



Directorate-General
for Energy
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- ***Independence and powers of regulators: legal and institutional requirements***

Heinz Hilbrecht,
Director, European Commission

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3rd package Directives contain a lot of provisions on NRAs

- 2nd package:
 - » 1 article – 1 page on NRAs

- 3rd package:
 - » 6 articles – 5,5 pages on NRAs
 - » detailed provisions:
 - 1) designation and independence of NRAs
 - 2) duties and powers of NRA

● Independence of NRA is key

- NRA as organisation: legally distinct and functionally independent from public or private entity
 - » not possible for NRA to be part of Ministry
- NRA staff and management
 - » act independently from any market interest
 - » not seek nor take direct instructions
- NRA Board:
 - » appointed for fixed term of 5 up to 7 years, renewable once
 - » rotation scheme
 - » may be relieved from office during their term only if
 - they no longer fulfil the conditions set out in the Directives (independence or impartiality of the NRA)
 - or have been guilty of misconduct under national law (fraud, bribery,...)

● **NRA has extensive autonomy**

- NRA can take autonomous decisions independently from any political body
 - » decisions of the NRA are immediately binding and directly applicable
- NRA has separate budget allocation with autonomy in the implementation of the allocated budget
 - » approval of the budget by the national legislator cannot be used to influence the NRA's priorities
- NRA must have adequate human and financial resources to carry out its duties

● **NRA must be impartial and transparent**

- aim of this provision: when taking a decision, NRA cannot be inclined to take account of other considerations than the general interest
- impartial = NRA takes decisions in a neutral way and based on objective criteria and methodologies
- clear balance: more powers & independence = more transparency
 - » what does that mean?:
 - decisions shall be made public
 - NRA must
 - be transparent on the way it is organised
 - consult stakeholders before taking important decisions

● **Main core duties of the regulator**

- network tariffs: fix or approve tariffs or methodology
- ensure compliance of TSOs/DSOs and undertakings with relevant legislation
- ensure that there are no cross-subsidies between transmission, distribution and supply activities
- help to ensure that consumer protection measures are effective and enforced
- cooperate in regard to cross-border issues with other regulators and with the Agency

● **Even more powers in case of ISO**

- monitor compliance TSO and ISO with their obligations
- monitor relations and communications between TSO and ISO, and in particular approve contracts between them
- improve investment planning and multi-annual network development plan presented annually by ISO
- ensure that network tariffs include remuneration of network assets and new investment
- power to carry out inspections, incl. unannounced inspections at the premises
- monitor the use of congestion charges collected by ISO

● National Regulators now have a clear EU cross border mandate

- general objective: promote, in close cooperation with the Agency, the regulatory authorities of other Member States and the Commission a competitive, secure and environmentally sustainable internal electricity and gas market *within the Community*
- duty to ensure compliance of TSOs and electricity and gas undertakings with Directives and other relevant Community legislation, incl. as regards cross border issues

● **Also several monitoring duties**

- may be carried out by other authority than NRA, but monitoring information must be made available to the NRA
- what
 - » investment plans of TSOs
 - » level of transparency
 - » level and effectiveness of market opening
 - » time taken by TSOs and DSOs to make connections and repairs
 - » investment in generation capacity

● **NRA has important powers**

- can take binding decisions on electricity and gas undertakings
- carry out investigations and decide upon and impose any necessary and proportionate measures to promote effective competition and ensure proper functioning of the market
 - » e.g. virtual power plants and gas release programmes
- require any information from electricity and gas undertakings
- impose effective, proportionate and dissuasive sanctions
 - » up to 10% of the annual turnover

● Conclusions

- demonstrable independence and impartiality of regulators is
 - » key of good governance
 - » fundamental condition for market confidence
- EU has unique set of rules aimed at enhancing cross border trade and establishing competitive gas and electricity market
- regulators have clear EU cross border mandate