA is to draft a work programme for the coming year(s), it should be able do so autonomously, i.e. without the need for the approval or consent of public authorities or any other third parties.

The ex post aspect of the requirement of having an NRA being able to take independent decisions means that the decisions of the NRA are immediately binding and directly applicable without the need for any formal or other approval or consent of another public authority or any other third parties. Moreover, the decisions by the NRA cannot be subject to review, suspension or veto by the government or the ministry. This, of course, precludes neither judicial review nor appeal mechanisms before any other bodies independent of the parties involved and of any government.

- **The NRA should have separate annual budget allocations.** In some countries, the budget of the regulatory authority is paid directly by the electricity and gas undertakings/license holders/consumers (in which case there is a clear separate annual budget allocation). In other countries, the budget of the regulatory authority is part of the total State budget. The new legislation (“Third Energy Package”) continues to allow the regulatory authority’s budget to be part of the State budget; however, there is now a clear need for separate annual budget allocations for the NRA.

- **The NRA should have autonomy in the implementation of the allocated budget.** This means that the NRA, and only the NRA, can decide on how the allocated budget is spent. It may neither seek nor receive any instruction on its budget spending. The approval of the budget of the NRA by the national legislator does not constitute an obstacle to budgetary autonomy.

In accordance with the requirement that the NRA exercises its powers transparently, the NRAs must report on the way they spend their budget.

- **The NRA has to have adequate human and financial resources** to carry out its duties; as the new European Union rules (“Third Energy Package”) assign considerably more duties and powers to the NRA, this will affect the human and financial resources to be put at the disposal of the NRA. Given the complexity of (energy) regulation, an NRA must be able to attract sufficiently qualified staff with various backgrounds (lawyers, economists, engineers, etc.).

- **The members of the board of the NRA are appointed for a fixed term of five to seven years, renewable once.** Governments can opt against the possibility for renewal, in which case the maximum term of office is seven years.

- **An appropriate rotation scheme for the board is to be put in place.** This means that the end date of the term of office of the board members cannot be the same for all members. This could be achieved for instance when the term of office of half of the members of the board ends mid-way through the term of office of the remaining board members.

- **The members of the board may be removed from office during their term only if they no longer fulfil the conditions set out in the Electricity and Gas Directives as regards their independence or have been guilty of misconduct under national law.** Although the Electricity and Gas Directives leave room for rules adopted at national or regional level as far as misconduct is concerned, it has to be stressed that the possibility to remove a member of the board during his or her term will apply in special cases only, such as fraud, bribery and breaches of the independence or impartiality of the NRA.
When referring to board members, the Electricity and Gas Directives also use the words ‘persons responsible for its management’ and ‘the regulatory authority top management’ i.e. the persons (typically a limited number of people) who, within the NRA, have the power to take decisions. Therefore the independence requirements for board members apply to those persons within the NRA having the power to take binding decisions (i.e. probably the members of the board of directors or the members of the management board or, in absence of such a board, the top management).

Duties of the regulatory authority

The Electricity Directive (Articles 37) and the Gas Directive (Articles 41) provide clear requirements for the duties of the NRA. Some of the duties are to be fulfilled solely by the NRA (core duty); other duties can be carried out by other authorities. These duties constitute a minimum set of competences and Governments/Parliaments may give the NRA additional powers to those specified. The core duties include:

- duties in relation to tariffs for access to transmission and distribution networks: fixing or approving, in accordance with transparent criteria, transmission or distribution tariffs or their methodologies (four options as regards the way tariffs for network access and balancing services are established: the NRA fixes the tariffs, the NRA fixes the methodology, the NRA approves the tariffs or the NRA approves the methodology);
- duties in relation to unbundling: ensuring that there are no cross-subsidies between transmission, distribution, liquefied natural gas, storage, and supply activities;
- duties in relation to the general oversight of energy companies: ensuring compliance of transmission and distribution system operators, system owners (where relevant) and electricity or gas undertakings with their obligations (These duties broadly relate to monitoring access to networks and infrastructure, monitoring markets and the development of competition, and monitoring consumer protection measures. It is possible to decide that the monitoring duties are to be carried out by authorities other than the NRA. If national Government/Parliament chooses to do so, it must guarantee that the information resulting from this monitoring will, as soon as possible, be made available to the NRA.);
- duties in relation to consumer protection: helping to ensure, together with other relevant authorities, that the consumer protection measures are effective and enforced; publishing recommendations, at least annually, in relation to compliance of supply prices with Article 3; ensuring access to customer consumption data. (The NRA should be granted the power to contribute to ensuring high standards of universal and public service in compliance with market opening, the protection of vulnerable customers, and the full effectiveness of consumer protection measures.)

Powers of the regulatory authority

It is important that the NRA is not only given quite extensive duties but also the necessary powers to be able to carry out its duties. Article 37(4) of the Electricity Directive and Article 41(4) of the Gas Directive provide as follows:

“Member States shall ensure that regulatory authorities are granted the powers enabling them to carry out the duties referred to in paragraph 1, 3 and 6 in an efficient and expeditious manner. For this purpose, the regulatory authority shall have at least the following powers:

(a) to issue binding decisions on [electricity and natural gas] undertakings;
(b) to carry out investigations into the functioning of the [electricity and gas] markets, and to decide upon and impose any necessary and proportionate measures to promote effective competition and ensure the proper functioning of the market. Where appropriate, the regulatory authority shall also have the power to cooperate with the national competition authority and the financial market regulators or the Commission in conducting an investigation relating to competition law;

---

4 The Directives do not provide any obligation on the NRAs setting end-user tariff, because – based on the targeted market model – the commodity component of the end-user price should be market based (not regulated).
(c) to require any information from [electricity and natural gas] undertakings relevant for the fulfilment of its tasks, including the justification for any refusal to grant third-party access, and any information on measures necessary to reinforce the network;

(d) to impose effective, proportionate and dissuasive penalties on [electricity and natural gas] undertakings not complying with their obligations under this Directive or any relevant legally binding decisions of the regulatory authority or of the Agency, or to propose to a competent court to impose such penalties. This shall include the power to impose or propose the imposition of penalties of up to 10 % of the annual turnover of the transmission system operator or of up to 10 % of the annual turnover of the vertically integrated undertaking on the transmission system operator or on the vertically integrated undertaking, as the case may be, for non-compliance with their respective obligations pursuant to this Directive; and

(e) appropriate rights of investigations and relevant powers of instructions for dispute settlement under paragraphs 11 and 12.”

Accountability of the Regulatory Authority — Complaints and Legal Actions

It is important to recognise the clear link, in the new Electricity and Gas Directives, between increased NRA independence and NRA accountability. The following aspects of accountability could be identified:

- The Electricity and Gas Directives expressly (Article 35(4) and Article 39(4)) require the Governments/Parliaments to ensure that the NRA exercises its powers transparently. As already indicated above, this means that the NRA needs to be transparent on the way it takes decisions as well as on the way it spends the budget allocated to it. This includes the need to consult stakeholders (e.g. by organising public hearings) before taking important decisions.

- The NRA must report ‘annually on its activity and the fulfilment of its duties to the relevant authorities of the Member States, …..’. Such reports shall be published to fulfil the transparency requirement.

- The third aspect of the NRA’s accountability is legal accountability, i.e. it must be possible to introduce legal actions against NRA decisions.

Decisions taken by the NRA must be fully reasoned and justified to allow judicial review. It is recommended that all acts by the NRA (including advice, studies etc.) be published (e.g. the result of monitoring activities).

The decisions must be made available to the public while preserving the confidentiality of commercially sensitive information. It is up to the NRA to decide, case by case, what information is commercially sensitive.

The following chapters will have a closer look into regulatory autonomy of ERRA Members in terms of political, legal and financial independence, transparency and some other special issues. Each of these different terms of regulatory independence and the “guarantee” for autonomous operation of the regulator was surveyed through different group of questions. The evaluation of the answers will be discussed in the following separate sub-chapters.

2.2. Political Independence

In the ERRA Survey we measured the political independence with two types of questions:

- Independence of the NRA as an organisation (questions related to the legally distinct and functionally independent formal position of the regulatory authority),

- Independence of the NRA management (authority’s head and board members)

The following answers represent the political independence of the ERRA member regulatory authorities as general (using the original numbering of the questions in the Survey).
Question 1.1. Is the regulator distinct and functionally independent from any other public or private entity?

Original Note to the question:
The understanding of “distinct and functional independence” needs to include that:
- it is the sole responsibility of the NRA to determine how it operates and is managed, including staffing-related matters
- there is no hierarchical (or other) link to any other body or institution

Only in case these requirements are given for your authority, your answer to this question can be “Yes”.

The answers:

<table>
<thead>
<tr>
<th>Value</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>24</td>
<td>92.3%</td>
</tr>
<tr>
<td>No</td>
<td>2</td>
<td>7.7%</td>
</tr>
</tbody>
</table>

Most of the ERRA member regulators (24 out the 26 answers) are formally distinct and functionally independent from any other public or private entity!

There are some circumstances, which could necessitate – based on the aspects of independence listed in subchapter 1.2. – deeper analysis of the political and legal “guaranties” of the “autonomous decisions”. The critical issues could be;
- the practice of Government consent to the statue of the NRA and
- the regulatory reporting practice to the Government).

In one ERRA Member case the Government “tutelage”/ supervise/ direct the regulatory authority, while in another case the regulator is a structural subdivision of the Government (changing this “legally not distinct” position was under consideration at the end of 2014).

Question 1.2. Does the regulator seek or take direct instructions from any government or other public or private entity when carrying out regulatory tasks?

Original Note to the question:
If the answer is “Yes”, please explain:
- From which entity?
- How frequent is such intervention?
- Is intervention executed publically or “informally”?  
- Which are topics on which intervention is typically experienced?

---

5 The statue governs the basics (rights and duties and funding) of the internal organization and other issues relevant to the work of the authority.
If the answer is „No”, please explain: Whether legislation provides for the necessary „role clarity” between the Regulator and the other public or private entities intervening in the Regulator’s tasks? If so, please indicate the specific legal framework!

**The answers:**

<table>
<thead>
<tr>
<th>Value</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>4</td>
<td>15.4%</td>
</tr>
<tr>
<td>No</td>
<td>22</td>
<td>84.6%</td>
</tr>
</tbody>
</table>

Most of the ERRA member regulators (22 out the 26 answers) do not seek or take direct instructions from any government or other public or private entity when carrying out regulatory tasks. Most of the regulators did not report, as general practice, publically or informally executed interventions. Four ERRA Member regulators reported the formal and informal need to consult with the Government or to have its consent before decisions, or having instructions from the Government.

There are limited Members, who explicitly stated, that the legislation provides for the necessary “role clarity” between the Regulator and the other public or private entities (Regulator – regulatory tasks; Government – policy making). There are countries, where the wording of the national law is similar to the requirements of the relevant EU Directives; declaring the formal independence. Some Members provided the title and number of the relevant legal act ensuring the independent decision making of the NRA.

Among those 22 Members, who do not seek or take direct instructions from any government or other public or private entity, there are still issues to be discussed and/or analysed:
- no legislation directly stating the regulator’s independence,
- no detailed rules excluding instructions from government organisations.

The general question still occurs; Is the legal declaration of the regulatory independent decisions ensures the real autonomous decision making practice of the NRA (avoid asking or accepting voluntary the consent and/or instructions of the government)?

**Question 1.3. Are there any formal rules that prohibit the regulator (i.e. Board members and staff) to have employment relationships with energy sector participants while holding their positions?**

**Original Note to the question:**
If the answer is „Yes”, explain the scope of the prohibition and which the consequences of non-compliance are!
In most of the ERRA member regulators’ cases (24 out the 26 answers) there are formal rules that prohibit the Regulator (i.e. Board members and staff) to have employment relationships with energy sector (in some cases in any commercial organization) while holding their regulatory positions!

There are only two cases, where such legal rules are missing.

Among ERRA Member countries there are different ways and forms of regulating the questioned prohibition, such as restrictions in energy law, law of regulation, special law of “Anti-Corruption and Law on Prevention of Conflict of Interest of Public Officials”, “Principles of Prevention and Combating Corruption” and/or in the form of Code of Ethics.

There are different consequences of the violation of employment restrictions, like; loosing job, imposing fine, but there are cases, where the clear rules are missing.

In some counties there are exemptions from the strict prohibitions usually the management and the staff of the Regulator are allowed to perform scientific and educational/academic/ scholar and artistic activities.

In limited number of ERRA Member countries there are rules for restrictions of such cases when leaving the regulator. The former regulators cannot work for the (energy) industry temporarily.

There are countries, where the Commissioners shall perform their regulatory activity as only employment.

There are countries, where the prohibition of holding employment relationships with energy sector participants (while holding their regulatory positions) is less strict or does not exist in case of regulatory staff. In very limited cases some prohibitions are binding for the spouses and relatives of the regulators as well.

In very limited countries the temporary limitations (usually two, three or one years) of the former regulators to seek employment in the energy industry (after leaving the Regulator) are softened or exempted in case of state owned energy companies – which rule does not necessarily represent level playing field among energy market players.

Question 1.4. Are there any formal rules that prohibit the regulator (i.e. Board members and staff) to have interests e.g. hold shares, in regulated utilities or execute leading political functions?

Original Note to the question:
If the answer is „Yes”, explain the scope of the prohibition and which the consequences in case of non-compliance are!
The answers:

In most of the ERRA member regulators’ cases (25 out the 26 answers) there are formal rules that prohibit the Regulator (i.e. Board members and staff) to have interest in regulated energy companies and executing leading political functions while holding their regulatory positions!

There are “only” two cases, where such legal rules are missing.

Among ERRA Member countries there are different ways and forms of regulating the questioned prohibition, such as restrictions in energy law, low of regulation, special law of “Anti-Corruption and Law on Prevention of Conflict of Interest of Public Officials”, “ Principles of Prevention and Combating Corruption” and/or in the form of Code of Ethics.

There are different consequences of the violation of such restrictions, like; loosing job, imposing fine, but there are cases, where clear rules are missing.

There are countries with clear rules, which stipulate, that Commissioners/Chairs, staff member and member of his or her household/family (spouses and relatives) cannot be owner, or shareholder in any licensee or other undertakings that directly or indirectly seek access to or usage of the transmission network.

In most cases the prohibition of holding shares, securities, or make any other investments in regulated entities are binding for the Commissioners/Chairs and for the staff members (during their duty) “only” without restrictions on family members.

There is one case, where the “softened” prohibition allows shares or stakes - owned by any regulatory decision makers and their family members - in any energy undertaking, if it does not exceed 0.5% of the capital stock.

There is one case, where there is no prohibition to have interests in energy undertakings, but all of them should be declared. In this case Regulator must “walk away” (not to be involved) from the decisions which might cause conflict of interests.

In very limited countries the temporal limitations (usually two or one years) of the former regulators to acquire shares of the energy industry (after leaving the Regulator) are softened or exempted in case of state owned energy companies.

There are other type of clear rules, which stipulate, that Commissioners and staff member shall be prohibited to be members of any political party or to actively participate in political activity (while holding their regulatory positions).

In most cases the Commissioners/Chairs are prohibited to be members of any political party or to actively participate in political activity.

There are countries with less strict rules; the regulatory staff can be a member of a political party without any objection. (In one country case; if one becomes a member of parliament, a senator, a member of government or appointed somewhere, as a consequence loses his post as a regulator.)

There is one case, where the relevant law lists those types of political positions which are prohibited for the regulatory top management, but no general restriction from political activity.
In another case it is prohibited to acquire securities that could be income bearing; to use powers of (regulatory) office in the interests of political parties, other public associations, religious association and other organizations, or to express publicly attitude to the named associations or organizations in the capacity of a civil servant, unless it is part of his/her official duties.

**Question 1.5. Is the regulator empowered to solve disputes / conflicts between industry and customers?**

*Original Note to the question:*
If the answer is „Yes“, please specify the types of disputes / conflicts!

