

CEER Citizens' Q&A

Monitoring NRAs' Independence

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1 What is NRAs' independence?

Energy national regulatory authorities' (NRAs') Independence is defined in Art. 35 (4) Directive 2009/72/EC as follows:

“Member States shall guarantee the independence of the regulatory authority and shall ensure that it exercises its powers impartially and transparently.” et seq.

The NRA is legally and functionally independent from any market player, acts independently from any market interest and does not seek or take direct instructions from any government or other public or private entity while carrying out the regulatory tasks.

2 What does the Report propose for the evaluation of NRAs' independence?

The Report provides a monitoring of NRAs' independence, taking into consideration that national legislators have already adapted NRA competences, tasks and duties by implementing the Clean Energy for All Europeans Package. The report defined a set of key indicators that serve as a basis for suitable comparability of NRAs' independence in decision-making, decision enforcement and independence in resources.

NRAs have a clear status of “independent bodies” with tasks and duties precisely defined in their legislation. Consequently NRAs' decisions are directly applicable and do not need any confirmation by any other body or political process. There is no governmental interference in regulatory decision-making of the regulator's core daily business. For the vast majority of NRAs their decisions can only be overturned by courts.

Furthermore, in regard to decision enforcement, NRAs have the power to carry out investigations into the functioning of the electricity and gas markets and impose any necessary and proportionate measures to promote effective competition and ensure the proper functioning of the markets. NRAs are equipped with legal powers to issue sanctions and penalties in regulatory matters.

Independence in resources is reflected in sufficient funding, an adequate number of employees and the possibility to initiate legal proceedings. The accountability of NRAs is also an important topic to ensure their independence. They are accountable to the legislator, stakeholders and the public, which leads to the importance of monitoring tasks. On the one hand, NRAs collect relevant information/data from the regulated sectors regarding their industry, market and economic performance. On the other hand, the NRAs also collect internal information/data on their own regulatory performance and processes.

To ensure transparency, NRAs publish their draft decisions and collect feedback from stakeholders and all interested parties when taking decisions, but also collected performance information.

3 What is the impact on energy customers?

Energy customers must be able to rely on properly working and independent regulators in their countries. A key aspect of NRAs' regulatory work is to provide binding guidance, review and/or approve contract terms between regulated entities (such as distribution system operators and transmission system operators) and/or market actors independently and in the interest of the consumers.

Most NRAs set out "Handbooks" for electricity and gas suppliers with obligations and the minimum service requirements that suppliers must adhere to in their dealing with energy customers, including vulnerable customers. These rules are in place to ensure that customers enjoy a high standard of protection in their dealings with suppliers. An independent regulator is key to empower customers to participate to the market and to protect consumers, particularly the vulnerable ones, in case of disputes.