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New Role and functions of independent energy regulatory authority in EU under the Third Energy Package

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Organisation

Directive 2009/72/EC

Article 35

Designation and independence of regulatory authorities

(1) Each Member State shall designate a single national regulatory authority at national level.

*Member States shall guarantee the **independence** of the regulatory authority and shall ensure that it exercises its powers **impartially** and **transparently**. For this purpose, Member States shall ensure that, when carrying out the regulatory tasks conferred upon it by this Directive and related legislation, the regulatory authority:*

- (a) is **legally distinct** and **functionally independent** from any other public or private entity;*

- (b) ensures that its staff and the persons **responsible for its management**:*
 - (i) act **independently** from any market interest; and*
 - (ii) 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 under Article 37.*

In order to protect the independence of the regulatory authority, Member States shall in particular 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**. (...)*

Organisation

- Only one NRA per Member State
- Fully independent
- Budget implementation autonomy
- Board appointments for 5 to 7 years – renewable once



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Objectives

General objectives of the regulatory authority (...)

- a) promoting**, in close cooperation with the Agency, regulatory authorities of other Member States and the Commission, **a competitive, secure and environmentally sustainable internal market** in electricity within the Community, and effective market opening for all customers and suppliers in the Community and ensuring appropriate conditions for the effective and reliable operation of electricity networks, taking into account long-term objectives;

- b) developing competitive and properly functioning regional markets (...);**



Objectives II - Art 36 c) – e)

- c) **eliminating restrictions** on trade in electricity between Member States, including developing **appropriate cross-border transmission capacities** (...);

- d) helping to achieve, in the most cost-effective way, the **development of secure, reliable and efficient non-discriminatory systems** that are consumer oriented, and promoting system adequacy and, in line with general **energy policy objectives**, energy **efficiency** as well as the integration of (...) of electricity from **renewable energy sources** and distributed generation in both transmission and distribution networks;

- e) facilitating access to the network for **new generation capacity**, in particular removing barriers that could prevent access for new market entrants and of electricity from **renewable energy sources**;

Objectives III - Art 36 e) – h)



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- (f) ensuring that system operators and system users are granted **appropriate incentives**, (...), to increase **efficiencies** in system performance and foster market integration;*

- (g) ensuring that **customers benefit** through the efficient functioning of their national market, promoting effective competition and helping to ensure **consumer protection**;*

- (h) helping to achieve **high standards of universal and public service** in electricity supply, contributing to the **protection of vulnerable customers** and contributing to the compatibility of necessary data exchange processes for customer switching.*



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Tasks

Monitoring – Art 37 (1)...



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- g) ...**investment plans** of the transmission system operators (...)*

 - h) ...compliance with and reviewing the past performance of **network security** and reliability rules and setting or approving standards and requirements for quality of service and supply (...);*

 - i) ...the level of **transparency**, including of wholesale prices (...);*

 - j) ...the level and **effectiveness** of market opening and competition at wholesale and retail levels, including on electricity exchanges, prices for household customers including prepayment systems, switching rates, disconnection rates, charges for and the execution of maintenance services, and complaints by household customers, (...);*

Monitoring – Art 37 (1)...



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- k) ... the occurrence of **restrictive contractual practices** (...);
 - m) ... the **time** taken by transmission and distribution system operators to make **connections and repairs**;
 - q) ... the implementation of **rules** relating to the roles and responsibilities of transmission system operators, distribution system operators, suppliers and customers and other market parties (...)
 - r) ... **investment in generation capacities** in relation to security of supply;
 - s) ... **technical cooperation** between Community and third-country transmission system operators;
 - t) ... the implementation of **safeguards measures** (...).

Regulatory main duties I – Art 37 (1)...



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- a) *fixing or approving, in accordance with transparent criteria, transmission or **distribution tariffs or their methodologies**;*

- b) ***ensuring compliance of transmission and distribution system operators** and, where relevant, system owners, as well as of any electricity undertakings, with their obligations under this Directive and other relevant Community legislation, including as regards cross-border issues;*

- c) ***cooperating** in regard to cross-border issues with the **regulatory authority** or authorities of the Member States concerned and with the **Agency**;*

- d) ***complying** with, and implementing, any relevant **legally binding decisions** of the **Agency** and of the **Commission**;*



Regulatory main duties II – Art 37 (1)...