**The answers:**

<table>
<thead>
<tr>
<th>Value</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>25</td>
<td>96.2%</td>
</tr>
<tr>
<td>No</td>
<td>1</td>
<td>3.9%</td>
</tr>
</tbody>
</table>

Except one, all ERRA member regulators (25 out the 26 answers) are responsible (empowered) to handle complaints, solve disputes / conflicts between energy industry and its’ customers and among energy industry players (licensees).

The different laws empower the regulator with out-of-Court examination of disputes.

The main categories of complaints/ disputes where the regulators authorised to solve the disagreements could be classified in the following ways:
- disputes on access to network,
- disputes on access to storage,
- disputes related to the activities of the Power Exchanges,
- pre-contractual disputes,
- end-user complains on service and supply conditions.

In several cases the time-period handling complaints and settling disputes are limited.

One NRA mentioned that in its case the complaint can be filed within 30 days from the day of the committed irregularity in the work of the system / network / storage operator. In case the regulator is in the procedure of adopting a new methodology, the dis-satisfied party may file a complaint against the methodology proposal within two months from the day of publishing of the methodology proposal.

Typical complaints of the customers, where the NRAs are authorised to handle are the followings:
- complaints regarding unauthorized/illegal consumption,
- complaints of users filed against DSOs related to connection or the availability of the network (denying connection and/or access to networks) in the quality required and against connection charges,
- complaints of users related to the settlement of accounts, billing, and payment of charges and metering,
- complaints/ disputes related to setting and application of prices (tariffs) (unjustified charges of the
regulated services),
- complaints related to the quality of supply.

Only one NRA provided information on the division/distribution of different customer complaints.

**Question 1.6. Are regulatory decisions finally binding (except for juridical review)?**

**Original Note to the question:**
If the answer is „No”, please specify which entity (e.g. Ministry, Government) overrule / revoke decisions of the regulator and under which conditions!

**The answers:**

<table>
<thead>
<tr>
<th>Value</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>25</td>
<td>96.2%</td>
</tr>
<tr>
<td>No</td>
<td>1</td>
<td>3.9%</td>
</tr>
</tbody>
</table>

In all ERRA members cases the regulatory decisions are binding except the possibility of juridical review. In one case the unsatisfied parties – without any conditions – could appeal to the administrative court or could go to the dispute resolution committee (formed from the board of ministers).

One NRA outlined the legal situation in the following way: Regulator's decision cannot be appealed, but can be disputed before the competent administrative court.

**Question 1.7. How are disputes between regulator and industry solved?**

In case of disputes between different players of the energy industry (including the end-users as well) generally the Regulator is obliged to investigate carefully the matter of the dispute, to take into account and balance the interests of both parties, to gather all possible documents and information and, if necessary, to consult independent experts.

This case the dispute settlement procedure is generally carried out based on some code of administrative procedures. The regulator – if formalised – settles disputes through administrative procedures that does not necessarily fully correspond to the alternative dispute settlement mechanism. The disputes are – in most cases – settled in a form of administrative decision of a regulator. These decisions of the Regulator could be subject to control of different courts - within limited time-period from the date of notification of the decision.

According to the license terms and conditions, disputes between the regulator and a regulated company are generally resolved by mutual consent of the parties, otherwise - in the course of judicial proceedings.

There were different phrasing of the judicial proceedings how disputes between regulator and energy industry are solved, like;
- Licensees may seek court revision of regulatory decisions,
- Disputes are solved on the legislative basis, in the course of judicial proceedings,
- Disputes that have not been resolved in the course of pre-trial proceedings are examined by the court.

There was one case, where the disputes between regulator and energy industry are solved by the government. In the case of this regulator; before decisions are made by the regulatory body the disputes are handled in the framework of discussions at the level of the Government.

There are some cases, where public consultations and public hearings are held for the most of issues where regulatory decision is pending and which are of high relevance to the stakeholders. In such cases the energy industry is also free to participate in the meetings where regulatory decisions are taken and express their final remarks towards the matter concerned.

As a reminder; in the ERRA Survey we measured the political independence with two type of questions:
- Independence of the NRA as an organisation (questions related to the legally distinct and functionally independent formal position of the regulatory authority),
- Independence of the NRA management (authority’s head and board members)

The following questions and answers represent the political independence of the NRA management (authority’s head) (using the original numbering of the questions in the Survey).

**Question 2.1. Is there a fixed term appointment applied to the Head of the regulatory authority?**

*Original Note to the question:*
If the answer is „Yes”, please explain the term duration!

The answers:

<table>
<thead>
<tr>
<th>Value</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>22</td>
<td>84.6%</td>
</tr>
<tr>
<td>No</td>
<td>4</td>
<td>15.4%</td>
</tr>
</tbody>
</table>

In most, but not all of the ERRA member regulator cases (22 out the 26 answers) there is a fixed term appointment applied to the Head of the regulatory authority.

In those four country cases, where there is no fix term appointment of the Head of the Regulator the political independence could be strengthened with the implementation of similar rules, which are applied in the other twenty two cases!

The conditions of the fix terms are different, but in most of the cases the term is longer, then 3 years. The most frequently used term is 5 years: 10 country introduced this time-period. Other terms: in 4 countries 6 years; in 3 countries 7 years, and 1 country has selected the 4 and the 3 years terms. One country introduced special rotation system among the Commissioners to select Chairman every year. In another case the chairman of the board shall be elected by secret ballot of the members of the board (duration of the mandate is two years).
In most of the fixed term cases, law specifies an option of renewal of another one or two terms.

Question 2.2. Who appoints the Head?

The answers:

<table>
<thead>
<tr>
<th>Value</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>The members of the management board</td>
<td>1</td>
<td>3.9%</td>
</tr>
<tr>
<td>A complex mix of the parliament and the government</td>
<td>1</td>
<td>3.9%</td>
</tr>
<tr>
<td>The parliament</td>
<td>8</td>
<td>30.8%</td>
</tr>
<tr>
<td>The president of the country</td>
<td>5</td>
<td>19.2%</td>
</tr>
<tr>
<td>The government collectively</td>
<td>4</td>
<td>15.4%</td>
</tr>
<tr>
<td>One or two ministers</td>
<td>1</td>
<td>3.9%</td>
</tr>
<tr>
<td>Other</td>
<td>6</td>
<td>23.1%</td>
</tr>
</tbody>
</table>

In 13 cases the Parliament or the President of the country appoints the Head of the Regulatory authority. These cases together represent 50% of those ERRA members, who participated in the survey. This appointment demonstrates a very strong political independence from the Governments and Ministries (who can have sometimes short term political goals, which could be in conflict with the aims of the Regulator).

The less strong appointment level (appointed by Ministers or Governments) could be “compensated” by legally specified and limited cases of revocation of the appointment or removal from the position.

There are special cases, where the legal framework introduced special rotation systems among the Commissioners to select Chairman every year. In another case the Chairman of the Board shall be elected by the Members of the Board.
Question 2.3. Which are the rules for the selection of the Head of the regulatory authority? (E.g. public job offers including selection criteria; selection committees; hearing of candidates in Parliament;....)

Original Note to the question:
If such rules exist, please explain the rules and their legal basis (law, regulation of the Ministry or other)!

The answers:

Two third of those ERRA member regulators, who participated in the survey has legally binding selection rules, which could strengthen the political independence of those Regulatory Heads, who were selected and appointed through a transparent selection process based on ex-ante declared selection criteria.

The formal political independence of the regulatory decision makers (and consequently the regulatory authority) could be enhanced by the introduction and implementation of such rules – in case of those countries (9 regulators), where these rules are missing!

In most cases the selection rules are set by different laws (energy sector related law, law on regulation, civil servant act). In limited case the Government is authorized by law to set the elements of the selection process.

In most of the cases the governing selection rule is the competition (announced open public recruitment tender/advertisement).

In several cases selection criteria’s exist, such as national citizenship and residence, university degree, energy related training and work experience, management knowledge and practice. The required lengths of working and management practices are different (three to ten years).

There are different bodies in the candidacy, selection and nomination process. In most of the cases the Ministry/Government prepares and announces the public recruitment tender/advertisement and evaluates the candidates. In limited cases the Prime Minister nominate the members of the selection committee.

Based on the results of the evaluation/ranking/selection procedure the proposal reaches the next level of the selection process; namely the Prime Minister, the competent Committee of the Parliament, the Parliament. In most cases the Prime Minister or the Parliament appoints the Head of the Regulatory Authority.

The selected candidate(s) in several cases is (are) invited to participate in a hearing of the Parliament.

<table>
<thead>
<tr>
<th>Value</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, such rules exist</td>
<td>17</td>
<td>65.4%</td>
</tr>
<tr>
<td>No, such rules do not exist</td>
<td>9</td>
<td>34.6%</td>
</tr>
</tbody>
</table>
Question 2.4. Are there any specific requirements for eligibility to the position of a Head of the regulatory authority other than professional skills? (E.g. citizenship, specific tests...)

Original Note to the question:
If the answer is „Yes“, please explain the requirements and their legal basis (law, regulation of the Ministry or other)!

The answers:

80% of those countries, who participated in the survey (21 out of 26 NRAs), has selection criteria, which could strengthen the political independence and ensure the high level competence of those Regulatory Heads, who were selected and appointed through a transparent selection process based on ex-ante declared selection criteria.

In several cases the following selection criteria’s exist:
- national citizenship and permanent residence in the country - as requirement for the candidacy and for the appointment,
- university degree (or high education);
  - technical, legal or economic profession,
  - Master degree or Bachelor degree or equivalent (in limited cases),
- work experience;
  - in most cases at least 10 years of work experience in the field of energy activities or related fields in the energy sector (in limited cases this requirement is 7,6 or 3 years “only”),
  - professional experience working at government agencies,
- language skills (requirements in limited cases);
  - good command in English,
  - two foreign languages
- managerial skills;
  - at least 3-4 years of experience in management position in the energy sector,
  - in very limited cases: at least 3 years’ experience as a senior employee in the public administration
- age limitations (in limited cases);
  - minimum: has to be older than 21 years of age,
  - maximum: 65 years of age
- no criminal background;
  - not been involved in any criminal acts,
  - in one case: the candidate is subject to a special check (criminal record, corruption related violation, administrative violations, conflict of interest, transparency, state of health, educational
There are countries (very limited cases), where the requirements are formulated in very general, “soft” way, like:

- professional experience of work at government agencies is required,
- civil servant background for several years,
- having good reputation and has not been involved in any criminal acts,
- the knowledge and experience should guarantee the selection of the best candidates (during the recruitment procedure professional experience of the candidates as well as necessary knowledge and the managerial competencies are assessed).

**Question 2.5.** Is revocation of appointment of the Head of the regulatory authority or removal from office limited to legally specified cases?

*Original Note to the question:*

If the answer is “Yes”, please explain:

- Which cases does the law define?
- Has there ever taken place revocation of appointment of Commission Members or removal from office beyond the legal limits? If so, please explain by which body and the arguments used for revocation / removal the requirements and their legal basis (law, regulation of the Ministry or other)!

**The answers:**

<table>
<thead>
<tr>
<th>Value</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>22</td>
<td>84.6%</td>
</tr>
<tr>
<td>No</td>
<td>4</td>
<td>15.4%</td>
</tr>
</tbody>
</table>

In 85% of those countries, who participated in the survey (22 out of 26 NRAs), the revocation of appointment of the Head of the regulatory authority or removal from office are limited to legally specified cases. These circumstances are providing formal political independence for the regulatory decision makers and supporting their autonomous behaviour.

The legally specified cases, when the revocation or removal could happen are in the following main categories:

- submission for resignation;
  - request submitted by the Head of the regulatory authority,
  - request submitted by the Head of the regulatory authority, if acknowledged and accepted
- voluntary retirement,
- upon death,
- incompatibility with the qualifications and requirements (those, which were prerequisites for appointment);
  - misinterpreted qualifications,
- lost citizenship,
- active membership of any political party (in very limited cases),
- crime;
  - conviction by finally binding verdict for intentional crime or fiscal offence,
  - effective sentence by court of law for a criminal offence,
  - criminal offence against official duty, fraud, corruption, theft, or other similar offence, which makes him/her unworthy of discharging the function,
  - violation of law
- unable to properly perform duties;
  - permanent loss of ability to perform duties,
  - actual inability to perform duties for more than 6 months (in limited cases 3 months),
  - court has announced him/her disabled or missing,
  - has been absent and unexcused from more than three (five) consecutive meetings of the Board
- conflict of interest;
  - began to pursue business in network industries,
  - became member of managing, supervisory or inspection bodies of regulated entities,
  - misuse of confidential information of the regulated sector,
  - dealing with the trade of energy
- mismanagement;
  - “mismanagement” (in one case – this general phrase could be misinterpreted),
  - Board of Commissioners may be collectively discharged if it successively and repeatedly fails to take decisions within the scope of its powers (in one case),
  - severe violation of service duties (in one case – this general phrase could be misinterpreted)
- serious breach of duty (in limited cases),
- new position;
  - became member of Government/Parliament of President of the country,
  - managerial positions in state bodies
- not comply with moral requirements;
  - not comply with Code of Ethics/Code of Conduct,
  - breach of moral requirements,
  - loss of perfect reputation
- Parliament decision (in one case);
  - The Government and/or 1/3 of members of the Parliament may propose to the Parliament to release a member of the Board,
  - Board members (also the Head) may be released in the event if the Annual Report on conditions in the Energy Sector which relates to the regulatory authority’s work is not adopted by the Parliament.

The right to appeal his/her revocation of appointment or removal from office is generally ensured by law.

There was one case, when the appointed Head of regulatory authority (President) was released. During his term a new law was adopted by the Parliament, with new appointing criteria’s:...the Head of regulatory authority shall be appointed following a selection procedure...The new rules also stated that the reigning President may be released (establishing a cause for release that was non-existent at the time President’s appointment). Later the Constitutional Court ruled that the amendment ensuring the release was
unconstitutional.

Question 2.6. Is the appointment renewable?

The answers:

<table>
<thead>
<tr>
<th>Value</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>1</td>
<td>3.9%</td>
</tr>
<tr>
<td>Yes, once</td>
<td>17</td>
<td>65.4%</td>
</tr>
<tr>
<td>Yes, more than once</td>
<td>5</td>
<td>19.2%</td>
</tr>
<tr>
<td>Other (please, explain)</td>
<td>3</td>
<td>11.5%</td>
</tr>
</tbody>
</table>

There is no common position among ERRA member countries; however in more than 84% of those members, who answered to the questioner has possibility to reappoint the Head and the Board members of the regulatory authority. In case of 17 countries the reappointment could happen once, while in 5 cases more than once.

In case of one country the reappointment is not possible. In case of another county the Minister is the Head of the regulatory authority without any reappointment limitations (the Head of the regulatory authority is automatically changes, if the Minister changes).

In one case the reappointment “depends on the performance” – which is similar to the cases, where the reappointment could happen more than once.

As a reminder; in the ERRA Survey we measured the political independence with two type of questions:

- Independence of the NRA as an organisation (questions related to the legally distinct and functionally independent formal position of the regulatory authority),
- Independence of the NRA management (authority’s head and board members)

The following questions and answers represent the political independence of the NRA management (board members excluding the Head of the Board) (using the original numbering of the questions in the Survey).

There are ERRA members (4 NRAs) where the "Board of Commissioners" (Called in the Gilardi index questioner: "management board") as collective decision making body does not exist. The Chairman/President is the only authority managing the regulatory authority and taking actions (proceeding) externally. In one case the Board exists, but instead of functioning as collective decision making body, it has special role whereas the Regulatory Board is particularly the authority of the appeal.
Question 3.1. Is there a fixed term appointment applied to the Board members of the regulatory authority?

The answers:

- **Yes**: 20 (76.9%)
- **No**: 6 (23.1%)

In most, but not all of the ERRA member regulator cases (21 out of the 26 answers) there is a fixed term of appointment applied to the members of the management of the regulatory authority.

