

## **CEER MEMBERS' LICENSING POWERS**

I. Assessing the outcome of the update of the 2005 regulatory benchmark report regarding CEER members' licensing powers, the following should be noted, in each area of the survey, respectively :

- **Power of the NRAs to issue licenses**

*Of the 28 Regulatory Authorities participating in the survey, the majority – 18 - has a general competence to issue licence. Interestingly, in several countries, such as Austria, some activities (trading – supply) do not need a licence.*

*In most of the other countries, such as Belgium and Germany, the licensing power remains within the core administrative competence of the state, while in Denmark a separate administrative authority deals with energy licensing (the Danish Energy Authority).*

- **Power of the NRAs to issue secondary legislation in the area of licensing, and to determine the terms and conditions of licenses**

*The results here are mixed and their assessment depends on the definition of secondary legislation : Less than 10 NRAs appear to have direct power to issue secondary legislative acts (such as licensing codes e.t.c.). From those who appear to have competence in that area, some are fully competent while others only partly (for instance ERSE – Portugal- issues codes and all secondary legislation, while RONI – Slovak Rep. – sets the technical prerequisites of business conduct in the energy sector), while a few may set terms and conditions [ i.e. e-control (Austria), ECA-(Estonia) as well as HEO (Hungary) and PUC (Latvia),].*

*Others, although lacking a full licensing competence, they participate in the complex administrative procedure leading to the licence issuing including the for the in an advisory role- CREG (Belgium), RAE (Greece), CNE (Spain)].*

- **Power of the NRAs to review and monitor licenses and compliance with license conditions**

*Almost all NRAs may review the compliance of the licence conditions, either based on their general competences or e.g. CER (Iceland), may issue a recommendation, while DERA (Denmark) may issue an order with specific content, ERO (Czech Rep) may revoke a licence, and AEEG may issue an opinion to the competent Minister. BNetzA appears to have no competence whatsoever in the area of licensing, therefore it may also not take any formal action in the area of compliance monitoring either.*

- **Power of the NRAs to modify licenses**

*Many regulators have still limited competence (and some none whatsoever), to modify licences. Among those who possess such powers, Ofgem stands out, with a fully developed modification procedure (Standard Licence Conditions are modified by the collective licence modification procedure – changes can be made unless objections received from 20% of the number of relevant licensees, or relevant licensees holding a 20% market share).*

- **Power of the NRAs to impose a fine on licensees for infractions and/or have the power to report infractions**

*More than half of the CEER energy regulatory authorities have full fine-setting powers. Others, upon law infringement, may revoke a licence (ERO – Czech Rep. – or EMV – Finland -) or propose to the competent state body to do so (AEEG – Italy, CNE – Spain).*

**II.** *The Third Package Directives stipulate that the National Regulatory Authority (NRA) must be able to take “autonomous decisions” (Electricity Directive Art 5(5)(a), Gas Directive (GD), Art 37(5)(a)) and must be “functionally independent from the government, any other political, public or private body” (ED Art. 35(4)a, GD Art. 37(4)(a)).*

*Nevertheless the authorisation to construct e.g. new capacity is not defined as a competence of the NRA, but the NRA shall have the right to review guidelines that may be set by the MS for that authorisation and may recommend amendments there to.*

*The NRA is responsible for the Certification of Transmission System Operators.*

*The NRAs have duties in relation to the general oversight of energy companies, including a general competence to ensure compliance of any electricity or gas undertaking with European Union law, and the power to issue binding (i.e. immediately and directly applicable) decisions on such undertakings and to impose effective, proportionate and dissuasive penalties for non compliance or to propose to a competent court that it imposes such penalties.*