



"The Concept of an Independent Regulator"

Peter Plug, Director, DTe (The Netherlands)

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Introduction and outline

- **Current situation and third package**
- **What is an independent regulator**
- **Independence towards who?**
- **Independence as professionalism**

Current situation

- **Lack of uniformity and in many cases weakness of regulatory authority**
- **Strong regulators are necessary for a properly functioning market**
- **Current legislation does not specify how independence must be ensured from short-term political influences**

(Establishing an Agency for the Cooperation of Energy Regulators, COM (2007) 0530)

Third package

- **Legally distinct and functionally independent of any other public or private entity**
 - **Legal personality**
 - **Budgetary autonomy**
 - **Human and financial resources**
 - **Independent management.**

(Establishing an Agency for the Cooperation of Energy Regulators, COM (2007) 0530)

What is an independent regulator?

- **An arm's-length relationship with regulated firms, consumers and other interests;**
- **An arm's-length relationship with political authorities;**
- **The attributes of organisational autonomy necessary to foster the requisite experience and to underpin those arm's-length relationships.**

(Smith, W. (1997), *Utility Regulators – The Independence Debate*)

- **Question one: what is independence / what is an arm's-length?**
- **Question two: independence towards who?**

Levels of independence

- **Institutional independence**
 - **Legal personality, budgetary autonomy, human and financial resources, independent management**

- **Independence as professionalism**
 - **Actual use of institutional arrangements, informal rules, norms, habits, cultural factors**

Independence towards who?



Institutional arrangements to ensure formal independence
can also lead to complex structures

Political authorities and the regulator

- **Political accountability and regulatory independence**
 - **Short term political influence: no interference in individual cases**
 - **Lack of solid kind of democratic legitimacy**
 - **(Informal) leeches still exist**

- **Policy and implementation**
 - **Information asymmetry between agency and political authorities**
 - **The regulator always plays an informal policy-making role**

The sector and the regulator

- **Agency capture**
 - Technical specialisation of sector
 - Asymmetric information

- **Regulatory deadlock**
 - One cannot play the game in a too technocratic manner
 - Negotiating is an inherent part of the game

- **Different roles towards sector**
 - Advisor, source of knowledge, posing fines, etc

Independence as professionalism

- **Strong regulators are necessary for a properly functioning market**
 - **Institutional independence and professional independence**
- **Social skills, insights, experience and wisdom are very important**
 - **Listening to stakeholders**
 - **Collecting arguments and information**
 - **Being contactable for the sector**
- **Playing the regulatory game is a constant manoeuvring between capture and deadlock**



Peter Plug, DTe (The Netherlands)