There are ERRA members (4 NRAs) where the "Board of Commissioners" (Called in the Gilardi index questioner: "management board") as collective decision making body does not exist. The Chairman/President is the only authority managing the regulatory authority and taking actions (proceeding) externally. In one case the Board exists, but instead of functioning as collective decision making body, it has special role whereas the Regulatory Board is particularly the authority of the appeal. In these four cases we cannot evaluate the answers to the Board related question.

Among those six country cases, where the answer was “no”, one of them answered “no”, because they have no “Board”, but the Vice Presidents have fix term.

The conditions of the fix terms are different, but in most of the cases the term is longer, then 4 years. The most frequently used term is 5 years: 12 country introduced this time-period. Other terms: in 4 countries 6 years; in 3 countries 7 years, and 1 country has selected the 4 years terms.

Question 3.2. Who appoints the members of the Board?

The answers:

- The Parliament: 9 (34.6%)
- The Government collectively: 4 (15.4%)
- A complex mix of the Parliament and the Government: 2 (7.7%)
- The head of the regulatory body: 0 (0.0%)
- One or two Ministers: 0 (0.0%)
- Other (please, explain): 11 (42.3%)

In 14 cases the Parliament or the President of the country (in one case called Head of State) appoints the Board members of the Regulatory authority. These cases together represent 54 % of those ERRA members, who participated in the survey. This appointment demonstrates a very strong political independence from the Government (who can have sometimes short term political goals, which could be in conflict with the aims of the Regulator).

The less strong appointment level (appointed by the Government collectively or the Prime minister) in 6
countries could be “compensated” by legally specified and limited cases of revocation of the appointment or removal from the position.

There are two cases, where the appointment is made by a complex mix of the Parliament and the Government. In one special case the Board members are deputy ministers of corresponding ministries, who are appointed according to the relevant procedures.

In those three country cases, where the Regulator has no “Board”, the political independence of a collective decision making body (Board) cannot be evaluated. (See details of evaluated answers to the Question No. 3.1.).

**Question 3.3. Which are the rules for the selection of Board members of the regulatory authority? (E.g. public job offers including selection criteria; selection committees; hearing of candidates in Parliament....)**

The answers:

<table>
<thead>
<tr>
<th>Value</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, such rules exist</td>
<td>17</td>
<td>65.4%</td>
</tr>
<tr>
<td>No, such rules do not exist</td>
<td>9</td>
<td>34.6%</td>
</tr>
</tbody>
</table>

Two third of those ERRA member regulators, who participated in the survey has legally binding selection rules, which could strengthen the political independence of those Regulatory Board members, who were selected and appointed through a transparent selection process based on ex-ante declared selection criteria.

The formal political independence of the regulatory decision makers (and consequently the regulatory authority) could be enhanced by the introduction and implementation of such rules – in case of those countries (9 regulators), where these rules are missing!

In most cases the selection rules are set by different laws (energy sector related law, law on regulation, civil servant act). In limited case the Government is authorized by law to set the elements of the selection process.

In most of the cases the governing selection rules (like announcement, evaluation, selection), the selection criteria’s and the different bodies involved in the nomination and appointment process are similar to the rules and practices applied in case of selecting the Head of Regulatory Authority (see the evaluation of the answers to the Question 2.3.).
Question 3.4. Are there any specific requirements for eligibility to the position of a Board member of the regulatory authority other than professional skills? (E.g. citizenship, specific tests...)

The answers:

70% of those countries, who participated in the survey (18 out of 26 NRAs), has selection criteria, that could strengthen the political independence and ensure the high level competence of those Regulatory Board members, who were selected and appointed through a transparent selection process based on ex-ante declared selection criteria.

In most of the cases the selection criteria’s are similar to the ones of the Head of Regulatory Authority (see the evaluation of the answers to the Question 2.4.).

Question 3.5. Is revocation of appointment of Board members of the regulatory authority or removal from office limited to legally specified cases?

Original Note to the question:
If the answer is „Yes“, please explain:
- Which cases does the law define?
- Has there ever taken place revocation of appointment of Commission Members or removal from office beyond the legal limits? If so, please explain by which body and the arguments used for revocation / removal the requirements and their legal basis (law, regulation of the Ministry or other)!

The answers:

In 73 % of those countries, who participated in the survey (19 out of 26 NRAs), the revocation of appointment of the Board members or removal from office are limited to legally specified cases. These circumstances are providing formal political independence for the regulatory decision makers and supporting their autonomous behaviour. The legally specified “safe” position of the Board members
against revocation or removal exist in less country cases (73%) compared to the same rules of the Heads of the Regulatory Authorities (80%).

In those three country cases, where the Regulator has no “Board”, the political independence of a collective decision making body (Board) cannot be evaluated. (See details of evaluated answers to the Question No. 3.1.).

In most of the legally specified cases, when the revocation or removal could happen the ex ante specified categories and main conditions are similar to the ones of the Head of Regulatory Authority (See the evaluation of the answers to the Question No. 2.5.).

**Question 3.6. Is the appointment renewable?**

The answers:

<table>
<thead>
<tr>
<th>Value</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>1</td>
<td>3.9%</td>
</tr>
<tr>
<td>Yes, once</td>
<td>16</td>
<td>61.5%</td>
</tr>
<tr>
<td>Yes, more than once</td>
<td>4</td>
<td>15.4%</td>
</tr>
<tr>
<td>Other (please, explain):</td>
<td>5</td>
<td>19.2%</td>
</tr>
</tbody>
</table>

There is no common situation among ERRA member countries; however in more than 77 % of those members, who answered to the questioner has possibility to reappoint the Board members of the regulatory authority. In 16 country cases the reappointment could happen once, while in 4 cases more than once.

In those three country cases, where the Regulator has no “Board”, the political independence of a collective decision making body (Board) cannot be evaluated. (See details of evaluated answers to the Question No. 3.1.).

In one case the Board members are deputy ministers, so their appointment and removal depends on the corresponding ministries.

In one case the reappointment “depends on the performance” – which is similar to the cases, where the reappointment could happen more than once.

There are no specific legal rules mentioning the re-appointment possibility of the top management in some EU member cases, but the EU Directives have guiding rules for the EU members: "Art. 35 5. “the members of the board of the regulatory authority or, in the absence of a board, the regulatory authority’s top management are appointed for a fixed term of five up to seven years, renewable once.”
Question 3.7. Is a rotation scheme for the members of the Board applied?

The answers:

<table>
<thead>
<tr>
<th>Value</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>9</td>
<td>34.6%</td>
</tr>
<tr>
<td>No</td>
<td>17</td>
<td>65.4%</td>
</tr>
</tbody>
</table>

Two third of the responded ERRA members (17) has no rotation scheme applied for the Members of the Board. In the 9 cases there are different rotation schemes in two main categories:

- In two cases the position of Chair will rotate annually or biannually on an equal basis between the Commissioners/Board members or this position shall be elected by the Board members.
- In other cases the aim of the “rotation scheme” is to ensure continuous operation of the Board (to avoid the situation, when the expiry date of the Board members is the same), like different terms of appointment for the Board members.

In this chapter we measured the political independence of the NRA with two type of questions focusing on the organisation (questions were related to the legally distinct and functionally independent formal position of the regulatory authority) and on the NRA management (authority’s head and board members).

In the following chapter we will focus on the legal independence of the regulatory authority.

2.3. Legal Independence

In this chapter of the ERRA Survey will have a closer look into regulatory autonomy of ERRA Members in terms of legal independence. Some of the questions of the chapter 2.1. has already analysed this aspect of the regulatory independence (questions related to the legally distinct position of the regulatory authority; 1.1., 1.5., 1.6.).

In this chapter we measure the legal independence with two types of questions:

- whether the independence of the NRA is formally stated in the legislation,
- what type of reporting and other type of obligations has the NRA towards the Government and the Parliament.

Introducing these questions we are using the original numbering of the questions in the Survey.
**Question 4.1. Is the independence of the regulator formally stated in legislation/statute? (E.g the tasks and duties of the regulator are specified in legislation)**

The answers:

<table>
<thead>
<tr>
<th>Value</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>24</td>
<td>92.3%</td>
</tr>
<tr>
<td>No</td>
<td>2</td>
<td>7.7%</td>
</tr>
</tbody>
</table>

In most, but not all of the ERRA member regulator cases (24 out the 26 answers) the legislation formally states the independence of the regulatory authority. There are different legal solutions stating and specifying this independent operation.

In most of the cases the sector specific law or the act on the regulation of energy activities specifies the conditions of independence.

In case the status of the regulatory authority is described as a government agency, which operates within the area of government, the relevant law specify the framework and the extent of state supervision and enforcement powers.

There are examples, where the law on regulation states the special legal capacity of the NRA, which has no state controlling authority and which is independent from the state authorities and operates within the limits of the authority as defined pursuant to the applicable laws.

There is another way, when the legal status, duties and responsibilities of the NRA are specified by a decree of the Government (this is a legally less strong demonstration of independence).

**Question 4.2. Is there any formal legal requirement to report to another body?**

The answers:

<table>
<thead>
<tr>
<th>Value</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>20</td>
<td>76.9%</td>
</tr>
<tr>
<td>No</td>
<td>6</td>
<td>23.1%</td>
</tr>
</tbody>
</table>

In more than two third of the countries reporting obligation exists for the NRAs (20 out of 26 cases).

The most frequent targets of the NRAs’ annual reports are the Parliament (7 cases), parallel the President of the country, the Parliament and the Government (7 cases), the Government (or the Ministry responsible for Energy) (2 cases) and in one case the governing board of the regulatory authority.

In two cases there is obligation to publish the annual report of the NRA without any reporting liability.
There are limited cases, where the relevant law specify the obligation of the NRA to submit other than annual reports and information to the Government and shall inform the competent parliamentary committee upon a specific request.

Question 4.3. What are the formal obligations of the regulatory body vis-à-vis the government?

The answers:

<table>
<thead>
<tr>
<th>Value</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>There are no formal obligations</td>
<td>4</td>
<td>15.4%</td>
</tr>
<tr>
<td>Presentation of an annual report for information only</td>
<td>7</td>
<td>26.9%</td>
</tr>
<tr>
<td>Presentation of an annual report that must be approved</td>
<td>2</td>
<td>7.7%</td>
</tr>
<tr>
<td>The regulatory body should assist the implementation of the energy policy</td>
<td>7</td>
<td>26.9%</td>
</tr>
<tr>
<td>The regulatory body is fully accountable to the government</td>
<td>5</td>
<td>19.2%</td>
</tr>
<tr>
<td>Other (please, explain):</td>
<td>7</td>
<td>26.9%</td>
</tr>
</tbody>
</table>

There are very diverse obligations of the ERRA member NRAs vis-à-vis the Government.

The majority of the regulators has relative “loose/week” obligations for their Government (presenting annual report for information only, assisting the implementation of the energy policy, possibility for recommendations for enacting or amending legislation and stating its opinion in legislation and decisions-making procedures concerning energy). In case we aggregate those who have no any obligation with those having “loose/week” obligations the result shows: 18 countries representing 69%.

While those, who have strict obligations on cooperation with the Government and those who are fully accountable for the Government, where the Government approves the Statue of the NRA or monitor and evaluate the performance of the regulator represent minority.
Question 4.4. What are the formal obligations of the regulatory body vis-à-vis the parliament?

The answers:

<table>
<thead>
<tr>
<th>Value</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>There are no formal obligations</td>
<td>7</td>
<td>26.9%</td>
</tr>
<tr>
<td>Presentation of an annual report for information only</td>
<td>8</td>
<td>30.8%</td>
</tr>
<tr>
<td>Presentation of an annual report that must be approved</td>
<td>6</td>
<td>23.1%</td>
</tr>
<tr>
<td>The regulatory body is fully accountable to the parliament</td>
<td>3</td>
<td>11.6%</td>
</tr>
<tr>
<td>Other (please, explain):</td>
<td>8</td>
<td>30.8%</td>
</tr>
</tbody>
</table>

There are very diverse obligations of the ERRA member NRAs vis-à-vis the Parliament.
Seven members (27%) has no formal obligations to the Parliament, while the majority (19 members representing 73%) has different obligations:
- some of the regulators have relative “loose/week” obligations: presenting the annual regulatory report for information “only” (8 members; 31%),
- three NRA fully accountable to the Parliament,
- in six cases (23%) the Parliament has to approve the annual report of the NRA.

There are special cases, when the Parliament approves the annual budget of the NRA, or the planned future activities of the regulator.

In one case the NRA shall prepare draft laws for approval of the Parliament.

There are cases, when the Parliament could ask any special questions for the regulator and the NRA is obliged to respond.

The full control of the Parliament over the regulator could result in endless political debates in pure technical, regulatory as well as management issues, which not support the stable regulatory operations and decisions.
2.4. Financial Independence

The financial independence is one of the most important pre-requisite to ensure the appropriate, sufficient and autonomous operation of the regulatory authorities. That is why the EU “Third Energy Package” requires separate annual budget allocations for the NRAs together with autonomy in the implementation of the allocated budget. In some countries, the budget of the regulatory authority is paid directly by the electricity and gas undertakings/ license holders/consumers (in which case there is a clear separate annual budget allocation).

The NRAs have to have adequate human and financial resources to carry out their duties. The necessary human and financial resources should be at the disposal of the NRA. Given the complexity of (energy) regulation, an NRA must be able to attract sufficiently qualified staff with various backgrounds.

Based on these “requirements” the following 19 questions try to map the financial situation at the ERRA member NRAs regarding budget sources (funding), autonomy in spending, governmental financial interventions and restrictions (if any), staffing and salary autonomy and its attractiveness to hire the necessary qualified staff.

**Question 5.1. Does the regulatory authority have its own budget?**

The answers:

<table>
<thead>
<tr>
<th>Value</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>25</td>
<td>96.2%</td>
</tr>
<tr>
<td>No</td>
<td>1</td>
<td>3.9%</td>
</tr>
</tbody>
</table>

Except one case in all of those ERRA countries, who participated in the survey (25 out of 26 NRAs), the regulatory authority has its own budget, which is a positive sign regarding this element of the financial independence.

**Question 5.2. Which are the funds of the regulator’s budget?**

The answers:

<table>
<thead>
<tr>
<th>Value</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part of state budget</td>
<td>10</td>
<td>38.5%</td>
</tr>
<tr>
<td>Separate budget</td>
<td>6</td>
<td>23.1%</td>
</tr>
<tr>
<td>Other (please, explain): 38.5%</td>
<td>10</td>
<td>38.5%</td>
</tr>
</tbody>
</table>

There are different budget allocation methods among the ERRA members. In 10 cases (42%) the
regulator’s budget is funded by the state central budget. In 6 cases (23%) the NRA has separate budget.

The original source of the budget is in several cases the regulatory fee levied on the regulated industry.

There are countries, where the regulated entities pay the regulatory fee (fines and other charges) to the state central budget, which allocate the adequate sources to the NRA.

In other cases the regulatory fee goes directly to the regulatory authority – which financial method represents higher budgetary autonomy for the NRA.

There are countries, where the regulatory authority possesses its own separate budget, but management of flows is performed via state budget.

5.3. Who approves the regulator’s budget?

The answers:

<table>
<thead>
<tr>
<th>Value</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minister</td>
<td>0</td>
<td>0.0%</td>
</tr>
<tr>
<td>Government</td>
<td>3</td>
<td>11.5%</td>
</tr>
<tr>
<td>Regulatory authority itself</td>
<td>7</td>
<td>26.9%</td>
</tr>
<tr>
<td>Parliament</td>
<td>10</td>
<td>38.5%</td>
</tr>
<tr>
<td>Other (please, explain):</td>
<td>6</td>
<td>23.1%</td>
</tr>
</tbody>
</table>

The direct answers to the question show 10 cases (39 %), when the Parliament has a dedicated approval on the NRA budget, but analysing the situation of those, who mentioned “other” approval methods, the total number of cases with direct or indirect (as part of the central budget) approval by the Parliament is 13 cases representing 50 %.