- e) **reporting** annually on its activity (...)
- f) **ensuring** that there are **no cross-subsidies** between transmission, distribution, and supply activities;
- n) **helping to ensure**, together with other relevant authorities, that the **consumer protection measures**, including those set out in **Annex I**, are effective and enforced;
- o) publishing **recommendations**(...) in relation to compliance of **supply prices** with Article 3 (...);
- p) ensuring **access to customer consumption data** (...);
- (u) contributing to the compatibility of **data exchange** processes (...) at regional level.



New tasks for NRAs - Summary

- Fixing tariffs
- Ensure the compliance of TSOs and DSOs with the new framework
- Ensure enforcement of effective consumer protection
- Strong cooperation on cross border issues
- Implement decisions of ACER and Commission
- Monitoring, especially concerning all unbundling provisions but also functioning of the market
- Justify and publish decisions



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Powers



Powers I - Art 37 (4)...

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- *issue **binding decisions** on electricity undertakings;*
 - *to carry out **investigations** (...)*
 - *to **require any information** from electricity undertakings relevant for the fulfilment of its tasks (...);*
 - *to **impose effective, proportionate and dissuasive penalties** on electricity undertakings not complying with their obligations (...) or to propose that a competent court impose such penalties. (...) penalties **of up to 10 % of the annual turnover** of the transmission system operator on the transmission system operator or of up to 10 % of the annual turnover of the vertically integrated undertaking on the vertically integrated undertaking (...);*
 - *appropriate **rights of investigations** (...).*



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Right to appeal

- (16) *Decisions taken by regulatory authorities shall be **fully reasoned and justified** to allow for **judicial review**. The decisions shall be available to the **public** while preserving the confidentiality of commercially sensitive information.*
- (17) *Member States shall ensure that suitable mechanisms exist at national level under which a party affected by a decision of a regulatory authority has a **right of appeal to a body independent of the parties involved and of any government**.*



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NRAs and ACER

The Agency for the Cooperation of Energy Regulators (ACER)



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- Set up to close the regulatory gap
- Tasks related to cross-border issues, e.g.
 - Provision of framework guidelines
 - Monitoring of the European Networks of Transmission System Operators (ENTSOs)
 - Tasks vis-à-vis NRAs
 - Individual decisions concerning exemptions or access to cross-border infrastructure
 - Monitoring of the internal natural gas & electricity market, in particular the retail prices, access to the network and compliance with the consumer rights



Relationship with ACER (I)

- ACER = Agency for the **Cooperation of Energy Regulators**
- National regulatory authorities (NRAs)
 - To cooperate with ACER
 - To comply and implement legally binding decisions of ACER
 - To report to ACER and provide information
 - ...
- Members of the Board of Regulators (BoR) = senior representatives of the NRAs



Relationship with ACER (II)

- ACER's tasks vis-à-vis the NRAs
 - Recommendations to assist NRAs (and market players) to share good practices
 - Provide framework for cooperation of NRAs
 - “Peer review” of decisions of NRAs
 - Provide opinion on the application of Guidelines adopted under the 3rd package
 - Last-resort decision-making on ...
 - Terms & conditions for cross-border infrastructure
 - Infrastructure exemptions
 - ... if involved NRAs have not been able to reach agreement



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Implementation in Austria

Implementation in Austria: E-Control



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- New Act on the Regulatory Authority
- Agency under public law
- Independent, not bound by any orders
- Management Board: 2 members
- Regulatory Commission: 5 members
- Staff: ~ 110 employees
- Annual budget: ~ 17 Mio €
- Complaints to Administrative und Constitutional Court
- Legal bases: E-Control Act, Electricity Act, Gas Act

E-Control's departments

	Executive Board
	Electricity Department
	Natural Gas Department
	Department for Renewable Energy and Energy Efficiency
	Department for Consumer Affairs
	Tariffs Department
	Department for Competition and Regulation
	Legal Department
	International Relations Department
	Department for Finance and Business Administration
	Department for IT and Telecommunications

Implementation in Austria II: E-Control

Main tasks – Management Board:

- Decisions concerning the cost of DSOs and TSOs
- Approval of General Terms & Conditions of DSOs and TSOs
- Monitoring and supervision in general
- Dispute settlement
- Collection of statistical data on electricity and gas
- Crisis Management

Main tasks – Commission:

- Approval of General Terms & Conditions for suppliers
- Decision of network tariffs
- Body of Appeal against cost decisions of the management board
- Arbitration between market participants

Thank you for your attention

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