In 8 cases (31%) the regulatory authority itself or its Board approve the budget, which situation represents high financial autonomy.

In 3 cases (12%) the Government approves the regulator’s budget providing less autonomy for the NRA.

5.4. Can there be any ex post cutting of the regulator’s budget?

Those, who answered to the question with “Yes” were requested to specify the followings:
- By which entity and based on which rules / criteria (if any?)
- If such cases of ex post cutting of the budget have taken place in the past and, if so, when?
- In case ex post cutting of the budget has taken place in the past how has this been treated in terms of legal reaction from the Regulator? Please in particular refer to procedures before the competent courts etc...
The answers:

16 ERRA members NRA (representing 62%) answered to the question with “No”, which means; after the annual budget approval they have “safe” situation; their budget cannot be cut!

However in 10 countries (38%) there are possibilities (confirmed by the practice) to cut the regulatory budget ex-post (after approval), which could mean serious lack of financial independence.

Half of the cases of budget cut the Government (Ministry of Finance), while in the other half the Parliament cut the approved annual budget of the NRAs.

During the years of economic crises (2008 – 2011 and in two countries in 2014 as well) in several cases the regulatory budget’ cut has happened together with the adjustment/ reduction of central budget (including budget’ cut of other government agencies, ministries and institutions). There were cases, when the regulatory authorities had to decrease the staff’s salaries, in line with an overall cut of salaries in state institutions.

This budget cut happened irrespectively of the source of the budget (funded by fees perceived from regulated utilities).

None of the NRA took legal action against the Government or Parliament who cut their budget; because there was no legal reason to show up any legal action against Parliament decision.

However based on the request of the EC, some NRA of EU member countries reported on the budget cutting to the Commission.

Question 5.5. Does the regulator have autonomy in the implementation of the allocated budget?

There was a request to those, who answered to the question with “ No” to specify the followings:

- From whom the regulator has to seek approval?
- For which cases the regulator has to seek approval?
- Whether there exist specific rules for the regulator using its budget (e.g. related to specific topics, staff, studies, training or other)?
- Whether parts of the regulator’s budget are determined by laws or decrees (e.g. staff salaries in case the staff has the status of civil servants for which a special legislative act defines salaries or similar cases)?
The majority of the regulatory authorities (21 NRAs out of 26, representing 81%) have autonomy in the implementation of the allocated budget, which is good position for them!

However of this relative autonomy in budget implementation several regulatory authorities are facing the same problem of central regulation of civil servants’ salary level.

There are countries, where the regulatory budget is approved item by item, which situation does not allow freedom to re-allocate the budget among approved limits of the different items (without repeated approval); this situation limit the flexibility of the regulatory authority to adjust resources to the current circumstances.

Question 5.6. Can any public entity in any way have influence on the individual costs that are specified in the budget (e.g. salaries of regulator employees)?

There was request to those, who answered to the question with “Yes” to specify the followings:
- Which entity (e.g. Minister, Government, Parliament or other) and the cases /procedure?
- The legal ground is for such an intervention on the individual costs. If stated in the legislation, please include the specific provision!
- Please, comment on the potential impact of such an influence on the independence of the Regulator as well as on the employees!

The answers:

In half of the countries (13 out of 26, representing 50%) the answers confirm, that different public entities (Parliament, Government, or Ministry) could influence those individual cost elements that are specified in the regulatory budget.

The most common way, when the Parliament – during the approval process or through general setting of civil servants’ salary/ remuneration level – intervenes in different cost elements of the regulatory budget; this is the case of 8 countries.

In 3 cases the Government and in one case the President of the country could influence the elements of...
the regulatory budget.

There are limited cases, when the Parliament introduces indirect pressure on the cost elements associated to the regulatory human resources (number of staff and salary level), as condition of the general regulatory budget approval.

In several countries the remuneration of the regulatory staff and decision makers is not competitive with the salaries of the regulated sector. This situation could lead to less motivated regulatory staff or risk of corruption and potential abuse of regulatory power by staff or decision makers.

The approach set by the 3rd Energy Package of EU legislation, where the legislator approves the global financial allocation without assessing individual costs may be recommended as a best practice solution.

Question 5.7. How is the budget controlled?

The answers:

![Pie chart showing distribution of budget control]

<table>
<thead>
<tr>
<th>Value</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>By the regulatory authority</td>
<td>5</td>
<td>19.2%</td>
</tr>
<tr>
<td>By the accounting office or court</td>
<td>2</td>
<td>7.7%</td>
</tr>
<tr>
<td>By both the regulatory authority and the government</td>
<td>4</td>
<td>15.4%</td>
</tr>
<tr>
<td>By the government only</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Other (please, explain):</td>
<td>15</td>
<td>57.7%</td>
</tr>
</tbody>
</table>

The answers are very diverse, but the majority of the regulatory budgets (expenses) are controlled by some institution or public body.

5 NRAs reported that self control exists “only”.

Among those, who selected the “Other” of the multiple choice of answers, there are different combinations of controlling institutions or state bodies, like:
- state audit office (5 cases)
- government and state audit office (1 case)
- chamber of accounts of the Parliament (2 cases)
- Parliament (2 cases)
- ministry (3 cases)
- independent auditor (4 cases).

Question 5.8. Is the regulatory authority budget subject to constraints arising from the central budget?

Those who answered to the question with “Yes” were asked to specify the followings:
- Please describe the constraints....
- How do you assess this dependence on the central statutory budget in terms of restricting the Regulator’s independence?
The answers:

Half of the NRAs (13 out of 26) reported, that the regulatory authority budget could be subject to constraints arising from the central budget. There are different extents on how the regulatory budget depends on the central budget:

- one situation shows very high dependency on central budget; the government can at any time reduce the regulatory budget,
- another situation, when the regulatory salaries are protected; in case of deficit of the central budget, financing is limited, only protected items are paid (salaries of employees, utility services),
- in some cases the regulatory budget is a part of central budget, however, any changes in central budget can only be introduced in a form of legal act that has to be approved by the Parliament,
- in one case the regulatory budget is an individual part (title) under the Parliament’s budget chapter and it may only be decreased by the Parliament.

Most of those NRAs, whose budget could be limited in case of central budget deficit, reported that those budget cuts, which are approved by the Parliament, cannot be perceived as influence on the independence of the regulator.

In some countries – due to budget cuts – the remuneration of the regulatory staff and decision makers is not competitive with the salaries of the regulated sector. This situation could lead to less motivated regulatory staff or risk of corruption and potential abuse of regulatory power by staff or decision makers – these potential negative consequences could influence the independence of the regulator.

**Question 5.9. Does your regulatory authority have any difficulties in covering its costs?**

Those who answered to the question with “Yes” were asked to describe the followings:

- What would your authority foresee as a solution to that could help overcoming these difficulties?
- In case your case your authority’s budget does not cover costs, is there any other source or possibility that can be used to cover this gap?

The answers:
69% of those ERRA members who participated in the survey (18 regulatory authorities out of 26) answered, that the NRA has adequate budgeting, the financial sources covers their costs.

In those 8 cases, where the regulatory authorities have difficulties covering their costs, there are limited, but different possibilities to overcome on this difficulty:

- In one case the deficit is covered through sources from the following year, including bank loans and treasury.
- If the planned expenditures are not covered, there are some cases, when the NRA has to revise its budget by switching off some of its activities, because the Government or the Parliament does not allow incorporating any other sources.
- There is one country, where the regulator – in case of the need of additional source to cover costs – was allowed in the past to use a special account that was financed by licensed companies. From the year 2015 the Law prohibits such funding by the regulated companies.

**Question 5.10. Did you experience cases in which your authority’s budget has not been spent?**

Those who answered to the question with “Yes” were asked to specify what happens with these not-spent funds.

The answers:

<table>
<thead>
<tr>
<th>Value</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>20</td>
<td>76.9%</td>
</tr>
<tr>
<td>No</td>
<td>6</td>
<td>23.1%</td>
</tr>
</tbody>
</table>

77% of those ERRA members who participated in the survey (20 regulatory authorities out of 26) answered, that the NRA has experienced cases when the authority’s budget has not been spent. To the additional question (What has happened with the not-spent funds?) the answers are split into two categories:

- 2/3 of the NRAs could use the unspent funds in the following year as calculated “income”, which reduced the fee to be paid by license holders in the following year or (in one case) as financial reserve. In one case there is a limit (in percentages) to unspent funds to be utilized in the following year.
- 1/3 of the NRAs should “send” the unspent funds to the state budget.
Question 5.11. Which body decides on the regulatory authority’s internal organisation?

The answers:

<table>
<thead>
<tr>
<th>Value</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>The regulatory authority</td>
<td>19</td>
<td>73.1%</td>
</tr>
<tr>
<td>Both the regulatory authority and the</td>
<td>4</td>
<td>15.4%</td>
</tr>
<tr>
<td>government</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The government</td>
<td>0</td>
<td>0.0%</td>
</tr>
<tr>
<td>Other (please, explain):</td>
<td>3</td>
<td>11.5%</td>
</tr>
</tbody>
</table>

In the majority of the cases (19 out of 26; representing 73%) the NRA itself decides on the regulatory authority’s internal organisation. – This situation represents higher independence and flexibility adjusting the internal structure to the new challenges.

In 6 cases the regulator together with the Government (4) or the Parliament (2) approves the internal organisation of the authority.

In one case the Prime Minister approves the internal organisation of the NRA.

Question 5.12. Which body is in charge of the regulatory authority’s personnel policy (hiring and firing staff, deciding on its allocation and composition)?

The answers:

<table>
<thead>
<tr>
<th>Value</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>The regulatory authority</td>
<td>19</td>
<td>73.1%</td>
</tr>
<tr>
<td>Both the regulatory authority and the</td>
<td>5</td>
<td>19.2%</td>
</tr>
<tr>
<td>government</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The government</td>
<td>0</td>
<td>0.0%</td>
</tr>
<tr>
<td>Other (please, explain):</td>
<td>2</td>
<td>7.7%</td>
</tr>
</tbody>
</table>

In more than 3/4 cases (20 out of 26 representing 77%) the NRAs themselves or the Head of Board are in charge of the regulatory authority’s personnel policy (hiring and firing staff, deciding on its allocation and composition). - This is a good representation of the operational autonomy!

In 5 cases both the regulatory authority and the government are involved in the regulatory authority’s personnel policy.

In one case both the regulatory authority and the Head of Civil Service (in the scope regulated by national law, including: requirements for access to positions in the civil service, the rights resulting from employment in the civil service, rules for employees’ work evaluation) are involved in the regulatory authority’s personnel policy.

© ERRA 2015
Question 5.13. How are salaries for Board Members established?

There are different systems of remuneration of regulatory Board Members established in the ERRA countries. The implemented remuneration systems can be categorized in the following ways:

- The regulatory authority itself sets through its own set of rules, the regime and principles for the remuneration of the Board Members and staff – this very strong responsibility exists in 2 cases.
- There was a very good solution, which was based on a research of the labour market; the introduced system established salaries competitive with the private sector (which are higher compared to public sector). Afterwards, the competitiveness of the regulatory salaries decreased due to its conservative policy of salary increase in comparison to the energy sector average rate, as well as introduction of certain civil service salary rules applicable also for the NRA.
- The salary/remuneration of the Board Members is calculated as certain percentages of the salary of the President of the country or the Prime Minister; 3 cases.
- The salary/remuneration of the Board Members is calculated as certain percentages of the average salary of energy industry employees, or average national income (both calculated by statistical office); 2 cases.
- There are countries, where a special governmental agency (Salaries and Wages Commission), the Government, the President or the Parliament (by law) determines the salary level of the civil servants and high officials, as Board Members; 7 cases.
- There are 4 cases, where the Board Members do not receive permanent salaries for their regulatory activities, because;
  - Board Members are officials of different central executive agencies/ ministries (they do not get any additional salary for their membership in the Board),
  - Board Members have remuneration during the time-period of ordinary and extra ordinary sessions of the Board (“only” the President of the Board has a permanent salary).

In several cases the financial independence of the regulatory authorities (including decision makers) could be strengthened!

Question 5.14. How do salaries for the Board Members compare with those of civil servants, government officials and industry officers?

Comparing the salaries of the Board Members with those of civil servants, government officials and industry officers we get a very diverse picture:

- In several ERRA member countries the salaries of the Board Members are comparable with high level officials of the state administration, higher than the average civil servant salary levels, but definitely lower than the managers or board members of the privately owned regulated (energy) companies.
- In some cases (2-3) the salaries of the Board Members are comparable to high government officials and members of Boards of Directors of regulated companies (in one case higher than the industry level).
- In 2-3 cases salaries of Board Members are significantly higher compared to those available to government/ministry officials.
- In several cases the comparison between the salary levels of Board Members and managers of the energy companies show significantly less income at the NRAs.

In this field the financial independence of the regulatory authorities (including decision makers) could be strengthened!
Question 5.15 How are salaries for the staff members established?

In 2/3 of the cases the general civil servant salary rules is applied for regulatory staff members, which is similar to other state administration bodies. In very limited cases the NRA management is allowed to deviate (in limited scale) from the general civil servant salary categories.

This remuneration principle – in most of the cases – does not ensure the competitiveness of NRAs on the labour market, thus the situation could question whether the NRAs have adequate human resources to carry out their duties. The necessary human resources should be at the disposal of the NRA. Given the complexity of (energy) regulation, an NRA must be able to attract sufficiently qualified staff with various backgrounds.

In less than 1/3 of cases the NRA could define the salary level of the staff members (with some relations to the civil servant salaries or with other limitations).

In one case the labour market “determines” the salary level of the regulatory staff.

Question 5.16. Has there been any ex-post reduction in the salaries of the employees imposed on the Regulator through ministerial decisions or other legal acts?

The answers:

More than 2/3 of the ERRA members, who participated in this survey, did not have any ex-post reduction in the salaries of the employees imposed on the Regulator through ministerial decisions or other legal acts – which represents relative good financial independence in this particular issue.

On the other hand, the remaining 31% (8 NRAs) suffered from different interventions, such as;

- there were salary reductions (in different scales) of the staff and the management (Board Members as well) during the most difficult year(s) of financial crises or due to state budget deficit (based on Government or Parliament decisions) (seven cases),
- Salaries freeze in civil service (including regulatory staff) since 2009 until 2017 (one case).

These interventions could seriously endanger the involved NRAs to have adequate human resources to carry out their duties.
5.17. Is there discrimination in terms of the salary of employees with similar backgrounds and experience solely based on their employment date and contract duration?

The answers:

![Pie chart showing the answers to the question.](image)

Almost all of the regulators (24 out of 26 NRAs) answered to the question, that there is no discrimination in terms of the salary of employees with similar backgrounds and experience solely based on their employment date and contract duration.

In some cases there are significant differences in the level of wages of staff members, however, this is not discrimination in legal sense. This phenomenon appears mostly in case of young people with relatively high mobility on the labour market. It is mostly due to system limitations resulting from the lack of funds to pursue career paths in the structures of the regulatory authority, and due to the centrally determined civil servant salary levels – which is not necessarily fit to the special case of regulatory structure, hierarchy and the necessary experience.

**Question 5.18. How do salaries for the staff members compare with those of civil servants, government officials and industry personnel particularly in the energy sector?**

Comparing the salaries of the regulatory staff members with those of civil servants, government officials and industry personnel we get a very diverse picture:

- In 9 cases the salaries of the regulatory staff members are similar to those of other civil servants and officials of the state administration.
- In 8 cases the salaries of the regulatory staff members are slightly higher than the average salary level of other civil servants or officials of the state administration.
- In 5 cases the remuneration of the regulatory staff is comparable to the one of the staff members of the privately owned regulated (energy) companies.
- In 9 cases the remuneration of the regulatory staff is definitely lower than the one of the staff members of the privately owned regulated (energy) companies (in two cases the differences are substantial).

This segment of the financial independence of the regulatory authorities (including adequate remuneration of staff with relative high level of education and with special expertise) should be strengthened! Otherwise the NRAs cannot hire the right staff members to the right place from the labour market and/or can lose trained staff members leaving the regulator and going to the regulated companies!
Question 5.19. Are salaries of Board members and staff regulated by a national law?

In more than ¾ cases the salaries of regulatory Board members and staff are regulated by national law (or in three cases presidential or governmental decree). In these cases the “regulation” means determining the highest salary ceiling, or the allowed range of salaries, or setting the coefficient which is multiplied by the fixed salary base according to the grade of the position.

In 5 cases the NRAs are responsible for setting the salary level of the regulatory Board members and staff; this is not regulated by law or different decrees.

This picture does not show high level of financial independence in human resource management in most of the ERRA members.

2.5. Transparency

The NRA should carry out its tasks in a transparent manner. That means the NRAs should prepare, adopt and publish their rules of different procedures (like licensing, tariff setting, network code approval and other important regulatory tasks). These procedural rules should include the application process, the necessary documents to be attached, the evaluation aspects and the procedures for decision making. Transparency also means that the NRAs should have clear contact points for all stakeholders and publish information on their own organisation and structure.

Another aspect of transparency is that the NRAs should consult stakeholders before taking important decisions (publishing documents ahead of public consultations and organising consultation for the different segments of regulatory stakeholders). The most advanced way of transparency, if the NRA publishes document after public consultation giving an overview of the comments received, of those that were taken into account and the reasons why other comments were not taken into account.

Third aspect of the regulatory transparency means makes the decisions of the NRA available to the public (this practice strengthen the evaluation of the regulator in the field of “accountability”). This will enable the parties affected by a decision and the public to be informed about the reasons why a decision was taken and, hence, become aware of the impartiality with which the NRA fulfils its duties and exercises its powers.

The following 3 questions try to identify the transparency level of the NRAs regarding reasoning and justification of decisions, consultation process and publicity of decisions.

Question 6.1. Are regulator decisions fully reasoned and justified to allow for judicial review?

The answers:

<table>
<thead>
<tr>
<th>Value</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>26</td>
<td>100.0%</td>
</tr>
<tr>
<td>No</td>
<td>0</td>
<td>0.0%</td>
</tr>
</tbody>
</table>
The regulatory decisions are fully reasoned and justified in case of all ERRA members to inform the involved and interested parties about the reasons why a decision was taken and to allow judicial review.

The question was rather general, so the scale and deepness of the reasoning and justification could not be identified from the simple answers.

**Question 6.2. Do you provide information on regulatory decisions available on the public domain (e.g. website)?**

The answers:

```
<table>
<thead>
<tr>
<th>Value</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>26</td>
<td>100.0%</td>
</tr>
<tr>
<td>No</td>
<td>0</td>
<td>0.0%</td>
</tr>
</tbody>
</table>
```

All ERRA members are providing information on regulatory decisions available on the public domain (official website of the authority).

In addition to this publicity form 7 NRAs publish their rule-making type and tariff related decisions in the official gazette of the government or in a national newspaper.

In some of those countries, where the open public consultations (like public hearings) are required by law and it is the generally used practice, the NRAs announce information related to the different stages and elements of the decision making process.

In limited cases the decisions are published in other languages than the national one(s) (in most cases the other language is English).

Some regulators established public information bulletins and good relation with the mass media publishing regulatory positions.

In some cases the regulatory decisions are consulted and relevant stakeholders notified via website prior the decision itself is taken.

**Question 6.3. Is there any procedure to involve the government institutions and the regulated industry in the regulatory decisions (e.g. consultation process)?**

The answers:

```
<table>
<thead>
<tr>
<th>Value</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>22</td>
<td>84.6%</td>
</tr>
<tr>
<td>No</td>
<td>4</td>
<td>15.4%</td>
</tr>
</tbody>
</table>
```
In 22 cases (85%) there is some consultative procedure to involve the government institutions and the regulated industry in the regulatory decisions, which demonstrate high level of transparency.

There are different consultation processes implemented in ERRA countries, such as:

- In several cases the NRA establishes its rules of procedures for different type of consultations and public hearings; establishing the framework and clear guidelines for prompt and efficient proceedings and fair decisions within the regulatory competence, respecting the requirement of the transparency of all actions and proceedings by enabling the receipt of necessary inputs from all interested parties (general public, industry, government, etc.).

- In some cases the NRA is obligated by law to organize open meetings for the public when considering applications or requests related to licensing, pricing, and drafting general administrative acts. The Commission shall discuss with the interested parties the basic principles set in the draft and shall allow sufficient time for preparation of opinions on the draft.

- In other (limited) cases consultation process is required “only” before the price setting and/or Regulatory Asset Base (RAB) related decisions.

- There are cases, when open public consultation is applied for any regulatory decisions.

- In several cases the consultation (publication of drafts and collecting opinions and comments) is managed through the Internet (website).

2.6. Other Regulatory Aspects of Independence

In the last subchapter of the Survey Questionnaire we asked some additional aspects of regulatory independence in the following issues;

- adequate human resources and average salary level of the staff and decision makers

- regulatory competencies and main considerations behind the regulatory decisions

Finally the NRAs were asked to give some general remarks, comments and potential proposals in order to safeguard regulatory independence.

The necessity of having adequate human and financial resources of NRA to carry out its duties was already discussed in the framework of “Financial independence”. Given the complexity of (energy) regulation, an NRA must be able to attract sufficiently qualified staff with various backgrounds (lawyers, economists, engineers, etc.).

Comparability of the answers related to the number of staff and average salary level of staff and Board members is limited! The adequate number of staff is very much depends on the list of regulatory duties and competencies and on the scope/number and structure of the regulated industries (e.g. the workforce required to determine distribution tariff depend on the number of DSOs). The same limitation exists comparing the average salary levels, which should be analysed together with the national background and national situation!

Question 7.1. Facts and Figures

7.1. a. Please provide information on the total number of employees in your authority!

The total numbers of employees in the different regulatory authorities vary very much in between 21 and 581. 11 NRAs have less than 100 employees (from which 9 have less than 50), 9 NRAs have staff number between 100 and 200, while the staff number of 5 NRAs is belonging to the category between 300 and
The comparability and the evaluation of the number of employees are very limited! Evaluating the adequate number of staff one should analyse at least the following conditions:
- the type of industries (gas, electricity, district heating, oil, water supply and sewage system, and others),
- the structure of industries (e.g. the number of distribution and supply companies, PXs, TSOs, storage facilities),
- the core and the additional regulatory responsibilities,
- the possibilities to outsource special regulatory tasks (involve outside experts to the work),
- the tariff setting methodologies (benchmark based, setting individual tariff elements or approving methodologies, ...).

7.1.b. Please provide information on the average salaries of Staff Members!

The average salaries of employees in the different regulatory authorities vary very much. The comparability and the evaluation of these figures are very limited! Evaluating the adequate salary level of staff one should analyse at least the following conditions:
- the complexity of the core and the additional regulatory responsibilities,
- the adequate internal structure of the NRA fitted to the tasks and duties (How many highly educated and experienced layers, engineers and economists are required to perform all the regulatory duties on a professional way?),
- the balance between internal regulatory activities and potential outsourced ones,
- the conditions of the different segments of national labour market,
- the potential additional remuneration methods additional to salaries (like special pension found or health care system, ...).

Looking back to the answers of the related questions (5.14. – 5.19.) the general picture shows that there is general room for salary increase to ensure adequate human resources at ERRA member NRAs!

7.1.c. Please provide information on the average salaries of Board Members!

The average salaries of Board Members in the different regulatory authorities vary very much. Some of the NRAs qualified this information confidential, which makes the analysis even more complicated. The comparability and the evaluation of the available figures is very limited – as it was introduced under the previous question (7.1.b.)!

Looking back to the answers of the related questions (5.14. – 5.19.) the general picture shows that in most of the cases of ERRA members there is general room for salary increase for the Board Members to ensure adequate human resources and strengthen the autonomous decisions of the NRAs!
Question 7.2. Which institution has regulatory competency?

The answers:

<table>
<thead>
<tr>
<th>Value</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>The regulatory authority only</td>
<td>19</td>
<td>73.1%</td>
</tr>
<tr>
<td>The regulatory authority and another independent authority</td>
<td>2</td>
<td>7.7%</td>
</tr>
<tr>
<td>The regulatory authority and the parliament</td>
<td>1</td>
<td>3.9%</td>
</tr>
<tr>
<td>The regulatory authority and the government</td>
<td>4</td>
<td>15.4%</td>
</tr>
<tr>
<td>The regulatory authority has only consultative competencies</td>
<td>0</td>
<td>0.0%</td>
</tr>
</tbody>
</table>

In 19 cases (73%) the ERRA member NRA is the only national authority, which institution has regulatory competences. This result of the analysis shows that most of the ERRA members are designated legal entities empowered with the necessary responsibilities to function as sole regulatory authority in the country, to be able to take autonomous decisions.

In 4 cases the NRA shares the regulatory competencies with the government (there was no detailed question in this Survey asking of the shared responsibilities, but the general practices shows, that in some cases the government keep competencies in licensing/authorisation and household tariff setting).

In 2 cases the NRA shares the regulatory competencies with another independent authority (in 1 case with the Parliament).

Question 7.3. Considerations identified in the decisions of your regulatory body?

(Please list priority as well)

The answers:

<table>
<thead>
<tr>
<th>Value</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technical (system operation, reliability, quality of supply)</td>
<td>6</td>
<td>23.1%</td>
</tr>
<tr>
<td>Commercial (RoE, RoR, ...)</td>
<td>1</td>
<td>3.9%</td>
</tr>
<tr>
<td>Consumer protection</td>
<td>1</td>
<td>3.9%</td>
</tr>
<tr>
<td>Supporting competition</td>
<td>3</td>
<td>11.5%</td>
</tr>
<tr>
<td>Social policy expectations of the government</td>
<td>0</td>
<td>0.0%</td>
</tr>
<tr>
<td>Other</td>
<td>15</td>
<td>57.7%</td>
</tr>
</tbody>
</table>

It is important that the NRA is not only given quite extensive duties but also the necessary powers to be able to carry out its duties. For this purpose, the regulatory authority shall have – among others – at least the following powers:

- to issue binding decisions on technical parameters of the energy systems (system operation, reliability, quality of supply);
- to impose any necessary and proportionate measures to promote effective competition and ensure the proper functioning of the market;
- to provide adequate economic (commercial) environment for the regulated companies with the
necessary financial incentives to maintain and develop the regulated asset;
- to understand and protect the interest of the consumers.

In some cases the regulator considers social policy expectations of the government.

The answers to the question, which tries to identify these considerations and the priority, show very diverse picture in what is the basis of regulatory decisions:
- 15 NRAs (58%) answered, that all the listed aspects are equally taken into consideration in the regulatory decisions (without any priority),
- 6 NRAs (23%) highlighted the technical parameters of the energy systems (system operation, reliability, quality of supply) as most important considerations in the decisions,
- 3 NRAs (12%) mentioned that the support of competition is the most important aspect of regulatory considerations
- None of the NRAs selected the “social policy expectations of the government” as the first priority, and (except one) all of those, who gave priority order among the listed considerations gave the lowest priority to this aspect.

**Question 7.4. Comments to the regulatory independence**

**The original question:** Any other comments you would like to make with respect to regulatory independence? And/or proposals in order to safeguard independence in cases where it is detected that it is not effectively guaranteed? Please indicate in which direction this could be done, if you consider that this should be a collective effort of Regulators.

**The answers:**

Those NRAs who generally commented the aspects and elements of regulatory independence highlighted some important measures to safeguard independence:
- The financial independence of the Regulator is very important in order to guaranty all of the conditions (human resources and adequate working environment) of efficient operation, predictable, consistent, professional, and non-discriminative autonomous decisions.
- The regulatory responsibilities (tasks and duties) together with the necessary power (including financial independence) should be “guaranteed” by law.
- A critical factor for NRA successful operation, and especially in countries with limited tradition in independent public institutions, is existence of strict safeguards in the primary legislation supporting the two main elements of NRA independence:
  - Integrity: insulation of improper influences (distance from the regulated companies, consumers and political authorities) – legally distinct and functionally independent status,
  - Expertise: existence, development and application of technical expertise (taking into consideration the influence of the regulatory framework on the energy markets and investment) – separate annual budget allocation with autonomy in its implementation ensuring adequate human and financial resources.
3. **Gilardi Index – Method and Results Measuring Regulatory Independence**

3.1. **Theoretical background**

Fabrizio Gilardi prepared a measurement system on the formal and informal aspects of regulatory independence, their conceptualization, and their “operationalization”\(^6\).

Gilardi, in his article [11], explained the reason why he upgraded a formerly prepared method (Cukierman et al – 1992) to be able to evaluate the credibility of actions, namely delegation of regulatory powers to independent agencies.

In fact, governments are increasingly willing to abandon some of their regulatory competencies in favour of institutions that are not democratically accountable, and that are insulated from political influence. This is one of the main institutional features of the rising regulatory state (La Spina and Majone 2000).

To explain delegation, the ‘credibility hypothesis’, claiming that governments delegate powers in order to enhance the credibility of their policies, has been suggested and is now widely accepted. While this hypothesis is theoretically well founded, however, it is empirically deficient since it has never been systematically tested before. Gilardi aimed to examine whether this hypothesis is consistent with empirical evidence.

Gilardi in his articles offered an empirical assessment of one well-established hypothesis about a new institutional feature of most western European countries. He suggested a detailed “operationalization” of agency independence leading to a single independence index.

To evaluate to what extent credibility concerns have an impact on the independence of regulatory agencies, Gilardi has constructed a data set with information on regulators for five sectors (electricity, telecommunications, financial markets, food safety and pharmaceuticals).

The index is focused on formal independence. This can be divided into five main dimensions, namely the agency head status, the management board members’ status, the general frame of the relationships with the government and the parliament, financial and organizational autonomy, and the extent of delegated regulatory competencies.

The indicators associated to these variables are presented in detail in the following table.

<table>
<thead>
<tr>
<th>Table: Formal independence of regulatory agencies</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Dimension/Indicators</strong></td>
</tr>
<tr>
<td><strong>Status of the agency head</strong></td>
</tr>
<tr>
<td><strong>Term of office</strong></td>
</tr>
<tr>
<td>over 8 years</td>
</tr>
<tr>
<td>6-8 years</td>
</tr>
<tr>
<td>5 years</td>
</tr>
<tr>
<td>4 years</td>
</tr>
<tr>
<td>fixed term under 4 years or at the discretion of the appointer</td>
</tr>
<tr>
<td>no fixed term</td>
</tr>
</tbody>
</table>

---

\(^6\) Policy credibility and delegation to independent regulatory agencies: a comparative empirical analysis – Journal of European Public Policy, 2011 (Fabrizio Gilardi)

\(^7\) The Formal Independence of Regulators: A Comparison of 17 Countries and 7 Sectors - Swiss Political Science Review 11(4), 2005 (Fabrizio Gilardi – Universite de Lausanne)

\(^8\) The independence of regulatory authorities (Fabrizio Gilardi and Martino Maggetti) – published in Handbook of Regulation, Cheltenham, Edward Elgar, 2010
**Who appoints the agency head?**

<table>
<thead>
<tr>
<th>Option</th>
<th>Weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>the members of the management board</td>
<td>1</td>
</tr>
<tr>
<td>a complex mix of the parliament and the government</td>
<td>0,75</td>
</tr>
<tr>
<td>the parliament</td>
<td>0,5</td>
</tr>
<tr>
<td>the government collectively</td>
<td>0,25</td>
</tr>
<tr>
<td>one or two ministers</td>
<td>0</td>
</tr>
</tbody>
</table>

**Dismissal**

<table>
<thead>
<tr>
<th>Option</th>
<th>Weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>dismissal is impossible</td>
<td>1</td>
</tr>
<tr>
<td>dismissal is possible, but only for reasons not related to policy</td>
<td>0,67</td>
</tr>
<tr>
<td>there are no specific provisions for dismissal</td>
<td>0,33</td>
</tr>
<tr>
<td>dismissal is possible at the appointer’s discretion</td>
<td>0</td>
</tr>
</tbody>
</table>

**May the agency head hold other offices in government?**

<table>
<thead>
<tr>
<th>Option</th>
<th>Weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>no</td>
<td>1</td>
</tr>
<tr>
<td>only with the permission of the government</td>
<td>0,5</td>
</tr>
<tr>
<td>yes/ no specific provisions</td>
<td>0</td>
</tr>
</tbody>
</table>

**Is the appointment renewable?**

<table>
<thead>
<tr>
<th>Option</th>
<th>Weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>no</td>
<td>1</td>
</tr>
<tr>
<td>yes, once</td>
<td>0,5</td>
</tr>
<tr>
<td>yes, more than once</td>
<td>0</td>
</tr>
</tbody>
</table>

**Is the independence a formal requirement for the appointment?**

<table>
<thead>
<tr>
<th>Option</th>
<th>Weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>yes</td>
<td>1</td>
</tr>
<tr>
<td>no</td>
<td>0</td>
</tr>
</tbody>
</table>

**Status of the members of the management board**

<table>
<thead>
<tr>
<th>Option</th>
<th>Weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>over 8 years</td>
<td>1</td>
</tr>
<tr>
<td>6-8 years</td>
<td>0,8</td>
</tr>
<tr>
<td>5 years</td>
<td>0,6</td>
</tr>
<tr>
<td>4 years</td>
<td>0,4</td>
</tr>
<tr>
<td>fixed term under 4 years or at the discretion of the appointer</td>
<td>0,2</td>
</tr>
<tr>
<td>no fixed term</td>
<td>0</td>
</tr>
</tbody>
</table>

**Who appoints the members of the management board?**

<table>
<thead>
<tr>
<th>Option</th>
<th>Weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>the head of the agency</td>
<td>1</td>
</tr>
<tr>
<td>a complex mix of the parliament and the government</td>
<td>0,75</td>
</tr>
<tr>
<td>the parliament</td>
<td>0,5</td>
</tr>
<tr>
<td>the government collectively</td>
<td>0,25</td>
</tr>
<tr>
<td>one or two ministers</td>
<td>0</td>
</tr>
</tbody>
</table>

**Dismissal**

<table>
<thead>
<tr>
<th>Option</th>
<th>Weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>dismissal is impossible</td>
<td>1</td>
</tr>
<tr>
<td>dismissal is possible, but only for reasons not related to policy</td>
<td>0,67</td>
</tr>
<tr>
<td>there are no specific provisions for dismissal</td>
<td>0,33</td>
</tr>
<tr>
<td>dismissal is possible at the appointer’s discretion</td>
<td>0</td>
</tr>
</tbody>
</table>

**May the management board hold other offices in government?**

<table>
<thead>
<tr>
<th>Option</th>
<th>Weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>no</td>
<td>1</td>
</tr>
<tr>
<td>only with the permission of the government</td>
<td>0,5</td>
</tr>
<tr>
<td>yes/ no specific provisions</td>
<td>0</td>
</tr>
</tbody>
</table>

**Is the appointment renewable?**

<table>
<thead>
<tr>
<th>Option</th>
<th>Weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>no</td>
<td>1</td>
</tr>
<tr>
<td>yes, once</td>
<td>0,5</td>
</tr>
<tr>
<td>Question</td>
<td>Yes</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>-----</td>
</tr>
<tr>
<td>Is the independence a formal requirement for the appointment?</td>
<td>1</td>
</tr>
<tr>
<td>Is the independence of the agency formally stated?</td>
<td>1</td>
</tr>
<tr>
<td>What are the formal obligations of the agency vis-à-vis the government?</td>
<td>0,67</td>
</tr>
<tr>
<td>What are the formal obligations of the agency vis-à-vis the parliament?</td>
<td>0,67</td>
</tr>
<tr>
<td>Which body, other than a court, can overturn the decisions of the agency</td>
<td>no body</td>
</tr>
<tr>
<td>Financial and organizational autonomy</td>
<td>1</td>
</tr>
<tr>
<td>What is the source of the agency's budget?</td>
<td>fees levied on the regulated industry</td>
</tr>
<tr>
<td>How is the budget controlled?</td>
<td>by the agency</td>
</tr>
<tr>
<td>Which body decides on the agency's internal organisation?</td>
<td>the agency</td>
</tr>
<tr>
<td>Which body is in charge of the agency's personnel policy (hiring and firing staff, deciding on its allocation and composition)?</td>
<td>the agency</td>
</tr>
<tr>
<td>Regulartory competencies</td>
<td>the agency only</td>
</tr>
</tbody>
</table>

©ERRA 2015
Each indicator is numerically coded on a scale of 0 (lowest level of independence) to 1 (highest level of independence). In order to construct a single independence index, the individual indicators are aggregated in two steps. First, the indicators are aggregated at a variable level. The value of the variable-level index is simply the mean of the corresponding indicators. Then, variable-level indices are aggregated into a single independence index, which once again is simply the mean of the five variable-level indices. In other words, to each variable is attributed the same weight and thus, implicitly, the same relevance. (One could reasonably argue here that this or that variable, say agency head status, is more relevant and thus deserves to be weighted more – Gilardi in his article answered to this potential question; combining variables is unavoidably arbitrary, so the simplest way, by attributing the same weight to each variable.)

3.2. Practical use of Gilardi index (limitations and assumptions) in this Survey

As we introduced the background of this Survey in the sub-chapter 1.1., the first version of the ‘Gilardi Index method’ based questionnaire was amended (upgraded by the ECRB Secretariat allowing more complex evaluation of regulatory independence. This new joint (ECRB – ERRA) questionnaire took into consideration the original questions, but changed some of them and restructured the potential (multiple choice) answers, which limit the use of answers calculating the Gilardi Index. To be able to calculate the different Gilardi indices and to create aggregated results for comparison of ERRA members to each other and with other RRAs, we made the following assumptions:

- Among those ERRA members, who participated in the Survey there are 4 NRAs where the "Board of Commissioners" (Called in the Gilardi index questioner: "management board") as collective decision making body does not exist. The Chairman/ President is the only authority managing the regulatory authority and taking actions (proceeding) externally. In one case the Board exists, but instead of functioning as collective decision making body, it has special role whereas the Regulatory Board is particularly the authority of the appeal. In these four cases we cannot calculate the Board related Gilardi indices based on the original scoring system, but instead, we use the same score what the relevant country has for the "independence status of the regulatory head". We calculate the aggregated Gilardi indices of these four NRAs with these artificially generated scores for comparability purposes.

- In the question Q 12.; if the President of the Country appoints the Head of the Regulatory Authority the same score was calculated as the answer of "complex mix of the parliament and the government". In the case, when the Prime Minister the Head of the Regulatory Authority the same score was calculated as the answer of "the government collectively".

- The question Q 14. of the Gilardi index was not incorporated into the ERRA Survey Questioner. The scoring of this question is based on the answers to the Survey question Q 1.3.

- The questions Q 16. and Q 26. of the Gilardi index were not incorporated into the ERRA Survey Questioner. The scoring of these questions is based on the answers to the Survey questions of Q 1.3., Q 2.4. and Q 3.4. In those cases, where the appointment criteria's are related to educational background and expertise, but no requirements on independence from the regulated industry and/or politics. The given score was zero.

- The question Q 32. of the Gilardi index ("What are the formal obligations of the agency vis-á-vis the government?") was not incorporated into the ERRA Survey Questioner. The scoring of this question is based on the answers to the Survey questions of Q 1.2. In those cases, where the regulatory agency should assist the implementation of the energy policy; the given score was: 0,33.
- The question Q 34. of the Gilardi index ("Which body, other than a court, can overturn the decisions of the agency where the latter has exclusive competence?") was not incorporated into the ERRA Survey Questioner. The scoring of this question is based on the answers to the Survey questions of Q 1.6.
- The "Dismissal" related question Q 13. of the Gilardi index was incorporated into the ERRA Survey Questioner with different multiple choice of answers. The scoring of this question is based on the answers to the Survey question Q 1.3.

3.3. Results of Gilardi index calculation

The following graphs expressively demonstrate the results of the calculations of the analysed dimensions.

Status of the agency head

This dimension has 6 different indicators, which are related to the fix term, the formal requirements and conditions of appointment, the renewability of appointment, the safeguards against dismissal and the independence requirements from government and industry.

Based on the calculated results of this dimension of the Gilardi index we can see a relative low level of independence in the ERRA average (Index=0.64) as the second lowest figure among the five dimensions of formal regulatory independence. The country by country analysis shows that the Gilardi index of this dimension does not reach Index=0,6 level in 6 cases (23% of the 26 NRAs) and none of them reaches the level of 0,8.

Status of the members of the management board

This dimension has 6 different indicators, which are similar to the previous dimension (related to the fix term, the formal requirements and conditions of appointment, the renewability of appointment, the safeguards against dismissal and the independence requirements from government and industry).

In this dimension of the Gilardi index we can see a relative moderate level of independence in the ERRA average (Index=0,61) as the lowest figure among the five dimensions of formal regulatory independence. The country by country analysis shows that the Gilardi index of this dimension does not reach Index=0,6 level in 8 cases (31% of the 26 NRAs). The fact, that there are four NRAs where the "management board" as collective decision making body does not exist, limits the correct evaluation of this particular dimension of the Index.
The independence level of the “Board members” is even lower than the calculated result of ERRA average, because in case of these 4 countries we substituted the missing data with the scores calculated for the “status of the agency head”.

Relationship with government and parliament

This dimension has 4 different indicators, which are related to the legally stated independence, the formal obligations vis-à-vis the government and the parliament, and the challenging possibilities and conditions of regulatory decisions.

Based on the calculated results of this dimension of the Gilardi index we can see a relative high level of independence in the ERRA average (Index=0.74) as the second highest figure among the five dimensions of formal regulatory independence. The country by country analysis shows that the Gilardi index of this dimension does not reach index=0.5 level in 1 case “only” and is equal or higher than Index=0.75 in 15 case (58% of the 26 NRAs)!
Financial and organizational autonomy

This dimension has 4 different indicators, which are related to the source of the agency’s budget, the control over the agency’s budget, the potential outside influence over the agency’s internal organization and staffing.

In this dimension of the Gilardi index we can see moderate level of independence in the ERRA average (Index=0,71) as the third lowest figure among the five dimensions of formal regulatory independence. The country by country analysis shows a complex picture; the Gilardi index of this dimension does not reach Index=0,6 level in 7 cases (27% of the 26 NRAs), while on the other hand the index is equal or higher than Index=0,75 in 17 cases (65% of the 26 NRAs)! This dimension of regulatory independence definitely need enhancement in several cases (as the sub-chapter 2.3. of this report highlighted).

Regulatory competencies

This dimension has one indicator, which is related to the core regulatory competencies, whether these are inside or partially outside of the appointed regulatory authority.

Based on the calculated results of this dimension of the Gilardi index we can see high level of independence in the ERRA average (Index=0,88) as the highest figure among the five dimensions of formal regulatory independence. The country by country analysis shows that the Gilardi index of this dimension is reaching the maximum value (Index=1) in 20 cases (77% of the 26 NRAs), which means that in these countries the NRA is the only regulatory authority responsible for the core regulatory competencies. In 23 cases (88% of the 26 NRAs) this value is equal or higher than Index=0,5.
Comparing different aspects of regulatory independence

The following graph shows the relative high difference of the Gilardi indices of ERRA average among the five dimensions of regulatory independence.

![Comparing different aspects of regulatory independence (ERRA Average)](image_url)

As we mentioned earlier some dimensions of regulatory independence definitely need enhancement in several cases (as the sub-chapter 2.3. of this report highlighted). The financial independence could be strengthened in the concerned NRAs to have adequate human resources to carry out their duties.

The minimum, maximum and median values of different dimensions of regulatory independence

We analysed the deviation of the minimum and maximum values of the five dimensions of Gilardi indices from the median values. The graph shows, that there are countries, where the independence level of the different dimensions (measured with Gilardi index) is steady (balanced), while in some cases the deviation is relative high; the minimum values are on very low level.

Analysing the median (mean) values of the five dimensions of independence we can realise, that the aggregated Gilardi index in 17 cases (65% of the 26 NRAs) is above the ERRA average (Index=0,71), while in 3 cases this index is far below the average; below 0,5 value. In most of the cases the mean index values are in the range between 0,7 and 0,9 which represent relative good level of formal independence.
Besides measuring the formal independence, Gilardi collected some *indicators* of the *“de facto” independence* of regulatory authorities:

De facto (operational) independence from politicians
- Frequency of revolving door
- Frequency of contacts
- Influence on budget
- Influence on internal organization
- Partisanship of nominations
- Political vulnerability
- External influence on regulation

De facto (operational) independence from regulated companies
- Frequency of revolving door
- Frequency of contacts
- Adequacy of budget
- Adequacy of internal organization
- Professional activity of chairperson/board members
- External influence on regulation

In this Survey we did not collect information in regards to these “de facto” (operational/real) independence indicators, but we should highlight the importance of the transparent, predictable and non-discriminative behaviour of the regulatory operation and decision making process. The consultation with the government

---

* The independence of regulatory authorities (Fabrizio Gilardi and Martino Maggetti) – published in Handbook of Regulation, Cheltenham, Edward Elgar, 2010
(while understanding and implementing energy policy issues), with the energy industry (while learning the operation, maintenance and development aspects of the regulated industry and the effects of the tariff incentives) and with the consumers (to be familiar with the expectation and satisfaction of consumers) is very important, but the regulator should take care on autonomous operation avoiding “regulatory capture”.

**Potential follow up**

We could periodically introduce this survey, with similar questions, to the ERRA members to be able to analyse the potential developments in different segments of formal regulatory independence. Collecting the different practices of transparent operation and the way how to strengthen the accountability of the NRAs could be further developed in the future surveys.
4. **Summary**

On the basis of ERRA objectives to improve national energy regulation in member countries and foster development of stable energy regulators with autonomy and authority, ERRA was always interested in measuring the independence/autonomy of its members. Following the previous surveys (Regulatory Benchmarking Report for the CIS (2006) and Regulatory Independence (2008)) ERRA Presidium decided in 2014 to measure and benchmark the “Regulatory Independence” of ERRA Members through the “Gilardi Index” (individual assessment with the Index) and with some additional questions, which are focusing on the main aspects of the EU requirements of regulatory autonomy.

In July 2014 ERRA Presidium approved the concept of joint work with ECRB for practical reasons utilising the possible synergy effects and avoiding the double workload on members of ERRA and ECRB. ERRA Secretariat collected the answers from those ERRA members (13 regulators), which are not members of the ECRB, through online electronic survey-tool between July and September, 2014.

In the middle of September 2014 it became clear, that the main orientation of the assessment criteria of ECRB and ERRA is different. Taking into consideration, that several non-EU member ERRA members are not interested in the benchmark to the EU best practice ERRA Presidium decided to evaluate all the ERRA members’ answers separately from ECRB.

This report has a closer look into regulatory independence of 26 countries (ERRA members, from which 13 ECRB members and 9 EU members) in terms of political, legal and financial independence and transparency. The report is focusing on the main factors that influence these areas and identify good practices among ERRA members.

We would like to express our gratitude to those employees of the 26 member organisations who took part in the data collection and provided us with all the information. The report could not be compiled without their great job.

Establishing an independent agency and creating legal framework to ensure its operation independently from investor’s interest and short term political interventions is no easy task and even more challenging in countries with limited tradition of independent public institutions and limited regulatory experience and capacity.

Even if a number of measures have already been set by law ensuring regulatory independence, many issues still remain questionable. Governments are very often reluctant to restrain political control/influence over regulatory decisions.

In the beginning of this report the Chapter 2.1. could assist those regulators, who would like to strengthen their political, legal and financial independence and their transparent operation and predictable decision making practice. In this chapter we collected and introduced some aspects of importance, dimensions and general meaning of regulatory independence (political independence; functional independence; status of the head of the Regulatory Authority; status of the Management Board), legal independence, financial independence, transparency and other relevant issues. These explanations and interpretation notes could help to understand the complexity of the issue.

Although many countries have established institutional framework, it is questionable whether they operate as truly independent regulatory authorities. The formal independence – provided by the existing legal framework with full authorisation delegated to the regulator – does not necessarily mean real (de facto) autonomous operation and decisions of the regulator. There are cases, when the regulatory decision makers voluntarily follow the short term political interest.

The analysis of the answers and additional notes to the 50 questions of the survey providing good opportunity for ERRA members to benchmark their position to the EU requirements, to the position of other ERRA members and to learn the best practices. The report collects several arguments for the ERRA regulators „fighting“ for their autonomous operation.

None the less the 26 different implementations of formal regulatory independence and transparent operation offer the chance for benchmarking; the limitations of comparisons should be taken into account!
In order to make correct comparison of different indicators (e.g. number of staff, salary level, responsibilities, powers, budget), we should also take into account other conditions like:

- the national legal framework and governance practice of the government,
- the market structure (number of players, unbundling situation and maturity of market conditions),
- energy-, climate- and competition policy of the country,
- the complexity of the core and the additional regulatory responsibilities and statutory powers,
- the adequate internal structure of the NRA fitted to the tasks and duties,
- the balance between internal regulatory activities and potential outsourced ones,
- the conditions of the different segments of national labour market.

Following the introductory chapters the report has a closer look into regulatory autonomy of ERRA Members in terms of political, legal and financial independence, transparency and some other special issues. Each of these different terms of regulatory independence and the “guarantee” for autonomous operation of the regulator was surveyed through different group of questions. The evaluations of the answers are discussed in separate sub-chapters.

In the ERRA Survey we measured the political independence with two types of questions:

- Independence of the NRA as an organisation (questions related to the legally distinct and functionally independent formal position of the regulatory authority),
- Independence of the NRA management (authority’s head and board members)

The Chapter 2.2. introduces the 7 different aspects of the political independence of the ERRA member regulatory authorities as general.

Most of the ERRA member regulators (22 out the 26 answers) do not seek or take direct instructions from any government or other public or private entity when carrying out regulatory tasks. Most of the regulators did not report, as general practice, publically or informally executed interventions. Four ERRA Member regulators reported the formal and informal need to consult with the Government or to have its consent before decisions, or having instructions from the Government. There are limited cases, where the legislation provides for the necessary “role clarity” between the Regulator and the other public or private entities (Regulator – regulatory tasks; Government – policy making). Among those, who do not seek or take direct instructions from any government or other public or private entity, there are still issues to be discussed and/or analysed:

- no legislation directly stating the regulator’s independence,
- no detailed rules excluding instructions from government organisations.

In most of the ERRA member regulators’ cases (22 out the 26 answers) there are formal rules that prohibit the Regulator (i.e. Board members and staff) to have employment relationships with energy sector (in some cases in any commercial organization) while holding their regulatory positions! There are “only” two cases, where such legal rules are missing.

In most of the ERRA member regulators’ cases (25 out the 26 answers) there are formal rules that prohibit the Regulator (i.e. Board members and staff) to have interest in regulated energy companies and executing leading political functions while holding their regulatory positions! In most cases the prohibition of holding shares, securities, or make any other investments in regulated entities are binding for the Commissioners/Chairs and for the staff members (during their duty) “only” without restrictions on family members.

There are cases with other type of clear rules, which stipulate, that Commissioners and staff member shall be prohibited to be members of any political party or to actively participate in political activity (while holding...
their regulatory positions). There are countries with less strict rules; the regulatory staff can be a member of a political party without any objection.

Among ERRA Member countries there are different ways and forms of regulating the questioned prohibition, such as restrictions in energy law, low of regulation, special law of “Anti-Corruption and Law on Prevention of Conflict of Interest of Public Officials”, “Principles of Prevention and Combating Corruption” and/or in the form of Code of Ethics.

There are different consequences of the violation of employment restrictions, like; loosing job, imposing fine, but there are cases, where the clear rules are missing.

In some counties there are exemptions from the strict prohibitions usually the management and the staff of the Regulator are allowed to perform scientific and educational/academic/ scholar and artistic activities.

In limited number of ERRA Member countries there are rules for restrictions of such cases when leaving the regulator. The former regulators (Board members) cannot work for the (energy) industry temporarily.

In all ERRA members cases the regulatory decisions are binding except the possibility of juridical review. In one case the unsatisfied parties – without any conditions – could appeal to the administrative court or could go to the dispute resolution committee (formed from the board of ministers). One NRA outlined the legal situation in the following way: Regulator’s decision cannot be appealed, but can be disputed before the competent administrative court.

Six questions and answers evaluated the political independence of the NRA management (authority’s head).

In most, but not all of the ERRA member regulator cases (22 out the 26 answers) there is a fixed term appointment applied to the Head of the regulatory authority. In those four country cases, where there is no fix term appointment of the Head of the Regulator the political independence could be strengthened with the implementation of similar rules, which are applied in the other twenty two cases!

The conditions of the fix terms are different, but in most of the cases the term is longer, then 3 years. The most frequently used term is 5 years: 10 country introduced this time-period. Other terms: in 4 countries 6 years; in 3 countries 7 years, and 1 country has selected the 4 and the 3 years terms. One country introduced special rotation system among the Commissioners to select Chairman every year. In another case the Chairman of the Board shall be elected by secret ballot of the members of the Board (duration of the mandate is two years).

In most of the fix term cases law specifies an option of renewal of another one or two term.

In 13 cases the Parliament or the President of the country appoints the Head of the Regulatory authority. These cases together represent 50 % of those ERRA members, who participated in the survey. This appointment demonstrates a very strong political independence from the Governments and Ministries (who can have sometimes short term political goals, which could be in conflict with the aims of the Regulator).
The less strong appointment level (appointed by Ministers or Governments) could be “compensated” by legally specified and limited cases of revocation of the appointment or removal from the position.

Two third of those ERRA member regulators, who participated in the survey has legally binding selection rules, which could strengthen the political independence of those Regulatory Heads, who were selected and appointed through a transparent selection process based on ex-ante declared selection criteria.

The formal political independence of the regulatory decision makers (and consequently the regulatory authority) could be enhanced by the introduction and implementation of such rules – in case of those countries (9 regulators), where these rules are missing!

In most of the cases the governing selection rule is the competition (announced open public recruitment tender/advertisement).

In several cases selection criteria’s exist, such as national citizenship and residence, university degree, energy related training and work experience, management knowledge and practice. The required lengths of working and management practices are different (three to ten years).

In most cases the Prime Minister or the Parliament appoints the Head of the Regulatory Authority.

The selected candidate(s) in several cases is (are) invited to participate in a hearing of the Parliament.

In 85% of the countries the revocation of appointment of the Head of the regulatory authority or removal from office are limited to legally specified cases. These circumstances are providing formal political independence for the regulatory decision makers and supporting their autonomous behaviour.

The legally specified cases, when the revocation or removal could happen are in the following main categories:
- submission for resignation;
- voluntary retirement,
- upon death,
- incompatibility with the qualifications and requirements (those, which were prerequisites for appointment);
- unable to properly perform duties;
- conflict of interest;
- mismanagement;
- serious breach of duty (in limited cases),
- new position;
- not comply with moral requirements;
- Parliament decision (in one case);

The right to appeal his/ her revocation of appointment or removal from office is generally ensured by law.

There were seven questions and answers, which represent the political independence of the NRA management (Board Members excluding the Head of the Board).

In most, but not all of the ERRA member regulator cases (21 out the 26 answers) there is a fixed term of appointment applied to the members of the management of the regulatory authority.

There are ERRA members (4 NRAs) where the “Board of Commissioners” (Called in the Gilardi index questioner: “management board”) as collective decision making body does not exist. The Chairman/ President is the only authority managing the regulatory authority and taking actions (proceeding) externally. In one case the Board exists, but instead
of functioning as collective decision making body, it has special role whereas the Regulatory Board is particularly the authority of the appeal. In these four cases we cannot evaluate the answers to the Board related question.

Among those six country cases, where the answer was “no”, one of them answered “no”, because they have no “Board”, but the Vice Presidents have fix term.

The conditions of the fix terms are different, but in most of the cases the term is longer, then 4 years. The most frequently used term is 5 years: 12 country introduced this time-period. Other terms: in 4 countries 6 years; in 3 countries 7 years, and 1 country has selected the 4 years terms.

In 73 % of the cases the revocation of appointment of the Board members or removal from office is limited to legally specified cases. These circumstances are providing formal political independence for the regulatory decision makers and supporting their autonomous behaviour. The legally specified “safe” position of the Board members against revocation or removal exists in less country cases (73 %) compared to the same rules of the Heads of the Regulatory Authorities (80 %). In most of the legally specified cases, when the revocation or removal could happen the ex ante specified categories and main conditions are similar to the ones of the Head of Regulatory Authority.

In terms of legal independence some questions has been already analysed related to the legally distinct position of the regulatory authority. There were additional four questions to measure the legal independence (whether the independence of the NRA is formally stated in the legislation, and what type of reporting and other type of obligations has the NRA towards the Government and the Parliament).

In most, but not all of the ERRA member regulator cases (24 out the 26 answers) the legislation formally states the independence of the regulatory authority. There are different legal solutions stating and specifying this independent operation. In most of the cases the sector specific law or the act on the regulation of energy activities specifies the conditions of independence.

In case the status of the regulatory authority is described as a government agency, which operates within the area of government, the relevant law specify the framework and the extent of state supervision and enforcement powers.

There are examples, where the law on regulation states the special legal capacity of the NRA, which has no state controlling authority and which is independent from the state authorities and operates within the limits of the authority as defined pursuant to the applicable laws.

There is another way, when the legal status, duties and responsibilities of the NRA are specified by a decree of the Government (this is a legally less strong demonstration of independence).

In more than two third of the countries reporting obligation exists for the NRAs (20 out of 26 cases).

Annual reports are submitted to different organisations; most frequently reports are submitted to the Parliament (7), parallel with the President of the country, the Parliament and the Government (7), to the Government (or the Ministry responsible for Energy) (2) and in one case to the governing board of the regulatory authority.

In two cases there is obligation to publish the annual report of the NRA without any reporting/ delivery liability. There are limited cases, where the relevant law specify the obligation of the NRA to submit other than annual reports and information to the Government and shall inform the competent parliamentary committee upon a specific request.
There are very diverse obligations of the ERRA member NRAs vis-à-vis the Parliament. Seven members (27%) has no formal obligations to the Parliament, while the majority (19 members representing 73%) has different obligations:

- some of the regulators have relative “loose/week” obligations: presenting the annual regulatory report for information “only” (8 members; 31%),
- three NRA fully accountable to the Parliament,
- in six cases (23%) the Parliament has to approve the annual report of the NRA.

There are special cases, when the Parliament approves the annual budget of the NRA, or the planned future activities of the regulator.

The financial independence is one of the most important pre-requisite to ensure the appropriate, sufficient and autonomous operation of the regulatory authorities. The NRAs have to have adequate human and financial resources to carry out their duties. These resources should be at the disposal of the NRA. Given the complexity of (energy) regulation, an NRA must be able to attract sufficiently qualified staff with various backgrounds.

Based on these “requirements”, 19 questions aimed to map the financial situation of ERRA member NRAs focusing on budget sources (funding), autonomy in spending, governmental financial interventions and restrictions (if any), staffing and salary autonomy and its attractiveness to hire the necessary qualified staff. Except one case all regulatory authority has its own budget. There are different budget allocation methods among the ERRA members. In 10 cases (38%) the regulator’s budget is funded by the state central budget. In 6 cases the NRA has separate budget. The original source of the budget is in several cases the regulatory fee levied on the regulated industry. There are countries, where the regulated entities pay the regulatory fee (fines and other charges) to the state central budget, which allocate the adequate sources to the NRA. In other cases the regulatory fee goes directly to the regulatory authority – which financial method represents higher budgetary autonomy for the NRA. There are countries, where the regulatory authority possesses its own separate budget, but management of flows is performed via state budget.

In 13 cases (50%) the Parliament approves directly or indirectly the NRA’s budget. In 8 cases (31%) the regulatory authority itself or its Board approve the budget, which situation represents high financial autonomy, while in 3 cases (12%) the governmental approval provides less autonomy for the NRA.

In 10 countries (38%) there are possibilities (confirmed by the practice) to cut the regulatory budget ex-post, which could mean serious lack of financial independence in these cases. During the years of economic crises (2008 – 2011 and in two countries in 2014 as well) in several cases the regulatory budget’ cut has happened together with the adjustment/reduction of central budget (including budget’ cut of other government agencies, ministries and institutions). There were cases, when the regulatory authorities had to decrease the staff’s salaries, in line with an overall cut of salaries in state institutions. This budget-cut happened irrespectively of the source of the budget (funded by fees perceived from regulated utilities).
The majority of the regulatory authorities (21 NRAs out of 26) have autonomy in the implementation of the allocated budget, which is good position for them! However of this relative autonomy in budget implementation several regulatory authorities are facing the same problem of central regulation of civil servants’ salary level. There are countries, where the regulatory budget is approved item by item, which situation does not allow freedom to re-allocate the budget among approved limits of the different items (without repeated approval); this situation limit the flexibility of the regulatory authority to adjust resources to the current circumstances.

In several countries the remuneration of the regulatory staff and decision makers is not competitive with the salaries of the regulated sector. This situation could lead to less motivated regulatory staff or risk of corruption and potential abuse of regulatory power by staff or decision makers.

The majority of the regulatory budgets (expenses) are controlled by some institution or public body. 5 NRAs reported that self control exists “only”. Among those, who selected the “Other” of the multiple choice of answers, there are different combinations of controlling institutions or state bodies, like: state audit office (5); government and state audit office (1); chamber of accounts of the Parliament (2); Parliament (2); ministry (3); independent auditor (4 cases).

77% of those ERRA members who participated in the survey answered, that the NRA has experienced cases when the authority’s budget has not been spent. To the additional question (What has happened with the not-spent funds?) the answers are split into two categories: 2/3 of the NRAs could use the unspent funds in the following year as calculated “income”, which reduced the fee to be paid by license holders in the following year; while 1/3 of the NRAs should “send” the unspent funds to the state budget.

In the majority of the cases (19 out of 26; representing 73%) the NRA itself decides on the regulatory authority’s internal organisation, which situation represents higher independence and flexibility adjusting the internal structure to the new challenges. In 6 cases the regulator together with the Government (4) or the Parliament (2) approves the internal organisation of the authority.

In more than 3/4 cases (20 out of 26) the NRAs themselves or the Head of Board are in charge of the regulatory authority’s personnel policy (hiring and firing staff, deciding on its allocation and composition) - this is a good representation of the operational autonomy! In 5 cases both the regulatory authority and the government are involved in the regulatory authority’s personnel policy.

There are different systems of remuneration of regulatory Board Members established in the ERRA countries. The implemented remuneration systems can be categorized in the following ways:

- The regulatory authority itself sets the regime and principles for the remuneration of the Board Members and staff; this very strong responsibility exists in 2 cases
- There was a very good solution, which was based on a research of the labour market; the introduced system established salaries competitive with the private sector (which are higher compared to public sector); in the meantime this method was replaced by centrally planned civil service salary rules
- Calculation as certain percentages of the salary of the President of the country or the Prime Minister (3 cases) or the average salary of energy industry employees, or average national income (2 cases)
- There are countries, where a special governmental agency, the Government, the President or the Parliament (by law) determines the salary level of the civil servants and high officials, as Board Members (7 cases)
- There are 4 cases, where the Board Members do not receive permanent salaries for their regulatory activities, because they are officials of different central executive agencies/ ministries or they have remuneration during the time-period of ordinary and extra ordinary sessions of the Board.

In several above introduced cases the financial independence of the regulatory authorities (including decision makers) could be strengthened!

In 2/3 of the cases the general civil servant salary rules is applied for regulatory staff members, which is similar to other state administration bodies. In very limited cases the NRA management is allowed to deviate from the general civil servant salary categories.

This remuneration principle – in most of the cases – does not ensure the competitiveness of NRAs on the labour market, thus the situation could question whether the NRAs have adequate human resources to carry out their duties. The necessary human resources should be at the disposal of the NRA. Given the complexity of (energy) regulation, an NRA must be able to attract sufficiently qualified staff with various backgrounds.

In less than 1/3 of cases the NRA could define the salary level of the staff members (with some relations to the civil servant salaries or with other limitations). In one case the labour market “determines” the salary level of the regulatory staff.

More than 2/3 of the ERRA members, who participated in this survey, did not have any ex-post reduction in the salaries of the employees imposed on the Regulator through ministerial decisions or other legal acts – which represents relative good financial independence in this particular issue.

1/3 of NRAs suffered from different interventions, such as; salary reductions (in different scales) of the staff and the management (Board Members as well) during the most difficult year(s) of financial crises or due to state budget deficit (based on Government or Parliament decisions) (seven cases), and salaries freezing in civil service, including regulatory staff. These interventions could seriously endanger the involved NRAs to have adequate human resources to carry out their duties.

Comparing the salaries of the regulatory staff members with those of civil servants, government officials and industry personnel we get a very diverse picture:
- In 9 cases the salaries of the regulatory staff members are similar to those of other civil servants and officials of the state administration.
- In 8 cases the salaries of the regulatory staff members are slightly higher than the average salary level of other civil servants or officials of the state administration.
- In 5 cases the remuneration of the regulatory staff is comparable to the one of the staff members of the privately owned regulated (energy) companies.
- In 9 cases the remuneration of the regulatory staff is definitely lower than the one of the staff members of the privately owned regulated (energy) companies (in two cases the differences are substantial).

This segment of the financial independence of the regulatory authorities (including adequate remuneration of staff with relative high level of education and with special expertise) could be strengthened! Otherwise the NRAs cannot hire the right staff members to the right place from the labour market and/or can lose trained staff members leaving the regulator and going to the regulated companies!

The NRA should carry out its tasks in a transparent manner. That means the NRAs should prepare, adopt and publish their rules of different procedures. Transparency also means that the NRAs should have clear contact points for all stakeholders and publish information on their own organisation and structure.

Another aspect of transparency is that the NRAs should consult stakeholders before taking important decisions. Third aspect of the regulatory transparency means makes the decisions of the NRA available to the public (“accountability”). This could enable the parties affected by a decision and the public to be informed.
about the reasons why a decision was taken and, hence, become aware of the impartiality with which the NRA fulfils its duties and exercises its powers.

3 questions were dedicated to identify the transparency level of the NRAs regarding reasoning and justification of decisions, consultation process and publicity of decisions.

The answers shows that the regulatory decisions are fully reasoned and justified in case of all ERRA members to inform the involved and interested parties about the reasons why a decision was taken and to allow judicial review. While the question was rather general, the scale and deepness of the reasoning and justification could not be identified from the simple answers.

All ERRA members are providing information on regulatory decisions available on the public domain (official website of the authority). In addition to this publicity form 7 NRAs publish their rule-making type and tariff related decisions in the official gazette of the government or in a national newspaper.

In some of those countries, where the open public consultations (like public hearings) are required by law and/or it is the practice, the NRAs announce information related to the different stages and elements of the decision making process.

In limited cases the decisions are published in other languages than the national one(s) (in most cases the other language is English). In some cases the regulatory decisions are consulted and relevant stakeholders notified via website prior the decision itself is taken.

In 22 cases (85%) there is some consultative procedure to involve the government institutions and the regulated industry in the regulatory decisions, which demonstrate high level of transparency.

There are different consultation processes implemented in ERRA countries, such as;

- in several cases the NRA establishes its rules of procedures for different type of consultations and public hearings,
- in some cases the NRA is obligated by law to organize open meetings for the public when considering applications or requests related to licensing, pricing, and drafting general administrative acts,
- in other (limited) cases consultation process is required “only” before the price setting and/ or Regulatory Asset Base (RAB) related decisions,
- there are cases, when open public consultation is applied for any regulatory decisions,
- in several cases the consultation (publication of drafts and collecting opinions and comments) is managed through the Internet (website).

In the last subchapter of the Survey Questionnaire we asked some additional aspects of regulatory independence in the following issues;

- adequate human resources and average salary level of the staff and decision makers
- regulatory competencies and main considerations behind the regulatory decisions

The necessity of having adequate human and financial resources of NRA to carry out its duties was already discussed in the framework of “Financial independence”. Given the complexity of (energy) regulation, an NRA must be able to attract sufficiently qualified staff with various backgrounds (lawyers, economists, engineers, etc.).

Comparability of the answers related to the number of staff and average salary level of staff and Board members is limited! The adequate number of staff is very much depends on the list of regulatory duties and competencies and on the scope/ number and structure of the regulated industries. The same limitation
exists comparing the average salary levels, which should be analysed together with the national background and national situation!

The total numbers of employees in the different regulatory authorities vary very much in between 21 and 581. 11 NRAs have less than 100 employees (from which 9 have less than 50), 8 NRAs have staff number between 100 and 200, while the staff number of 5 NRAs belong to the category between 300 and 600.

The comparability and the evaluation of the number of employees is very limited! Evaluating the adequate number of staff one should analyse at least the following conditions:
- the type of industries (gas, electricity, district heating, oil, water supply and sewage system, and others),
- the structure of industries (e.g. the number of distribution and supply companies, PXs, TSOs, storage facilities),
- the core and the additional regulatory responsibilities,
- the possibilities to outsource special regulatory tasks (involve outside experts to the work),
- the tariff setting methodologies (benchmark based, setting individual tariff elements or approving methodologies, ...).

The average salaries of employees in the different regulatory authorities vary very much also.

The comparability and the evaluation of these figures is also very limited! Evaluating the adequate salary level of staff one should analyse at least the following conditions:
- the complexity of the core and the additional regulatory responsibilities,
- the adequate internal structure of the NRA fitted to the tasks and duties (How many highly educated and experienced lawyers, engineers and economists are required to perform all the regulatory duties in a professional way?),
- the balance between internal regulatory activities and potential outsourced ones,
- the conditions of the different segments of national labour market,
- the potential additional remuneration methods additional to salaries (like special pension found or health care system, ...).

The general picture shows that there is room for salary increase to ensure adequate human resources in ERRA member NRAs!

In 19 cases (73%) the NRA is the only national authority, which institution has regulatory competences. This result of the analysis shows that most of the ERRA members are designated legal entities empowered with the necessary responsibilities to function as sole regulatory authority in the country, to be able to take autonomous decisions.

In 4 cases the NRA shares the regulatory competencies with the government. In 2 cases the NRA shares the regulatory competencies with another independent authority (in 1 case with the Parliament).

It is important that the NRA is not only given quite extensive duties but also the necessary powers to be able to carry out its duties. For this purpose, the regulatory authority shall have – among others – at least the following powers:
- to issue binding decisions on technical parameters of the energy systems (system operation, reliability, quality of supply);
- to impose any necessary and proportionate measures to promote effective competition and ensure the proper functioning of the market;
- to provide adequate economic (commercial) environment for the regulated companies with the necessary financial incentives to maintain and develop the regulated asset;
- to understand and protect the interest of the consumers.

In some cases the regulator considers social policy expectations of the government.
The answers to the question, which aims to identify these considerations and the priority, show very diverse picture in what is the basis of regulatory decisions:

- 15 NRAs (58%) answered, that all the listed aspects are equally taken into consideration in the regulatory decisions (without any priority),
- 6 NRAs (23%) highlighted the technical parameters of the energy systems (system operation, reliability, quality of supply) as most important considerations,
- 3 NRAs (12%) mentioned that the support of competition is the most important aspect,
- None of the NRAs selected the “social policy expectations of the government” as the first priority, and (except one) all of those, who gave priority order among the listed considerations, gave the lowest priority to this aspect.

Finally the NRAs were asked to give some general remarks, comments and potential proposals in order to safeguard regulatory independence.

Those NRAs who generally commented the aspects and elements of regulatory independence highlighted some important measures to safeguard independence:

- The financial independence of the Regulator is very important in order to guaranty all of the conditions (human resources and adequate working environment) of efficient operation, predictable, consistent, professional, and non-discriminative autonomous decisions.
- The regulatory responsibilities (tasks and duties) together with the necessary power (including financial independence) should be “guaranteed” by law.
- A critical factor for NRA successful operation, and especially in countries with limited tradition in independent public institutions, is existence of strict safeguards in the primary legislation supporting the two main elements of NRA independence:
  - Integrity: insulation of improper influences (distance from the regulated companies, consumers and political authorities) – legally distinct and functionally independent status,
  - Expertise: existence, development and application of technical expertise (taking into consideration the influence of the regulatory framework on the energy markets and investment) – separate annual budget allocation with autonomy in its implementation ensuring adequate human and financial resources.

Evaluating and Benchmarking the „Formal Regulatory Independence“ through the “Gilardi Index” provide a relative simple method for individual assessment of ERRA members with the indices prepared by Fabrizio Gilardi, Professor of the Universite de Lausanne. The 22 questions of the Gilardi method are focusing on the following main aspects (dimensions) of formal independence:

- Status of the Regulatory Body Head
- Status of the Members of the Management Board
- Relationship with the Government and Parliament (governance)
- Financial and Organizational Autonomy
- Regulatory Competencies

Some of the original Gilardi questions and the possible multiple choice answers were modified during the preparation of the Joint (ERRA-ECRB) Survey Questionnaire, that is why the comparison of the results with

---

Regulatory Authorities of other regional Associations is limited, but the internal (within ERRA) benchmark is feasible and demonstrative.

To be able to calculate the different Gilardi indices and to create aggregated results for comparison of ERRA members to each other, we made some assumptions in case of those NRAs, where the "Board of Commissioners" (called in the Gilardi index questioner: "management board") as collective decision making body does not exist and in other cases as well (these assumptions could be identified in sub-chapter 3.2).

The following graphs expressively demonstrate the results of the calculations of the analysed dimensions.

The **Status of the agency head** dimension has 6 different indicators, which are related to the fix term, the formal requirements and conditions of appointment, the renewability of appointment, the safeguards against dismissal and the independence requirements from government and industry.

Based on the calculated results of this dimension of the Gilardi index we can see a relative low level of independence in the ERRA average (Index=0,64) as the second lowest figure among the five dimensions of formal regulatory independence. The country by country analysis shows that the Gilardi index of this dimension does not reach 0,6 level in 6 cases (23% of the 26 NRAs) and none of them reaches the level of 0,8.

The **Status of the Regulatory Authority Head**

The dimension of **Status of the members of the management board** has 6 different indicators also, which are similar to the previous dimension (related to the fix term, the formal requirements and conditions of appointment, the renewability of appointment, the safeguards against dismissal and the independence requirements from government and industry).

In this dimension of the Gilardi index we calculated a relative moderate level of independence in the ERRA average (Index=0,61) as the lowest figure among the five dimensions. The country by country analysis shows that the Gilardi index of this dimension does not reach 0,6 level in 8 cases (31% of the 26 NRAs). The fact, that there are four NRAs where the "management board" as collective decision making body does not exist, limits the correct evaluation of this particular dimension of the Index. The independence level of the “Board members” is even lower than the calculated result of ERRA average, because in case of these 4 countries we substituted the missing data with the scores calculated for the “status of the agency head”.

The **Relationship with government and parliament** dimension has 4 different indicators, which are related to the legally stated independence, the formal obligations vis-à-vis the government and the parliament, and the possibilities and conditions to challenge the regulatory decisions.

Based on the calculated results of this Gilardi index dimension we can see a relative high level of independence in the ERRA average (Index=0,74) as the second highest figure among the five dimensions. The country by country analysis shows that the Gilardi index of this dimension does not reach 0,5 level in 1 case “only” and is equal or higher than 0,75 in 15 case (58% of the 26 NRAs).
The Financial and organizational autonomy dimension indicators related to the source of the agency’s budget, the control over the agency’s budget, the potential outside influence over the agency’s internal organization and staffing.

In this dimension of the Gilardi index we can see a moderate level of independence in the ERRA average (Index=0.71) as the third lowest figure among the five dimensions of formal regulatory independence. The country by country analysis shows a complex picture; the Gilardi index of this dimension does not reach 0.6 level in 7 cases (27% of the 26 NRAs), while on the other hand the index is equal or higher than Index=0.75 in 17 cases (65% of the 26 NRAs). This dimension of regulatory independence definitely needs enhancement in several cases (as the sub-chapter 2.3. of this report highlighted).

The Regulatory competencies dimension is related to the core regulatory competencies, whether these are inside or partially outside of the appointed regulatory authority.

Based on the answers and the calculated results of this dimension we can see a high level of independence in the ERRA average (Index=0.88) as the highest figure among the five dimensions of formal regulatory independence. The country by country analysis shows that the Gilardi index of this dimension is reaching the maximum value (1) in 20 cases (77%), which means that in these countries the NRA is the only regulatory authority responsible for the core regulatory competencies. In 23 cases (88%) this value of the index is equal or higher than 0.5.

© ERRA 2015
Comparing different aspects of regulatory independence the following graph shows the relative high difference of the Gilardi indices of ERRA average among the five dimensions of regulatory independence.

![Graph showing relative high difference of Gilardi indices among the five dimensions of regulatory independence.](image)

As the report mentioned, some dimensions of regulatory independence definitely need enhancement in several country cases. The financial independence could be strengthened in the concerned NRAs to have adequate human resources to carry out their duties.

The minimum, maximum and median values of different dimensions of regulatory independence

We analysed the deviation of the minimum and maximum values of the five dimensions of Gilardi indices from the median values. The graph shows, that there are countries, where the independence level of the different dimensions (measured with Gilardi index) is steady (balanced), while in some cases the deviation is relative high; the minimum values are on very low level.

![Graph showing minimum, maximum, and median values of Gilardi index for different countries.](image)
Analysing the median (mean) values of the five dimensions of independence we can realise, that the aggregated Gilardi index in 17 cases (65% of the 26 NRAs) is above the ERRA average (0.71), while in 3 cases this index is far below the average; below 0.5 value. In most of the cases the mean index values are in the range between 0.7 and 0.9 which represent relative good level of formal independence.

Besides measuring the formal independence, Gilardi collected some indicators of the “de facto” independence of regulatory authorities. In this Survey we did not collect information in regards to these “de facto” (operational/ real) independence indicators, but we should highlight the importance of the transparent, predictable and non-discriminative behaviour of the regulatory operation and decision making process.

In this Survey we did not collect information in regards to these “de facto” (operational/ real) independence indicators, but we should highlight the importance of the transparent, predictable and non-discriminative behaviour of the regulatory operation and decision making process. The consultation with the government (while understanding and implementing energy policy issues), with the energy industry (while learning the operation, maintenance and development aspects of the regulated industry and the effects of the tariff incentives) and with the consumers (to be familiar with the expectation and satisfaction of consumers) is very important, but the regulator should take care on autonomous operation avoiding “regulatory capture”.

Potential follow up

ERRA could periodically introduce this survey, with similar questions, to the members to be able to analyse the potential developments in different segments of formal regulatory independence. Collecting the different practices of transparent operation and the way how to strengthen the accountability of the NRAs could be further developed in the future surveys.

June 2015
5. Bibliography

Directive 2009/72/EC Concerning Common Rules for the Internal Market in Electricity

Directive 2009/73/EC Concerning Common Rules for the Internal Market in Natural Gas


Fabrizio Gilardi and Martino Maggetti: The independence of regulatory authorities – Handbook of Regulation, Cheltenham, Edward Elgar, 2010